आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष

[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**]**

आयकर अपील सं./I.T.A. Nos.2339 & 2340/CHNY/2017
निर्धारण वर्ष **/**Assessment years :2010-11 and 2011-12.

M/s. India Pistons Limited, Huzur Gardens, Sembium, Chennai 600 011.	**Vs.**	The Deputy Commissioner of Income tax, Corporate Circle 2(2) Chennai.

आयकर अपील सं./I.T.A. Nos.2383 & 2384/CHNY/2017
निर्धारण वर्ष **/**Assessment years : 2010-11 and 2011-12

The Deputy Commissioner of Income tax, Corporate Circle 2(2) Chennai.	**Vs.**	M/s. India Pistons Limited, Huzur Gardens, Sembium, Chennai 600 011.
(अपीलार्थी/Appellant)		**[PAN AAACI 1439E]** **(प्रत्यर्थी/Respondent)**

Assessee by	**:**	Shri. R. Vijayaraghavan, Adv
Department by	**:**	Ms. R. Anitha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing	**:**	27-08-2019
घोषणा की तारीख /Date of Pronouncement	**:**	26-09-2019

आदेश / O R D E R

PER INTURI RAMA RAO, ACCOUNTANT MEMBER

These are cross appeals filed by the assessee and Revenue directed against the common order of the learned Commissioner of Income Tax (Appeals)-9, Chennai (hereinafter called as 'CIT(A)') dated 09.06.2017 for the assessment years (AY) 2010-2011 and 2011-2012.

2. Since, the identical facts and issues are involved in these appeals, we proceed to dispose of the same vide this common order.

3. For the sake of convenience and clarity the facts relevant to the appeal for assessment year 2010-11 are stated herein.

4. The brief facts of the case are as under:

The appellant namely ''India Pistons Ltd" is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing of piston and piston assemblies. The return of income for the AY 2010-11 was filed on 12.10.2010 and the same was revised on 27.03.2012 disclosing total income of Rs.27,13,491/-. Against the said return of income, the assessment was completed by the Dy. CIT, Company Circle-II(3), Chennai (hereinafter called "AO") vide order dated 28.03.2013 passed

u/s. 143(3) of the Income Tax Act, 1961 (in short 'the Act') at total income of Rs.15,68,73,550/-. While doing so, the Assessing Officer made disallowance of ₹2,02,62,946/- u/s.14A of the Act, additional depreciation of ₹41,54,090/- and export promotion expenditure of ₹21,00,000/-.

5. Being aggrieved, an appeal was preferred before ld. CIT(A), who vide impugned order had partly allowed the appeal by setting aside the issue of disallowance of interest u/s.14A r.w.r. 8D (2) (ii) of the Act to the Assessing Officer to verify whether own funds were utilized for making investments which yielded exempt income while confirming the disallowance under Rule 8D(2) (iii) of the Act. As regards to the disallowance of additional depreciation claimed u/s.32(1) (iia) of the Act, the ld. CIT(A) following the decision of Hon'ble Jurisdictional High Court in the case of Brakes India Ltd vs. DCIT, 2017-TIOL-710-HC-MAD-IT held that balance of depreciation can be claimed in the subsequent assessment years, accordingly deleted the addition. As regards to the export promotion expenditure, ld. CIT(A) confirmed the disallowance following the decision of Co-ordinate Bench of the Tribunal in assessee's own case in ITA No.2186/Mds/2010, dated 30.09.2016 for assessment year 2006-07.

6. Aggrieved by that part of the ld. CIT(A) order, which is against assessee-company, the assessee company is in appeal in ITA No.2339/CHNY/2017, whereas the Revenue is in appeal in ITA No.2383/CHNY/2017 on the grounds which are decided in favour of the assessee company.

7. Now, we take up appeal of the assessee in ITA No.2339/CHNY/2017, for assessment year 2010-2011 for adjudication.

8. The Assessee raised the following grounds of appeal:

''1. The order of the Commissioner of Income tax (Appeals) is contrary to law, facts and in the circumstances of the case.

2.1 The Commissioner of Income tax (Appeals) erred in confirming the disallowance of Rs.15,16,995/- (0.5% of average investment) u/s 14A by applying rule 8D(iii).

2.2 The Commissioner of Income Tax (Appeals) ought to have appreciated that only those investments made in the current assessment year that had yielded dividend income after excluding the investments made in subsidiaries/group companies as held by the Hon'ble Chennai Tribunal in the case of EIH Associated Hotels Ltd Vs. CIT reported in 201 3-TIOL-796-ITAT- MAD,

2.3 The Commissioner of Income Tax (Appeals) ought to have appreciated that the Hon'ble Chennai ITAT in the case of Computer Age Management services (p) Ltd in ITA Nos. 1236, 1240, 1259,1261/2014 dt 28.11.2014 held that disallowance u/s 14A r.w.r 8D can be made only by taking into consideration the investments which has given rise to such income which does not form part of the total income.

3. The Commissioner of Income tax (Appeals) erred in Confirming the disallowance of Export Promotion Expenses amounting to Rs.21 ,00,000/-

3.1 The Commissioner of Income tax (Appeals) ought to have appreciated that this amount represents the share of (Central Bank of

India approved) London Office maintenance expenses reimbursed to M/s. Amalgamations Pvt. Ltd, the holding company of the Amalgamations Group to which the Appellant company belongs.

3.2 The Commissioner of Income tax (Appeals) ought to have appreciated that Foreign Branch Liaison representative is acting for and on behalf of all the group companies and the expenses incurred by the Liaison representative is shared by the group companies.

3.3 The Commissioner of Income tax(Appeals) ought to have appreciated that for convenience; Amalgamations Private Ltd makes the payment to the liaison office and recovers the share of expenses from the individual group companies.

3.4 The Commissioner of Income tax (Appeals) ought to have appreciated that the Amalgamations Private Ltd is not rendering any service to the group companies except making the payment in advance and recovering from the group companies.

3.5 The Commission of Income tax (Appeals) ought to have appreciated that the Liaison office is rendering service directly to the group companies by way of provision of office premises and provision for secretariat service for the use of participating companies for meeting exporters/importers of the respective companies.

3.6 The Commissioner of Income tax (Appeals) ought to have appreciated that the expenditure has been incurred for the purposes of business of the Appellant and the expenses are thus revenue in nature. Hence the entire expenses are allowable as deduction.

4. The Appellant craves leave to adduce additional grounds at the time of hearing".

9. The grounds of appeal No.1 & 4 are general in nature therefore, does not require any adjudication.

10. Grounds of appeal No.2 challenges the correctness of the order of the CIT(A), confirming the addition u/s.14A r.w.r.8D(2) (iii) of the Act. It is submitted that for the purpose of computing

disallowance under clause (iii) of Rule 8D(2) only those investments which yielded exempt income alone to be reckoned with, in this connection he placed reliance on the judgment of Hon'ble Delhi High Court in the case of ACB India Limited vs. ACIT, (2015) 374 ITR 108.

11. On the other hand, the ld. Sr. Departmental Representative placed reliance on the orders of lower authorities.

12. We heard the rival submissions and perused the material on record, having regard to the decision of Hon'ble Delhi High Court in the case of ACB India Ltd (supra) and the decision of the Delhi Special Bench of the Tribunal in the case of *ACIT VS. Vireet Investment Pvt. Ltd, 2017-TIOL-923-ITAT-Del-SB,* we are of the considered opinion that the average value of investments which yielded exempt income alone are to be considered for the purpose of computing disallowance. Accordingly, we remit the issue back to the file of the Assessing Officer to recompute the amount of disallowance under clause (iii) of Rule 8D(2) by adopting only average value of investments which yielded exempt income. Thus, grounds of appeal No.2 is partly allowed for statistical purpose.

13. Ground No.3 relates to disallowance of business promotion expenditure. We would remand back the issue to the file of the

Assessing Officer, following the decision of the Co-ordinate Bench of the Tribunal in assessee's own case in ITA No.56/Mds/2013, for assessment year 2008-09, dated 12.06.2015 for fresh adjudication in accordance with law. Thus, grounds of appeal No.3 is partly allowed for statistical purpose.

14. In the result, the appeal of the assessee in ITA No.2339/CHNY/2017 for assessment year 2010-2011 is partly allowed for statistical purpose.

15. Now, we take up appeal of the Revenue in ITA No.2383/Chny/2017, for assessment year 2010-2011 for adjudication.

16. The Revenue has raised the following grounds of appeal.

''1. The Order of the learned Commissioner of Income Tax (Appeals) is contrary to the Law and facts of the case.

2.1. The CIT(A) erred in holding that if the own funds available in the possession of the assessee is more than the tax free investments no disallowance could be made under Rule 8D(2)(ii).

2.2. The CIT(A) erred in allowing the disallowance made u/s.14A r.w.r. 8D(2)(ii) and directing the AC to verify and consider whether own funds are more than the investment made in tax free securities.

2.3. The CIT(A) erred in directing the AC to modify the 14A disallowance made under Rule 8D without the considering the facts that when assessee had mixed bag of funds and huge investments were made in assets yielding exempt income.

2.4. The CIT(A) erred in applying only the clause under 8D(2)(iii) for disallowance u/s.14A, when there is no such exemption available in the Provisions of Section/Rule.

2.5. It is submitted that CBDT in Circular No.512014 dated 11.02.2014 has clarified that Rule 8D r.w.s. 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.

3.1 The CIT(A) erred in allowing the balance of the additional depreciation carried forward from the earlier assessment year to the next year.

3.2 The CIT(A) erred in allowing the balance of the additional depreciation based on the decision of the Hon'ble Maras High court in the case of Brakes India Ltd which was not accepted by the Department and further appeal is pending the Apex Court.

3.3. The CIT(A) failed to appreciate the 3rd proviso of Section 32(1)(iia) allowing part of additional depreciation in the year subsequent to acquisition of assets came into being prospectively w.e.f. 01.04.2016 and therefore does not apply to the asst. year in question.

3.4 The CIT(A) ought to have appreciated that as per the proviso to section 32(1)(iia) of the Act where the asset is acquired and put to use by the assessee for the purpose of business for a period of less than one hundred and eighty days in that previous year deduction under this sub-section shall be restricted to fifty per cent of such asset.

3.5 The CIT(A) failed to appreciate the jurisdictional High Court's decision in the case of M/s. MM Forgings Ltd. (349 ITR 673) which is in favour of the Department.

4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the Order of the learned Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored".

17. The grounds of appeal No.1 & 4 are general in nature therefore, does not require any adjudication.

18. In ground No.2, the Revenue is aggrieved by the decision of the ld. CIT(A) to remit the issue of disallowance u/s.14A r.w.r.8D(2)

(ii) to the Assessing Officer. Though the ld. CIT(A) had no power of setting aside to the Assessing Officer but there are no such fetters on the powers of the Tribunal to set aside the issue to the Assessing Officer. Therefore, we are of the considered opinion that the issue whether investments are made out of own funds or borrowed funds is a question of fact which requires to be verified by the Assessing Officer with evidence and therefore we remit the matter back to the file of the Assessing Officer to decide whether the investments are made out of borrowed funds or own funds, if the investments are made out of own funds, no disallowance of investments can be made. Thus, grounds of appeal No.2 filed by the Revenue is partly allowed for statistical purpose.

19. Vide ground No.3, the Revenue challenges the decision of the ld. CIT(A) in allowing additional depreciation. This issue is no more res integra as it stands concluded by the decision of Jurisdictional High Court in the case of Brakes India Ltd (supra), where the Hon'ble Jurisdictional High Court following the decisions of Hon'ble Karnataka High Court in the case of Rittal India (P) Ltd (2016) –TIOL-07-HC-KAR-IT and its own decision in the case of CIT vs. M/s. Shri. T.P. Textiles Private Ltd, TCA No.157 of 2017 had held as under:-

3.This issue has been dealt with by us vide judgment dated 06.03.2017, passed in T.C.A.No.157 of 2017, titled: Commissioner of Income Tax, Madurai Vs. M/s.Shri T.P.Textiles Private Limited. We have made the following observations therein:

> *‼ 6.1. Therefore, the only issue, which arose for consideration before the Tribunal was, whether the additional depreciation, in the sum of Rs.8,03,233/-, could be claimed by the Assessee in the relevant assessment year, i.e., A.Y.2011-12, in respect of machinery, which was purchased and used for less than 180 days, in the previous year, 2009-10 (i.e., A.Y.2010-11).*
>
> *7. The Tribunal, relying upon its own judgment in the case of Fresh & Honest Cafe Ltd. V. DCIT, dated 10.08.2016, passed in I.T.A.No.1373/Mds/2016 allowed the appeal of the Assessee.*
>
> *7.1. Pertinently, in the judgment of the Tribunal, delivered in the case of Fresh & Honest Cafe Ltd. V. DCIT, reliance was placed on the judgment of the Karnataka High Court in the case of : CIT V. Rittal India (P.) Ltd., [2016] 66 taxmann.com 4 (Karnataka).*
>
> *7.2. The issue, which arose for consideration before the Tribunal in the Fresh & Honest Cafe Ltd. V. DCIT, was also, whether the Assessee could be allowed balance additional depreciation in the relevant A.Y., following the A.Y., in which, the machinery had been purchased, and put to use, albeit, for a period of less than 180 days.*
>
> *7.3. The Tribunal has, thus, in the context of the provisions of Section 263 of the Act, considered, as to whether the assessment order, as passed, qua the issue encapsulated above, erroneous and/or prejudicial to the interest of the Revenue.*
>
> *7.4. In order to appreciate the issue at hand, relevant provisions of Section 32 of the Act, to the extent applicable in the A.Y. in issue, would be required to be noticed :*
>
> > *"Section 32 (1) In respect of depreciation of -*
> >
> > *(i) buildings, machinery, plant or furniture, being tangible assets;*

(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;

(ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed:

Provided ....
(a)...
(b)....

Provided further that where an asset referred to in clause (i) or clause (ii) or clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) 1`or clause (iia), as the case may be:

Provided also ....
Provided also...
Provided also....
Provided also...
Explanation 1....
Explanation 2....
Explanation 3...
Explanation 4...
Explanation 5...

(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing or generation or generation and distribution of power, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii).

(Emphasis is ours)

8. Pertinently, the Karnataka High Court, in a decision rendered in the case of CIT V. Rittal India (P.) Ltd., [2016] 66 taxmann.com 4 (Karnataka), has interpreted the aforesaid provision, in particular, the proviso incorporated therein. The Karnatake High Court, in the said case, has come to the conclusion that additional depreciation granted under clause (iia) of Section 32(1) of the Act is for the purpose of affording benefits to the Assessees and, to encourage industrialization, either by setting up a new industrial unit, or, by expanding a new industrial unit, by purchasing and installing a new machinery, or, plant, and putting the same to use for the purposes of business.

8.1. The Court, went on to say, that while, the proviso appearing in Section 32(1) restricts the claim of depreciation to 50% of the amount calculated at the percentage prescribed for an asset referred to in clause (iia), nowhere does it restrict allowance of the balance 50% of the additional depreciation, which in percentage terms, would be 10% in the succeeding A.Y.

8.2. The relevant observations made by the Division Bench of the Karnataka High Court in the case of CIT V. Rittal India (P.) Ltd., as contained in paragraphs 7, 8 and 9 of the said judgment, for the sake of convenience are extracted hereafter :

> *"..... 7. Clause (iia) of Section 32(1) of the Act, as it now stands, was substituted by the Finance Act, 2005, applicable with effect from 01.04.2006. Prior to that, a proviso to the said Clause was there, which provided for the benefit to be given only to a new industrial undertaking, or only where a new industrial undertaking begins to manufacture or produce during any year previous to the relevant assessment year.*
>
> *8. The aforesaid two conditions, i.e., the undertaking acquiring new plant and machinery should be a new industrial undertaking, or that it should be claimed in one year, have been down away by substituting clause (iia) with effect from 01.04.2006. The grant of additional depreciation, under the aforesaid provision, is for the benefit of the assessee and with the purpose of encouraging industrialization, by either setting up a new industrial unit or by expanding the existing unit by purchase of new plant and machinery, and putting it to*

use for the purpose of business. The proviso to Clause (ii) of the said Section makes it clear that only 50% of the 20% would be allowable, if the new plant and machinery so acquired is put to use for less than 180 days in a financial year. However, if nowhere restricts that the balance 10% would not be allowed to be claimed by the assessee in the next assessment year.

9. The language used in Clause (iia) of the said Section clearly provides that "a further sum equal to 20% of the actual cost of such machinery or plant shall be allowed as deduction under Clause (ii)". The word "shall" used in the said Clause is very significant. The benefit which is to be granted is 20% additional depreciation. By virtue of the proviso referred to above, only 10% can be claimed in one year, if plant and machinery is put to use for less than 180 days in the said financial year. This would necessarily mean that the balance 10% additional deduction can be availed in the subsequent assessment year, otherwise the very purpose of insertion of Clause (iia) would be defeated because it provides for 20% deduction which shall be allowed....."

9. We are in respectful agreement with the view taken by the Division Bench of the Karnataka High Court, passed in CIT V. Rittal India (P.) Ltd.

10. According to us, these are provisions included by the Legislature in the Statute to give a fillip to new industries as also to existing industries, which seek to expand its sway, by investing in and making use of new plant and machinery.

10.1. The plain language of Section 32(1)(iia) read along with the relevant proviso would have us come to the conclusion that, there is no limitation in the assessee claiming the balance 10% of additional depreciation in the succeeding assessment year.

10.2. As a matter of fact, with effect from 01.04.2016, the ambiguity, if any, in this regard, in the mind of the Assessing Officer, stands removed by virtue of the Legislature, incorporating in the Statute, the necessary clarificatory amendment.

10.3. The amendment brought in the relevant proviso obtaining in Section 32, reads as follows:
‖ .... 32. (1) .....

Provided also that where an asset referred to in clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year, and the deduction under this sub-section in respect of such asset is restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (iia)for that previous year, then, the deduction for the balance fifty per cent of the amount calculated at the percentage prescribed for such asset under clause (iia) shall be allowed under this sub-section in the immediately succeeding previous year in respect of such asset: .....¶
(Emphasis is ours)

11. We may only indicate that during the course of the arguments, our attention was drawn to the "Memorandum Explaining the provisions in Financial Bill, 2015", whereby, the aforementioned amendment was brought about.

11.1. The relevant part of the Memorandum is extracted hereafter:

"..... To remove the discrimination in the matter of allowing additional depreciation on plant or machinery used for less than 180 days and used for 180 days or more, it is proposed to provide that the balance 50% of the additional depreciation on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant and machinery, shall be allowed in the immediately succeeding previous year.
This amendment will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years."

11.2. A perusal of the extract of the Memorandum relied upon would show that the legislature recognised the fact that the manner in which the Revenue chose to interpret the provision, as it stood prior to its amendment would lead to discrimination, in respect of plant and machinery, which was used for less than 180 days, as against that, which was used for 180 days or more.

11.3. In our opinion, as indicated above, the amendment is clarificatory in nature and not prospective, as is sought to be

contended by the Revenue. The Memorandum cannot be read in the manner, in which, the Revenue has sought to read it, which is, that the amendment brought in would apply only prospectively.

11.4. We are, clearly, of the view that the Memorandum, which is sought to be relied upon by the Revenue, only clarifies as to how the unamended provision had to be read all along.

11.5. In any event, in so far as the Court is concerned, it has to go by the plain language of the unamended provision, and then, come to a conclusion in the matter. As alluded to above, our view, is that, upon a plain reading of the unamended provision, it could not be said that the Assessee could not claim balance depreciation in the A.Y., which follows the A.Y., in which, the machinery had been bought and used, albeit, for less than 180 days.¶

4.We would have thought, that this would have put an end to the matter. However, the learned counsel for the Revenue, Mr.Ravikumar seeks to advance the following additional submissions:

4.1.Firstly, that, this Court did not take into account, while passing the judgment in Commissioner of Income Tax, Madurai Vs. M/s.Shri T.P.Textiles Private Limited, the judgment of the Division Bench of this Court in M.M.Forgings Limited Vs. Additional Commissioner of Income Tax, (2012) 349 ITR 673.

4.2.Secondly, the Circulars issued by the Central Board of Direct Taxes being: Circular no.8 of 2002 dated 27.08.2002 and Circular no.281 dated 29.11.1979, have not been taken note of in our judgment rendered in Commissioner of Income Tax, Madurai Vs. M/s.Shri T.P.Textiles Private Limited.

4.3.Third and lastly, that the provisions of Section 32(1)(iia) does not allow for additional depreciation, to be carried forward to the following year, in which, the asset is installed and put to use for the following reason.

4.4.It is the submission of the learned counsel that after depreciation is provided for, in the year of installation and use the written down value of the asset is made part of the block of assets, and it is this block of assets, which are subjected to depreciation, and therefore, the Assessee is not permitted to

calculate and provide for depreciation separately, qua, the asset, on which, additional depreciation is provided.

5.In order to appreciate the aforesaid submissions, the following facts are required to be noticed:

5.1.The Assessee had claimed additional depreciation under Section 32(1)(iia) amounting to Rs.1,89,67,159/- during the relevant assessment year, i.e., AY 2006-07.

5.2.The additional depreciation was claimed at the rate of 7.5% being 50% of the prescribed rate, which was 15%.
5.3.The depreciation was claimed at the said rate as the subject asset was used for less than 180 days.

5.4.The said depreciation was claimed in the preceding assessment year, i.e., AY 2005-06, which is, when the asset was installed and put to use.

5.5.In the relevant assessment year i.e., AY 2006-07, the Assessee sought to claim the balance depreciation equivalent to 7.5%. The Assessing Officer, however, rejected the claim made by the Assessee qua the balance additional depreciation.

5.6.Being aggrieved, the Assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) [in short, CIT(A)]. The CIT(A) sustained the order of the Assessing Officer. The Tribunal, did likewise and therefore, the Assessee, is in appeal, before us.

6.As indicated right at the outset, the issue is covered in favour of the Assessee, by virtue of our judgment in the matter of Commissioner of Income Tax, Madurai Vs. M/s.Shri T.P.Textiles Private Limited. As noticed above, the Karnataka High Court in CIT V. Rittal India (P.) Ltd., [2016] 66 taxmann.com 4 (Karnataka), has also taken the same view.

6.1.We are informed that the Revenue has not assailed the judgment of the Karnataka High Court.

6.2.In our judgment in the matter of Commissioner of Income Tax, Madurai Vs. M/s.Shri T.P.Textiles Private Limited, we have

noticed the aforementioned judgment of the Karnataka High Court.

7.In so far as the first submission advanced by Mr.Ravi is concerned, according to us, the same is completely untenable.

7.1.The judgment of the Division Bench of this Court in M.M.Forgings Limited Vs. Additional Commissioner of Income Tax, did not deal the issue, which is at hand.

7.2.The issue, in hand, is as to whether balance additional depreciation could be carried forward to the year, following the previous year, in which, additional depreciation was claimed.

7.3.The Division Bench in M.M.Forgings case the said case was not concerned with the issue, with which, we are faced, that is, the right to carry forward the balance additional depreciation. Therefore, the judgment is completely distinguishable.

8.The second submission of Mr.Ravi, that Circular no.8 of 2002 dated 27.08.2002 and Circular no.281 dated 29.11.1979, have not been taken note of, in our judgment rendered in Commissioner of Income Tax, Madurai Vs. M/s.Shri T.P.Textiles Private Limited, according to us, will not impact, either the reasoning or the conclusion reached by us, in the said matter.

8.1.It is pertinent to note that the Circular no.281 dated 29.11.1979, pre-dates the insertion of the relevant provision, i.e., second clause to Section 32 (1) (iia). The said clause (iia), admittedly, was inserted by virtue of the Finance (No.2) Act, 2002, with effect from 01.04.2003.

8.2.In so far as the second Circular is concerned, i.e, Circular no.8 of 2002 dated 27.08.2002, in our view, in no way, helps the case of the Revenue. The Circular does not dwell on the point which we are confronted with.

8.3.In any case, according to us, the Circulars are not binding on the Court, though, they may be binding on the Revenue. [See CIT V. Hero Cycles Pvt. Ltd., (1997) 228 ITR 463 (SC)].

9.The last submission that Mr.Ravi advanced, was, in fact, predicated on the reasoning given by the Assessing Officer, which, according to us, is misconceived, as the manner of calculation of depreciation, cannot, to our minds, impede the claim of the Assessee for balance additional depreciation, in the year following the previous year, in which, the said asset is installed and put to use.

10.Therefore, for the aforesaid reasons, we find no merit in the submissions advanced by the Revenue.

11.The appeal is accordingly, allowed and the impugned judgment of the Tribunal is set aside. However, there shall be no order as to costs".

Since the decision of ld. CIT(A) is in consonance with the law laid down by the Jurisdictional High Court, we do not find any reason to interfere with the order of the ld. CIT(A). The grounds of appeal No.3 filed by the Revenue stands dismissed.

20. In the result, appeal of the Revenue in ITA No.2383/CHNY/2017 for assessment year 2010-2011 is partly allowed for statistical purpose.

21. Now, we take up appeal of the assessee in ITA No.2340/CHNY/2017, for assessment year 2011-2012.

22. The assessee raised the following grounds of appeal:-

'1. The order of the Commissioner of Income Tax (Appeals) is contrary to Law, facts and in the circumstances of the case.

2.1 The Commissioner of Income tax (Appeals) erred in confirming the disallowance of Rs.12,91,939/- (0.5% of average investment) u/s 14A by applying rule 8D(iii).

2.2 The Commissioner of Income Tax (Appeals) ought to have appreciated that only those investments made in the current assessment year that had yielded dividend income after excluding the investments made in subsidiaries/group companies as held by the Hon'bLe Chennai Tribunal in the case of EIH Associated Hotels Ltd Vs. CIT reported in 2013-TIOL-796-ITAT-MAD,

2.3 The Commissioner of Income Tax (Appeals) ought to have appreciated that the Hon'bte Chennai ITAT in the case of Computer Age Management services (p) Ltd in ITA Nos. 1236, 1240, 1259,1261/2014 dt 28.11.2014 held that disallowance u/s 14A r.w.r 8D can be made only by taking into consideration the investments which has given rise to such income which does not form part of the total income.

3. The Commissioner of Income tax (Appeals) erred in Confirming the disallowance of Export Promotion Expenses amounting to Rs.20,73,625/-

3.1 The Commissioner of Income tax (Appeals) ought to have appreciated that this amount represents the share of (Central Bank of India approved) London Office maintenance expenses reimbursed to M/s. Amalgamations Pvt. Ltd, the holding company of the Amalgamations Group to which the Appellant company belongs.

3.2 The Commissioner of Income tax (Appeals) ought to have appreciated that Foreign Branch Liaison representative is acting for and on behalf of all the group companies and the expenses incurred by the Liaison representative is shared by the group companies.

3.3 The Commissioner of Income tax (Appeals) ought to have appreciated that for convenience; Amalgamations Private Ltd makes the payment to the liaison office and recovers the share of expenses from the individual group companies.

3.4 The Commissioner of Income tax (Appeals) ought to have appreciated that the Amalgamations Private Ltd is not rendering any service to the group companies except making the payment in advance and recovering from the group companies.

3.5 The Commission of Income tax (Appeals) ought to have appreciated that the Liaison office is rendering service directly to the group companies by way of provision of office premises and provision for secretariat service for the use of participating companies for meeting exporters/importers of the respective companies.

3.6 The Commissioner of Income tax (Appeals) ought to have appreciated that the expenditure has been incurred for the purposes of business of the Appellant and the expenses are thus revenue in nature. Hence the entire expenses are allowable as deduction.

4. The Commissioner of Income tax (Appeals) erred in confirming the disallowance of setoff of unabsorbed depreciation of Rs.2,28,05,4501- and business loss of Rs.4,93,43,275/- u/s 72A.

4.1 The Commissioner of Income tax (Appeals) has erred in not appreciating the fact that appellant has applied for clarification before the CBDT for which the appellant has received a reply dated 5th April 2013 wherein CBDT instructed to approach the Assessing Office in this regard.

4.2 The Commissioner of Income tax (Appeals) ought to have appreciated that appellant approached the Assessing office vide its letter dated 8th August 2013 by providing alt the details required as instructed by Central Board of Direct Taxes.

4.3 The Commissioner of Income tax (Appeals) has erred in not appreciating the facts that appellant has been in the same tine of business till date and that three-fourth of the assets at the time of merger i.e. on 01.07.2007 was Rs. 794.97 lakhs and fixed assets at the end of fifth year was 775.52 lakhs and therefore, the requirement of holding assets for five years have been met by the appellant.

4.4 As regards requirement of achieving production of 50% of the installed capacity of the Amalgamating Company within 4 years, the Appellant has achieved the requisite level of production on the fifth year and have approached the CBDT for waiver of the requirement of achieving the production on the fourth year itself. As the Application for waiver is pending before the CBDT, the disallowance is premature.

5. The Appellant craves leave to adduce additional grounds at the time of hearing."

23. The grounds of appeal No.1 & 5 are general in nature therefore, does not require any adjudication.

24. Grounds of appeal No.2 challenges the correctness of the order of the CIT(A), confirming the addition u/s.14A r.w.r.8D(2) (iii) of the Act. This issue is remitted back to the file of the Assessing Officer in assessee's appeal in ITA No.2339/CHNY/2017 for assessment year 2010-2011 at para 12 of the impugned order. Accordingly, grounds of appeal No.2 raised by the assessee in assessment year 2011-12 is also remitted back to the file of the Assessing Officer for fresh adjudication. Grounds of appeal No.2 is partly allowed for statistical purpose.

25. Ground No.3 relates to disallowance of business promotion expenditure. This issue is remitted back to the file of the Assessing Officer in assessee's appeal in ITA No.2339/CHNY/2017 for assessment year 2010-2011 at para 13 of the impugned order.

Accordingly, grounds of appeal No.3 raised by the assessee in assessment year 2011-12 is also remitted back to the file of the Assessing Officer for fresh adjudication. Grounds of appeal No.3 is partly allowed for statistical purpose.

26. Ground No.4 challenges the disallowances set off of loss u/s.72A of the Act. Reasoning of the ld. CIT(A) while denying the set off of loss is based on proper appreciation of facts and law and we do not find any reason to interfere with the orders of the lower authorities. Grounds of appeal No.4 filed by the assessee stands dismissed.

27. In the result the appeal of the assessee in ITA No.2340/CHNY/2017 for assessment year 2011-12 is partly allowed for statistical purpose.

28. Now we take up appeal of the Revenue in ITA No.2384/CHNY/2017 for assessment year 2011-12.

29. Since, the facts in the present appeal are identical to the facts in Revenue appeal in ITA No.2383/Chny/2017 for assessment year 2010-11 for the reasons mentioned therein, we remit the issue back to the file of the Assessing Officer as in the same lines indicated in

appeal ITA No.2383/Chny/2017 supra. Hence, the above captioned appeal filed by the Revenue is partly allowed for statistical purpose.

30. To summarize the results, appeals of the assessee in ITA Nos.2339 & 2340/CHNY/2017 and appeals of the Revenue in ITA Nos. 2383 & 2384/CHNY/2017 for assessment years 2010-11 and 2011-2012 are partly allowed for statistical purposes.

Order pronounced on 26th day of September, 2019, at Chennai.

Sd/-	Sd/-
(एन.आर.एस. गणेशन**)**	**(**इंटूरी रामा राव**)**
(N.R.S. GANESAN)	**(INTURI RAMA RAO)**
न्यायिक सदस्य**/JUDICIAL MEMBER**	लेखा सदस्य**/ACCOUNTANT MEMBER**

चेन्नई/Chennai
दिनांक/Dated:26th September, 2019
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