

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH : KOLKATA

[Before Hon'ble Shri M.Balaganesh, AM & Shri S.S.Viswanethra Ravi, JM]

I.T.A No. 1766/Kol/2016

Assessment Year : 2010-11

Universal Cables Ltd.
[PAN: AAACU 3547 P]
(Appellant)

-vs-

DCIT, Circle-6(1), Kolkata

(Respondent)

I.T.A No. 2142 /Kol/2016

Assessment Year : 2010-11

DCIT, Circle-6(1), Kolkata

(Appellant)

-vs-

Universal Cables Ltd.
[PAN: AAACU 3547 P]
(Respondent)

I.T.A No. 1767/Kol/2016

Assessment Year : 2011-12

Universal Cables Ltd.
[PAN: AAACU 3547 P]
(Appellant)

-vs-

DCIT, Circle-6(1), Kolkata

(Respondent)

I.T.A No. 2143/Kol/2016

Assessment Year : 2011-12

DCIT, Circle-6(1), Kolkata

(Appellant)

-vs-

Universal Cables Ltd.
[PAN: AAACU 3547 P]
(Respondent)

For the Appellant : Shri J.P. Khaitan, Sr. Counsel
Shri Vinod Sharma, CA

For the Respondent : Shri Sallong Yaden, Addl. CIT

Date of Hearing : 06.02.2018

Date of Pronouncement : 14.02.2018

ORDER

Per M.Balaganesh, AM

1. These cross appeals by the Assessee as well as Revenue arise out of the separate orders of the Learned Commissioner of Income Tax(Appeals)-17, Kolkata [in short the Id CIT(A)] in Appeal Nos.279&280/CIT(A)-17/Kol/15-16 dated 29.07.2016 and 05.08.2016 respectively against the order passed by the DCIT, Circle-6, Kolkata [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 28.03.2013 and 31.01.2014 for the Assessment Years 2010-11 & 2011-12 respectively. The facts of assessment year 2010-11 are taken up together for adjudication and the decision rendered thereon would apply with equal force for assessment year 2011-12 also except with variance in figures.

2. Disallowance of leave encashment:

Ground Nos. 1 and 2 of Assessee Appeal for assessment year 2010-11

Ground No. 1 of Assessee Appeal for assessment year 2011-12

The brief facts of this issue is that the assessee is a company engaged in manufacturing and selling of cables, capacitors and optic fibers. The Id AO observed that the assessee made a provision for leave encashment for Rs 1,04,69,715/- and Rs 34,12,071/- for the Asst Years 2010-11 & 2011-12 respectively and claimed the same as deduction by following the decision of the Hon’ble Jurisdictional High Court in the case of Exide Industries Ltd reported in 292 ITR 470 (Cal). The Id AO sought to disallow the same in terms of section 43B(f) of the Act as the same was not paid within the due date of filing the return of income. The Id AO observed that the said decision has been stayed by the Hon’ble Supreme Court and accordingly disallowed the provision for leave encashment on the ground that the same is allowable only on payment basis in terms of

section 43B(f) of the Act, which was upheld by the Id CITA. Aggrieved, the assessee is in appeal before us on the following grounds:

I.T.A. No. 1766/Kol/2016 for Assessment year 2010-11

1. *That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in not holding that provision for leave encashment for Rs. 1,04,69,715/- is neither statutory liability nor contingent liability and therefore not to be considered for the purpose of computing disallowance u/s 43B(f) of the I.T. Act, 1961.*

2. *That without prejudice to ground no. 1, the ld. DCIT be directed to exclude a sum of Rs. 33,64,322/- being payment made on account of leave liability during the assessment year 2002-03 in case the department's appeal is allowed in their favour and deduction for provision made for leave liability is withdrawn.*

I.T.A. No. 1767/Kol/2016 for assessment year 2011-12

1. *That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in not holding that provision for leave encashment for Rs. 34,12,071/- is neither statutory liability nor contingent liability and therefore not to be considered for the purpose of computing disallowance u/s 43B(f) of the I.T. Act, 1961.*

2.1. We have heard the rival submissions. We find that though the Hon'ble Calcutta High Court in the case of Exide Industries Ltd vs Union of India reported in 292 ITR 470 (Cal) had struck down the provisions of section 43B(f) of the Act as unconstitutional, the revenue had carried the matter further to the Hon'ble Supreme Court which initially in Special Leave to Appeal (Civil) CC 12060 / 2008 dated 8.9.2008 had held as under:-

*“The petition was called on for hearing today.
 Upon hearing counsel the court made the following Order.
 Issue Notice.
 In the meantime, there shall be stay of the impugned judgement, until further orders.”*

Later the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No(s). CC 22889 / 2008 dated 8.5.2009 had held as under:-

*“The petition was called on for hearing today.
Upon hearing counsel the court made the following Order
Delay condoned.
Leave granted.*

Pending hearing and final disposal of the Civil appeal, Department is restrained from recovering penalty and interest which has accrued till date. It is made clear that as far as the outstanding interest demand as of date is concerned, it would be open to the department to recover that amount in case Civil Appeal of the department is allowed.

We further make it clear that the assessee would, during the pendency of this Civil Appeal , pay tax as if Section 43B(f) is on the statute book but at the same time it would be entitled to make a claim in its returns.”

Hence from the aforesaid Supreme Court judgement, it could be inferred that the Hon’ble Supreme Court had not stayed the judgement of the Calcutta High Court during Leave proceedings. But the Hon’ble Supreme Court had only passed an interim order on the impugned issue. Hence we deem it fit and appropriate , in the interest of justice and fair play, to remand this issue to the file of the Id AO to pass orders based on the outcome of the main appeal on merits by the Hon’ble Supreme Court as stated supra.

2.2. With regard to ground no. 2 raised by the assessee for assessment year 2010-11 seeking deduction for actual payment made in the sum of Rs. 33,64,322/- on account of leave liability, the same also would be decided by the Id. AO based on the final outcome of the decision of Hon’ble Supreme Court in the case of Exide Industries referred to supra. Accordingly, ground no. 1&2 for assessment year 2010-11 and ground no. 1 for assessment year 2011-12 raised by the assessee are allowed for statistical purposes.

3. Taxability of Entry Tax:

Ground no. 3 of assessment year 2010-11

Ground no. 2 of assessment year 2011-12

The facts of Asst Year 2010-11 are taken up for adjudication and the decision rendered thereon would apply with equal force to Asst Year 2011-12 also except with variance in figures.

The brief facts of this issue is that the Id. AO observed that the State government of Madhya Pradesh had granted certain fiscal incentive to the assessee company during the year . As per the said scheme, the amount of assistance was determined at 75% of total commercial tax (MPVAT + GST) deposited (net of tax rebate) in respect of sale of products produced using VCV Technology on a yearly basis during the eligibility period. Besides no entry tax was required to be paid on raw materials, booking materials etc. The Ld. AO observed that the assessee had availed entry tax exemption as per the above scheme to the tune of Rs. 1,05,47,005/- and treated the same as capital receipt in the return of income filed by the assessee. The Id. AO observed that since the entry tax of Rs. 1,05,47,005/- for the assessment year 2010-11 is not required to be paid by the assessee, the same represents the benefit derived by the assessee and accordingly constitutes revenue receipt thereon. Accordingly, he taxed the same as business income of the assessee. This action of the Id. AO was upheld by the Ld. CIT(A). Aggrieved the assessee is in appeal before us on the following grounds:

I.T.A. No. 1766/Kol/2016 for Assessment year 2010-11

3. That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in not directing the AO to treat exemption of claim for Entry Tax of Rs. 1,05,47,005/- as capital receipt.

I.T.A. No. 1767/Kol/2016 for assessment year 2011-12

2. That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in not directing the AO to treat exemption of claim for Entry Tax of Rs. 1,42,91,630/- as capital receipt.

