

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.1302/PUN/2010

निर्धारण वर्ष / Assessment Year : 2004-05

The Deputy Commissioner of Income Tax,
Circle-8, Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Atlas Copco (India) Ltd.
Sveanagar, Mumbai-Pune Road,
Dapodi, Pune-411 012.
PAN: AAACA4074D

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1303/PUN/2010

निर्धारण वर्ष / Assessment Year : 2004-05

M/s. Atlas Copco (India) Ltd.
Sveanagar, Mumbai-Pune Road,
Dapodi, Pune-411 012.
PAN: AAACA4074D

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-8, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri R Murlidhar &
Shri Prashant Gandhi

Revenue by : Ms. Kesang Y Sherpa, CIT

सुनवाई की तारीख / Date of Hearing : 19.07.2019

घोषणा की तारीख / Date of Pronouncement : 22.07.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

These cross appeals preferred by the Revenue and assessee emanates from the order of the Ld. CIT(Appeals)-V, Pune dated 30.07.2010 for the assessment year 2004-05 as per the grounds of appeal on record.

2. These cases were heard together. Since issues common and facts are similar, these cases are being disposed of vide this consolidated order. First, we would take up assessee's appeal in ITA No.1303/PUN/2010 for adjudication.

ITA No.1303/PUN/2010 (By Assessee) **A.Y.2004-05**

3. **Ground No.1** of assessee's appeal is with regard to the disallowance u/s.35DD of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), fees for increase in authorized share capital.

4. At the time of hearing, the Ld. AR of the assessee submitted that this ground is covered by the decision of Co-ordinate Bench of the Tribunal, Pune in assessee's own case in ITA No.1311/PUN/2011 & ITA No.1414/PUN/2011 for assessment year 2002-03 and in ITA No.1676/PUN/2011 & ITA No.54/PUN/2011 for assessment year 2003-04. In assessment year 2002-03, the Tribunal on this issue has held as follows:

“22. We have perused the case records and heard the rival contentions. We have also analyzed the facts and circumstances on the issue. The Ld. CIT(Appeals) allowed the stamp duty expenses to be amortized u/s.35DD of the Act stating that to be part of amalgamation proceedings, following the decision of his predecessor in assessee’s own case for assessment year 2004-05 and 2005-06 as on record. The Assessing Officer and the Ld. CIT(Appeals) has not denied the facts that there were amalgamation proceedings with respect to the assessee, however they have not brought out any reasons, specially in the order of the Ld. CIT(Appeals) that when entire expenses are in connection with amalgamation proceedings and the Revenue Authorities have allowed stamp duty expenses as deduction u/s.35DD of the Act then what is the reason for not allowing the expenses incurred regarding fees for increase in authorized share capital which is also part of the same amalgamation proceedings. We are also inclined to agree with the submission of the Ld. AR after perusing facts of the case in the decision of the Hon’ble Delhi High Court (supra.) that it relates to fees for registration of company and essentially dealing with provision of section 35D(2)(c)(iii) of the Act. There is substantial difference between registration of a company and action taken for increase in authorized share capital.

In the case of the assessee because of amalgamation proceedings, there was need to increase in authorized share capital and therefore, such expenses cannot be segregated from the main amalgamation proceedings and therefore, these expenses are part of amalgamation expenses.

*23. In view of the matter, we set aside the order of the Ld. CIT(Appeals) on this issue and direct the Assessing Officer to delete the addition from the hands of the assessee. Thus, **ground No.4 raised in appeal by the assessee is allowed and ground No.3 of the Revenue’s appeal is dismissed.**”*

Respectfully, following our aforesaid decision, **we allow the ground No.1 raised in appeal by the assessee.**

5. **Ground No.2** relates to software development expenses being treated as capital in nature.

6. The Assessing Officer had observed that the software expenses incurred by the company was towards purchase of specialized software and hence, has benefit of enduring nature, therefore, depreciation was allowed. The Assessing Officer further observed that expenditure debited to Software Development account mainly include purchase cost of new software such as Computer

software-ICEM-CFD- Hexa Mesh Software etc. From the verification of the details of expenses, the Assessing Officer observed that it is clear that the same should have been capitalized instead of debiting to profit and loss account.

7. That before the Ld. CIT(Appeals), the assessee had taken a plea that similar expenditures were allowable for assessment year 2001-02 and the Ld. CIT(Appeals) held that for assessment year 2001-02 definitely, he had allowed these expenditures since they were incurred on general purpose software such as Windows and MS Office. However, with regard to the relevant year from the findings of the Assessing Officer it is crystal clear that the software in question were in the nature of specialized software. In such case, the assessee, no doubt shall derive enduring benefit even beyond two years. Therefore, the Ld. CIT(Appeals) upheld the addition made by the Assessing Officer as capital expenditure.

8. At the time of hearing, the Ld. AR of the assessee relied on the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Geoffrey Manners & Co. Ltd., 49 taxmann.com 320 wherein the findings of the Tribunal was upheld by the Hon'ble Bombay High Court. In that order the Tribunal has observed that in the present world scenario, technology plays an essential role regarding advancement of research and therefore, technology has to be updated from time to time and judicial note has to be taken with regard to the technological advancement and though there is small degree of durability that should not mean expenses incurred are capital in nature. Rather they are revenue in nature.

9. Per contra, the Ld. DR relying on the order of the Assessing Officer submitted that in the case of the assessee, it is not a question of simple updating of the Windows etc. Rather some specialized software such as Computer software-ICEM-CFD-Hexa Mesh Software etc. has been installed by the assessee. Therefore, there cannot be any doubt that there is durability factor for much longer period of time and it is on this background, the Ld. CIT(Appeals) had also upheld the addition made in this regard. The Ld. CIT(Appeals) in assessee's own case for assessment year 2001-02 had allowed such expenditure since they were on software updating for general purpose software such as Windows and MS office etc. but when it came to this relevant year, the type of technological advancement through software development as installed by the assessee definitely ensures durability of longer period of time and therefore, this should have been capitalized and should not have been debited to the profit and loss account.

10. We have perused the case records and heard the rival contentions. We have also considered the judicial pronouncements placed before us. The records demonstrates that there is sharp difference in up-gradation of software and expenses incurred by the assessee as compared to the assessment year 2001-02 with that of the relevant assessment year. In this year, various software have been installed such as Computer Software-ICEM-CFD- Hexa Mesh Software by the assessee. However, none of the parties could submit through evidence regarding durability of these software, whether it is in the category of general purpose of software or specialized software which can be utilized directly for manufacturing or production. Therefore, this issue needs detailed verification. Further, we observe the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Geoffrey

Manners & Co. Ltd. (supra.) wherein the decision of the Tribunal has been upheld by observing that in the changing trend development of technology for research is essential and there is small degree of durability attached to it. Thus, the expenditures in that case was held to be revenue in nature. Similar position the assessee had witnessed for assessment year 2001-02 wherein the Ld. CIT(Appeals) himself has given relief to the assessee. But in the relevant assessment given, the specialized software used by the assessee, the degree of durability of these software are to be ascertained. If they are of such expenditure that they can be used directly for manufacturing and production and for longer degree of durability then there cannot be any iota of doubt that they are capital in nature. However, if the degree of durability is small then following the decision of the Hon'ble Bombay High Court (supra.) this expenditure should be treated as revenue expenditure and hence, allowable.

In view of the matter, we set aside the order of the Ld. CIT(Appeals) on this issue and restore it to the file of Assessing Officer for detailed verification as herein above mentioned after complying with the principles of natural justice. Thus, **ground No.2 raised in appeal by the assessee is allowed for statistical purposes.**

11. **Ground No.3** relates to the expenditure on premises of Rs.35,46,311/-.

12. The Assessing Officer on perusal of the profit and loss account of the assessee observed that an amount of Rs.35,46,312/- has been debited to expenditure on premises account under the head "Miscellaneous Expenses". After going through the details submitted by the assessee as called for by the Assessing Officer it was seen that the expenditure debited to expenditure on premises account mainly include capital expenditure made at MD's Bunglow

like painting, architect's fees, furniture, stair-case etc. From verification of the details of the said expenses, the Assessing Officer observed that they are capital in nature. However, the assessee debited the same to P & L account instead of capitalizing and had also claimed depreciation thereon as per rate applicable. The Assessing Officer disallowed 80% of the expenses on premises account amounting to Rs.28,37,050/-, however, allowed the same to be capitalized and depreciation of Rs.1,41,853/- @ 5% (As MD's Residence was acquired after 30.09.2003) was allowed and the net addition on this account therefore, was Rs.26,95,198/-.

13. That before the Ld. CIT(Appeals), the assessee submitted that the assessee company purchased a second hand bungalow for the MD and the expenditure debited under this head were incurred on items of work like repairs to staircase, painting, architect's fees and repairs to swimming pool. The Ld. AR stated that apart from this, expenditures debited under this head also included minor repairs at the company owned as well as leased premises at various locations. The Ld. AR stated that the entire expenditure was in the nature of current repairs and no civil work/new construction or capital investment was included under this head. The Ld. CIT(Appeals) after considering the submissions of the assessee, facts of the case and assessment order agreed on the action of the Assessing Officer. However, considering detailed facts of the case and nature of expenditure, he was of the view that major part of the expenditure under this head could be construed to be of the nature of current repairs, maintenance etc. and hence, 40% of the expenditure under this head was capitalized instead of 80% as held by the Assessing Officer and depreciation was allowed thereon.

14. The Ld. AR of the assessee reiterated the submissions as made in front of the Assessing Officer as well as before the Ld. CIT(Appeals). The Ld. AR has placed reliance on the following judgments :

(i) Standard Mills Co. Ltd. Vs. Commissioner of Income Tax, 181 ITR 233 (Bom.)

(ii) Commissioner of Income Tax Vs. HEDE Consultancy (P) Ltd., 127 TAXMAN 597 (Bom.)

In all these cases, similar expenditures were allowed as revenue expenditure. The Ld. AR therefore, submitted that even 40% capitalization as held by the Ld. CIT(Appeals) should be deleted and entire amount should be allowed.

15. Per contra, the Ld. DR relied on the orders of the Sub-ordinate Authorities.

16. We have perused the case records and heard the rival contentions. We observe that the assessee company during the year had purchased a second hand bungalow for MD. Thereafter, all these repairs works had taken place. The case laws relied on the by the Ld. AR are on the facts and situation that renovation/repairs were taken place where already the property was in use. But in this case during the year property was purchased and suitable repairs/renovation were made and then it was put to use. So substantially facts are different as compared to the case of the assessee. The Assessing Officer had directed 80% to be capitalized which was reduced to 40% by the Ld. CIT(Appeals) considering that some of the repairs were in nature of current repair. We find this reasoning to be judicious so as that it had maintained the principles of equality with regard to the parties herein in the given facts and circumstances. We do not find any infirmity with the findings

of the Ld. CIT(Appeals) which is thereby upheld. Thus, **ground No.3 raised in appeal by the assessee is dismissed.**

17. **Ground No.6** of the Revenue's appeal is with regard to the deduction towards provision for warranty.

18. Briefly stated facts of this ground that the assessee made provision for warranty at Rs. 1,76,75,590/-. A sum of Rs.77,53,766/- on account of free of cost replacement /consumables was credited to the provision account. The assessee could not substantiate its claim for deduction of provision. Consequently, the Assessing Officer disallowed net amount of Rs.98,71,825/- The Ld. CIT(Appeals) deleted the disallowance by relying on his order for an earlier year. The Revenue is aggrieved by the deletion of addition.

19. We have heard both the sides and gone through the relevant material available on record. It is observed that similar issue came up for consideration before the Tribunal for the immediately preceding assessment year and the Tribunal, following its own order for the earlier years, has held that the provision for warranty should be allowed @ 0.4% of net sales unless the amount of actual expenditure is more than the amount of provision, in which eventuality the entire amount of expenditure claimed as deduction, should be allowed.

20. The assessee's turnover for the instant year is Rs.293 crore. Amount of provision for warranty at the rate of 0.40% of such turnover, comes to Rs.1.17 crore, against which the assessee created gross provisions of Rs.1.76 crore.

The Assessing Officer took note of the fact that assessee credited a sum of Rs.77.53 lakh on account of free of cost replacement/consumables. In the orders for the earlier years, the Tribunal has held that once deduction is allowed towards provision for warranty, then no separate deduction can be allowed for actual expenditure towards replacements/ repairs in honouring such warranty claims. It is quite logical also that the assessee cannot be allowed double deduction, firstly, at the time of creation of provision and then at the time of actual expenditure. From the material on record, it can only be gathered that the assessee credited a sum of Rs.77,53,766/- to provision account. It is not clearly emanating as to whether Rs.77,53,766/- was, in fact, offered for taxation in this assessment year. If the assessee really offered the amount of Rs.77,53,766/- for taxation, then the view taken by the Ld. CIT(Appeals) in deleting the addition has to be upheld. On the other hand, if it is found that the amount of Rs.77,53,766/- was credited to Provision for warranty account, but was not offered for taxation, in that case, provision will have to be restricted @ 0.40% of total sales, which is Rs.1.17 crore as against the claim of deduction for provision at Rs.1,76,75,590/-. Excess amount of provision in that case will have to be disallowed. We therefore, set aside the impugned order on this score and remit the matter to the file of Assessing Officer for deciding the issue afresh in accordance with the above directions. Needless to say, the assessee will be allowed a reasonable opportunity of hearing. Thus, **ground No.6 raised in appeal by the Revenue is allowed for statistical purposes.**

21. **Ground No.4** is with regard to the disallowance of miscellaneous expenses. This issue has been discussed by the Assessing Officer at Para 12 of his order and as per the detailed reasons and investigation carried out, he

disallowed 60% of the miscellaneous expenses and added to the total income of the assessee. Prima facie, the Assessing Officer disallowed 60% of these expenses since proper documentary evidences were not furnished by the assessee before him.

22. The Ld. CIT(Appeals) as per reasons appearing in his order which is on record restricted this disallowance to 20%.

23. We have perused the case records and we find that for similar expenses in assessee's own case in ITA No.1676/PUN/2011 and ITA No.54/PUN/2012 for assessment year 2003-04, the Tribunal had restricted the disallowance to 15% of the expenses by observing as under:

“17. Having heard both the sides and gone through the relevant material on record, we find that the first sum of Rs.33,76,762/- is in the nature of actual expenses incurred during warranty period. Since a deduction has been separately allowed to the assessee on creation of provision for warranty, there can be no question of allowing any separate deduction for actual expenses incurred in accepting the claims under warranty. We, therefore, uphold the impugned order to the extent of disallowance of Rs.33,76,762/-.

18. Second item is expenditure on Gifts at Rs.14,99,816/-. The assessee could not produce any evidence to show whether the Gifts were given for the business purpose or were hit by Explanation 1 to section 37(1) of the Act. In the absence of furnishing any such details, we uphold the view taken by the ld.CIT(A) in sustaining this disallowance.

19. Similar is the position regarding donations of Rs.6,26,628/-, for which the assessee could not adduce any evidence. The impugned order is, therefore, upheld to this extent.

20. As regards the fee of Rs.13,53,956/- for handling share records is concerned, we find that the same is in respect of shares issued by the assessee company and not for handling any investments of the assessee. Such expenses incurred by the assessee are deductible in full.

21. As regards the remaining expenses, the ld. CIT(A) restricted the addition to 25%. Considering the peculiar circumstances prevailing in the extant case, we are of the considered opinion that it would be just and fair if the disallowance is restricted to 15% of such expenses. We order accordingly.”

24. We have gone through the details of the Miscellaneous expenditure, which have been tabulated at pages 260 & 261 of the paper book. It can be seen that a sum of Rs.41,33,283/- has been included under this head, which is on account of Software development account. We have separately dealt with this issue and allowed the assessee's claim for statistical purposes. This amount is, therefore, directed to be excluded from the total of Miscellaneous expenses. A sum of Rs.25,83,042/- included under this head is on account of actual expenditure on warranty repairs during that period. Similar issue has been decided by the Tribunal in the immediately preceding year against the assessee. We, therefore, direct to disallow the amount of Rs. 25,83,042/-. In the preceding year, we have also disallowed expenditure incurred by the assessee on Gifts and Donations, in entirety. The Assessing Officer is directed to verify the details of such Miscellaneous expenses and disallow the amount relating to Gifts and Donation, if included, under this head. For the preceding year, we have allowed full deduction towards fees for share handling. The Assessing Officer is directed to allow deduction for the full amount towards fees for share handling, after excluding it from this head, if already included. In so far as the remaining amount is concerned, following the view taken in the preceding year, we direct the Assessing Officer to restrict the disallowance to 15% of such remaining expenses. Thus, **ground No.4 raised in appeal by the assessee is partly allowed.**

25. **Ground No.5** is with regard to the ad-hoc disallowance u/s.14A @ 10% of the exempted income.

26. At the time of hearing, the Ld. AR of the assessee submitted that he is not pressing ground No.5. Therefore, in view of the submissions of the Ld. AR,

ground No.5 raised in appeal by the assessee is dismissed as 'not pressed'.

27. With regard to **ground No.6 and 7**, the Ld. AR submitted that these grounds are covered by the decision of assessee's own case in ITA No.1311/PUN/2011 & ITA No.1414/PUN/2011 for assessment year 2002-03 and in ITA No.1676/PUN/2011 and ITA No.54/PUN/2011 for assessment year 2003-04 wherein the issue before the Tribunal was as follows:

"22. Ground no.6 of the assessee's appeal is against the confirmation of inclusion of commission income of Rs.7,87,32,730/- as part of total turnover in the computation of deduction u/s.80HHC. The later part of the ground is towards confirmation of exclusion of 90% of Service charges and Miscellaneous income from profits of business for deduction u/s.80HHC."

The Tribunal on this issue has held as under:

"23. It is seen that similar issue came up for consideration before the Tribunal in assessee's own case for the immediately preceding assessment year. Following the view taken by the Tribunal in assessee's own case for still another year, the matter has been remitted to the AO for a fresh decision. Both the sides are in agreement that the facts and circumstances of the extant ground are similar to those for the A.Y. 2002-03. Following the view taken for the immediately preceding assessment year, we set aside the impugned order and remit the matter to the file of AO for deciding this issue in conformity with the directions given by the Tribunal in its earlier orders."

28. We have perused the case records and have given considerable thought to the findings recorded in our earlier orders in ITA No.1311/PUN/2011 & ITA No.1414/PUN/2011 for assessment year 2002-03 and in ITA No.1676/PUN/2011 and ITA No.54/PUN/2011 for assessment year 2003-04 wherein the matter has been restored to the file of Assessing Officer with directions as appearing therein. Respectfully following our earlier orders as afore stated, this issue is remitted back to the file of Assessing Officer with

similar directions. Thus, **grounds No.6 and 7 raised in appeal by the assessee are allowed for statistical purposes.**

29. In the result, **appeal of the assessee in ITA No.1303/PUN/2010 is partly allowed for statistical purposes.**

ITA No.1302/PUN/2010 (By Revenue)
A.Y.2004-05

30. Apart from grounds appearing in appeal Memo, the Revenue had preferred an additional ground with respect to Section 35DDA of the Act.

31. At the time of hearing, the Ld. DR submitted that **grounds No.1, 2 and 3 in the appeal Memo and the additional ground** are similar in nature. The Ld. DR further submitted that in assessee's own case in ITA No.1676/PUN/2011 and ITA No.54/PUN/2011 for assessment year 2003-04, the Tribunal had restored the issue to the file of Assessing Officer with certain directions. In this regard, the Ld. DR invited our attention to Para 10 and 11 of the Tribunal's order for assessment year 2003-04 wherein it was held and observed as under:

"10. Ground no.2 of the assessee's appeal is against not allowing proper deduction u/s.35DDA towards Voluntary Retirement Scheme (VRS) on accrual basis.

11. Similar issue came up for consideration before the Tribunal in assessee's own case for the immediately preceding assessment, which has been discussed on page 9 para 12 of the order. The Tribunal has held the assessee to be entitled to deduction u/s.35DDA on the basis of incurring of liability. A further direction has been given to ensure that the assessee is not allowed deduction on actual payment basis. The AO is directed to examine this aspect and allow deduction only towards incurring of liability, i.e. on accrual of liability towards VRS u/s.35DDA and no amount should be allowed as deduction on payment basis. This ground is, therefore, allowed for statistical purposes."

Respectfully, following our decision in assessee's own case for assessment year 2003-04, this issue is restored to the file of Assessing Officer with similar directions. Therefore, **grounds No. 1, 2 and 3 in the appeal Memo and additional ground raised in appeal by the Revenue are allowed for statistical purposes.**

32. **Ground No.4** of the Revenue's appeal is with regard to the fact that whether the Ld. CIT(Appeals) was justified in holding that expenditure incurred by the assessee on stamp duty for transfer of immovable assets would qualify as 'amalgamation expenses' and is an allowable expenditure u/s.35DD of the Act.

33. We find that similar issue had come up for consideration before us in ITA No.1311/PUN/2011 & ITA No.1414/PUN/2011 for assessment year 2002-03 and in ITA No.1676/PUN/2011 and ITA No.54/PUN/2011 for assessment year 2003-04. In assessment year 2003-04, the Tribunal on this issue has held as follows:

"30. Both the sides are consensus ad idem that similar issue came up for consideration before the Tribunal in the case of the assessee for the A.Y. 2002-03. We find that relevant discussion has been made on page 13 para 22 of the order by which the issue has been determined in favour of the assessee. Following the view taken for the immediately preceding year, we dismiss this ground of appeal by the Revenue."

Respectfully, following our decision as mentioned herein above, **ground No.4 raised in appeal by the Revenue is dismissed.**

34. In **ground No.5**, Revenue challenges the action of the Ld. CIT(Appeals) in deleting addition of Rs.3,54,72,491/- made by the Assessing Officer on account of payment of commission by the assessee.

35. This ground had also come up for consideration before us in respect of parties herein in ITA No.1676/PUN/2011 and ITA No.54/PUN/2011 for assessment year 2003-04 wherein the Tribunal has held as follows:

“31. Second ground by the Revenue is against allowing claim of Dealer Commission. Here again, we find that similar issue has been determined by the Tribunal at page 37 of its order for the immediately preceding year. The relevant discussion has been made from para 64 onwards and eventually the view taken by the Id. CIT(A) has been approved. Following the same, we countenance the impugned order on this score. This ground is not allowed.”

Respectfully, following our decision as hereinabove mentioned, **ground No.5 raised in appeal by the Revenue is dismissed.**

36. **Ground No.7, 8 and 9** of the Revenue's appeal is with regard to TP adjustment on account of royalty payment made to AE.

37. With regard to these grounds, it is observed that similar issue had come up for consideration before us ITA No.1311/PUN/2011 & ITA No.1414/PUN/2011 for assessment year 2002-03 and in ITA No.1676/PUN/2011 and ITA No.54/PUN/2011 for assessment year 2003-04. In assessment year 2003-04, the Tribunal in its order has held as follows:

“34. We have heard both the sides and gone through the relevant material on record. It is found as an admitted position that the assessee paid Royalty to its AEs as per the rates approved by the RBI. The TPO determined NIL ALP simply on the ground that the AEs to whom the assessee paid Royalty had discontinued production of such products. In our considered opinion, this is no ground to determine NIL ALP of an international transaction. The TPO is required to determine the ALP of an international transaction under one of the methods mandated under rule 10B of the Income-tax Rules, 1962. Nothing of the sort has been done in the instant case. The TPO got influenced with extraneous reasons, which have no bearing on the determination of the ALP of an international transaction. It is further observed that similar issue came up for consideration before the Tribunal in assessee's own case for the immediately preceding assessment year. The transfer pricing addition made in similar circumstances has been deleted. Relevant discussion

has been made on page 39 onwards of the order. Considering the entire conspectus of the case, including the fact that the payment of Royalty to AEs was as per RBI norms, we are satisfied that the view taken by the ld. CIT(A) is unassailable. This ground, therefore, fails.”

Respectfully following the view taken in assessment year 2002-03 and 2003-04 as hereinabove stated, **grounds No. 7, 8 and 9 of the Revenue’s appeal are dismissed.**

38. **Ground No.10** of Revenue’s appeal is similar to **ground No.6 and 7** of the assessee’s appeal in this year. Therefore, on similar directions as mentioned while deciding the issue in assessee’s appeal, we restore this issue to the file of Assessing Officer. Thus, **ground No.10 raised in Revenue’s appeal is allowed for statistical purposes.**

39. In the result, **appeal of the Revenue in ITA No.1302/PUN/2010 is partly allowed for statistical purposes.**

40. In the combined result, **appeal of the assessee in ITA No.1303/PUN/2010 and appeal of the Revenue in ITA No.1302/PUN/2010 are partly allowed for statistical purposes.**

Order pronounced on 22nd day of July, 2019.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 22nd July, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-V, Pune.
4. The CIT-V, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

*

		Date	
1	Draft dictated on	19.07.2019	Sr.PS/PS
2	Draft placed before author	22.07.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		