IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J" MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)

ITA No. 5761/MUM/2016
Assessment Year: 2012-13
&
ITA No. 5762/MUM/2016
Assessment Year: 2013-14

The Asstt. Commissioner of Income Tax, Circle-2(2)(2) Room No. 545, 5th floor, Aaykar Bhavan, M.K. Road, Churchgate, Mumbai-400020.	Vs.	M/s Mahindra Sona Limited Gateway Building, Apollo Bunder, Mumbai-400001.
		PAN No. AAACM3524A
Appellant		**Respondent**

Revenue by : Ms. Arju Garodia, DR
Assessee by : Mr. Prasad Bapat, AR

Date of Hearing : 25/05/2018
Date of pronouncement: 29/06/2018

ORDER

PER N.K. PRADHAN, AM

The captioned appeals filed by the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-5, Mumbai [in short 'CIT(A)'] and arise out of the assessment completed u/s 143(3) of the Income Tax Act 1961 (the 'Act'). As common issues are involved, we are proceeding to dispose them off through a consolidated order for the sake of convenience.

ITA No. 5761/MUM/2016
Assessment Year: 2012-13

2. The 1st ground of appeal

> On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) was right in deleting the disallowance made by the AO in respect of interest on assets not put to use u/s. 36(1)(iii) following the decision of the Ld. CIT(A) on the issue in the assessee's own case in the earlier A.Yrs.2008-09, 2009-10 & 2010-11, even when under Income Tax Act each assessment is separate and more so without bringing on record the basis of similarity of facts.

3. During the course of assessment proceedings, the Assessing Officer (AO) noticed that the assessee had incurred Rs.1,22,80,000/- on acquisition of fixed assets and capital work-in-progress and capital advances. The AO disallowed interest of Rs.2,50,000/- in view of proviso to section 36(1)(iii) on the ground that the assessee had not put to use the assets during the year.

4. In appeal, the Ld. CIT(A) followed the order of his predecessor for AYs 2011-12, 2008-09 and 2009-10 and deleted the ad-hoc disallowance of Rs.2,50,000/- made by the AO.

5. Before us, the Ld. DR relies on the order of the AO, whereas the Ld. counsel of the assessee supports the order passed by the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. In *Madhav Prasad Jatia v. CIT* (1979) 118 ITR 200 (SC), it has been held that for claiming deductions u/s 36(1)(iii), the basic requirements are:

(i) the money i.e. (capital) must have been borrowed by the assessee;

(ii) it must have been borrowed by the assessee for his business, profession or vocation; and

(iii) the assessee must have paid interest on the amount and claimed it as an allowance.

A perusal of the assessment order dated 27.03.2015 passed by the AO clearly shows that he has made the disallowance on presumptions. Following the ratio laid down in the above case, we uphold the order of the Ld. CIT(A) and dismiss the 1st ground of appeal.

7. The 2nd ground of appeal

> On the facts and in the circumstances of the case and in law, whether the Ld. CIT (A) is right in directing the AO to allow the expenditure of ISO Ohsas expenses of Rs.5,26,907/- as revenue in nature.

8. During the course of assessment proceedings, the AO observed that the assessee had claimed ISO Ohsas expenses of Rs.6,19,891/-. Considering such expenditure as enduring in nature, the AO treated it as capital expenditure and after allowing depreciation @ 15%, made a disallowance of Rs.5,26,907/- (Rs.6,19,891/- *minus* Rs.92,984/-).

9. In appeal, the Ld. CIT(A) followed the order of his predecessor for the AYs 2010-11 and 2008-09 and allowed the appeal filed by the assessee.

10. Before us, the Ld. DR relies on the order of the AO, whereas the Ld. counsel relies on the order of the Ld. CIT(A).

11. We have heard the rival submissions and perused the relevant materials on record. We find that the assessee-company regularly conducts ISO audits and provides training to its employees and the expenses were incurred on drinking water, water monitoring etc. which were carried out to ensure the environmental regulations and safety of the employees. Such expenditure being revenue in nature, we uphold the order of the Ld. CIT(A) and dismiss the 2nd ground of appeal.

12. The 3rd ground of appeal

> On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) is right in deleting the addition made on account of provision for warranty to the tune of Rs.1,19,87,565/- relying on the earlier years decision of the Ld. CIT(A) in the assessee's own case even when under the Income Tax Act treats each assessment to be separate and more so without bringing on record the basis of similarity of facts

13. The assessee-company had made a provision of warranty period supplies amounting to Rs.1,19,87,565/-. The AO observed that the above claim is not sustainable as no liability has crystallized. He referred to the decision in *Bharat Earth Movers Ltd*. 245 ITR 428 (SC), wherein the issue was ESIC liability in respect of employees and then disallowed the above warranty provision of Rs.1,19,87,565/-, by following the order of his predecessor for the AY 2005-06.

14. In appeal, the Ld. CIT(A) followed the order of the Tribunal for the AY 2005-06 and also the order of his predecessor for the AYs 2009-10 and 2010-11 and allowed the appeal filed by the assessee.

15. Before us, the Ld. DR relies on the order of the AO, whereas the Ld. counsel relies on the order of the Tribunal in assessee's own case for the AY 2005-06 and thus supports the order passed by the Ld. CIT(A).

16. We have heard the rival submissions and perused the relevant materials on record. We find that the ITAT 'I' Bench Mumbai in assessee's own case for the AY 2005-06 (ITA No. 2417/M/2010) held at para 3.2 the following:

> "The assessee who is a manufacturer of automotive components had been issuing warranty at the sale of the product for removal of defects over a particular period of time. The assessee had made provisions for warranty expenditure in the year of sale on the basis of past experience etc. The issue is whether such provision for warranty can be allowed as deduction. We find that the same issue had been considered by the Hon'ble Supreme Court in case of Rotork Controls India (p) Ltd. (supra) in which the Hon'ble Supreme Court observed that warranty was an integral part of sale price as the warranty stood attached to the sale price of the product. It was also observed that warranty provisions have to be recognized because an assessee had a present obligation as a result of past events resulting in an outflow of resources and a reliable estimate could be made of the amount of obligation. Therefore, the assessee had incurred the liability which was an allowable deduction under section 37 of the I.T. Act."

Facts being identical, we follow the order of the Co-ordinate Bench and dismiss the 3rd ground of appeal.

17. <u>The 4th ground of appeal</u>

> On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) is right in directing the AO to examine the reconciliation

statement furnished by the assessee and take appropriate decision in accordance with law in respect of CENVAT credit and VAT set off to the tune of Rs.19,04,619/- to the closing inventory by invoking Section 145A.

18. During the course of assessment proceedings, the AO pointed out to the assesseee that as per Annexure-V of TAR, the deviation from the nature of valuation prescribed u/s 145A has resulted in difference of Rs.19,04,619/-. The AO made an addition of the above difference to the net profit for bringing out the true and correct profit as per the provisions of section 145A of the Act.

19. In appeal, the Ld. CIT(A) followed the order of the ITAT in assessee's own case for the AY 2010-11 and directed the AO to follow the direction of the Tribunal contained therein.

20. Before us, the Ld. DR relies on the order of the AO whereas the Ld. counsel relies on the order of the Ld. CIT(A).

21. We have heard the rival submissions and perused the relevant materials on record. We find that the ITAT 'B' Bench Mumbai in assessee's own case for the AY 2010-11 (ITA No. 3343/Mum/2014) set aside the order of the CIT(A) on the above issue and restored the matter to the file of the AO with a direction to examine the reconciliation statement furnished by the assessee and take appropriate decision in accordance with law after giving reasonable opportunity of being heard to the assessee.

The same issue again arose in AY 2011-12. The Tribunal followed the order for AY 2010-11 and restored the matter to follow the said direction.

Facts being identical, we follow the order of the Co-ordinate Bench in assessee's own case for AY 2010-11 and 2011-12 and restore the matter to the file of the AO with the direction to examine the reconciliation statement furnished by the assessee and take appropriate decision as per the Act after affording reasonable opportunity of being heard to the assessee.

Thus the 4th ground of appeal is allowed for statistical purposes.

22. In the result, the appeal is partly allowed.

23. The grounds of appeal for the AY 2013-14 are identical to AY 2012-13. Facts being same, our decision for AY 2012-13 applies *mutatis mutandis* to AY 2013-14.

24. In the result, the appeals are partly allowed.

Order pronounced in the open Court 29/06/2018.

Sd/-	Sd/-
(SAKTIJIT DEY)	(N.K. PRADHAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai;
Dated: 29/06/2018
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai