

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।  
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.563/CHNY/2017  
निर्धारण वर्ष /Assessment year : 2010-2011

Deputy Commissioner of  
Income Tax,  
Corporate Circle 1(1)  
Chennai 600 034.

**Vs.** M/s. Daimler India  
Commercial Vehicles (P) Ltd,  
SIPCOR Industrial Growth,  
Oragadam, Mathur Post,  
Kancheepuram 602 105.

(अपीलार्थी/Appellant)

**[PAN AABCF 1590N]**  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mrs. Ruby George, IRS, CIT.  
प्रत्यर्थी की ओर से /Respondent by : Shri. Ajay Vohra, Sr. Advocate  
and Shri. D. Praveen, Advocate

सुनवाई की तारीख/Date of Hearing : 29-05-2018  
घोषणा की तारीख /Date of Pronouncement : 31-05-2018

**आदेश / ORDER**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

In this appeal filed by the Revenue, which is directed against an order dated 19.12.2016 of Id. Commissioner of Income Tax (Appeals)-1, Chennai, it assails the direction of Id. Commissioner of

Income Tax (Appeals) to allow a claim of expenditure aggregating ₹21.32 Crores.

2. Facts apropos are that assessee a company incorporated with the intention of designing, manufacturing and selling commercial vehicles had filed its return of income for the impugned assessment year declaring "Nil" income. During the course of assessment proceedings, it was noted by the Id. Assessing Officer that assessee had not started its commercial operations. As per the Id. Assessing Officer, assessee was only in the process of setting up a manufacturing facility and operationalising such facility with the support of its group companies. During the relevant previous year, assessee was allotted 379.75 acres by SIPCOT Industrial Growth Centre, at Oragadam. Ld. Assessing Officer noted that assessee was in the process of registering and executing the lease deed. A Show cause notice was issued to the assessee, proposing a disallowance of expenditure claimed by the assessee, since it was still to set up its manufacturing facility. Such notice ran on the following lines:-

*" It is seen from the financial statements and documents that you have not commenced your commercial operations (manufacture and sale of commercial vehicle). You are involved only in activities towards setting up of your facility and operation with the support of your group companies. In the significant account policy and notes to account, it was stated that the "Company is set up for designing, manufacturing,*

*distributing, selling, source of after sales engineering services and R&D of commercial vehicle and related products and component for domestic Indian and Overseas Market", "Moreover as per Point 9 of significant accounting policies and notes on account, the company has imported Mitsubishi fuso bus, free of cost from your group company in Japan and sold the same in India". Point 15 of significant accounting policies and notes on account, it was stated that 379.75 acres of land is allotted to by SIPCOT Industrial Growth Centre, Orgadam and the company is in the process of registering and executing the lease deed.*

*All the above discussions clearly show that the company has not commenced its commercial operation. More over this fact was also reflected in TPO's order also (F. No.D-108/TPO-I/AY. 2010-11 dtd. 20.11.2013) that the company had not commenced its activities. Since the income from main activity has not commenced, the corresponding expenditure is not allowable. In this regard you are hereby requested to show cause why the expenditure under the head operating expenses, financial expenses, depreciation should not be disallowed"*

3. Assessee in its reply to the above notice stated that it had started its R & D activity which was one of its main object and had set-up an R &D centre, pursuant to agreements with M/s. Ricardo, UK Ltd and M/s. Magna Powertrain-Engineering Centre Steyr GmbH & Co KG. Further, as per the assessee it had already earned revenue from sale of vehicle. However, Id. Assessing Officer was not impressed by the above reply. According to him, main revenue generating activity of the assessee was designing, manufacturing and selling commercial vehicles and not R&D. As per the Id. Assessing Officer, such activity had not commenced during the relevant previous year.

According to him, assessee's activities had not reached a stage where it was in a position to procure business. Ld. Assessing Officer also placed reliance on an order passed Id. Transfer Pricing Officer on 20.11.2013 in respect of the international transactions undertaken by the assessee. It seems Id. TPO had commented that assessee was yet to start its commercial operations. As per, Id. Assessing Officer, assessee was not eligible to claim expenditure incurred prior to the start of its commercial operation. He disallowed the following expenditure claimed by the assessee.

<i>Operating Expenses</i>	:	<i>19,39,47,503</i>
<i>Financial Expenses</i>	:	<i>1,46,26,492</i>
<i>Depreciation</i>	:	<i>46,19,716</i>

Thus, an addition of ₹21,31,93,711/- was made to the returned loss of ₹40,60,20,032/- and assessment completed accordingly.

4. Assessee's appeal before the Id. Commissioner of Income Tax (Appeals) was successful. As per the Id. Commissioner of Income Tax (Appeals) there were two limbs for the activities undertaken by the assessee based on its Memorandum of Association. First of these, as per Id. Commissioner of Income Tax (Appeals) was

setting up of a manufacturing facility for commercial vehicles and second was importing and selling readymade commercial vehicles. According to the Id. Commissioner of Income Tax (Appeals), under the first limb of activity, assessee had developed prototypes, requested for sourcing of components and also undertaken in-house research. Further, as per the Id. Commissioner of Income Tax (Appeals), second limb of activity also had started since revenue was generated from sale and accounted in the profit and loss account. Id. Commissioner of Income Tax (Appeals) noted that assessee had sales of ₹36,44,361/- and other income of ₹4,94,54,084/- reflected in its profit and loss account. Former income, as per Id. Commissioner of Income Tax (Appeals), arose on account of sale of commercial vehicle. Id. Commissioner of Income Tax (Appeals) also took cue from Schedule 14 of Audited Financial Statements filed by the assessee, by highlighting the following.

*"21.1 Point No.(d)- Fixed assets and capital work-in-progress.*

*Expenditure directly attributable to construction of the project is classified as project development expenditure and disclosed under capital work-in-progress.*

*21.2 Point No.(f) - Research and Development Expenses  
Capital expenditure on account of Research and Development is classified as project development expenditure and disclosed under capital work-in-progress.*

*21.3 The appellant in its submission dated 23.12.2016 has submitted that the entire expenditure incurred towards research and development has been classified as project*

*development expenditure and disclosed under capital work-in-progress.*

*21.4 Point No.(g) - Borrowing costs:*

*Borrowing cost comprising interest and finance charges directly attributed to the construction of qualifying assets are capitalized as part of the cost of that asset until the activities necessary to prepare the qualifying asset for its intended use are complete.*

Ld. Commissioner of Income Tax (Appeals) thus came to a conclusion that assessee had commenced its activities in relation to design and had also undertaken pre-activities essential for commencement of manufacturing.

5. Further, as per the Id. Commissioner of Income Tax (Appeals) expenditure debited in the profit and loss account, which was disallowed by the Id. Assessing Officer was not incurred for setting up of the manufacturing facility. Ld. Commissioner of Income Tax (Appeals) also noted that assessee had capitalized expenses relating to setting up manufacturing facility and research and development. Ld. Commissioner of Income Tax (Appeals) also took into consideration earning of income from the activity of sourcing, which was identified as a separate line of business, for which approval was obtained by the assessee from Foreign Investment Promotion Board (FIPB). Due note was also taken by the Id. CIT(A) of certificate of

commencement of business issued by the Registrar of Companies on 18.12.2007. Further, as per the Id. Commissioner of Income Tax (Appeals) Id. Assessing Officer, had allowed loss to be carried forward and had begun his computation from the loss returned by the assessee in its profit and loss account. According to the Id. Commissioner of Income Tax (Appeals) Id. Assessing Officer, having allowed a carry forward claim of loss under the head "income from business or profession" could not say that assessee had not commenced its commercial operations. He thus deleted the disallowance made by the Id. Assessing Officer.

6. Now before us, Id. Departmental Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that during the relevant previous year, SIPCOT had just allotted a piece of land to the assessee on which assessee was setting up its plant. As per the Id. Departmental Representative, significant accounting policies and notes to accounts, contained in Schedule 14 to its audited final accounts clearly mentioned at para 9 that assessee was still to commence business. As per the Id. Departmental Representative, assessee had not set up its manufacturing facility. Contention of the Id. Departmental Representative was that taking up research and development by itself

could not be construed as setting up of the business. According to her, claim was allowed by the Id. Commissioner of Income Tax (Appeals) without properly appreciating the facts.

7. Per contra, Id. Authorised Representative strongly supporting the order of the Id. Commissioner of Income Tax (Appeals) submitted that Id. Assessing Officer had in the assessment done for assessment year 2009-2010, accepted the claim of business loss, and completed the assessment. As per the Id. Assessing Officer, once the Id. Assessing Officer had accepted the business to have been set up in the previous year relevant to assessment year 2009-2010, he could not take a contradictory stand that the business was still to be set up in the subsequent assessment year. Id. Authorised Representative pointed out that the assessment done by the Id. Assessing Officer for assessment year 2009-2010 u/s.143(3) of the Income Tax Act, 1961 (in short "the Act") was subjected to a reopening u/s.148 of the Act. As per the Id. Authorised Representative, the reason cited for such reopening was that business of the assessee was yet to commence and claim of expenditure was erroneously allowed. Id. Authorised Representative, pointed out that such reopening was assailed by the assessee through a Writ Petition No.43435 of 2016 and WMP Nos.37296 & 37297/2016, before Hon'ble Jurisdictional High Court

and Hon'ble Jurisdictional High Court through its judgment dated 30.01.2018 quashed it. Copy of the judgment was placed on record by the Id Authorised Representative. Thus, according to him, assessment done on 24.01.2013 for assessment year 2009-2010 had reached a finality, and the view taken by the Id. Assessing Officer that assessee had commenced its business in the said assessment could not be altered in the subsequent year.

8. Alluding to the nature of expenditure disallowed, Id. Authorised Representative pointed out that none of such expenditure related to the manufacturing facility being set up by the assessee. Relying on Schedule 12 of the Audited Final Accounts, Id. Authorised Representative submitted that whole of the operating expenditure of ₹19,39,47,503/- which was disallowed by the Id. Assessing Officer did not relate to setting up of any manufacturing facility. As per the Id. Authorised Representative, assessee company was incorporated for designing, manufacturing, distributing, selling, sourcing, providing engineering services and research and development of commercial vehicles and related products and components for domestic Indian and overseas markets. Contention of the Id. Authorised Representative was that assessee had already started doing R & D design work and had also sold an imported Mitubishi fuso bus. Thus,

according to the Id. Authorised Representative, assessee had set up its business as well as commenced its trading operations.

9. Adverting to the depreciation schedule placed at paper book page No.12, Id. Authorised Representative submitted that a sum of ₹3,21,58,904/- out of the total depreciation claim of ₹3,67,78,620/-, which was directly attributable to setting up of manufacturing facility was included under the head "capital work in progress". As per the Id. Authorised Representative, balance sum of ₹46,19,716/-, claimed as depreciation in the Revenue field was not attributable to the setting up of the manufacturing facility. Contention of the Id. Authorised Representative was that assessee was pursuing different streams of business, all connected to manufacturing and sale of commercial vehicles. Contention of the Id. Authorised Representative was that assessee itself having capitalized the expenditure which was relatable to the manufacturing facility which was being erected, balance of expenditure which was related to trading and other activities could not have been disallowed. As per the Id. Authorised Representative, apart from pursuing R&D work, assessee had also procured components and started testing prototypes of various vehicles manufactured by it. Submission of the assessee was that the business as a whole was to be considered and even when one of the

line of activities had commenced, business had to be considered as setup. Reliance was placed on the following judgments:-

Western India Vegetable Products Ltd vs. CIT, 26 IR 151 (Bom)
CIT vs. Ralliwolf Ltd, 121 ITR 262 (Bom)
CIT vsa. Axis Pvt. Equity Ltd, ITA No.1204/2014 (Bom)
CIT vs. Saurashtra Cement and Chemical Industries Ltd, 91 ITR 170 (Guj)
Sarabhai Management Corporation Ltd, vs. CIT, 102 ITR 25 (Guj)
Prem Conductors Pvt. Ltd vs. CIT, 108 ITR 654 (Guj)
CIT vs. Hughes Escorts Communications Ltd, 311 ITR 253 (Del)
Omniglobe Information Tech India (P) ltd vs. CIT, 369 ITR 1 (Del)
CIT vs. E funds International India, 162 Taxman 1 (Del)
CIT vs. ESPN Software India. P. Ltd 301 ITR 368 (Del)
CIT vs. Dhoomketu Builders & Development P. Ltd, 368 ITR 680 (Del)
CIT vs. Samsung India Electronics Ltd, 356 ITR 354 (Del)
Carefour WC & C India (P) Ltd vs. CIT, 368 ITR 692 (Del)
CIT vs. Franco Tosi Ingegneria, 241 ITR 268 (Mad)
CIT vs. Club Resorts P. Ltd, 287 ITR 552 (Mad)
ITO vs. Great Sea Trawlers Building Yard Mandapam Ltd, 14 TTJ 307, (Madras Tribunal)

10. Ad libitum reply of the Id. Departmental Representative was that land on which manufacturing facility was to be set up itself was in the process of being acquired, and assessee could not say that prototypes of vehicles were already tested. Further, according to her, the only trading done by assessee was sale of one solitary bus which was given to it free of cost by somebody abroad. This would not, according to her, mean that assessee had set up its business.

11. We have considered the rival contentions and perused the orders of the authorities below. Case of the assessee is that it was pursuing a bucket of activities connected to its main object, which inter alia included research and development, designing, manufacturing and selling of commercial vehicles. As per the Id. Authorised Representative, assessee had already started procurement of components and had also undertaken trading, apart from pursuing a R & D activities. At this juncture, it is apposite to look at the directors' report of the assessee for the relevant previous year. What was stated in the such directors' report under the heading financial results is reproduced under:-

*Your company's performance during the year as compared with that during the previous year is summarized below:-*

	(₹ in Million )	
	2009-10	2008-09
Share Capital (Including share application money)	5921.31	2,578.99
Capital work in progress	5592.17	3,082.44
Fixed Assets (Net Block)	1543.85	87.12
(+) Profit (-) Loss before depreciation & Tax	(155.41)	(327.14)
Depreciation	4.61	5.30
Net Profit /(-) Loss Before Tax	(160.02)	(332.44)
Provision for Fringe Benefit Tax	--	5.72
Net Profit (-) Loss After Tax	(160.02)	(338.16)
Balance Carried to Balance Sheet	(513.69)	(353.67)

Sine your company is yet to start commercial production and no revenue was generated, the Company has reported a loss of ₹160.02Million after tax

During the year under review, your Company succeeded in implanting its first footprint on Indian Customers by selling imported ROSA Bus manufactured by Mitsubishi FUSO Japan.

Your parent Company ('Daimler AG') had consolidated their truck business for India with your Company because which your Company takes the responsibility of Marketing, Sales & Service of Mercedes-Benz Trucks effective from July 01, 2010.

With focus on the entire Indian truck market, your Company consolidates the Daimler truck business in India and offers the total product portfolio of Daimler trucks to the customers for their individual needs. Furthermore, your

Company will be able to offer a dedicated approach with synergies for the premium segment of heavy transportation, powered by high performance Mercedes-Benz Trucks

Thus, it is an admitted position that assessee was yet to start commercial production and no revenue was generated by it. In other words, sale of ₹36,44,361/- appearing in the income side of its profit and loss account was not considered by the assessee itself as revenue arising from any commercial operation. Reason why assessee deemed so is clear from note no.9 of its "significant accounting policies" which read as under:-

*"9. During the year, the company has imported Mitubishi Fuso Diesel Engine Bus Free of cost form from Mitusubish Fuso Truck Bus Corporation, Japan and sold it in the Indian Market. Revenue represents the sale of such truck, net of sales tax."*

12. Another facet of the argument of the Id. Authorised Representative is that assessee, though it had not yet started commercial production, had already undertaken R & D activities, tested prototypes and procured components. However, expenditure incurred by the assessee given in Schedule 12 of its Audited final accounts do not show any purchase of components. Schedule 4 of its

final accounts which gives the break-up of the expenditure capitalized during the relevant previous year reads as under:

Description	As at April 1, 2009	Incurred during the year
Construction in progress	1,500,608,266	1,190,965,773
Advance against capital goods	58,046,626	549,795,199
<b>Project developments expenses</b>		
Salaries and allowances	158,669,050	452,214,944
Contribution to provident and other funds	4,671,559	12,642,468
Legal and professional charges	790,568,873	440,475,128
Travelling and conveyance	74,453,442	60,362,721
Rent	34,578,141	43,322,638
Recruitment expenses	34,250,305	25,849,770
Communication expenses	6,328,102	8,589,091
Insurance	2,900,531	1,16,560
Staff Welfare	2,881,169	12,631,676
Power and fuel	1,695,368	13,529,119
Depreciation	11,514,006	32,158,904
Others	13,241,660	54,044,209
	-----	-----
Total of project development expenses	<u>1,135,752,206</u>	<u>1,156,937,227</u>
Total	<u>2,694,407,098</u>	<u>2,897,698,199</u>

There is no identifiable item shown in the profit and loss account or in the capitalized expenditure which can substantiate the claim of any R& D activity. Neither has any revenue been generated from R&D activities also. Fact of the matter is that assessee had just completed the process of registering the lease of the land and started the setting up of its plant, in such land during relevant previous year.

13. Coming to the aspect of sale of a bus which was given free of cost by a company abroad, such a solitary transaction cannot in our opinion, be construed as start of commercial operations. As to the nature of "other income" of ₹4,94,54,084/- cited by the Id. Authorised Representative as an evidence for setting up the business, the items constituting such "other income" as it appear in Schedule 11 of its final accounts is reproduced hereunder:-

Interest on deposits (tax deducted at source ₹57,512 ( previous year ₹34,372)	489,574	233,888
Profit on sale of mutual fund investments	----	41,173,270
Dividend income from mutual fund investments	20,761,394	15,715,403
Foreign exchange gain (net)	22,375,644	---
Miscellaneous income	5,827,472	92,837
	<u>49,454,084</u>	<u>57,215,398</u>

Neither the solitary sale of a bus nor the other income, in our opinion can substantiate the claim of the assessee that its business was set up.

14. Coming to the reliance placed on the assessment for the immediately preceding assessment year, it is true that reopening which was attempted, was quashed by Hon'ble Jurisdictional High Court through its judgment dated 30.01.2018. What was held by their lordships in this judgment at paras 16 to 20 are reproduced hereunder:-

*"16. In the light of the above legal position, the impugned proceedings are liable to be set aside for the sole reason that there was no tangible material available with the Assessing Officer except that which was disclosed in the return of income filed by the petitioner for the relevant assessment year. This has been held to be not a sound foundation for exercising power under Section 147 read with Section 148 of the Act. This would be sufficient to set aside the impugned proceedings. However, since elaborate submissions were made on either side, touching upon the factual issues only to test whether reopening was justified or whether it was a change of opinion. I proposed to consider the said issue. The question revolves upon whether the petitioner had made full and true disclosure with regard to the year of commencement of business. The assessee would contend that there has been full and true disclosure.*

*17. The learned senior counsel for the assessee pointed out that this aspect was mentioned in the return of income and duly explained in the notes to the financial statements, which forms part of the return of income and specifically dealt with by the TPO, as it was disclosed by the assessee in Form No.3 CEB. The Assessing Officer issued notices under Section 142(1) of the Act and called for information, which were furnished along with letter dated 08.12.2012, a brief note on the business activity of the Company was furnished*

*which shows that the petitioner was to set up a truck manufacturing facility with R & D facility activity for Research and Development. The TPO considered this issue and while passing the order dated 27.12.2017, specifically recorded that the commercial production proposes to start in the year 2012. This material was available and considered by the Assessing Officer as could be seen from para 2 of the scrutiny assessment order dated 24.01.2013.*

*18. The learned senior standing counsel for the Revenue would submit that the Assessing Officer will not look into Form No.3 CEB and it is for the TPO, to take note of the same and only in that said document, it has been stated that production has not commenced. I am unable to countenance the submission of the learned counsel for more than one reason. Firstly, assessment proceedings are not a one way proceedings, even in the case of the assessee, the Assessing Officer while completing the regular assessment, called for details and documents which were furnished by the assessee. As held by the Hon'ble Supreme Court in Calcutta Discount Company Limited Vs. ITO, reported in 1961 (41) ITR 191 (SC), nothing more is required on the part of the assessee except to furnish all material facts. There is sufficient indication to show that the Assessing Officer considered the order passed by the TPO. This' would be sufficient to hold that the materials which were placed in Form No.3 CES, resulting in an order dated 27.12.2012, was part of the assessment file, perused by the Assessing Officer, but for which he would not have referred to the same in paragraph 2. Even assuming the Assessing Officer did not look into the Form No. 3 CES. he is bound to look into the order passed by the TPO, as he is required to see any other additions have been made. This is so because the order passed by the TPO is binding on the Assessing Officer. Thus, I have no hesitation to hold that the materials disclosed by the assessee were available with the Assessing Officer and it is from such material, the present impugned reopening proceedings have been initiated. Thus, the respondent had initiated proceedings purely based on existing information which was provided by the assessee in the course of original assessment and based on the return of income filed by the assessee for the relevant year. The petitioner before the Assessing Officer placed the profit and loss account and the balance sheet and the relevant annexures and notes to the financial statements. The notes are important material because it would disclose the details pertaining to various entries in the profit and loss account*

*and balance sheet and explain the stand taken by the assessee. So far as the fixed assets is concerned in the balance sheet, the petitioner has indicated that the capital work is in progress.*

*19. Thus, in the absence of any new material in the hands of the Assessing Officer or discovery of some materials or a new insight after the completion of the original assessment, the question of reopening does not arise. The conclusion arrived by the Assessing Officer in the impugned order that merely the petitioner has produced books of account before the Assessing Officer and that there is no presumption that all the books were seen by the Assessing Officer is factually incorrect, as during the course of assessment proceedings, documents and evidences were called for from the assessee which were produced and after perusal of the same, the assessment was completed. As pointed out in several decisions, it is for the Assessing Officer to arrive at a conclusion based on the materials produced and it is for the assessee to suggest as to what conclusion that should be arrived as it has been held that the assessee is not expected to submit a draft assessment order.*

*20. Thus, for all the above reasons, I am of the considered view that the impugned reopening proceedings is a clear case of change of opinion as there has been full and true disclosure by the assessee at the time of scrutiny assessment/original assessment. The Assessing Officer had no tangible material to come to a conclusion that there was no full and true disclosure and the reopening is based on the materials available on record i.e., in the return of income filed by the assessee for the relevant assessment year and based on such material, reopening could not have been done as it has been held that information received by the Assessing Officer, after the completion of the assessment alone is sound foundation for exercising power under Section 147 read with Section 148 of the Act”.*

Their lordships had invalidated the reopening attempted for the assessment year 2009-2010, taking a view that it was on a change of opinion, and not due to any failure of the assessee to make a true and full disclosure. The judgment, in our opinion does not say that

assessee had setup its business during the previous year relevant to assessment year 2009-2010. In our opinion just for a reason that Id. Assessing Officer accepted the contention of the assessee in the earlier year on a wrong footing would not be a reason to accept the claim that rule of res-judicata would apply, when facts show a totally different scenario.

15. As to the various judgments relied on by the Id. Authorised Representative, the case of *Western India Vegetable Products Ltd (supra)*, is the first. In the said case, concerned assessee had started purchasing groundnuts which was an essential raw material for production of oil. Though oil mill was still to be procured, their lordships held that business could be deemed as set up, the moment assessee had purchased the raw material. As against this, in the case before us, there is no purchase of any raw material for production of the commercial vehicles. Assessee was still in the process of setting up its plant. Coming to the judgment of Hon'ble Bombay High Court in the case of *Ralliwolf Ltd (supra)*, the main object of the said company was as under:-

*(1) To carry on the business of tool makers, electrical and mechanical engineers and contractors, iron-founders, manufacturers of agricultural implements and other machinery, brass founders, metal workers, boiler makers, wheelwrights, machinists, iron and steel converters, smiths, woodworkers, builders, painters, metallurgists,*

*water supply engineers, gas and electricity makers, framers, printers, carriers and merchants, and to buy, sell, manufacture, import and export, repair, convert, alter, let on hire, and deal in portable electric tools, and tools of all kinds, implements and machinery of all kinds, vehicles of any kind, rolling stock and hardware of all kinds and the component parts thereof and accessories thereto. "*

Concerned assessee had during the relevant previous year purchased items which could be used either for manufacture or for sales. This was the reason why their lordships held the assessee to have commenced its business. As against this, in the case before us, there is no such purchase of raw materials or components for sale.

16. No doubt, Id. Counsel has placed reliance on a host of other judgments. In all these judgments, concerned assessee had started atleast one line of activity coming within the ambit of the main object and such line of activity which earned revenue, was a precursor to its main object. None of these judgments, in our opinion would further the case of the assessee here.

17. In the light of our observations above, we are of the opinion that Id. Commissioner of Income Tax (Appeals) fell in error in accepting the contention of the assessee that it had set up its business. Just because Id. Assessing Officer computed the income by making a disallowance on returned loss would not entitle the assessee to claim that an expenditure otherwise not allowable under the Act,

has to be allowed. Expenditure claimed by the assessee was incurred prior to setting up its business. We therefore have no hesitation in setting aside the order of the Id. Commissioner of Income Tax (Appeals) and restoring the order of the Id. Assessing Officer.

18. In the result, the appeal of the Revenue stands allowed.

Order pronounced on Thursday, the 31st day of May, 2018, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

**(N.R.S. GANESAN)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

Sd/-

(अब्राहम पी. जॉर्ज)

**(ABRAHAM P. GEORGE)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:31st May, 2018

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                          |                              |                         |
|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |