आयकर अपीलीय अधिकरण, मुंबई " एल" खंडपीठ

Income-tax Appellate Tribunal -"L"Bench Mumbai

सर्वश्री राजेन्द्र,लेखा सदस्य एवं, राम लाल नेगी, न्यायिक सदस्य

Before S/Shri Rajendra,Accountant Member and Ram Lal Negi,Judicial Member

आयकर अपील सं./I.T.A./3435/Mum/2015,निर्धारण वर्ष /Assessment Year: 2007-08

Dy. CIT-3(2) Room No.608, 6th Floor, Aayakar Bhavan Mumbai-400 020.	Vs.	M/s. Mangalore Refinery & Petro - chemicals Ltd. Maker Tower, "F" Wing, 16th Floor Cuffe Parade, Mumbai-400 005. **PAN:AAACM 5132 A**

(अपीलार्थी **/Appellant**) (प्रत्यर्थी **/ Respondent**)

आयकर अपील सं./I.T.A./3588/Mum/2013,निर्धारण वर्ष /Assessment Year: 2007-08

M/s. Mangalore Refinery & Petro - chemicals Ltd . Mumbai-400 005.	Vs.	Dy. CIT-3(2) Mumbai-400 020.

(अपीलार्थी **/Appellant**) (प्रत्यर्थी **/ Respondent**)

Revenue by: Shri M.V. Rajguru-Sr.-DR
Assessee by: Shri Ronak G. Doshi

सुनवाई की तारीख **/ Date of Hearing: 11.09.2017**
घोषणा की तारीख **/ Date of Pronouncement: 11.09.2017**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार/ PER RAJENDRA, AM-

Challenging the orders dated 15/2/2013 of CIT(A)-4, Mumbai the assessee and the Assessing Officer (AO) have filed cross appeals for the year under consideration.Assessee-company, engaged in the business of refining of crude oil, selling of petroleum products and captive generation and distribution of power, filed its return of income on 26/10/2007 declaring total income at Rs.Nil under normal provisions of the Act. However, it offered the tax of Rs.122.06 crores on the net income of Rs.10,87,95,95,688/-. The AO completed assessment u/s.143(3) of the Act,on 25/11/2010,determining its income at Rs.Nil.He determined book profit of the assessee at Rs.10,93,60,33,285/-.

ITA/3588/Mum/2013:

2.First Ground of appeal, filed by the assessee is about freight charges u/s. 40(a)(i) of the Act.It was agreed by representatives of both the sides that identical issue was deliberated upon and was decided by the Tribunal while deciding appeal for AY.2006-07(ITA/No. 1240/Mum/ 2010 dt.17/5/2017) we are reproducing the relevant portion of the order which reads as under :-

"6.3.2.*It is said that the Act,being a taxing statute,has to be understood by reference to its language and that it is not the function of the judicial forums to stretch a taxing statute to rope in items of income which are not explicitly covered by the relevant taxing provision. No income can be brought to taxation on the basis of the intention or scheme of the Act. Section 5(2) of the Act,levies a tax on the total income of a non-resident; this provision is subject to the provisions of the Act and, therefore, obviously,chargeability of an item of income has to be proved by the AO who wants to tax it.As far as the provisions of TDS are concerned there is no need to say that same would be applicable only if the income is chargeable to tax.The words of section 195(1) in clear terms, lay down that tax at source is deductible only from "sums chargeable" under the provisions of the Act, i.e., chargeable u/s.4,5 and 9 of the Act.In the case under consideration, the basic fact of chargeability of the disputed amount has not been proved.The shipping companies are not residents of India nor they are having permanent establishment in India. Payments by the assessee were through TT.s.The FAA has held that as the payments were not made in foreign bank so the income has to be treated arisen in India.He was of the opinion that if the payments were made in foreign country only then the payments would have been considered to be covered by the instructions issued by the CBDT.In our opinion,the FAA had taken a very extreme view.In the present age of technical advancement it cannot be imagined that TDS provisions will not be applicable only if payments are made in a foreign country and payment made by TT.s in India is not payment outside India.The idea behind the Memorandums referred in the earlier paragraphs is to ensure that shipping companies should be subjected to the TDS provisions,if they receive payment in India.We find that in case of Avon (supra) the assessee had made TT.s. at Hyderabad and the Tribunal had held that such payments were covered by the Memorandums. Therefore,we are of the opinion that payments made through TT.s.,even though made via SBI Mumbai,by the assessee to foreign shipping companies is as per the provisions of the CBDT Memorandums and therefore,TDS provisions would not be applicable in the case under conside -ration.As far as the matter of Poompuhar(supra) is concerned it is sufficient to say that fact of both the cases are clearly distinguishable.The Tribunal in that matter had decided that the assessee should have a regularity of business of operating ship as a condition to attract section 44 B of the Act.Therefore,by importing that ratio the FAA had wrongly held that payment received was royalty.We would also like to reproduce the relevant portion of the order,dealing with the similar issue,of the Avon Organic Ltd.(supra) and it reads as under:*

> "6. We have heard rival submissions and perused the material on record. As revealed from the assessment order, the AO has come to the conclusion that the commission payments were deemed to have been received in India only because the telegraphic transfer of the remittances towards commission was made from a bank in India. Apart from these things, the AO has got no other material on record to show that the foreign agents either rendered any services in India or have any permanent establishment in India. Only because the remittances towards commission were telegraphically transferred to the foreign agents from the banks in Hyderabad will not lead to the inference that the income to the foreign agents accrued or arose in India in terms of section 5(2)(a) of the Act. The ITAT, Hyderabad Bench in the case of Dr. Reddy's Laboratories (supra) took note of the decision of the Hon'ble Supreme Court in the case of Transmission Corpn. of A.P (supra) and held in the following manner:
>
> "In the case of Transmission Corporation (supra), the facts were that the assessee had entered into certain agreements with certain foreign parties for supply of equipments. Another set of contracts entered into were for assembling, erection, testing and commissioning of the equipment. Pursuant to these contracts, payments were made by the assessee to the foreign parties without deducting tax under s. 195 of the Act. The contention of the assessee was that s. 195 would be applicable only where the payment to the non resident is wholly income chargeable to tax as it provides that any person responsible for paying to a non resident 'any sum chargeable under the provisions of this Act', shall, at the time of payment, deduct income tax thereon at the rates in force. In other words, the contention was that when the payments made to the non resident were not entirely income, but a trading receipt, there is no question of deduction of income tax at the source as the section does not provide for it. To this contention, the Supreme Court answered that the assessee who made the payments to the non residents was under an obligation to deduct tax at source u/s 195 of the Act in respect of the sums paid to them under the contracts entered into. It further held that the obligation

of the assessee to deduct tax u/s 195 is limited only to the appropriate proportion of income chargeable under the Act. Thus, it can be seen that the said judgment in fact helps the assessee. The second question answered by the Supreme Court can be understood to mean that the obligation of the assessee to deduct tax u/s 195 is not there when the payment made to the non resident does not contain any proportion of income therein. In our view, right from the beginning, not only on the basis of the circulars of the Board, but also on the basis of the decision of the Tribunal in its own case, the assessee firmly believed that no part of the income paid to the foreign agent was taxable in India. Therefore, there was no question of deducting any tax at source on any proportion of the payment made to the non-residents. Thus, the judgment in the case of Transmission Corporation (supra) does not advance the case of the department in the present appeal. Finally, it may be pertinent to note that Circular No.786 dated 7-2-2000 i.e., the same has been issued after the judgment was rendered in the case of Transmission Corporation (supra) i.e., on 17-8-1999. The facts in the assessee's case remain governed by the Board Circular and hence, in the final analysis, respectfully following the earlier order of the Tribunal in the assessee's own case, we uphold the order of the CIT (A) deleting the disallowance."

7. In case of Divis Laboratories Ltd. (supra), the ITAT, Hyderabad Bench while interpreting the provisions contained under s. 195 held that unless the income is liable to tax in India, there is no obligation to deduct tax. In order to determine whether the income can be deemed to accrue or arise in India, it has to be consistent in the context of section 9. As per section 9, the basic criteria provided in the section is about accrual of or arising of income In India by virtue of connection with the property in India or control or management vested in India. Unless these conditions were satisfied, it cannot be held that income has accrued or arisen in India. This Tribunal further held that section195 has to be read along with charging sections 4, 5 and 9 of the Act. The provisions contained u/s 195 were not meant that the moment there is a remittance, the obligation to deduct TDS automatically arise.Considering the fact that the AO has not brought any material on record to show that the foreign agents have rendered any part of the services in India or have a permanent establishment and business connection in India, it cannot be said that any part of the commission payment made to them accrued or arisen in India requiring deduction of tax u/s 195(1) of the Act. We are also fortified by the decision of the ITAT Bombay Bench discussed above. In the aforesaid view of the matter, we fully agree with the finding of the CIT (A) that no disallowance u/s 40(a)(i) could be made. We therefore uphold the order of the CIT (A) and dismiss the ground raised by the department."

Considering the above,first ground of appeal is decided in favour of the assessee."

Respectfully following the above order,we allow first Ground of appeal raised by the assessee.

3.Second Ground of appeal is about treating interest on bank deposits and miscellaneous interest as income from other sources.During the assessment proceedings,the AO found that assessee had earned income of Rs.21.03 crores, that it had treated the same as part of business income.He asked the assessee to explain as to why the interest should not be taxed under the head income from other sources. After considering the submission of the assessee ,dtd.16/11/2010, he held that the assessee had not established as to how the income earned by it by way of interest constituted business income, that it was carrying out business of refining of crude oil and selling the same, that earning of interest was never the objective of the assessee. Accordingly, he held that the disputed amount of Rs.12,30,90,115/- had to be taxed under the head income from other sources.

3.1. During the appellate proceedings,before the First Appellate Authority,the assessee made elaborate submissions and relied upon certain case laws. After considering available material

he held that the assessee had received interest income from six sources i.e., bank deposits, (Rs.9.77crores),interest from NMPT(Rs.4 crores); interest and recovery of discount charges (Rs.2.85crores);miscellaneous interest (Rs.2.76 crores),interest on housing loan(Rs.82,572/-) and interest on oil bonds(Rs.1.90 crores).

Referring to the order of his predecessor he held that interest on bank deposit was taxable under the head income from other sources,that while deciding the appeal for AY. 1999-2000, the Tribunal had held that interest received for NMPT was to be assessed as income from business and profession,that his predecessor had followed the order of the Tribunal for AY.s 2003-04 to 2006-07. Finally, he held that interest on NMPT was taxable under the head business and profession.With regard to remaining items of interest(except miscellaneous interest Rs.2.76 crores),he held that the Tribunal had decided the issue in favour of the assessee while adjudicating appeal for AY 1999-2000.

He observed that under the item miscellaneous interest there were 10 items -BG Sales-(Rs.2.56 crores); LC sales-(Rs.37,710/-);CAPS-(Rs.15,671/-); Interest charges for delay in collection-BIOCON Ltd.-(Rs.1,643/-);Interest for Advance against Equity-(Rs.9,71,520/-); Interest recovered from M/s. Elite Engineering Works-(1,934/-);Interest charged @ 8% for payment made on behalf of KRPL-(Rs.2,49,252/-); Interest on Mobilisation Advance @ 13% -M/s. N.R. Patel & Co.-(Rs.6,97,419/-); Other Deductions-(Rs.14,018/-) and Call/Allotment Money received along with Interest –Rasmond Paul-(Rs.9,235/-).He held that Bank guarantee sale (BG sales) and sales on letter of credit (LC Sales)were having direct nexus with the business of the assessee, that interest's received from these items (Rs.2.56 crores) plus (Rs. 37,710/-) were assessable as income from business and profession,that other interest were rightly assessed under the head income from other sources.

3.2. During the course of heating before us, the Authorised Representative stated that the issue of interest on bank deposit was discussed by the Tribunal while deciding the appeal for AY.s 1999-2000,2005-06 and 2006-07,that the Tribunal had decided the issue in favour of the assessee,as far as interest on bank deposit is concerned.

With regard to miscellaneous interest of Rs.19.60 lakhs he stated that the assessee had filed appeal for three items only i.e.,mobilization advance-Rs.6.97 lakhs; interest on advance against equity -Rs.9.71 lakhs; and interest charged for payment made on behalf of KRPL-2. 49 lakhs, that these items were related with business of the assessee, that interest arising on these items had to be assessed under the head business income.The Departmental Represen -

tative(DR) stated that in the earlier year,the Tribunal had decided the issue against the assessee with regard to miscellaneous interest.

3.3. We find that while deciding the appeal for AY.2006-07 (ITA/1240/Mum/2010 dtd. 17/05/17) the Tribunal deliberated upon and has decided the issue as under :-

8.*Next ground is about treating interest on bank deposit (Rs.6.42 crores) and Miscellaneous interest (Rs.1.38 crores) under the head income from other sources. We find that while deciding the issue of interest on bank deposit for the AY 2005-06 (supra), the Tribunal had dealt the issue of interest on bank deposit at para-3 of page-3 and 4. It reads as under :-*

3.Ground No. 2 relates with treatment of certain interest incomes under the head 'business income'. AO noted that the assessee earned various interest incomes totaling Rs.15.36 Crores which were taxable under the head 'Income from other sources' against which set-off of brought forward business loss was not available to the assessee. The break-up of the interest income was as follows:

Item No.	Particulars	Amount (Rs.)
1.	Interest on Bank deposits	92,66,526/-
2.	Interest from New Mangalore Port Trust	5,31,18,256/-
3.	Interest /Discount charges from customers	4,44,73,925/-
4.	Misc. Interest	77,41,574/-
5.	Interest on Contractors'advances	1,369/-
6.	Interest on Housing Loans	3,70,202/-
7.	Interest on call money	32,072/-
8.	Interest on Income tax Refund	3,86,55,665/-
	Total	**15,36,59,589/-**

After perusal of assessee's contentions and relying upon decision in assessee's own case for earlier years, CIT(A) concluded that Interest on item No. 1,2, 3, 5,6, & 7 was assessable under the head 'Business Income' which has been assailed before us by the revenue.No serious arguments have been raised by either side against item Nos. 5,6 & 7 and therefore,we are not inclined to disturb the finding of Ld. CIT(A) in that respect. The assessee availed working capital facilities from bank which remained idle at times and to off set the interest cost, it placed idle funds as Fixed deposits with Bank and earned interest thereon.Similarly,the assessee approached New Mangalore Port Trust (NMPT) do develop infrastructural facilities such as construction of new oil berth, dredging, providing fire-fighting equipment for the use of assessee and paid advance towards the same to NMPT and earned interest thereupon. The Ld. AR, while contending that these transaction were inextricably linked with the business of the assessee, drew our attention to following decisions of Tribunal & Hon'ble Bombay High court in assessee's own case to lead that the issue stands squarely covered in favour of assessee:-

i) ITA No. 2470/2013 (Bombay High Court AY 2001-02) order dated 06/09/2016
ii) ITA No. 76/Mum/2003 (Mumbai ITAT for AY 1999-00) order dated 31/12/2003
iii) ITA No. 6476/Mum/2003 (Mumbai ITAT for AY 2000-01) order dated 06/05/2008
iv) ITA No. 1655/Mum/2006 (Mumbai ITAT for AY 2001-02) order dated 11/03/2013

The copies of these pronouncements have been placed before us. A perusal of these orders vouches for the stand of Ld. AR and even otherwise, analyzing the nature of above transactions, we are inclined to hold that these two items shall be assessable under the head 'Business Income' The only item left is interest & discount charges received from the customers. The Ld. CIT(A) has made the following observation in his appellate order:-

> *"Third component is against interest and discount charges received from customers amounting to Rs.4,44,73,925/-. The facts are that in the normal course of business appellant sells its finished products on receipt of advance except from oil marketing companies.However,some of the parties lift products of appellant by submitting bank guarantees. In such a case,*

appellant charges interest from the date of sale to the date of actual payment by said parties.Appellant also receives discount on these transactions. Both discount and interest are directly related to business income of appellant. Therefore, these have to be considered as business income of appellant, Assessing Officer is directed accordingly"

The revenue has nowhere rebutted / disputed the above findings. Hence, in view of the same,we find that these items constitute art and parcel of the business of the assessee and hence rightly been found assessable under 'Business Head' by First Appellate authority.The ground of revenue's appeal is partly allowed."

Respectfully following the same we hold that interest on bank deposit has to be treated as business income. First part of Ground of appeal no.3 is decided in favour of the assessee.

*"**8.1.**With regard to miscellaneous income of Rs.1.38 crores, the AR argued that the Tribunal had dealt with the issue while deciding the appeal for the AY 2005-06, that certain items therein were of similar nature, that same were held to be income from business.The DR stated that the assessee had not filed any detail about the miscellaneous interest before the FAA.*

***8.2.**We have heard the rival submissions and perused the material available on record.We find that the FAA has given a categorical finding of fact about total interest of Rs.16.84 crores. With regard to miscellaneous interest of Rs.1.38 crores he has specifically mentioned that assessee has not filed details about the so called miscellaneous interest income. Nothing was brought on record to prove that details of the disputed amount were ever furnished before the revenue authorities.'Interest income'can be assessed under the head 'business income' as well under the head 'income from other sources'depending upon the facts of the case.We find that the FAA had dealt with interest in bank deposit interest on NMPT and interest on discount charges etc. along -with the miscellaneous interest. Thus, the details about the remaining interest income were made available to him.It is not known as to why the assessee did not furnish the details of so called miscellaneous interest income. Whether the interest income was of the similar nature or not has not been proved. It was the duty of the assessee to substantiate its claim. Because of the failure of the assessee to support the claim made by it,we are of the opinion that order of the FAA should not be disturbed. Second part of third Ground raised by the assessee is decided against the assessee."*

On a query by the bench,the AR fairly agreed that in the statement of facts the details of three items were not filed,that there was no documentary evidence to prove the claim regarding the three items mentioned above.As there is no evidence to prove that the interest, except for the bank interest, BG sales and LC sales ,was arising out of day to day business activity of the assessee,so,we uphold the order of the FAA to that extent.Ground No.2 is decided in favour of the assessee in part.

4.Ground No.3 is about addition on account of provision for advances doubtful of recovery while computing book profit u/s. 115JB of the Act.During the assessment proceedings,the AO found that the assessee had had made provision for advances doubtful of recovery,amounting to Rs.5.64 crores. He held that the liability on account of provision for doubtful debts and advances was not an ascertained liability, that same was to be added to the book profit of the assessee invoking the provision of section 115JB of the Act.

4.1. Before the FAA the assessee made submissions and relied upon certain case laws.After considering the available material the FAA held that the provision was not against any

ascertained liability, that same was to be added to book profit as per clause (c)of Explanation 1 below sub section 2 of section 115 JB.

4.2. Before us,the AR stated that the liability was not unascertained. He relied upon the cases of Vijaya Bank(190taxmann257); Tainwala Chemicals & Plastics India Ltd.(47SOT116); and Vodafone Essar Gujarat Ltd. (Tax Appeal No.749 of 2012-dtd. 4/8/2017).The DR left the issue to the discretion of the Bench.

4.3. We have heard the rival submissions and perused the material on record. In the case of Tainwala Chemicals and Plastics India Ltd.(supra),one of the question of law raised by the department was as under

> *"(k) Whether, on the facts and circumstances of the case the Tribunal was justified in upholding the decision of the CIT(A) in deleting the addition on account of provisions for doubtful debts to the book profit u/s.115JB of the Act……"*

The Hon'ble High Court while dealing with the other question i.e., question (c) alongwith question (k) held as under :

> *"3. In so far as question (c) is concerned, the Tribunal by the impugned order has followed the decision of the Apex court in the matter of* ***Vijaya Bank V/s. Commissioner of Income Tax*** *reported in* ***322 ITR 166****, wherein it has been held that once the provision of doubtful debt has been debited to the profit and loss account and corresponding provision has been credited or reduced from the debtors account in the balance sheet, then, this would amount to writing off. In the present case, the Tribunal recorded a finding of fact that the respondent – assessee has debited the provision of doubtful debt to the profit and loss account and correspondingly reduced the assets by reducing the amount of unsecured loans. On the aforesaid facts, the Tribunal held that this would amount to writing off of the debt. Thus, on examination of facts it concluded that the respondent – assessee has written off the loan and would be entitled to the claim of bad debts. The Tribunal by the impugned order also recorded a finding of fact that once the respondent– assessee has lent surplus money and offered the interest to tax as business income, then the activity of the respondent – assessee of lending money is a business activity. Therefore, the debt qualifies for deduction under Section 36(1)(vii) read with Section 36(2) of the Income Tax Act, 1961. In view of the finding of fact recorded by the Tribunal that the provision has been written off and reliance placed on the decision of the Apex Court in the matter of Vijaya Bank (supra), we see no reason to entertain question (c).*
>
> *8. In so far as question (k) is concerned, the grievance of theRevenue is that for the purpose of computing profits under Section 115JB, the provision of doubtful debts has to be added. In view of our decision to question (c) above, issue of adding back the provisions for the purpose of computing book profits does not survive. This is particularly so in view of the fact that the Tribunal has recorded a finding of fact that the provision has been written off. Accordingly, we see no reason to entertain question (k)."*

We find that the assessee had debited the provision for doubtful debts to the profit and loss account and had credit the corresponding provisions from the balance sheet.Considering the above Ground No.3 is decided in favour of the assessee.

5.Ground No.4 deals with disallowance on account of depreciation.The AR stated that WDV,determined pursuant to the order of the Tribunal for the AY. 2006-07 should be adopted for depreciation purposes. The DR stated that matter could be decided on merits.We

find that while deciding the appeal for 2006-07 (supra), the Tribunal at para 10 pg-16 had held as under :-

> *"**10.**Last ground is about claim of depreciation on assets which were created on capitalization of capital-work-in-progress.It was argued before us that WDV, as determined pursuant to the order of the FAA for the AY 2005-06 should be adopted. The DR stated that matter could be decided on merits. In our opinion the request made by the assessee is as per the provisions of law.The AO is directed to consider the figures for the earlier year for calculating the WDV. Last Ground is allowed."*

We direct the AO accordingly.Fourth ground is allowed.

6.Last Ground of appeal is about addition made on account of provision for advances doubtful of recovery under the normal provisions of the Act i.e., 36(1)(vii).

6.1. Before us, the AR contended that similar issue was dealt by the Tribunal in the cases of LML Ltd.(72Taxmann.com207)and KEC Intl.Ltd.(33taxmann.com243), Tainwala Chemicals (47SOT169).We find that in the case of LML Ltd. (supra),the Tribunal has held that once the provision for doubtful debts has been debited to P&L account and corresponding provision had been reduced from debtors account in balance sheet then same would amount to writing off of the debts, that all the conditions laid down u/s.36(1) would be fulfilled. As stated earlier the assessee has passed necessary entries in P&L account as well as in the Balance sheet.Therefore,we allow Ground No.5.

ITA/3435/Mum/2013

7.The AO has raised three grounds. First Ground of appeal,raised by AO,is about treating the interest received for NMPT,as business income as against income from other sources.The DR and AR agreed that identical issue was decided by the Tribunal against the AO while adjudicating the appeal for AY 2006-07 (supra).We are reproducing the operative part and it reads as under:-

> *"**2.**First ground of appeal, raised by the AO, is about deleting the interest of Rs. 4.00 crore, received from New Mangalore Port Trust as business income as against income from other sources. It was brought to our notice by the representatives of both the sides that identical issue was decided in favour of the assessee by the Tribunal while adjudicating appeals for the AY.s1999-2000 to 2001-02(ITA/76/Mum/2003,dtd.31.12.2003,ITA/6476/Mum/2003 dtd.06.05. 2008and ITA/ 1655/Mum/2006,11.03.2013)and that the Hon'ble Bombay High Court had upheld the order of the Tribunal for the AY.2001-02.We find that similar issue was decided against the AO in the appeal no.ITA/7341/Mum/2008,AY.2005-06,Dtd.21.12. 2016.Respectfully following the above orders of the Tribunal and the judgment of the Hon'ble High Court,we decide first ground of appeal against the AO."*

Following the same,we dismiss first Ground of appeal raised by the AO.

8.Second Ground deals with interest received by the assessee.While dealing with the ground No.2 of the assessee ,we had mentioned the basic facts about interest disallowance.The AO

had held that interest in oil bonds, interest and discount charges, interest on housing loan, interest on BG Sales and LC Sales were to be taxed under the head income from other sources.

8.1. Before us, the representatives of both the sides agreed that interest received on account of oil bonds, discount charges and housing loan was the subject matter for the appeal for the AY.2006-07,before the tribunal. hey also agreed that the Tribunal had held that interest received by the assessee on account of above mentioned three items had to be assessed as business income.Respectfully,following the above order of the Tribunal ,we decide the second Ground of appeal against the AO.

9.Last Ground of appeal is about allowing higher depreciation .While deciding the appeal filed by the assessee(GOA-4) we have already allowed the ground in favour of the assessee. Following the same last Ground of appeal is decided against the AO.

As a result, appeal filed by the assessee stands partly allowed and the appeal of the AO is dismissed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है और निर्धारिती अधिकारी की अपील नामंजूर की जाती है.

Order pronounced in the open court on 11th , September, 2017.
आदेश की घोषणा खुले न्यायालय में दिनांक 11 सितबंर, 2017 को की गई।

Sd/-	**Sd/-**
(**राम लाल नेगी / Ram Lal Negi**)	(राजेन्द्र **/ Rajendra**)
न्यायिक सदस्य **/ JUDICIAL MEMBER**	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक/Dated : 11.09 .2017.
Jv.Sr.PS.

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

1.Appellant /अपीलार्थी **2.** Respondent /प्रत्यर्थी
3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, **4.**The concerned CIT /संबद्ध आयकर आयुक्त
5.DR "L " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**
उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई **/ITAT, Mumbai.**