



IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1183/PUN/2023 and
ITA No.425/PUN/2025
Assessment Years : 2018-19 and 2020-21

Brahm Precision Materials Pvt. Ltd., K-221, MIDC, Waluj, Aurangabad – 431 136 Maharashtra PAN : AAPCS8797IL	Vs.	CIT(A)/NFAC, Delhi
Appellant		Respondent

Appellant by	:	Shri Hari Krishan
Respondent by	:	Shri Amol Khairnar & Shri Ramnath P. Murkude
Date of hearing	:	07.08.2025
Date of pronouncement	:	13.10.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeals at the instance of assessee for A.Y. 2018-19 and A.Y. 2020-21 are directed against the separate orders of CIT(A)/NFAC evenly dated 22.09.2023 passed u/s.250 of the Income-tax Act, 1961 (in short 'the Act') and are arising out of Assessment Orders dated 25.03.2021 and 26.09.2022 passed u/s.143(3) r.w.ss.143(3A) & 143(3B)/u/s.143(3) r.w.s.144B of the Act for A.Y. 2018-19 and A.Y. 2020-21 respectively.

2. Registry has informed that ITA No.425/PUN/2025 is barred by limitation as the assessee has filed this appeal with a delay of 445 days. Assessee has filed condonation application



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explaining the reasons for delay and the contents of the same are reproduced below :

“The assessee respectfully submits as follows.

1. The Commissioner of Income Tax (Appeals) has passed the order u/s 250 of the Income tax Act on 22-09-2023. Accordingly the last date for filing the appeal before Hon'ble Tribunal was 21-11-2023. The appeal has been filed on 17-02-2025. Thus there is a delay of 454 days in filing the appeal.

As the identical issue was already in dispute before the Hon'ble Income Tax Appellate Tribunal, Pune for Assessment Year 2018-19 in ITA No. 425/PUN/2025 and the final order of the Hon'ble Tribunal was yet to come, therefore, we were under the impression that the final order of Hon'ble Tribunal will also apply for Assessment Year 2020-21. We were under the impression that the separate appeal is not required to be filed for Assessment Year 2020-21.

2. On 14-02-2025 the assessee received notice dated 14-02-2025 vide DIN No. INSIGHT/VER/02/Service_Letter/2024-25/4919123137160001 from the Verification Centre, National Faceless Assessment Unit, Income Tax Department, Delhi for levying penalty us/270A of the Income Tax Act. In order to furnish reply to the above penalty notice we consulted the Senior Counsel and were advised to immediately file the appeal before the Hon'ble Tribunal. The appeal was accordingly filed on 17-02-2025. Thus the delay of 454 days has been caused in filing of the appeal.

4. It is respectfully submitted that delay has been caused due to genuine reasons. There was no malafides or gross negligence on the part of the assessee in the delay in filing of the appeal. The assessee has not obtained any undue advantage from the delay in filing the appeal.

5. PRAYER

The delay of 454 days in filing of the appeal may kindly be condoned and the appeal may kindly be admitted for adjudication.”

3. After hearing both the sides and perusing the averments made in the application, we are satisfied that ‘reasonable cause’ prevented the assessee to file the appeal within the stipulated time. We note that the delay is not intentional and assessee would not have gained from filing this appeal with a delay. We



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therefore taking guidance from the judgments of Hon'ble Apex Court in the case of *Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. reported in (1987) 2 SCC 107* and in the case of *Inder Singh Vs. State of Madhya Pradesh judgment dated 21.03.2025 (2025 INSC 382)* condone the delay of 445 days in filing of the instant appeal before this Tribunal and admit the appeal for adjudication.

4. Since most of the grounds raised in these two appeals are common, we proceed to dispose of these appeals by way of consolidated order for the sake of convenience.

5. We will first take up ITA No.1183/PUN/2023 relating to A.Y. 2018-19 and our decision on common issues raised in A.Y. 2018-19 shall apply *mutatis mutandis* on the common issues raised for A.Y.2020-21. Though the assessee has raised detailed grounds of appeal along with Form No.36 but subsequently assessee vide letter dated 12.06.2024 has filed revised and concised grounds including the additional ground of appeal which reads as under:

"The following grounds of appeal are taken independently without prejudice to one or other.

1. *The Ld. CIT (A) has erred in confirming the disallowance of Rs. 97,61,190/- made by the Assessing Officer on account of Foreign Investment written off. The disallowance may be deleted.*

2. *The Ld. CIT (A) has erred in confirming the addition of Rs.99,23,830/-made by the Assessing Officer by treating the advance of Rs.99,23,830/-received against sales, as unexplained cash credit u/s 68 of the Act. The addition may be deleted.*

3. *The Ld. CIT (A) has erred in confirming the action of the Assessing Officer in charging the higher rate of tax by invoking the provisions of section 115BBE of the Act, in respect of the addition of Rs. 99,23,830/- made to the income to the assessee by treating the advance of Rs. 99,23,830/-received against sales, as unexplained*



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cash credit u/s 68 of the Act. The invocation of provisions of section 115BBE may be vacated/cancelled/quashed.

4. *The Ld. CIT (A) has erred in upholding the action of the Assessing Officer in making the ad-hoc addition on account of the excess cost of raw material consumed, and in confirming the addition to the extent of Rs.1,14,55,271/- on ad-hoc basis at the rate of 0.01% of the total turnover. The addition of Rs.1,14,55,271/-confirmed by CIT (A) may deleted.*

5. *The Ld. CIT (A) has erred in confirming the disallowance of Rs.10,28,087/- made by the Assessing Officer on account of excise duty balance of Rs.10,28,087/- written off. The disallowance may be deleted.*

6. *The appellant craves leave to add to or amend/modify or delete any or all of the above grounds of appeal.”*

6. At the outset, Ld. Counsel for the assessee requested for not pressing Ground of appeal Nos. 4 and 5. Accordingly, the said grounds are dismissed as ‘not pressed’.

7. Brief facts of the case are that the assessee is a Private Limited Company carrying on the business of manufacturing of Aluminium Die Casting items required for Automobile components, manufacturing of Auto Components and Machining and Assembly of Auto Components. Return of income for A.Y. 2018-19 e-filed on 28.11.2018 declaring loss of Rs.6,67,235/-. Return processed u/s.143(1) of the Act on 04.11.2019. Subsequently, case selected for Complete Scrutiny on account of the three issues namely :

- (a) *Claim of Any Other Amount Allowable as deduction in Schedule BP*
- (b) *Non-Furnishing of Quantitative details*
- (c) *Investments/Advances/Loans*

8. After serving valid statutory notices u/s.143(2) and 142(1) of the Act along with the questionnaire, ld. Assessing Officer (AO) carried out the assessment proceedings and various submissions were filed by the assessee. Ld. AO noticed that



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assessee has written off Rs.97,61,190/- under the head Administrative Expenses towards the Foreign Investment becoming Bad Debt. In reply to the query raised by ld. AO, assessee submitted that the write off amount is amortization of foreign investment for taking the effect of loss in the Wholly Owned Subsidiary Company M/s.Brahm Corporation, Indiana, USA (in short 'WOS-BC, USA' which has arisen on account of huge losses and civil proceedings going on against the company in USA due to default in repayment of Loan taken from Bank in USA. Assessee vide letter dated 15.02.2021 submitted that the sole purpose of the investment was to establish market in Europe/USA as a measure of commercial expediency and fulfilling its business objectives. It was also submitted that when the assessee decided to explore the business activities in Europe/USA he came to know about the business concern namely M/s. Littler Diecast Corporation, Indiana, USA (in short 'LDC, USA') and for acquiring this company assessee had to incorporate the "WOS-BC,USA" and from the investments made by the assessee company in its "WOS-BC,USA", 80% shares of "LDC,USA" were acquired. It was also submitted that from F.Y. 2014-15 onwards assessee company started sending funds to its "WOS-BC,USA" for acquiring the shares of "LDC, USA" and also to expand the business. In the due course of time, business loans were also taken from Regions Bank, Alabama, USA and the loan was taken by "LDC, USA", "WOS-BC, USA" and the personal guarantee of Mr. Bhavook Tripathi who is the common Director in "WOS-BC,USA", "LDC,USA" and also the Managing Director of the assessee company. From F.Y. 2016-17 onwards, assessee started receiving orders from "LDC,USA" but subsequently due to local recession in the business,



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“LDC,USA” could not fully fund its payroll and defaulted in meeting the terms of the Credit Agreement dated 09.03.2016 with the Regions Bank. Even after the Bankruptcy being filed by “LDC,USA”, the Regions Bank, USA did not agree to the bankruptcy and filed a suit against “LDC,USA”, “WOS-BC,USA” and Mr. Bhavook Tripathi on 09.02.2018 before the Delaware County Circuit Court, USA. Copy of Resolution passed by “WOS-BC,USA” in January 2018 also filed before the ld. AO in support of the claim that “WOS-BC,USA” is under liquidation. It was thus claimed that the investment was made to further its business objectives however it could not bring projected Revenue and profits from business rather resulted into a loss. Therefore, Rs.97,61,198/- being part of the total investment in “WOS-BC,USA” was written off as a business expenditure/loss. However, ld. AO was of the view that Foreign Investment written off is not a Revenue business loss but is Capital loss and cannot be held as business expenditure.

9. During the course of assessment proceedings, ld. AO further noticed that assessee has received Rs.99,23,830/- in Foreign currency. However, it was claimed by the assessee that said sum is advance against sales received from “LDC,USA” but inadvertently entry has been made in the name of “WOS-BC,USA”. However, ld. AO was not satisfied with the submissions and treated the sum of Rs.99,23,830/- as unexplained cash credit u/s.68 of the Act and made addition thereof.

10. Further, Ld. AO on examining the expenditure incurred on material consumed observed that there is large increase in cost of raw material by 4.67% and finally made addition disallowing



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3% of the total turnover as excess expenditure claimed on material consumed, making addition of Rs.3,21,17,583/-.

11. Ld. AO also made addition of Rs.10,28,087/- which the assessee claimed as Excise balance written off for various Excise amounts which were standing in the books of company as receivables but Ld. AO was not satisfied with the submission and made addition of Rs.10,28,087/-. Ld. AO made total addition of Rs.5,28,30,690/- and assessed the income at Rs.5,33,72,180/-.

12. Aggrieved assessee preferred before ld.CIT(A) challenging the various additions made by ld. AO. However, ld.CIT(A) only gave part relief relating to *ad hoc* disallowance on material consumption and restricted it to 1.07% of the total turnover thereby sustaining the addition to Rs.1,14,55,271/- as against Rs.3,21,17,583/- made by ld. AO.

13. Dissatisfied assessee is now in appeal before this Tribunal raising the aforementioned revised and concised grounds including the additional grounds and made separate submissions for the issues raised.

Bad Debts in the form of Foreign Investment written off at Rs.97,71,198/- : Ld. Counsel for the assessee submitted that during F.Y. 2010-11 Mr. Bhavook Tripathi, Managing Director of the assessee company set up a company namely M/s. Sanshu Industries Pvt. Ltd. with 99% share holding and took over the business of his own sole proprietary concern M/s. Sanshu Industries located at Aurangabad. During F.Y. 2015-16, name of the company M/s. Sanshu Industries Pvt. Ltd. was changed to M/s. Brahm Precision Materials Pvt. Ltd. With a



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view to establish and expand its business into manufacturing high precision casing components for Aerospace and Industries in the USA, assessee started looking for the appropriate avenues. On due diligence, it decided to acquire the on-going business of M/s. Littler Diecast Corporation, USA which was in the similar business in USA as required by assessee. The State of Indiana is the manufacturing hub in USA. For the acquisition of "LDC, USA", a new and wholly owned subsidiary company namely M/s. Brahm Corporation incorporated in United States of America which inturn acquired 80% of the shares of "LDC, USA". For acquiring the Equity of "LDC,USA", funds from the assessee company were remitted from India to its "WOS-BC,USA" during A.Y. 2015-16 to A.Y. 2018-19 totalling to approx Rs.53.60 crore Along with the business funds remitted by the assessee, certain more funds were required to expand the business and manufacturing activity and accordingly "WOS-BC, USA" and "LDC, USA" took business loan of USD 45,00,000 from the Regions Bank, Alabama, USA as co-borrowers as per the Credit Agreement dated 09.03.2016 and copy is placed in paper book Volume No.2 from pages 376 to 459. This loan was given by the Regions Bank, Alabama on the personal guarantee of Mr. Bhavook Tripathi who is the common Director in all the three entities, i.e. two located at USA and the assessee company itself. On 10.03.2016, assessee company entered into a Service Agreement with "LDC, USA" for providing the services relating to Administrative work. Sales and Marketing Services, Technical services, Intellectual property licenses etc. Similarly, "WOS-BC, USA" also entered into Service Agreement with "LDC, USA". From F.Y. 2016-17, assessee started receiving business income from USA on



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account of service charges and export sales. Master Agreement also executed on 07.11.2016 between “LDC, USA”, WOS-BC, and M/s. Regions Equipment France, USA. Purchase orders were received from “LDC, USA” during F.Y. 2016-17 and in the A.Y. 2017-18 assessee received income of Rs.4,19,43,353/- from “LDC, USA” which is duly accounted for in the return of income filed for A.Y. 2017-18. Assessee also received income of Rs.3,22,51,819/- from “WOS-BC,USA” by way of service charges during F.Y. 2017-18 relevant to assessment year 2018-19. With the help of investments made in “WOS-BC,USA” and taking over of 80% stake in the business of “LDC, USA” assessee also started receiving export orders and made export sales during F.Y. 2016-17 to F.Y. 2018-19. However, assessee could not achieve the quality standard of the products expected in USA and the export orders started failing. Due to the rejection of Indian goods, and the local recession in USA, business of “LDC, USA” got adversely affected. In order to help “LDC, USA” to maintain the payment schedule of the bank assessee company sent some more investments to the Equity of “LDC, USA” through its “WOS-BC,USA” but there were defaults to the terms of the Credit Agreement dated 09.03.2016 as a result “LDC, USA” filed a bankruptcy petition on 02.09.2018 and before filing of this petition Board of Directors of “WOS-BC,USA” passed a resolution on 12.01.2018 for liquidation of some of the assets, loans and equity interests of “WOS-BC,USA” which included selling of the houses located in Carmel with the permission and consent of the bank. However, M/s. Regions Bank did not agree with the bankruptcy and filed a legal suit against “LDC, USA”, “WOS-BC,USA” and Mr. Bhavook Tripathi on 09.02.2018 before the Delaware County Circuit Court, USA



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for monitory judgment against the borrowers and the guarantor and for appointing a receiver over “LDC, USA” and “WOS-BC,USA”. Eventually, an agreed motion was reached on 21.09.2020 between the Regions Bank, “WOS-BC,USA”, “LDC, USA” and Mr. Bhavook Tripathi before the Delaware County Circuit Court, USA for the sale of the remaining unliquidated intangible assets of “WOS-BC,USA” and “LDC, USA” and the assessee was required to pay huge funds.

14. Ld. Counsel for the assessee submitted that on passing of the resolution on 12.01.2018 for liquidation of some of the assets, filing of suit by Regions Bank on “WOS-BC,USA”, “LDC, USA” and Mr. Bhavook Tripathi on 09.02.2018 and also before the finalisation of the Financial Statements for F.Y. 2017-18, the order of Delaware County Circuit Court, USA was passed on 09.04.2018. Assessee considering the situation and the probable huge business loss, has written off Rs.97,61,190/- equivalent to 1,50,000 US Dollars in its books out of the total investments made in “WOS-BC,USA” and claimed it as business loss/expenditure. In the Audited Balance sheet, reasons for writing off have been mentioned which is existence of proceedings going on against wholly owned subsidiary company “WOS-BC,USA”. Before ld. AO, it has been stated that the purpose of making the investment in the wholly owned subsidiary company “WOS-BC,USA” was to expand the business and also making exports to the US markets through the acquisition of the running business of “LDC, USA”. Eventhough the objective was to increase the business and export sales and the assessee was able to get good return on such investments by way of service charges from overseas



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company as well as the export orders however after few years it suffered huge losses and therefore writing off part of the foreign investment at Rs.97,61,190/- is purely a business loss and is allowable as a revenue expenditure.

15. Similar type of bad debts of writing off foreign investment has also been claimed in the books for A.Y. 2020-21 at Rs.9,56,76,580/-. He finally concluded that the bad debts at Rs.97,61,190/- for A.Y. 2018-19 and Rs.9,56,76,580/- for A.Y. 2019-20 should be allowed as a business loss as it has been incurred due to commercial expediency and activity carried out in due course of business. In support, reliance has been placed on the following decisions :

1. *Ace Designers Ltd. Vs. ACIT (2020) 120 taxmann.com 321(Karnataka)*
2. *CIT Vs. U.P. Rajkiya Nirman Nigam Ltd. (2013) 36 taxmann.com 96 (Allahabad)*
3. *CIT Vs. U.P. Rajkiya Nirman Nigam Ltd. (2015) 64 taxmann.com 379 (SC)*
4. *Spencers and Co. Ltd. (2014) 47 taxmann.com 55 (Madras)*
5. *CIT Vs. Colgate Palmolive (India) Ltd. (2015) 59 taxmann.com 139 (Bombay)*
6. *Booke Bond & Co. Ltd. (1986) 28 Taxman 426 (SC)*

16. **Next issue is addition u/s.68 of the Act at Rs.99,23,830/- :** Ld. Counsel for the assessee submitted that the alleged sum equivalent to USD 154282 was received by the assessee on 19.07.2017 from M/s. Littler Diecast Corporation, USA as advance against supplies. However, inadvertently during the course of assessment proceedings, it was wrongly submitted that the said sum has been received from "WOS-BC,USA". He submitted that the ledger account of "LDC, USA" is placed at pages 543 of paper book No.2. Details of the amount received as advance against sales and bank statement



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of the assessee held with “WOS-BC,USA” also supports this fact and even closing balance in the ledger account of “LDC, USA’ has been arrived after adjustment of the opening balances and the export sales made during the year at Rs.95,90,205/-. Also in A.Y. 2020-21 assessee has written off Rs.10,52,66,785/- out of the investments made in its 100% wholly subsidiary company “WOS-BC,USA” and the said sum of Rs.99,23,830/- has been adjusted during the year against it and only the net amount of Rs.9,56,76,580/- has been claimed as bad debt. Ledger account of “WOS-BC,USA” is also placed at page 537 of paper book No.2. He submitted that since nature and source of alleged sum is duly explained with evidences, no addition for unexplained cash credit u/s.68 of the Act is called for.

17. Ld. Counsel also referred to the various documents filed through paper book No.1 and 2 and the Index of such paper books are reproduced below :

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18. On the other hand, ld. DR vehemently argued submitting that bad debts/foreign investment written off has rightly been affirmed by ld.CIT(A) because the assessee has actually made investment in its “WOS-BC,USA” which is in the nature of capital investment and cannot be categorised as a Revenue expenditure and the bad debts claimed by the assessee cannot be allowed as business loss. He further took us through the following findings of ld.CIT(A) (relevant extract) :

“4. Decisions:- I have carefully considered the facts on record, the assessment order, written submissions and cited case law made by the appellant during appellate proceedings. In the present appeal, the appellant has taken several grounds of appeal and the ground-wise decisions are as under:-

4.1 Ground No. 1 relates to addition of foreign investment written off of Rs.97,61,190/-. In this case, the appellant has written off foreign



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investment of Rs.97,61,190/- in its wholly owned subsidiary (WOS) as business loss for the financial year under consideration. On perusal of the profit and loss Account, the AO has noted that the appellant has written off a sum of Rs.97,61,190/- on account of foreign investment written off under Note no. 21(b) of Direct Expenses under the head of office and administration cost. The AO has noted that this amount is investment loss and not a business loss.

4.1.1 During the appellate proceedings, the appellant has contended that the main reason of writing off of some part of investment in M/s Brahm Corporation USA was due to the fact that the Company namely Brahm Corporation USA has filed for bankruptcy in April 2018, however at that time the entire impact was not known hence only some part of the investment was written off in the present financial year.

4.1.2 On examination of the facts of the case, it is observed that the appellant has made investments in its wholly owned subsidiary (WOS) namely M/s Brahm Corporation USA. The appellant has claimed that it has made investments in WOS in USA to furtherance of its business objectives in USA and Europe. Subsequently, its WOS suffered losses and therefore the appellant has written off some part of the losses. On carefully considering the facts and circumstances of the case, it is observed that although the appellant has consistently claimed that it has made Investments in WOS in USA to furtherance its business objectives. However, the nature of business objective was never specified by the appellant which could clearly establish that this investment was made for generating revenue income for the appellant. In fact, the appellant failed to show that any business transaction was happened with WOS in past years. It is also a matter of fact that the appellant has shown investment under the investment head of balance sheet continuously and the appellant has not furnished any evidence to show the business arrangement between the appellant and WOS and the WOS was also conducting same line of business or supplying any materials from USA or marketing/ selling products of the appellant in USA. Thus, the appellant completely failed to show the commercial expediency in investment in WOS. Since, there is loss in the appellant's WOS in USA, the appellant is trying to portray its investment loss as business loss. Further, the appellant has claimed that due to the fact that its WOS has filed bankruptcy, the entire impact was not known hence only some part of investment was written off in this financial year. Even if it is considered business expenditure for a while, the loss on this account cannot be claimed on the basis of estimation or any type of provisioning being unascertained loss. Also, AO has clearly held that the appellant had on the one hand some fresh transaction of investment with WOS in the present financial year and on the other hand claimed a write off of Rs. 97.61.190/- equivalent to 150000 USD.



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4.1.3 The appellant had clearly recognized the investment in USA as an asset on its balance sheet when the said investment was made. The appellant itself admits that apart from exploring global opportunities of existing products of WOS, it has made investment in it to form controlling interest in the said company. This acceptance of the appellant clearly indicates the intention of the appellant and nature of investment as well.

4.1.4 The appellant has referred to case laws in its favour. On perusal of the case laws referred to by the appellant, it is observed that the facts and circumstances of these cases are different and it do not cover on the similar lines. The decision in the case of the CIT Vs Colgate Palmolive (India) Ltd was based on manufacturing of items exclusively for the assessee as the assessee was wholly reliant for manufacturing of items to be traded. Further, there was a loss on sale of shares of WOS of Colgate Palmolive (India) Ltd whereas in the present case, only part of investment in WOS has been written off on estimation basis and not ascertained in nature. Thus the decision of the referred case is not applicable in the present case.

4.1.5 In view of the above discussion, I am of the considered view that the loss of such investment has to be recognized as capital loss and not as revenue loss and accordingly the same cannot be allowed to be set off against the business income of the appellant. Therefore, the disallowance of Rs.97,61,190/- on account of foreign investment can't be allowed as business expenditure. Thus, the ground no.1 is hereby dismissed.

“4.2 Ground No. 2 relates addition of Rs.99,23,830/- as unexplained cash credit u/s 68 of the Act. In this case, the appellant has received Rs.99,23,830/- (equivalent to 1,54,292 USD) on 19.07.2017 during the year and this amount has been shown as borrowing of money in Para 14 of Form 3CEB. The AO pointed out that the appellant has submitted that it has received loan from Littler Diecast USA and contradicted its statement in the subsequent Para of its reply dated 25.01.2021 stating that the amount of Rs.99,23,830/- is received from Brahm Corporation as advance against sales to be made to it. It is observed that the appellant vide its subsequent reply dated 15.02.2021 filed during assessment proceeding submitted that this amount was received as advance against sales to be made and the transaction could not be completed in the subsequent years as the said concern has gone into liquidation.

4.2.1 For the above, it is seen that the appellant has submitted contradictory statement during the assessment proceedings. Further, it is observed that the appellant has wrongly classified the amount and has shown this amount as a negative amount in the list of sundry debtors and not in the head of loans or advance from customer as current liability in the Balance sheet. During the appellate proceedings, the appellant has submitted a copy of court order for bankruptcy of Brahm Corporation USA and Littler Diecast and their financial statement. Perusal of these documents reveals that



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on the one hand the appellant is making investment in equity of Brahm Corporation USA and on the other hand the appellant received loan from Litter Diecast, a related concern of Brahm Corporation USA and both the concerns have gone for bankruptcy and the appellant is claiming part investment as written off whereas loan has not been written off. These circular transaction doesn't support the genuineness of loan from Litter Diecast. Therefore, it is considered that the appellant has failed to explain the nature & source of loan fund received during the year. Thus, the addition of Rs.99,23,830/- made on account of unexplained cash credit u/s 68 of the Act is hereby confirmed. This ground of appeal is hereby dismissed.”

19. We have heard the rival contentions and perused the record placed before us. In Ground No.1, assessee has raised the issue that ld.CIT(A) erred in confirming the disallowance of Rs.97,61,190/- made by the AO denying the claim of business loss/bad debt in the form of “Foreign Investment written off”. The assessee has claimed bad debts/business loss in the form of writing off of part of the Foreign Investment made in wholly owned subsidiary M/s. Brahm Corporation, USA. However, ld. AO as well as ld.CIT(A) treated the alleged writing off of foreign investment as capital loss and denied the claim of business expenditure. We thus need to examine the nature of the expenditure incurred by the assessee, i.e. whether it is a revenue expenditure/loss or a capital expenditure/loss. It is judicially settled that if investments are made to expand or explore business avenues then loss of such investment is a business loss and if investments are made to get return in the form of dividend or interest or increase in price of such investment then loss of such investment is a capital loss.

20. At the cost of repetition, brief facts relating to this issue are that in order to expand its business overseas and also to increase its export sales and other Revenue in the field of manufacturing of high precision caging components and



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Aerospace and Defence Industries in USA looked for the proper avenues. After due diligence, the on-going business of “M/s. Littler Diecast Corporation, USA” was found to be a company through which the assessee can achieve its object of increasing its business revenue. However, for acquiring the shareholding of “LDC, USA”, assessee company incorporated wholly owned subsidiary “M/s. Brahm Corporation, USA”. During F.Y. 2014-15, the process of acquiring the major stake in “LDC, USA” (80%) by “WOS-BC,USA” started and the assessee started remitting funds from India to “WOS-BC,USA” and the investment started from F.Y. 2014-15 till F.Y. 2017-18 and totalled to Rs. 53.60 crore. Now once the process of acquiring the business of “LDC, USA” started, apart from the foreign investment made by assessee company in its “WOS-BC, USA” through India, assessee company through its Managing Director Mr. Bhavook Tripathi and the two concerns located in USA, i.e. “WOS-BC,USA” and “LDC, USA” also took business loans from Regions Bank, Alabama vide Credit Agreement dated 09.03.2016. Assessee also entered into Service Agreement with “LDC, USA” vide Agreement dated 10.03.2016 for providing various services namely Administration, Sales and Marketing, Technical, Intellectual Property licenses, Travel Services etc. The assessee company started achieving its objectives of expanding its business with the help of the on-going business of “LDC, USA” when it started receiving income from USA during F.Y. 2016-17 onwards on account of service charges and export sales. It is an undisputed fact that on account of investment made by the assessee in the “WOS-BC,USA” along with acquisition of 80% stake in “LDC, USA”, assessee company started earning income from F.Y. 2016-17 onwards itself. Such



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income is from the purchase orders received for manufacturing of dyes at 95000 US Dollars, income of Rs.4,19,43,353 received from “LDC, USA” during A.Y. 2017-18 and income of Rs.3,22,51,819/- by way of service charges received from “WOS-BC,USA” during A.Y. 2018-19. Apart from service charges assessee also made export sales of Rs.84,78,369/- and Rs.38,93,982/- during A.Y. 2017-18 and A.Y. 2018-19 respectively. Even during A.Y. 2019-20 assessee made export sales of Rs.6,04,818/- to BRP, Inc. All these figures of export sales and service charges income received from USA duly accounted in the books and offered to tax have direct nexus with the investment made by the assessee in “WOS-BC,USA” which was spread over four years and the purpose of such investment was not to earn any income from the investment in the form of Dividend or Interest but is purely for expansion of business and the results are evident looking to the figures of export of goods and services to the overseas companies through “WOS-BC,USA” and “LDC, USA”.

21. We further observe that after taking business loans from Regions Bank, Alabama, USA at the initial stage the business is claimed to have been growing but due to some goods exports were not meeting the USA standards and also growing recession in USA, “LDC, USA” started having problems of funding its payrolls and even defaulted in making payments to the instalments of Regions Bank. These defaults culminated into severe financial crunch faced by “WOS-BC,USA” and “LDC, USA”. In the first month of 2018, Board of Directors of “WOS-BC,USA” passed a resolution for filing a Bankruptcy petition and for liquidation of some of the assets and Equity of “WOS-



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BC,USA". However, Regions Bank, USA did not agree to the Bankruptcy petition declared by "WOS-BC,USA" and filed a suit against WOS-BC and "LDC, USA" and also on the key person of the assessee company namely Mr. Bhavook Tripathi who stood as guarantor for the business loans given by Regions Bank, USA. Thus, a suit was filed by Regions Bank, USA on 09.02.2018 for appointing a receiver ship before the "Delaware County Circuit Court, USA" and finally on 09.04.2018 the Court passed a receivership appointing the receiver. Now at this point of time in India when the books of account of the assessee were being finalised and financial statements were under preparation, assessee company foreseeing the business loss of the foreign investments made in "WOS-BC, USA" during A.Y. 2015-16 to A.Y. 2018-19, booked expenditure in the form of Foreign Investment writing off at Rs.97,61,190/- and further kept on booking such business loss/expenditure in subsequent assessment years including the one for A.Y.2020-21 wherein also the assessee has booked revenue expenditure at Rs.9,56,76,580/- in the form of writing off of the Foreign Investment made in "WOS-BC,USA". Now at this juncture, ld. Counsel for the assessee submitted that assessee's claim of writing off the foreign investment in "WOS-BC, USA" is purely a business loss because the investment was made with the intent of expanding the business and it was for commercial expediency and not a capital investment. Before proceeding further, we would like to take note of certain judicial precedents referred and relied on by ld. Counsel for the assessee wherein also similar issue have been dealt.



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22. Hon'ble Jurisdictional High Court in the case of CIT Vs. Colgate Palmolive (India) Ltd. (supra) has held as under :

“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% 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. Vs. CIT, 161 ITR 365 and of this Court in the case of CIT vs. Investa Industrial Corporation Ltd., 119 ITR 360. The alternate 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 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 17 March 2003 and which have been used to repay the loan to the Assessee company, amounting to Rs.5.5 crores, before 1 March 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 realize 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.



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

9. *Upon 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.”*

23. Hon’ble High Court of Allahabad in the case of *CIT Vs. U.P. Rajkiya Nirman Nigam Ltd. (supra)* has held as under :

“4. Brief facts, giving rise to the instant appeal, are that the assessee U.P. Rajkiya Nirman Nigam Ltd. is a State Government Undertaking engaged in the construction activities. During the year Assessment Year under consideration, i.e. 2004-05 relevant to the F.Y. 2003-04, the assessee had filed its original return declaring therein Rs.6,34,21,360/- on 1-11-2004, but subsequently, the same was revised at Rs.4,32,14,180/- on 18.8.2005 and while revising the said return, it has been declared that the debts to the tune of Rs. 2,13,50,967.28, out of Rs. 42.07 crores of sundry debtors, had become bad and irrecoverable, as these debts were pertaining to the period 1987-88 and 1998-99. A notice under Section 143 (1) of the Income-tax Act was issued requiring the assessee to explain as to how the debts which had become bad only on 30-3-2005 and accordingly relates to Assessment Year 2005-06, but the same has been claimed in the Assessment Year 2004-05 to which reply was tendered by the Assessee-respondent and the relevant para of the reply reads as under:-

“(i) That the financial year ended on 31-3-2004.

(ii) That the audit for the period 1-4-2003 upto 31-3-2004 could only be finalized after the closure of financial year that is after midnight of 31-3-2004.

(iii) That when the audit is to be taken up for finalization by the auditors after the closure of the financial year, i.e. after the midnight of 31-3-2004, any decision by the AUDITORS to reconcile, audit, pass rectification entry (if any), passing of journal entry in the Books, any correction by the auditors, or decision regarding debit of expenditure or any outgoing or credit of any income or receipt, accounting of any asset or liability different from what the assessee has already done, can and shall only be taken after 1-4-2004. Hence whether any decision for debiting an entry or crediting an entry is to be taken,



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whether by the auditors, Management or by the management on, the advise and guidance of the Statutory Auditors so as to disclose the correct income for the purpose of assessment, will only be taken on or after 1-4-2004. Hence whether the same is taken on 1-4-2004 or 30-9-2004 or any other date after 1-4-2004 will not change the nature and complexion of the entry. In the present case, when the due date for filing return came, the accounts had not been completely audited and finalized the Books were still subject to audit and open for any correction by the auditors. Hence any decision made before finalization of Accounts can in any manner effect and correct the Accounts and the decision so taken has in all circumstances to be considered as a method and procedure for placing correct income for assessment both as per the statutory provisions of Companies Act, 1956 and I.T. Act, 1961."

5. *The Assessing Authority did not agree with the explanation/justification given by the Assessee and accordingly, add the same on the grounds that these debts were to be written off in the Financial Year 2004-05 relevant to the Assessment Year 2005-06, as the decision with regard to the said debt being bad and was irrecoverable had been taken on 30-3-2005. The First Appellate Authority while dismissing the appeal of the assessee uphold the reasoning of the Assessing Officer. Under these circumstances, the assessee filed an appeal before the Income-tax Appellate Tribunal and the Tribunal came to the conclusion that there is no requirement in law under Section 36(1)(vii) of the Income-tax Act, that the amount should actually be written off before the end of the financial year.*

Relevant provisions of Section 36 (1) (vii) read as under:-

*"36(1)***

(vii) subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year"

6. *On perusal of the provisions here-in-above, it reveals that the only requirement for allowing the bad debt under Section 36 (1) (vii) of the Income-tax Act, is that any bad debt or part thereof is written off as irrecoverable and secondly, they should be written off in the accounts of the assessee for the previous year. In the instant appeal, neither the department nor the assessee disputes that the debt had become bad and it was written off.*

7. *The prescription as provided is to write off bad debt by the assessee in the accounts 'for the previous year', but it does not say to write off bad debt 'in the previous year'. Thus, there is a vast difference if the word 'in' would have been there in place of 'for'. Further, the words 'accounts of the assessee' are qualified with further words 'for the previous year'. Thus, it only means that the accounts in which the Act of writing off is to be done by the assessee should be for the previous year. Therefore, the law requires to write*



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off the bad debt in the accounts of the assessee in the relevant accounting year. There is neither any condition nor any provision that the writing off should be done in the previous year, i.e. before end of the financial year.

8. In the present case, debts relating to the period 1987-88 and 1998-99 claimed in the accounts which were prepared upto 31-3-2004 and as the accounts of the assessee are open and subject to corrections by the Auditors, as per the Companies Act, then such writing off can be done in those account books. No new legal proposition has been brought to our notice for treating the debt as bad or irrecoverable should be taken in the previous year itself. In other words, where account books are not closed and not signed by the Board of Directors and not adopted by the shareholders as per the Companies Act, it is legally permissible to make adjustments before they are finally adopted.

9. Further, it is admitted that the original return, on the basis of unaudited accounts, was filed on 1-11-2004. After audit had taken place and report of the Auditors was accepted, revised return was filed on 18-8-2005 and it is only in the revised return, the debts to the tune of Rs.2 crores and odd had been declared as bad. The ground taken by the Assessing Authority and Appellate Authority for not accepting the said bad debts during the assessment year under consideration, i.e. 2004-05 is contrary to the provisions of Section 36 (1) (vii) of the Income-tax Act, and further in view of the interpretation as stated here-in-above. Therefore, the Tribunal has rightly allowed the appeal of the assessee.

10. The Apex Court in the case of Kerala State Industrial Development Corpn. Lid. v. CIT [2012] 349 ITR 365/25 taxmann.com 564, while dealing with the State Public Sector Undertaking and the provisions of Section 36 (1) (vii) has laid down two conditions to be satisfied at the relevant time, namely, that (a) bad debt must be established to have become bad in that year and (b) bad debt should have been written off in the books of account of that year. If both these conditions are satisfied, then the assessee is entitled for the claim of bad debt.

11. In view of above, the questions are answered in negative, i.e. against the Revenue and is in favour of the assessee.”

24. Hon'ble High Court of Karnataka in the case of *Ace Designers Ltd. Vs. ACIT (supra)* has held as under :

“5. We have considered the submissions made by learned 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 USA. It is well settled legal proposition that while deciding the question whether a receipt is a capital or income, it



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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 [1959] 35 ITR 148 (SC), P.H. Divecha v. CIT [1963] 48 ITR 222 (SC), Kettlewell Bullen & Co. Ltd. v. CIT [1964] 53 ITR 261 (SC), Gillanders Arbuthnot & Co. Ltd. v. CIT [1964] 53 [TR 283 (SC) and CIT v. BEST and Co. (P.) Ltd. [1966] 60 TR 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 Coporation 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 a 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



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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 ie, 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.

In view of preceding analysis, the first substantial question of law is answered in the negative and in favour of the assessee. It is not necessary for us to answer the remaining substantial questions of law in view of our answer to the first substantial question of law. In the result, the order of the Tribunal dated 14-12-2012 to the extent of the findings contained against the assessee is quashed.

Accordingly, the appeal is allowed.”

25. On going through the above judgments, we notice that in the case of CIT Vs. Colgate Palmolive India Ltd. (supra) Hon'ble Jurisdictional High Court has considered the fact where the assessee claimed deduction on account of loss on sale of shares held in Camelot Investment Pvt. Ltd. amounting to Rs.5.50 crore and that the assessee made investment in 100% wholly owned subsidiary and claimed it as loss purely for business reasons. Hon'ble Court has observed that the main reason for setting up Camelot Investment Pvt. Ltd. was to manufacture of Tooth brushes exclusively for the assessee and since the assessee was relying on Camelot Investment Pvt. Ltd. for manufacturing of Tooth brushes to be traded by the assessee,



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the investment in Equity of Camelot Investment Pvt. Ltd. is nothing but a measure of commercial expediency to further business objectives and primarily related to the business operations of the assessee. Hon'ble Court has further held that at no point of time the investment in Camelot Investment Pvt. Ltd. was made with an intention to realise any enhancement value thereof or to earn dividend income and the investment was made to separately house the integral part of the business activity. Hon'ble Court held in favour of the assessee allowing the claim of business loss of Rs.5.50 crore towards the writing off of investment made in the Equity of Camelot Investment Pvt. Ltd.

26. Now examining the facts of the instant case in light of above judgment, we find the facts of the assessee are on much stronger footing so much so that in the instant case the process started with the making of investment in the Equity of "WOS-BC,USA" which further acquired 80% stake in the running business of "LDC, USA". The purpose of the investment of the assessee company in "WOS-BC,USA" was to expand its business of manufacturing of high precision caging components for Aerospace and Defence Industries in USA. This purpose was brought on the table by getting export orders for which Foreign remittances were made and also major amount of income earned from export of services and the activities carried out by the companies located in USA (*referred supra*). Assessee with the assistance of following documents has tried to prove that purpose of making investment in "WOS-BC,USA" was purely for commercial expediency and expansion of business. The list of documents reads as under :



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27. Now going through the above details furnished in the paper book and more specifically Intercompany Service Agreement dated 10.03.2016 between "WOS-BC,USA" and



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“LDC, USA” placed at pages 470 to 506 provides the information about services to be provided by “WOS-BC,USA” to “LDC, USA” and the scope of such services mentioned in the said Service Agreement are as under :

“Scope: Service Provider shall provide all administrative services to Service Recipient as Service Recipient may from time to time request from Service Provider, including without limitation the following:

1. Support Services

Such technical, marketing and business support services and assistance as may be requested from time to time relating to the business of Service Recipient.

2. Treasury Services

Services for the administration of certain treasury functions as may be requested from time to time, which may include but shall not be limited to managing capital structure, and investment & debt portfolios; financing for operations; managing credit lines and facilities; managing compliance with financial covenants.

3. Tax Services

Tax support and tax compliance services as may be necessary to ensure that Service Recipient complies with applicable tax laws and as may be requested from time to time. Service Provider shall coordinate with and assist Service Recipient's certified public accountants (the "Accountants") in preparing tax returns in order that such tax returns be filed as soon as reasonably practicable after the end of each fiscal year. Service Provider shall use all reasonable efforts to cause such tax returns to be filed on a timely basis and shall, promptly after the receipt thereof from such Accountants, deposit such copies with the permanent records of the subject entity. Such tax services may also include assistance with respect to tax research and planning; tax examinations; tax provisions; sales, use, and property tax.

4. Legal Affairs

Legal support services as may be requested from time to time, which may include but shall not be limited to the administration of any litigation by, against or involving Service Recipient, maintenance of trademarks and monitoring compliance with any regulatory requirements to which any Service Recipient is subject or may become subject in the future, but which shall not include any legal services the provision of which Service Provider concludes, after consultation with its counsel, could reasonably be expected to create a conflict of interest or violate an ethical rule.



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5. Accounting/Books and Records

Accounting support services as may be requested from time to time to assist in the maintenance of (a) a system of accounting for Service Recipient administered in accordance with generally accepted accounting principles in the United States ("U.S. GAAP") consistently applied and other accounting principles reasonably requested, and (b) a set of audit procedures that are consistent with U.S. GAAP. In addition, Service Provider shall provide such support services for Service Recipient as it may request from time to time to, including but not limited to:

Accounts Payable: Invoice processing, expense report processing, vendor file maintenance, 1099 reporting.

Accounts Receivable: Credit, collections, cash application.

General Ledger Accounting: GL maintenance, journal entry processing, account reconciliations, month end close financials, fixed asset accounting.

General Accounting: liaison governance support.

PPM: Project Portfolio Management.

6. Financial Statements/Periodic Reports

Service Provider shall provide such assistance to Service Recipient as may be requested from time to time by Service Recipient in the preparation of a balance sheet as at the end of each fiscal year and statements of income and results of operations and cash flows for such fiscal year (including notes thereto) of Service Recipient, which set forth in each case (in comparative form) corresponding figures for the preceding fiscal year and which are accompanied by the report thereon of the Accountants to the effect that such financial statements have been prepared in accordance with U.S. GAAP applied on a basis consistent with prior years (except as otherwise specified in such report). In addition, Service Provider shall provide other financial statements and periodic reports as reasonably requested by Service Recipient.

Service Provider shall provide such assistance to Service Recipient as may be requested from time to time in the preparation of financial reports and statements. If requested by Service Recipient, any such reports shall be certified by Service Provider to be correct and complete, to fairly present in all material respects the consolidated financial condition of Service Recipient, as the case may be, at the date shown and the results of operations for the period then ended and to have been prepared in accordance with U.S. GAAP consistently applied, except for year-end adjustments. The reports shall include a narrative discussion describing the business and operations of Service Recipient during the preceding quarter.



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Service Provider may engage outside accountants in connection with the provision of administrative services relating to the preparation of financial statements and periodic reports, in accordance with applicable corporate policies.

7. Financial Services

Service Provider shall provide budgeting, forecasting, financial planning and analysis services as may be requested.

8. Property Management

Service Provider shall provide such support and assistance to Service Recipient as may be requested from time to time in connection with the management of any real or leasehold property interests of Service Recipient.

9. Borrowing Documentation

Service Provider shall provide such support services as may be requested from time to time in connection with the administration of Service Recipient's financing arrangements, which may include but shall not be limited to the administration of Service Recipient's respective obligations and responsibilities under any loan documents and related security and other documents related to any borrowings of Service Recipient, and provision of letter of credit for future borrowings/security of Service Recipient.

10. Government Approvals

Service Provider shall provide such support services as may be requested from time to time by Service Recipient in connection with filings by Service Recipient with any governmental authority of any periodic or other reports required to be filed by such Service Recipient under the provisions of any government rule applicable to it and in connection with maintaining compliance with all permits, licenses and governmental approvals necessary or desirable for the conduct of Service Recipient's business. Such services may include but shall not be limited to preparing any application, filing or notice relating thereto.

11. Public and Government Relations

Service Provider shall provide such support services as may be requested from time to time by Service Recipient relating to public relations and government relations matters.

12. Human Resources

Service Provider shall provide such support and assistance to Service Recipient as may be requested from time to time in connection with the human resources matters of Service Recipient.

13. Strategic Planning and Business Development

Service Provider shall provide such support services as may be requested from time to time by Service Recipient relating to strategic planning and business development matters of Service Recipient.



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14. Corporate Finance Services

Service Provider shall provide such support services as may be requested from time to time by the Service Recipient relating to corporate finance matters of Service Recipient, including but not limited to:

Finance Management: *Corporate and operating group strategy development, mergers, acquisitions, joint ventures, and other business combination facilitation.*

Planning and Analysis: *Corporate monthly reporting, forecasting and budgeting, facilitation of capital initiatives, consolidated financials, forecasts and budgets; technical accounting support and external audit facilitation; allocations.*

Sourcing: *Vendor management; purchase order management.*

Audit & Risk Management: *Finance, information technology, and operation audits; security; business continuity safety and loss prevention; claims management, risk financing; certificates of insurance.*

15. Procurement

Service Provider shall provide such support services as may be requested from time to time by the Service Recipient relating to procurement matters of Service Recipient.

16. Other

Service Provider shall provide such other assistance or services relating to the conduct of Service Recipient's business as may be requested from time to time by Service Recipient."

28. We find that the business activity has commenced immediately after the initial investments made by the assessee company in its "WOS-BC,USA" during F.Y. 2014-15 and 2015-16 itself and the results started coming immediately thereafter. During A.Y. 2017-18 assessee received income of Rs.4,19,43,353/- from "LDC, USA" and also income of Rs.3,22,51,819/- from "WOS-BC,USA" during A.Y. 2017-18 and A.Y. 2018-19. Income generated from service charges have been duly offered as Revenue in the Audited Balance sheet of the assessee company during relevant A.Yrs. 2017-18 and 2018-19. This fact clearly demonstrates that the purpose of



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making investment in “WOS-BC,USA” by the assessee company was for purpose of expansion of business and to increase the Revenue along with income of service charges assessee also made export sales during A.Yrs. 2017-18 and 2018-19 which has as a direct nexus with the business model established by the assessee company through its “WOS-BC,USA” and acquired major stake in “LDC, USA”. Therefore, the ratio laid down by the Hon’ble Jurisdictional High Court in the case of *CIT Vs. Colgate Palmolive India Ltd. (supra)* in our considered opinion is squarely applicable on the facts of the instant case with much more strength that investment in “WOS-BC, USA” is purely for business expansion purpose and increase the gross turnover and profits of the company. Further, the ratio laid down in the *CIT Vs. Colgate Palmolive India Ltd. (supra)* has further been followed by Hon’ble Karnataka High Court in the case of *Ace Designers Ltd. Vs. ACIT (supra)* where also the investments made in 100% subsidiary claimed as business loss have been held to be correct by the Hon’ble Court.

29. Under these given facts and circumstances and also considering the judicial precedents referred in the preceding para more particularly the judgment of Hon’ble Jurisdictional High Court in the case of *CIT Vs. Colgate Palmolive (India) Ltd. (supra)*, we find that the assessee made investment in “WOS-M/s. Brahm Corporation located in USA for the purpose of expanding its business activities and the investment made in the Equity of “WOS-BC, USA” were not with the intention of earning Dividend or interest or other income in the form of enhancement of value of investment. We find that the purpose of foreign investment in “WOS-BC, USA” was to acquire the



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running business concern located in USA and then to increase the business activity including export of Goods and Services. The genuineness of this investment in “WOS-BC, USA” is well evidenced with various documentary evidences filed before us which shows the genuineness of carrying out of the business activity.

30. We also find that after making of the investment for business purposes, the assessee has been able to receive export orders and has also effected the exports and has also earned Revenue from export of services from the WOS located abroad and the other business concern namely M/s. Littler Diecast Corporation, USA. We further find that the claim of the assessee is in the nature of business loss and not a capital loss or bad debt as the investments made abroad are not in the nature of sundry debtors or account receivable but the investments made for business purposes. We further find that the assessee with the support of various documents placed in paper book including the suit filed by Regions Bank, USA with Delaware County Circuit Court, USA and the resolution passed for declaring Bankruptcy proves that the assessee has incurred business loss and the same has been written off from the books of account in piece meal basis since the proceedings were going on and then finally culminated in the year 2020. Accordingly, writing off of the Foreign investment made in the “WOS-BC, USA” during the instant year at Rs.97,61,190/- is purely for commercial expediency and is a business loss rightly claimed as expenditure by the assessee during the year. Thus, we fail to find any consistency in the finding of Id.CIT(A) and the same



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is reversed. Ground No.1 raised by the assessee for A.Y. 2018-19 is allowed.

31. Apropos to Ground Nos. 2 and 3 regarding addition of Rs.99,23,830/- made by AO for unexplained cash credit u/s.68 of the Act, we have carefully gone through the records and also the ledger account of both “WOS-BC,USA” and “LDC, USA” and find that the alleged sum of USD 1,54,282 equivalent to Rs.99,23,830/- has been received by the assessee from “LDC, USA” in which 80% of the stake is held by the assessee’s “WOS-BC,USA” and that is considered as advance against supplies. Only due to inadvertent mistake committed by the representative of the assessee during the course of assessment proceedings mentioning that alleged sum was received from “WOS-BC,USA”, impugned addition has been made. However, since the identity of “LDC, USA” is not in dispute and that it is directly related to the assessee for its business activity and the alleged fund have been received as part of the business receipts as advance against supplies through proper banking channel. Assessee has successfully explained the nature and source of the alleged sum along with bank certificate and therefore no addition u/s.68 of the Act r.w.s.115BBE for unexplained cash credit is called for. Finding of Id.CIT(A) on this issue is reversed. Ground Nos. 2 and 3 raised by the assessee are allowed.

32. In the result, appeal of the assessee for A.Y. 2018-19 is partly allowed.

33. Now we take up ITA No.425/PUN/2025 for A.Y.2020-21. Assessee has raised following grounds of appeal :



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“The following grounds of appeal are taken independently and without prejudice to one another.

1. The Ld. Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 9,56,76,580/- made to the income of the assessee by treating the loss of Rs. 9,56,76,580/-, in respect of the investment made in M/s. Brahm Corporation (USA) written off, as capital loss.

2. The appellant craves leave to add to or amend/modify or delete any or all of the above grounds of appeal.”

34. The sole grievance of the assessee is against the disallowance of business loss claimed towards writing off of the Foreign Investment made in “WOS-BC, USA” at Rs.9,56,76,580/-.

35. We have already dealt with this issue in the appeal for A.Y. 2018-19 and after elaborate discussion we have held in favour of the assessee allowing the claim of the assessee of writing off of foreign investment in “WOS-BC, USA” as business loss/expenditure and have also held that alleged write off is not a capital loss. Accordingly, finding on this common issue given by us while adjudicating the similar issue for A.Y. 2018-19 (*supra*) shall apply *mutatis mutandis* on the sole issue raised for A.Y. 2020-21 and the claim of business loss/expenditure at Rs.9,56,76,580/- made by the assessee company for A.Y. 2020-21 is hereby allowed. Finding of Id.CIT(A) is reversed. Ground of appeal No.1 raised by the assessee is allowed.

36. Ground No. 2 is general in nature.

37. In the result, appeal of the assessee for A.Y. 2020-21 is allowed.



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38. To sum up, ITA No.1183/PUN/2023 is partly allowed and ITA No.425/PUN/2025 is allowed as per the terms indicated above.

Order pronounced on this 13th day of October, 2025.

Sd/-

(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 13th October, 2025.
Satisfy

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.