3.1. We have heard the rival submissions. The Id. AR fairly stated that the issue is covered against the assessee by the decision of Co-ordinate Bench of this

Tribunal in the assessee's own case for the assessment year 2008-09 and 2009-10 in I.T.A Nos. 679,910,1051&1906/Kol/2013 dated 27.02.2015 wherein it was held that:

"21. We have heard the rival submissions and gone through facts and circumstances of the case. We find that the assessee has claimed entry tax amounting to Rs. 1,01,09,282/- as deduction without taking it through P & L Account. The AO made addition of this amount. Aggrieved, assessee preferred appeal before Ld. CIT(A) claiming the entry tax as exempt being capital receipt similar to the scheme of Govt. of Madhya Pradesh being Industrial Investment Promotion Assistance. But Ld. CIT(A) confirmed the action of the AO by observing in para 72 to 76 as under:

"72. The provisions of section 43B are very clear and it starts with a non obstante clause stating that notwithstanding anything contained in an)' other provision of this Act certain deductions are TO be only on actual payment. Any sum payable by The assessee by way of tax, duty, cess or fee, by whatever name called. under an)' law for the time being in force shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according 10 the method of accounting regularly employed by him) only in computing The income referred 10 in section 28 of that previous year in which such slim is actually paid by him. It further provides that for the purposes of clause (a), as in force at all material Times, "any sum payable" means a sum for which the assessee incurred liability in the previous year even though such sum might not have been payable within that year under the relevant law was not payable under in the relevant period.

73. The Provisions of Income Tax Act, 1961 will over ride the provisions of any other Act being specifically provided in the Income Tax at/to allow the deduction only on the basis of payment although the relevant acts under which the cess is collected may provide to pay in the next year. In the matter of taxation the provisions of Income Tax . Act, 1961 only will determine the accounting of receipt for the purposes of taxation. No Act will override the provisions of Income-Tax in the matter of taxation unless specifically provided to override the provisions of the income Tax Act, 1961. Both Acts i.e. The Industrial Promotion Policy 2004 was formulated by the Stare Government of Madhya Pradesh for the promotion of industry in the State and does not provide that it will override the provisions of the Income Tax ACT, 1961 for income tax purposes and accounting of entry tax in the Income Tax Act, 1961.

74. The Hon 'ble madras High Court has held that that the directions issued by Reserve Bank DJ India to provide [or non-performing assets cannot override the mandatory provisions of the Income-tax Act contained in section 36(1)(viiia). It observed in the order as under.-

"Further, the Commissioner (Appeals), on the facts of the case, found that merely because the Reserve Bank of India has directed the assessee to provide for non-performing assets, that direction cannot override the mandatory provisions of the Income-tax Act contained in section 36(1)(viiia) which stipulate for deduction not exceeding 5 per cent, of the total income only in respect of the provision for bad and

ITA Nos.1766&1767/Kol/2016
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 Universal Cables Ltd.
 A.Yrs. 2010-11& 2011-12

doubtful debts which are predominately revenue in nature or trade related and not for provision for non-performing assets which are of predominately capital nature, and held that the Assessing Officer was right in disallowing the provision of Rs.30 lakhs debited in the profit and loss account of the assessee towards non-performing assets.

75. *Similarly, the Hon'ble Orissa High Court has held in the case of Orissa Rural Housing Development Corpn. Ltd. v Assistant Commissioner of income-Tax reported in [2012] 17 taxmann.com 186 (Orissa): 20 Taxmann 673 has held in para 19 that National Housing Bank Act, 1987 does not overrides the Income Tax Act, 1961 and further observed as follows:-*

"19. Question No. (h) is as to whether the National Housing Bank Act, 1987 overrides the Income Tax Act, 1961.?"

Though both the Acts are Central ACT they are occupying different fields. The purpose of enacting both the Acts are different. Income Tax Act has been enacted to levy tax on income which is covered under Entry No.82 of List-I- Union List of Seventh Schedule 10 the Constitution. The National Housing Bank Act, 1987 has been enacted to promote housing finance institutions both at local and regional levels 10 provide financial and other support to such institutions which are covered under Entryry-45 of List-I- Union List of Seventh Schedule to the Constitution of India. There is no such provision in the National Housing Bank ACT [ha! it will override the Income Tax Act. Since the impugned orders are passed under the Income Tax Act, 1961, they are governed by the provisions of Income Tax Act, Therefore, the contention of the petitioner that National Housing Bank ACT, 1987 overrides the Income Tax Act, 1961 is wholly untenable in law."

76. *The appellant has not paid the entry tax under The Industrial Promotion Policy 2004 formulated by the State Government of Madhya Pradesh for the promotion of industry in the State and did not deposit with The State Govt. Entry tax was calculated based on hypothetical basis that if would amount Rs.1,01,09,282/- at the lime of payment, (if would not had been exempted) to the State Govt. The appellant's claim that since the entry tax under The Industrial Promotion Policy 2004 formulated by the State Government of Madhya Pradesh for the promotion of industry in the State was exempted and hence same is its expenditure and to be deducted from its taxable income as expenditure does not hold good in view of the clear provisions of section 43B and the various judgments of the appellate authorities including of Ho'n'ble Apex Court. Hence, the claim of the assessee for deduction of Rs. 1,01,09,2821- is not allowed. This ground of appeal is dismissed. "*

We find that even now before us, Ld. counsel for the assessee could not establish that how this is equivalent to the Industrial Investment Promotion Assistance, the scheme of Govt. of Madhya Pradesh. We' find no infirmity in the order of CIT(A) and the same is confirmed. This common issue in both the years of assessee's appeals is dismissed.

Respectfully following the same we dismiss the ground no. 3 raised by the assessee for assessment year 2010-11 and ground no. 2 raised by the assessee for assessment year 2011-12.

4. Disallowance u/s 14A of the Act read with Rule 8D of the Rules:

Ground No. 4 of assessment year 2010-11

Ground No. 3 of assessment year 2011-12

Ground Nos. 2 and 3 of assessment year 2010-11

Ground No. 2 and 3 of assessment year 2011-12

The brief facts of this issue is that the assessee in the return claimed exempt income in the form of dividend of Rs. 21,66,110/- for the assessment year 2010-11 and Rs. 18,69,380/- for assessment year 2011-12. The assessee stated that no expenses were incurred for the purpose of earning such dividend income and accordingly made no disallowance u/s 14A of the Act in the return of income. The Id. AO resorted to make the disallowance by applying Rule 8D of the Rules and made disallowance under Second and third limb of the said Rule in the sum of Rs. 92,10,000/- for assessment year 2010-11 and Rs. 1,05,32,000/- for assessment year 2011-12. The assessee pleaded that it had received dividend from three companies as under:

Name of Company	Dividend received	
	Assessment year 2010-11	Assessment year 2011-12
Birla Corporation Ltd.	20,77,110/-	17,80,380/-
Industry House Ltd.	9,000/-	9,000/-
Baroda Agents & Trading Co. Pvt. Ltd.	80,000/-	80,000/-
Total dividend received	21,66,110/-	Rs. 18,69,380/-

The Ld. CIT(A) observed that the assessee had sufficient own funds and no part of borrowed funds were utilized for making investments and accordingly deleted

the disallowance made under Rule 8D(2)(ii) of the Rules for both assessment years. In respect of disallowance made under the third limb of Rule 8D(2) of the Rules, the Ld. CIT(A) by placing reliance on the decision of this tribunal in REI Agro Ltd. reported in 144 ITD 141 held that only dividend bearing investments should be considered for working out the disallowance at 0.5% of average value of investments. Aggrieved, both the assessee as well as revenue are in appeal before us on the following grounds:

I.T.A. No. 1766/Kol/2016 for Assessment year 2010-11(Assessee Appeal)

4. *That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in not deleting the entire disallowance of Rs. 92,10,000/- treated by ld. DCIT as expenses attributable to earning Dividend income and did not hold that no expenses have been incurred to earn the said income.*

I.T.A. No. 1767/Kol/2016 for assessment year 2011-12 (Assessee Appeal)

3. *That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in not deleting the entire disallowance of Rs. 1,05,32,000/- treated by ld. DCIT as expenses attributable to earning Dividend income and did not hold that no expenses have been incurred to earn the said income.*

I.T.A. No. 2142/Kol/2016 for Assessment year 2010-11(Revenue Appeal)

2. *That the Ld. CIT(A) has erred in law in holding that since the assessee has sufficient own funds, expenditure by way of interest are not to be taken into account while calculating the disallowance u/s 14A r.w.Rule 8D(2)(ii) of the I.T. Act.*

3. *That the Ld. CIT(A) has erred in law in appreciating the fact the assessee was not able to produce any satisfactory evidence that its loan funds are not used for investments to earn exempt income.*

I.T.A. No. 2143/Kol/2016 for assessment year 2011-12 (Revenue Appeal)

2. *That the Ld. CIT(A) has erred in law in holding that since the assessee has sufficient own funds, expenditure by way of interest are not to be taken into*

account while calculating the disallowance u/s 14A r.w.Rule 8D(2)(ii) of the I.T. Act.

3. That the Ld. CIT(A) has erred in law in appreciating the fact the assessee was not able to produce any satisfactory evidence that its loan funds are not used for investments to earn exempt income.

4.1. We have heard the rival submissions. We find that the disallowance had been made by the Ld. AO by applying the provisions of Rule 8D(2) under second and third limbs thereon. From the perusal of the details of investments placed on record, which are forming part of the paper book filed before us, we find that the assessee's share investments of Rs. 25.61 crores were made during the years 1993-94 to 1996-97 out of its own funds. During the financial year 2009-10 relevant to assessment year 2010-11, the assessee invested Rs. 22.41 crores in the joint venture company named Birla Furukawa Fiber Optics Ltd. The material facts in this behalf are that the optic fiber business of the assessee was technology driven and heavily dependent on technology which required constant upgradation in keeping with the latest developments. The assessee was not able to upgrade its optic fiber manufacturing facility with the latest technology and as such entered into joint venture agreement with Furukawa Electronic Company Ltd., Japan on 11.04.2009 which resulted in formation of new joint venture company, Birla Furukawa Fiber Optics Ltd. The assessee sold the entire plant and machinery of its optic fiber unit to the new joint venture company in two phases during the months of February, 2010 and October, 2010. The proceeds of such sale in February, 2010 amounting to Rs. 13.48 crores were used for acquiring shares in the new joint venture company. The remaining amount of Rs. 8.93 crores was invested by the assessee in the joint venture company out of its own funds. In this

regard, we find that the retained earnings of the assessee after distribution of dividend are as under:

31.03.2008	Rs. 10.77 crores
31.03.2009	Rs. 4,29 crores
31.03.2010	Rs. 20.38 crores

The assessee had also enclosed Chartered Accountant's certificate to prove that the entire investments were made only out of own funds and not out of borrowed funds. The ld. AR pleaded that the aforesaid fact would clearly prove that the investments made in joint venture company were made out of business compulsion and hence to be treated as strategic investment in nature. We are inclined to accept this argument of the ld. AR and hold that the investment made by the assessee in joint venture company namely Birla Furukawa Fiber Optics Ltd. is to be treated as strategic investment only. From the perusal of the financials of the assessee, we hold that the assessee is flooded with sufficient own funds in its kitty which were used for making investments in shares. Hence, the Ld. CIT(A) had rightly appreciated this fact and had rightly deleted the disallowance made under Rule 8D(2)(ii) for both the assessment years under appeal. In respect of third limb of Rule 8D(2), we find that the Ld. CIT(A) had rightly placed reliance on the Co-ordinate Bench of this Tribunal in the case of REI Agro Limited reported in 144 ITD 141, wherein it was held that only dividend bearing investments were to be considered for the purpose of making disallowance under rule 8D. Accordingly, we do not find any infirmity in the order of Ld. CIT(A) in this regard. While considering the dividend bearing investments, we further hold that strategic investment also should be excluded as admittedly the same were not made with a view to earn dividend income but rather made for the purpose of protecting the business interests arising out

business compulsions and accordingly, to be treated as investment made as a measure of commercial expediency. This strategic investment would accordingly to be outside the ambit of the disallowance u/s 14A of the Act read with Rule 8D of the Rules.

4.2. In view of the aforesaid findings the grounds raised by the Revenue are dismissed and grounds raised by the assessee are partly allowed.

5. Disallowance of balance portion of additional depreciation:

Ground No. 1 for assessment year 2010-11

Ground No. 1 for assessment year 2011-12

The brief facts of this issue is that the assessee during the financial year 2008-09 purchased and installed new plant and machinery for its manufacturing business. Some of such plant and machinery were put to use for a period of less than 180 days during the said financial year and in respect of such plant and machinery, the assessee claimed only 50% of additional depreciation u/s 32(1)(iia) of the Act in view of the second proviso to section 32(1) of the Act. Now during the year under appeal i.e. assessment year 2010-11, the assessee claimed further depreciation (i.e. balance 10% which is 50% of 20%) on this plant and machinery on the plea that it is entitled to get the balance depreciation this year also. The Ld. AO held that after allowing a portion of additional depreciation in assessment year 2009-10, written down value has been worked out by the ld. AO and the same has been brought forward during the year under appeal as opening written down value, on which regular depreciation would be applicable to the assessee at the rates prescribed for plant and machinery. With these observations, he disallowed the remaining portion of unclaimed additional depreciation pertaining to assessment

year 2009-10 (i.e. balance 10%) in the assessment and granted only regular depreciation. The Ld. CIT(A) by placing reliance on the decision of this Tribunal in assessee's own case for the assessment year 2007-08 to 2009-10 granted relief to the assessee and deleted the disallowance made thereon by the Id. AO. Aggrieved, the revenue is in appeal before us on the following grounds:

I.T.A. No. 2142/Kol/2016 for Assessment year 2010-11

1. That the Ld. CIT(A) has erred in law by allowing the claim of balance of additional depreciation amounting to Rs. 1,29,62,039/- in subsequent assessment year. The Department filed an appeal u/s 260A before the Hon'ble High Court in the case of M/s Century Enka Ltd. for A.Y. 2008-09 on the similar issue.

I.T.A. No. 2143/Kol/2016 for assessment year 2011-12

1. That the Ld. CIT(A) has erred in law by allowing the claim of balance of additional depreciation amounting to Rs. 1,29,62,039/- in subsequent assessment year. The Department filed an appeal u/s 260A before the Hon'ble High Court in the case of M/s Century Enka Ltd. for A.Y. 2008-09 on the similar issue.

5.1. We have heard rival submissions. We find that the issue under dispute is covered by this Tribunal in assessee's own case for the assessment year 2007-08 in I.T.A. No. 4/Kol/2012 dated 14.01.2015 wherein it was held that :

"4. At the outset, Ld. Counsel for the assessee Shri J. P. Khaitan, Advocate submitted that the issue is covered by the decision of Coordinate bench in the case of Birla Corporation Limited Vs. DCIT, ITA No. 683/K/2011 & DCIT Vs. Birla Corporation Limited, ITA No. 581/K/2011 for AY 2007-08 dated 08.12.2014, wherein the Tribunal has held as under:

"15. We have heard rival submissions and gone through facts and circumstances of the case. The facts are admitted and there is no dispute on the facts. Only issue for adjudication is whether the assessee is entitled for the balance 50% additional depreciation in view of sec. 32(1)(iia) of the Act in the next assessment year for remaining unutilized additional depreciation. We have gone through the relevant provisions of second proviso to section 32(1)(ii) and 32(1)(iia) of the Act. In the present case before us, the assessee has purchased

and installed new plant and machinery for its manufacturing unit and put to use for a period of less than i.e. 180 days, during the FY 2005-06 relevant to AY 2006-07 and claimed 50% additional depreciation u/s. 32(1)(iia) of the Act in view of the second proviso to section 32(1)(ii) of the Act. Further, the balance 50% of additional depreciation on such plant and machinery has been claimed by the assessee company during the year under consideration i.e. the FY 2006-07 relevant to this assessment year 2007-08. A bare reading of clause (iia) of section 32(1) of the Act w.e.f. the AY 2006-07, provides for allowance of additional depreciation equal to 20% of actual cost of new plant and machinery acquired and installed after March, 31st 2005 by an assessee engaged in the business of manufacture or production of any article or thing. Such additional depreciation is to be allowed as deduction u/s. 32(1)(iia) of the Act but second proviso to section 32(1)(ii) restricts the allowance of depreciation at 50%, if the plant and machinery is acquired during the previous year is put to use for a period of less than 180 days in that previous year. The second proviso specifically makes a reference to an asset referred to in clause (iia) of the said section 32(1) of the Act. And it is because of the second proviso assessee claimed only 50% additional depreciation for AY 2006-07 and accordingly, claimed the balance amount of additional depreciation in the immediately subsequent year i.e. the year under consideration AY 2007-08. We are in full agreement with the argument of Shri J. P. Khaitan, Senior Advocate that a bare reading of section 32(1)(iia) clearly shows that the assessee is eligible for additional depreciation in case the new machinery and plant was acquired and installed after 31-03-2005. There is no restrictive condition in the clause for the eligibility of the assessee to claim additional depreciation. When the assessee is eligible for depreciation @ 20%, in the absence of any specific provision, the AO cannot cut down the scope of deduction by referring to second proviso to section 32(1)(ii) of the Act. He also pointed out that even if there is any contradiction between sections 32(1)(iia) and second proviso to section 32(1)(ii), it has to be reconciled so as to give harmonious effect to the legislative intent. The benefits conferred on the assessee by way of incentive provision cannot be taken away by adopting an implied meaning to second proviso to section 32(1)(ii) of the Act. Since the second proviso to section 32(1)(ii) does not expressly prohibit the allowance of the balance 50% depreciation in the subsequent year, second proviso to section 32(1)(ii) shall not be interpreted to mean that it impliedly restrict the additional depreciation to be allowed in the subsequent assessment year. We are of the view that the assessee now is entitled for 50% additional depreciation, because in the year in which the machinery was first put to use the assessee claimed only 50% of additional depreciation for the reason that the same was put to use for less than 180 days, in this assessment year for the balance of depreciation.”

In view of the above discussion and considering the order of coordinate Bench, cited supra, we are of the considered view that the assessee is entitled for additional depreciation u/s. 32(1)(iia) of the Act in this assessment year. We direct the AO accordingly.”

Respectfully following the same, we hold that the Ld. CIT(A) had rightly deleted the disallowances and had rightly granted the relief to the assessee. Accordingly, ground no.1 raised by the revenue for assessment year 2010-11 and 2011-12 are dismissed.

6. In the result, to sum up

I.T.A. No.	Assessment year	Result
1766/Kol/2016	2010-11	Partly allowed for statistical purposes.
1767/Kol/2016	2011-12	Partly allowed for statistical purposes.
2142/Kol/2016	2010-11	Dismissed
2143/Kol/2016	2011-12	Dismissed

Order pronounced in the Court on 14.02.2018

Sd/-

[S.S. Viswanethra Ravi]
 Judicial Member

Sd/-

[M.Balaganesh]
 Accountant Member

Dated : 14.02.2018

SB, Sr. PS

ITA Nos.1766&1767/Kol/2016
ITA Nos.2142&2143/Kol/2016
Universal Cables Ltd.
A.Yrs. 2010-11& 2011-12

Copy of the order forwarded to:

1. Universal Cables Limited, Birla Building, 4th Floor, 9/1, R.N. Mukherjee Road, Kolkata-700001.
2. DCIT, Circle-6(1), Kolkata, Aayakar Bhawan, 6th Floor, P-7, Chowringhee Square, Kolkata-700069.
- 3..C.I.T.-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches