आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL, **'C'** BENCH : CHENNAI

श्री इंटूरी रामा राव, लेखा सदस्य एवं

श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष

[BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. Nos.1604 & 1740/CHNY/2016.

निर्धारण वर्ष /Assessment years : 2011-12 and 2012-2013.

Shriram EPC Ltd, 18/03, Rukmani Lakshmipathy road, 1st floor, R.A.Building, Egmore, Chennai 600 008. **[PAN AAFCS 1410C]**	**Vs.**	The Deputy Commissioner of Income Tax, Company Circle 6(1) Chennai 600 034.

आयकर अपील सं./I.T.A. Nos.2011, 2012, 2013, 2014 and 2744/CHNY/2016.

निर्धारण वर्ष /Assessment years :2009-10, 2010-11, 2011-12, 2012-13 and 2013-14.

The Deputy Commissioner of Income Tax, Company Circle 6(1) Chennai 600 034.	**Vs**	Shriram EPC Ltd, 18/03, Rukmani Lakshmipathy Road, 1st floor, R.A.Building, Egmore, Chennai 600 008. **[PAN AAFCS 1410C]**
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

Department by	:	Shri. A. Sundararajan, Addl. CIT
assessee by	:	Shri. R. Sivaraman, Advocate

सुनवाई की तारीख/Date of Hearing	:	15-10-2019
घोषणा की तारीख /Date of Pronouncement	:	08-01-2020

आदेश / O R D E R

PER BENCH

These are appeals and Cross appeals filed by the assessee and Revenue directed against different orders of the Commissioner of Income Tax (Appeals)-15, Chennai (in short 'CIT(A)' for Assessment Years 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14.

2. First we take up Revenue appeal in ITA No.2011/CHNY/2016 for assessment year 2009-10 for adjudication.

3. The Revenue raised the following grounds of appeal.

> *"1. The order of the learned CIT(A) is contrary to law and facts of the case.*
>
> *2. The Ld CIT(A) erred to direct the AO to allow the ESOP expenses for Rs. 2, 52,80,000/-*
>
> *2.1 The Ld CIT(A) failed to appreciate that ESOP expenditure is incurred in relation to issue of shares and is not relatable to regular business.*
>
> *2.2 The Ld CIT(A) failed to appreciate the facts mentioned in the case of Brooke Bond India Ltd and Punjab State Industrial Development Corporation that expenditure incurred in relation to increase in share capital is not allowable.*
>
> *2.3 The Ld CIT(A) erred to direct the AO to allow depreciation of Rs.64,16,093/- as depreciation on intangible assets.*
>
> *2.4 The Id. CIT(A) erred in directing the AO to allow i.e depreciation based on his predecessor orders for A.Ys.05-06 to 08-09 since appeals have been filed against all the above order before ITAT on 24.03.2016 and the department's appeal has not yet reached its finality on this issue on similar grounds*

> *2.5. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored".*

4. The respondent- assessee namely ''M/s. Shriram EPC Limited", is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of integrated designing, engineering, procurement, construction and projection management. The return of income for the AY 2009-10 was filed on 29.09.2009 disclosing total income of Rs.34,59,53,000/- and the same was revised on 05.01.2010 disclosing same total income as the original return of income filed. Against the said return of income, the assessment was completed by the Joint Commissioner of Income Tax, Company Range VI, Chennai (hereinafter referred as Assessing Officer) vide order dated 28.03.2013 passed u/s.143(3) r.w.s. 92CA(4) of the Income Tax Act, 1961 (in short ''the Act") at total income of ₹37,76,49,093/-. While doing so, the AO disallowed ESOP expenditure of ₹2,52,80,000/- and depreciation on intangible assets of ₹64,16,093/-.

5. The Assessing Officer disallowed ESOP expenditure giving reasons which are extracted at para 5.3 of the assessment order and

Assessing Officer also took note of the fact that Hon'ble Jurisdictional High Court in the case of CIT vs. PVP Ventures, 211 Taxman 554, wherein it was held that ESOP expenditure allowable as revenue expenditure, but noting that the decision of Jurisdictional High Court in the case of PVP Ventures (supra) is appealed before the Hon'ble Supreme Court and disallowed the expenditure. The Assessing Officer also disallowed depreciation on intangible assets of ₹500 lakhs acquired on amalgamation of Shriram Engineering Construction Ltd during the previous year relevant to assessment year 2005-06 as same was disallowed its initial assessment year is 2005-06.

6. Being aggrieved by the above additions, the assessee-company preferred an appeal before ld. CIT(A), who vide impugned order allowed ESOP expenditure following the decisions of Hon'ble Jurisdictional High Court in the case of PVP Ventures Ltd (supra) and Hon'ble Delhi High Court in the case of CIT vs. Lemon Tree Hotel in ITA No.107/2015, dated 18.08.2015. As regards to the issue of depreciation, the ld. CIT(A) directed the Assessing Officer to allow depreciation on technical knowhow.

7. Being aggrieved, the Revenue is in appeal before us in the present appeal. The ld. Sr. Departmental Representative contested

that ld. CIT(A) ought not have allowed ESOP expenditure as revenue expenditure as it is notional expenditure and capital in nature. He further submitted that the decision of Jurisdictional High Court in the case of PVP Ventures (supra) is being challenged before the Hon'ble Supreme Court. The ld. Sr. Departmental Representative also challenged the decision of ld. CIT(A) to allow depreciation on technical knowhow as identical issue in earlier years was restored to the file of the Assessing Officer.

8. On the other hand, ld. Authorised Representative submitted that ESOP cost debited to Profit and Loss account is not national loss but only business expenditure incurred wholly for the purpose of business and the same should be allowed as deduction, placing reliance on the decision of Hon'ble High Court of Madras in the case of PVP Ventures (supra). He further submitted that the Hon'ble Supreme Court had dismissed the SLP filed against the order of Jurisdictional High Court in the case of PVP Ventures(supra). As regards to depreciation, he submitted that the technical knowhow acquired under slump sale agreement is in the nature of business or commercial rights or right of similar nature are eligible for depreciation under Section 32(1) (ii) of the Act. He placed reliance on the decision of Co-ordinate Bench of the Tribunal in assessee's own case in ITA

No.895 to 897/Mds/2012, for assessment years 2005-06 to 2007-2008, dated 10th September, 2012.

9. We heard the rival submissions and perused the material on record. The grounds of appeal No.1 & 2.4 are general in nature therefore, does not require any adjudication.

10. Grounds 2 to 2.2 challenges the decision of ld. CIT(A) in allowing ESOP expenditure as revenue expenditure. The issue in the present appeal is squarely covered in favour of the assessee by the order of Hon'ble Delhi High Court in the case of Lemon Tree Hotel (supra) and by the decision of Hon'ble Jurisdictional High Court in the case of PVP Ventures Ltd (supra), wherein it was held as follows.

> ''**29.** As far as the Employees Stock Option Plan is concerned, as rightly pointed out by the Tribunal, the assessee had to follow SEBI direction and by following such direction, the assessee claimed the ascertained amount as liability for deduction. We do not find that there exists any error to disturb the order of the Tribunal and in turn the Assessing Authority. In the circumstances, we agree with the submission of learned senior counsel appearing for the assessee in this regard by upholding the order of the Tribunal''.

Against the above decision of the Hon'ble Jurisdictional High Court, the SLP filed by the Department was dismissed by the Hon'ble Supreme Court vide order dated 28.03.2014 (2512/2014) and hence, the law laid down by the Hon'ble Madras High Court has become final. Thus, in

view of the above judicial pronouncement, we find no infirmity in the order of the ld. CIT(A) on this issue and accordingly, the ground raised by the Revenue stands dismissed. Hence, grounds of appeal No.2 to 2.2 stand dismissed.

11. Ground No.2.4 challenges the decision of ld. CIT(A) in allowing depreciation on technical knowhow holding it to be intangible assets. Admittedly, there is no addition made to the intangible assets during the year under consideration. The depreciation was disallowed by the Assessing Officer following its decision in earlier years. This issue was subject matter of appeal before appellate forum. It appears that the Co-ordinate Bench of the Tribunal in assessee's own case in ITA No.895 to 897/Mds/2012, for assessment years 2005-06 to 2007-2008, dated 10th September, 2012 had dismissed the appeal filed by the Revenue. Accordingly, since the claim is only consequential in nature, if the depreciation is allowed in the initial year, the same should be allowed in the year under consideration and this issue is remitted back to the file of the Assessing Officer to follow the decisions of earlier years. Accordingly, the ground of appeal No.2.4 raised by the Revenue is partly allowed for statistical purpose.

12. In the result, the appeal filed by the Revenue in ITA No.2011/CHNY/2016 for assessment year 2009-2010 is partly allowed for statistical purpose.

13. Now, we take up appeal of the Revenue in ITA No.2012/CHNY/2016 for assessment year 2010-2011 for adjudication.

14. The Revenue has raised the following grounds of appeal:-

"1. The order of the learned CIT(A) is contrary to law and facts of the case.

2.The Id CIT(A) erred in directing the AO to allow the 100% depreciation on addition to leased building of Rs.13,16,008/-

2.1) CIT(A) erred in wrongly applying the facts of the case of M/s Amway India Enterprises Vs DCIT ITAT Delhi. It is to be noted that M/s Amway India Enterprises was having the same premises for last several years and this fact was also considered. But in this case no information is furnished to show that premises was under occupation for several years. As the facts are difference on some counts, the decision cannot be applied to the case of the assessee.

2.2) CIT(A) failed to appreciate the facts of the decision of Delhi High Court in the case of Uttar Bhaat Wool Exchange Ltd Vs CIT Delhi reported in 55 ITR 550

2.3) CIT(A) failed to note that, this expenditure is not an allowable deduction either according to the provisions of section 30(a) (i) or according to the provisions of section section 37. Since the expenditure incurred is in the nature of addition to buildings falling in the block of assets under the category 'buildings' which are not used mainly for residential purpose, the depreciation is allowable at 10% only.

2.4) The Ld CIT(A) erred in directing the AD to allow the ESOP expenses of Rs. 2,75,99,528/ -

2.5) Ld CIT(A) failed to appreciate that ESOP expenditure is incurred in relation to issue of shares and is not relatable to regular business.

2.6) Ld CIT(A) failed to appreciate the facts mentioned in the case of Brooke Bond India Ltd and Punjab State Industrial Development Corporation that expenditure incurred in relation to increase in share capital is not allowable.

2.7 CIT(A) erred in directing the AO to allow the depreciation @15% on electrical installation instead of lO% allowed by the AO.

2.8 CIT(A) failed to consider the facts that electrical fittings are independent and their operation is no way directly linked to the operation of any specific plant. Hence, for the purpose of depreciation, these assets are to be considered to the block of assets to which they relate and depreciation to be considered accordingly.

2.9 CIT(A) failed to appreciate the decision of Bombay High Court in the case of CIT Vs Hoechst Dyes and Chemicals Pvt Ltd (240 ITR 1) wherein it is held that the electrical fittings and other apparatus do not qualify as plant but forms part of electrical fittings.

3. The Ld CIT(A) erred in directing the AO to delete the disallowance of foreign exchange loss of Rs.1,44,68,263/-

3.1 The Ld CIT(A) ought to have noted that the assessee entered into FE forward contract against payment to be made to a German Company for the supply of equipments for the assessee's project and Explanation 3 of Section 43A squarely applies.

3.2 The Ld CIT(A) ought to have noted that expenses incurred towards FE fluctuation in connection with acquisition of capital asset needs to be capitalized in view of sec 43A.

2.4 The CIT(A) failed to appreciate that the decision of Supreme Court in the case of Woodward Governor reported in 312 ITR 254 squarely applies to this case.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored".

15. The return of income for the AY 2010-11 was filed on 27.09.2010 disclosing total income of Rs. 36,19,28,086/- and the same was revised on 30.03.2012 disclosing total income of ₹25,90,69,900/-. Against the said return of income, the assessment was completed by the Deputy Commissioner of Income Tax, Company Range VI (2) Chennai (hereinafter referred as Assessing Officer) vide order dated 30.03.2013 passed u/s.143(3) of the Income Tax Act, 1961 (in short "the Act") at total income of ₹38,71,57,712/-, after making the following additions.

Depreciation on plant and machinery disallowed	*22,12,713*
Depreciation on windmills disallowed	*2,60,27,878*
Depreciation on intangible assets of 07-08 disallowed	*14,20,281*
Depreciation on buildings disallowed	*13,16,008*
ESOP expenses additionally claimed disallowed	*2,75,99,528*
ESOP expenses disallowed	*2,75,99,528*
Depreciation on electrical fittings disallowed	*1,55,613*
Foreign exchange loss disallowed	*1,44,68,263*
Disallowance u/s.43B	*2,72,88,000*

16. Being aggrieved, assessee preferred an appeal before the ld. CIT(A) who vide impugned order deleted all the additions except in respect of addition of ₹2,72,88,000/- made u/s.43B of the Act which was restored to the file of the Assessing Officer for due verification.

17. Being aggrieved by the order of the ld. CIT(A), the Revenue is in appeal before us.

18. Vide grounds of appeal No.2 to 2.3, the revenue challenges the correctness of the decision of ld. CIT(A) in allowing addition on lease hold premises as revenue expenditure. Admittedly, the assessee made temporary partitions on leased premises like pipes, floor tiles, false ceiling, refurbishing etc. The contention of the assessee company is that they are temporary erection in the form of pipes, floor tiles, false ceiling and this expenditure was not brought into existence into new asset and therefore it should be allowed as revenue expenditure by placing reliance on the decision of Jurisdictional High Court in the case of Thiru Arrooran Sugars ltd vs. DCIT, 213 Taxman 90. The issue in the present grounds of appeal is decided against the assessee company and in favour of the Revenue by the Jurisdictional High Court in the cases of CIT vs. ETA Travel Agency (P) Ltd, 109 Taxmann.com 66 and CIT vs. Viswams,105 Taxmann.com 289 wherein it was held as under:-

24. Section 32 of the Act deals with depreciation. Section 32(1A) of the Act was inserted by the Taxation Laws (Amendment) Act, 1970 with effect from 01.4.1971. It was omitted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 with effect from 01.4.1988. By the same Amendment Act, 1986, Sub~Section (1A) stood interpolated as Explanation 1 to Section 32 of the Act with effect from 01.4.1988. Explanation 1 to Section 32 of the Act reads as follows :

> *Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work in or in relation to, and by way of renovation or extension of, or improvement to, the building, then, the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee.”*

25. A reading of the above Explanation clearly shows that where the business or profession of the assessee is carried on in a building, which is not owned by him, but has been leased out, in respect of which the assessee holds a lease or other right of occupancy, if any expenses are incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work in or in relation to, and by way of renovation or extension of, or improvement to, the building, then, the provisions of the said Clause shall apply as if the said structure or work is a building owned by the assessee. The effect of Explanation 1 was considered in the decision in the case of Madura Coats.

26. After referring to various other decisions, the Court pointed out that the extensive repairs and renovations carried out by the assessee cannot be said to be incurred to preserve and maintain an already existing asset since many new objects have been brought into as could be seen from the list of construction made and thus, the object of expenditure made by the assessee is definitely to bring a new asset into existence to obtain new advantage further

giving enduring benefit to the assessee. The Court further pointed out that the Tribunal committed an error by allowing the expenditure incurred on repairs of the rented building as taxable expenditure under Section 37(1) of the Act ignoring Explanation 1 to Section 32 of the Act.

27. In the decision in the case of Viswams, the Court considered a similar question. The Court took note of the decision in the case of Silver Screen Enterprises Vs. CIT [reported in (1972) 85 ITR 578] wherein the Punjab and Haryana High Court held that the amounts spent for construction of the verandah, office room, side room and bath rooms brought into existence an asset of enduring nature, that the replacement of old wooden chairs by steel chairs was to attract larger and better customers and that this would go to show that the lessee (the assessee therein) brought into being an asset of enduring nature. After taking into consideration Explanation 1 to Section 32 of the Act, the Court held that the assessee had incurred substantial expenditure towards renovation leading to enduring benefit and that they are not merely repairs and ultimately rejected the contention raised by the assessee.

28. In the decision of the Kerala High Court in the case of Indus Motors Co. (P) Ltd., the Division Bench elaborated the effect of Explanation 1 to Section 32 of the Act. As the Division Bench entertained a doubt as to the correctness of the decision of the Division Bench of the Kerala High Court in the case of Joy Alukkas India Private Limited Vs. ACIT [ITA. No.230 of 2013 dated 20.1.2014], the matter was referred to a Full Bench. We quote the relevant portions in the decision of the Division Bench in the case of Indus Motor Co. (P) Limited, which read as hereunder :

> *24. According to us, on a reading of Explanation, it is categoric and clear that so far as the expenditure incurred as contemplated in the Explanation is concerned, a legal fiction is created, by which, the assessee enjoying a lease hold right on a building is treated as the owner of the building. So, according to us, the question to be considered in such a case is whether the assessee has acquired any enduring benefit by putting the refurbished building to use*

> *over a period of time in accordance with the agreement entered into between the assessee and the building owner.*
>
> *25. So far as the question regarding the expenditure incurred by the assessee for refurbishing the building taken on lease is concerned, we are of the considered opinion that after the introduction of Explanation 1 to Section 32(1) of the Act, there is no scope left at all for any interpretation since, by a legal fiction, the assessee is treated as the owner of the building for the period of his occupation. This means that by refurbishing, decorating or by doing interior work in the building, an enduring benefit was derived by the assessee for the period of occupation and therefore, is a capital expenditure and not revenue expenditure. So also as contended by the learned Senior Counsel for the Renenue, the criteria that is to be adopted for identifying the enduring benefit is the nature of enhancement and advantage that the assessee has derived by putting the building to use for business purposes. According to us, by adding Explanation 1 to Section 32(1), Parliament has manifested its legislative intention to treat the expenditure incurred by the assessee on leasehold building as capital expenditure and therefore, Explanation 1 to Section 32(1) cannot be subjected to any other interpretation. Further, the language of Explanation 1 is very plain and clear and there was no scope for providing a different meaning for the words used and hence, we are bound to consider the question by giving the literal meaning to the expressions and phraseologies by the Legislature applied."*

29. In the above decision, it was pointed out that so far as the expenditure incurred as contemplated in the explanation is concerned, a legal fiction is created, by which, the assessee, enjoying a leasehold right on a building, is treated as the owner of the building. It was further pointed out that after the introduction of Explanation 1 to Section 32 of the Act, there is no scope left out at all for any interpretation since, by a legal fiction, the assessee is treated as a owner of

the building for the period of his occupation and this would mean that by refurbishing, decorating or by doing interior work in the building, an enduring benefit was derived by the assessee for the period of occupation and therefore, it is a capital expenditure and not revenue expenditure.

30. The factual position has been pointed out by us in the preceding paragraphs and it will be worthwhile to reiterate that the entire details of the expenditure incurred by the assessee for all the branch offices spread over the country were produced before the Assessing Officer. The expenses incurred were for providing furniture, interior decoration and office equipment and also consultation charges. These details were once again placed before the CIT(A), when the assessee filed appeal against the assessment order. The CIT(A) took note of the various categories of expenses incurred by the assessee and from the details given in paragraph 5 of the order passed by the CIT(A) dated 09.7.2007, it is clear that the assessee had spent substantial funds in creating office space with a particular design to suit their requirement. In fact, the assessee had also admitted that they were granted agency by M/s.Malaysian Airlines and that they had to design the showroom with a particular design as instructed by the said Airlines.

31. Furthermore, the expenses, which were incurred, clearly show that they are fixed and are capital in nature and that the test applied by the CIT(A) to state that the assessee cannot remove the same at the time of vacating the premises is an incorrect test applied by the CIT(A) because the CIT(A) did not take note of Explanation 1 to Section 32 of the Act. In the light of the said Explanation, it has become immaterial as to whether the assessee is the owner of the building or the lessee and there is no scope left for any interpretation since, by legal fiction, the assessee is treated as the owner of the building for the period of their occupation.

34. At the risk of repetition, it is not out of place to mention here that the decision of the Division Bench of the Kerala High Court in the case of Indus Motors Co. Pvt. Ltd. was referred to a Full Bench for reconsideration of the decision rendered in Joy Alukkas India (P) Ltd. Ultimately, the Full

Bench of the Kerala High Court in the decision reported in (2016) 382 ITR 0503 reiterated that the observations and opinion expressed by Division Bench in the case of Joy Alukkas India (P) Ltd., for holding that the expenditure incurred by the assessee in the above case was not a capital expenditure, but was only revenue expenditure were based on facts of that case, that the relevant test was applied by the Division Bench and that the observation made by the Division Bench in paragraphs 29 and 30 in the decision in the case of Joy Alukkas India (P) Ltd., had to confine to the facts of that case. Further, the relevant portions in the judgment rendered by the Full Bench in the case of Indus Motors Co. Pvt. Ltd., read as follows :

> *33. As has been observed above, whether an expenditure incurred by assessee in a particular case is a capital expenditure or revenue expenditure has to be decided on the facts of that case by applying the relevant tests. Explanation 1 to Section 32(1)(i) does not intend to lay down that whenever expenditure has been incurred by the assessee for the purpose of business or profession on the construction of any structure or doing of any work in or in relation to or by way of renovation or improvement to the building, then such expenditure has to be mandatorily treated as capital expenditure. The explanation only meant that in the event any capital expenditure is incurred by the assessee, the provisions of Section 32 (1) shall be applicable as if the said structure or work is a building owned by the assessee. We thus answer the reference holding that the ratio of the judgment of the Division Bench in Joy Alukkas case as expressed in paragraph 28 of the judgment needs no reconsideration.*

34. We further hold that whether an expenditure incurred by the assessee is a capital expenditure or revenue expenditure is to be decided on the facts of each case by applying the relevant tests."

35. In the light of the above discussions, the above tax case appeal is allowed, the orders passed by both the CIT(A) as well as the Tribunal are set aside and the order passed by the Assessing Officer is restored. Consequently, the substantial questions of law are answered in favour of the Revenue. No costs.

Respectfully following the ratio decision of Hon'ble Jurisdictional High Court in the cases cited supra, we are of the considered opinion that addition to leasehold premises cannot be allowed as revenue expenditure. Thus, the findings of the ld. CIT(A) stands reversed. However, we direct the Assessing Officer to allow depreciation at the rate applicable to buildings. Accordingly, grounds of appeal Nos.2 to 2.3 of the Revenue stands partly allowed.

19. Grounds of appeal No.2.4 to 2.6, the challenges the decision of ld. CIT(A) in allowing ESOP expenses as Revenue expenditure.

20. This issue was raised by the Revenue for the assessment year 2009-2010 in ITA No. 2011/CHNY/2016, wherein we decided the issue in favour of the assessee vide para 10 of above. Fact situation being the same, grounds of appeal No.2.4 to 2.6 of the Revenue for assessment year 2010-2011 also stand dismissed.

21. Grounds 2.7 to 2.9 raised by the Revenue challenges the correctness of the decision of the ld. CIT(A) to allow depreciation on electrical fittings at the rate applicable to plant and machinery. The ld. CIT(A) allowed depreciation on electrical installation at ₹1,55,613/- at the rate applicable to electrical fittings. Contention of the assessee is that this electrical fitting form part of the plant and

machinery and therefore depreciation should be allowed at the rate applicable to plant and machinery. Submission of the assessee that electrical installation are part of plant and machinery are not disputed by the Assessing Officer. Therefore the ld. CIT(A) had rightly allowed depreciation at the rate applicable to plant and machinery. Accordingly, we do not find any reason to interfere with the order of the ld. CIT (A). Grounds of appeal No.2.7 to 2.9 raised by the Revenue stand dismissed.

22. Grounds 3 to 3.4 relates to the decision of ld. CIT(A) in allowing foreign exchange loss of ₹1,44,68,263/-.

23. The brief facts of the issue are as under:-

During the previous year relevant to assessment year under consideration, the assessee company paid premium of forward contract to pledge against fluctuation in foreign currency payment made to M/s. Envirotherm GMBH Germany for supply of equipments to Amonia project. The premium paid was claimed to be revenue expenditure. The Assessing Officer disallowed the claim for want of evidence as assessee failed to establish the real nature of expenditure. On appeal before the ld. CIT(A), the ld. CIT(A) allowed the claim considering the same as mark to market loss.

24. Being aggrieved, the Revenue is in appeal before us in the present appeal.

25. We heard the rival submissions and perused the material on records. The claim was disallowed by the Assessing Officer for failure of the assessee to establish real nature of the expenditure. However, the ld. CIT(A) after considering certain judicial precedents considered it to be mark to market loss and allowed the claim as revenue expenditure. From the perusal of the assessment order, it is clear that ld. CIT(A) had not considered any material on records suggesting that it is mark to market losses. He simply accepted the contention of the assessee that it represents mark to market loss and allowed the expenditure. The approach of the ld. CIT(A) cannot be sustained and therefore we remit the issue back to the file of the Assessing Officer to decide the issue afresh after examining true nature of the claim. Accordingly, grounds 3 to 3.4 raised by the Revenue is partly allowed for statistical purpose.

26. In the result, the appeal of the Revenue in ITA No.2012/CHNY/2016 for assessment year 2010-2011 is partly allowed for statistical purpose.

27. Now we take cross appeals filed by the assessee and Revenue respectively in ITA No.1604/CHNY/2016 and ITA No.2013/CHNY /2016

for assessment year 2011-2012.

28. The return of income for the assessment year 2011-12 was filed on 29.09.2011 disclosing total income of ₹67,57,69,760/-. Against the said return of income, the assessment was completed by the Deputy Commissioner of Income Tax, Company Circle VI(2), Chennai (hereinafter referred as ''Assessing Officer") vide order dated 30.03.2014 passed u/s. 143(3) of the Income Tax Act, 1961 (for short 'the Act') at total income of ₹ 70,53,32,202/-. While doing so, the Assessing Officer made the following disallowances:-

Depreciation on assets	5,16,933
ESOP expenses	1,16,85,044
Bad debts written off	2,73,17,449
Loss on sale of assets	21,000
Disallowance u/s.40(a)(i)	10,16,961
Disallowance u/s.14A	1,19,55,420
Depreciation on intangible assets added disallowed during assessment year 2007-08	10,65,211
Excessive depreciation on additions to buildings disallowed during assessment year 2010-11	11,84,407
Depreciation on plant and machinery disallowed during assessment year 2010-2011	18,80,807

29. Being aggrieved by the above additions, the assessee-company preferred an appeal before ld. CIT(A), who vide impugned order partly allowed the appeal by setting aside the issue of credit for TDS and also the issue of depreciation of plant and machinery to the file of the Assessing Officer, ld. CIT(A) confirmed the addition of ₹15,00,000/- claimed as bad debts in relation to advance paid to Vivero Financial P. Ltd has no services were rendered and allowed other grounds of appeal raised by the assessee.

30. First, we take up Revenue appeal in ITA No.2013/CHNY/2016, for assessment year 2011-2012 for adjudication.

31. The Revenue raised the following grounds of appeal.

> *"1. The order of the Learned CIT(A) is contrary to law and facts of the case.*
>
> *2. The Ld CIT(A) erred in directing the AO to allow the [SOP expenses of Rs. 1,16,85,044/--*
>
> *2.1. The Ld CIT(A) failed to appreciate that ESOP expenditure is incurred in relation to issue of shares and is not relatable to regular business.*
>
> *2.2 Ld CIT(A) failed to appreciate the facts mentioned in the case of Brooke Bond India Ltd and Punjab State Industrial Development Corporation that expenditure incurred in relation to increase in share capital is not allowable.*
>
> *2.3 CIT(A) erred in directing the AO to delete the addition of Rs.2,19,02,210/- as the appellant had written off said amount as the power projects were abandoned. The CIT(A) also erred in directing the AO to delete the disallowance of Rs.39,15,239/- as allowable expenditure u/s 37.*

2.4 CIT(A) failed to consider the facts that the expenses are capital in nature and not as bad debts

2.5 The Ld CIT(A) erred in directing the AO to delete the disallowance u/s.14A of Rs.1,19,55,420/-

2.6. The Ld CIT(A) failed to appreciate that the Board's circular No.5/2014 is quite clear that disallowance u/s 14A is attracted even when there is no exempt income earned during the year.

2.7 The Ld CIT(A) failed to appreciate that as per the schedules enclosed to the P&L account it is seen that the appellant had made long term investments in shares of certain companies. These long term investments in shares were made with the motive of earning dividend which is exempt from income tax.

2.8 The Ld CIT(A) erred to direct the AO to delete the excess depreciation of Rs.11,84,407/- on building.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored".

32. Grounds 1 & 3 are general in nature, therefore do not require any specific adjudication.

33. In grounds 2 to 2.2, the Revenue challenges the correctness of the decision of ld. CIT(A) in deleting the ESOP expenditure.

34. This issue was raised by the Revenue for the assessment year 2009-2010 in ITA No. 2011/CHNY/2016, wherein we decided the issue in favour of the assessee vide para 10 of above. Fact situation

being the same, grounds of appeal No.2 to 2.2 of the Revenue for assessment year 2011-2012 also stand dismissed.

35. Grounds 2.3 & 2.4 challenges the decision of the ld. CIT(A) in deleting the expenditure incurred on abandoned projects.

36. The brief facts of the issue are as under:-

Assessee made total claim of ₹2,73,17,449/- as bad debts. The breakup of bad debts are as under:-

> *"Note on Bad Debts written off Rs.2,73,17,449/-*
>
> *1. Shriram lnfrastrcture and Power Ltd -Rs.2,19,02,210/- Shriram Infrastructure and Power Ltd wanted to develop 4 to 5 power projects in Tamil Nadu, Jabalpur, Turicorin, etc.,. We wanted to participate in the project and funded the project expenses. Due to several reasons the project could succeed and had to be abdondened. Hence we have written off the amount.*
>
> *2. Alpha Energy systems Ltd — Rs.39, 15,239/- We gave contract work to Alpha Energy Systems Ltd and paid Rs.39, 15,239/-.*
> *They did not complete the contract nor returned the money. Since the money could not recovered we have written off the amount.*
>
> *3. Vivro Financial Services P Ltd — Rs. 15,00,000/- We have paid Rs. 15,00,000/- for the purpose of financial service. They did not render any services. They also did not return the money. As the amount could not be recovered we have written off the amount".*

The same was claimed as bad debts before the Assessing Officer. The Assessing Officer disallowed the claim by holding that the amount

written off do not represents the debts. However, the ld. CIT(A) allowed the claim as revenue expenditure considering that the expenditure was incurred for abandoned power projects by taking note of the fact that assessee is also in the business of power project by placing reliance on the decision of Mumbai Bench of the Tribunal in the case of Idea Cellular vs. Add. CIT in ITA No.3260 and 3493/Mum/2008, dated 13.05.2016.

37. Being aggrieved by the order of the ld. CIT(A), the Revenue is in appeal before us in the present appeal. The ld. Departmental Representative contended that expenditure incurred in respect of abandoned project is capital in nature and the same cannot be allowed as revenue expenditure. As regards to the write off of ₹39,15,239/- he has no serious objections.

38. On the other hand, the ld. Authorised Representative contended that assessee company is into the business of wind power generation and therefore the power generation is an extension of existing business, hence the same should be allowed as deduction. As regards to the advance paid to M/s. Alpha Energy Systems Ltd, it is submitted that the advance was made in the course of business, since

the amount was written off in the books of accounts the same should be allowed as deduction as trading loss, if not as bad debt.

39. We heard the rival submissions and perused the material on records. Admittedly, an amount of ₹2,19,02,210/- was incurred by the assessee in connection with new power projects. The power projects were abandoned for various reasons. Therefore the question that arises before us is whether this can be allowed as revenue expenditure. Admittedly, assessee is also in the business of wind power generation. The business of power generation is an existing one and the same should be allowed as deduction if there is unity of control of two management as held by Bombay High Court in the case of CIT vs. Idea Cellular 76 Taxcomm. 77 and Hon'ble Delhi High Court in the case of CIT vs. Monnet Industries Ltd, 332 ITR 627.

40. As regards to write off of amount paid to M/s. Alpha Energy Systems Ltd. Admittedly, advance was paid during the course of business of the assessee. Since the amount had become irrecoverable the same should be allowed as deduction as revenue loss if not as bad debts as held by the Hon'ble Jurisdictional High Court in the case of Devi Films Private Ltd vs. CIT, 75 ITR 301 and Hon'ble Gujarat High Court in the case of CIT v. Abdul Razak & Co, 136 ITR 825. In the light of the above facts, the grounds of appeal 2.3 and 2.4 filed by

the Revenue has no merits, hence, we dismiss the grounds raised by the Revenue.

41. Grounds of appeal 2.5 to 2.7 challenges the decision of ld. CIT(A) in deleting the addition made u/s.14A of the Act on the ground that in the absences of exempt income no disallowance can be made.

42. The Assessing Officer disallowed a sum of ₹1,19,55,420/- u/s.14A of the Act by holding that the provisions of Section 14A of the Act are applicable even in case of investments which not yielded any dividend income.

43. On appeal before the ld. CIT(A), ld. CIT(A) deleted the addition by holding that in the absence of any exempt income, no disallowance u/s.14A of the Act can be made.

44. Being aggrieved by the order of the ld. CIT(A), the appellant is in appeal before us in the present appeal.

45. We heard the rival submissions and perused the material on record. The only issue in the present grounds of appeal relates to disallowance u/s.14A of the Act. Admittedly, no dividend income was earned by the assessee company during the previous year under

consideration. Now the law is settled to the extent that in the absence of any exempt income resort to provisions of Section 14A of the Act cannot be made. Reference can be made to the following decisions

(i) *Redington (India) Ltd vs. Addl. CIT, 392 ITR 633,*
(ii) CIT vs. Chettinad Logistics P. Ltd, 248 Taxman 55.

Since the decision of the ld. CIT(A) is in consonance with the ratio laid down by the above decisions, we do not find any reason to interfere with the order of the ld. CIT(A). Grounds of appeal 2.5 to 2.7 raised by the Revenue stand dismissed.

46. Ground No.2.8 challenges the decision of ld. CIT(A) in deleting the addition made on account of excess depreciation on building of ₹11,84,407/-.

47. The Assessing Officer made addition of ₹11,84,407/- by alleging that assessee claimed excess depreciation on building. The facts of the case are that during the previous year relevant to assessment year 2010-2011, assessee made additions to lease buildings of ₹ 14,62,232/- as revenue expenditure and the same was disallowed. The Assessing Officer held that the additions cannot be allowed as revenue expenditure but allowed depreciation at 10% and accordingly, made addition. In the year 2010-2011 the ld. CIT(A) allowed the claim as revenue expenditure. However, the Tribunal in

ITA No.2012/CHNY/2016 for assessment year 2010-2011 in assessee's own case at para 17 above had reversed the findings of the ld. CIT(A). Accordingly, the Assessing Officer can allow depreciation at the rate applicable to buildings. From the perusal of the assessment order, it is clear that Assessing Officer had disallowed 90% of the opening value of written down which is not correct as assessee had not claimed it. However, the ld. CIT(A) had rightly deleted the addition by holding it to be doubtful disallowance. The findings of the ld. CIT(A) is based on proper appreciation of facts. We do not find any reason to interfere with the order of the ld. CIT(A) on this issue. Accordingly, ground of appeal No.2.8 filed by the Revenue stands dismissed.

48. In the result, the appeal filed by the Revenue in ITA No.2013/CHNY/2016 for assessment year 2011-2012 stands dismissed.

49. Now we take up assessee appeal in ITA No.1604/CHNY/2016 for assessment year 2011-2012 for adjudication.

50. The assessee raised the following grounds of appeal.

'The order of the CIT (Appeals) is against law and fact of the case.

2. The CIT (A) erred in confirming the disallowance of Bad Debts of Rs.15,00,000.

3. The CIT(A) erred in not appreciating the fact that the amount is allowable as business loss.

4. The CIT(A) erred in not appreciating the fact that a sum of Rs.50 Lakhs was advanced to Vivro Financial Services Pvt Ltd for providing financial services on 27/03/2007 and they did not do any service and they returned Rs.25 Lakhs on 27/12/2007 and Rs.10 Lakhs on 24/11/2008 and as no services were rendered and the balance amount of Rs.15 Lakhs was not returned by the party, the appellant claimed Rs.15Lakhs as it is a loss.

5 .For these and other grounds that may be adduced before or at the time of hearing the Honb'le ITAT may be pleased to delete the addition of Bad debts".

51. Assessee company challenges the decision of the lower authorities in confirming the addition of ₹15,00,000/- being advance paid to M/s. Vivro Financial Services Pvt Ltd and the same was written off in the books of accounts. It is stated that the amount was paid during the course of carrying of business and the claim should be allowed as deduction as business loss, if not as bad debts. It is submitted that amount written off had become it recoverable and further it is submitted that the amount should be allowed as deduction placing reliance on the following decisions.

(i) CIT vs. Sree Ganesh Stores, (2004) 137 Taxman 261
(ii) Seven Seas Petroleum (P) Ltd, 61 Taxman 80.

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

53. We heard the rival submissions and perused the material on record. The only issue involved in the present appeal relates to allowance of claim of addition of ₹15,00,000/- being amount paid to M/s. Vivro Financial Services Pvt Ltd and written off in the books of accounts as irrecoverable. Admittedly, this amount was paid during the course of carrying on the business of the assessee and the same should be allowed as deduction if not as bad debts in the light of the following decisions .

(i) Devi Films Private Ltd vs. CIT, 75 ITR 301 (Mad)

(ii) CIT v. Abdul Razak & Co, 136 ITR 825 (Guj)

Accordingly, we direct the Assessing Officer to allow the deduction of ₹15,00,000/- while computing the income under the head ''capital gains".

54. In the result, the appeal filed by the assessee in ITA No.1604/CHNY/2016 for assessment year 2011-2012 stands allowed.

55. Now, we take up cross appeals No. 1740/CHNY/2016 and 2014/CHNY/2016 filed by assessee and Revenue respectively for assessment year 2012-2013.

56. The assessee in ITA No.1740/CHNY/2016 has raised the following grounds of appeal.

‘’The order of the CIT (Appeals) is against law and fact of the case.
2. The CIT (A) erred in confirming part of the disallowance made u/s 14A r.w .Rule 8D.

3.The CIT (Appeals) erred in not appreciating the fact that the AO applied Rule 8D without recording having regard to the accounts of the appellant as to why he was not satisfied with the correctness of the appellant’s claim that no expenditure was incurred in relation to the income which does not form part of total income. In this connection the appellant rely on the Delhi High court judgment in the case of CIT Vs. Taikisha Engineering India Ltd(229 Taxman 143) and CIT Vs. I.P. Support Services India Pvt Ltd (378 ITR 240).

4. without prejudice to the appellants ground that the disallowance u/s 14A rw Rule 8D is not attracted the following grounds are raised.

a) The CIT(A) erred in not appreciating the fact that the appellant has not received any dividend income from the investment made in Associate Enterprises, Subsidiary Companies, Joint Ventures, Associates and other companies and in the light of the following judgments the investments made in the above companies need not be taken in to account for computation of disallowance u/s 14A r.w. Rule 8D (2)(iii).

i. REI Agro Ltd Vs.DCIT Central Circle XXVII Kolkatta (144 lTD 141)

ii. Interglobe Enterprises Ltd Vs. DCIT(ITA no.1362 &1032/DEL/2013 dated 04/04/2013) ITAT, Delhi.

iii. ITAT Chennai decision in the case of EIH Associated Hotels Ltd Vs. DCIT in ITA No.1503 /Mds/2012 dated 17/07/2013”.

57. The brief facts of the case are as under:-

The Assessing Officer made an addition of ₹1,39,34,748/- u/s.14A of the Act rejecting the contention of the assessee that no expenditure was incurred towards earning exempt income and the investments are made out of own funds in the form of equity shares in subsidiary companies.

58. Being aggrieved, an appeal was preferred before ld. CIT(A), who vide impugned order had confirmed the applicability of Section 14A of the Act. However directed the Assessing Officer to restrict the amount of disallowance to the extent of exempt income.

59. Being aggrieved, the assessee is in appeal before us in the present appeal. Ld. Authorised Representative contended that Assessing Officer should not have resorted to disallowance u/s.14A of the Act without recording satisfaction as how the claim made by the assessee company is incorrect. He further submitted that no expenditure was incurred for earning exempt income and therefore the question of disallowance does not arise placing reliance on the decisions of Hon'ble Delhi High Court in the case of CIT vs. Taikisha Engineering India Ltd, 229 Taxman 143 and CIT vs. I.P. Support Services India Pvt Ltd, 378 ITR 240.

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

61. We heard the rival submissions and perused the material on record. The only issue in the present grounds of appeal relates to disallowance u/s.14A of the Act. Admittedly, no dividend income was earned by the assessee company during the previous year under consideration. Now the law is settled to the extent that in the absence of any exempt income resort to provisions of Section 14A of the Act cannot be made. Reference can be made to the following decisions

(iii) *Redington (India) Ltd vs. Addl. CIT, 392 ITR 633,*
(iv) CIT vs. Chettinad Logistics P. Ltd, 248 Taxman 55.

In view of the above judgments, we allow the appeal filed by the assessee.

62. In the result, the appeal filed by the assessee in ITA No.1740/CHNY/2016 for assessment year 2012-2013 stands allowed.

63. Now we take up cross appeal of the Revenue in ITA No.2014/CHNY/2016 for assessment year 2012-2013.

64. The Revenue raised the following grounds of appeal.

"1.The order of the learned CIT(A) is contrary to law and facts of the case.

2.The Ld CIT(A) erred in directing the AD to allow ESOP expenses for Rs. 14,43,000/-

2.1 Ld CIT(A) failed to note that ESOP expenditure is incurred in relation to issue of shares and is not relatable regular business.

2.2 Ld CIT(A) failed to note the facts mentioned in the case of Brooke Bond India Ltd and Punjab State Industrial Development Corporation that expenditure incurred in relation to increase in share capital is not allowable.

2.3 The Ld CIT(A) erred in directing the AD to allow the U/s 14A r.w. 8D expenses for Rs.1,39,34,748/-.

2.4.The Ld CIT(A) failed to note that as per the schedules enclosed to the P&L account, it is seen that the appellant had made long term investments in shares of certain companies. These long term investments in shares were made with the motive of earning dividend which is exempt from income tax.

2.5 The Ld CIT (A) failed to note that the disallowance u/s 14A is attracted even in a case where there is no exempt income earned as held in the Chennai ITAT decision in the case of Siva Industries & Holdings Ltd Vs ACIT (54 SOT 49) and which is in conformity with department view as clarified vide circular no.5/2014.

2.6 The Ld CIT(A) erred in directing the AD to allow the excess depreciation on addition made to leased building of Rs.2,02,55,619/-

2.7 The Id. CIT(A) failed to note the facts that as per the explanation 1 to sec 32 of the IT Act which stated that if an assessee incurs expenditure on leasehold premises for the construction of any structure or doing of any work in or in relation to or by way of renovation or improvement, it is considered to be a capital expenditure and depreciation will be provided accordingly.

2.8 For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored".

65. The grounds of appeal No.1 & 2.8 are general in nature therefore, does not require any adjudication.

66. Grounds 2 to 2.2 challenges the decision of ld. CIT(A) in allowing ESOP expenses as revenue expenditure.

67. This issue was raised by the Revenue for the assessment year 2009-2010 in ITA No. 2011/CHNY/2016, wherein we decided the issue in favour of the assessee vide para 10 of above. Fact situation being the same, grounds of appeal No.2 to 2.2 of the Revenue for assessment year 2012-2013 also stand dismissed.

68. Grounds 2.3 to 2.5 challenges the action of the ld. CIT(A) in restricting the disallowance u/s.14A of the Act to the extent of exemption income.

69. The decision of the ld. CIT(A) is in consonance with the law laid down by Hon'ble Jurisdictional High Court in the cases of *Redington (India) Ltd vs. Addl. CIT, 392 ITR 633 and* CIT vs. Chettinad Logistics P. Ltd, 248 Taxman 55. Therefore, we do not find any reason to interfere with the order of the ld. CIT(A). Grounds of appeal 2.3 to 2.5 raised by the Revenue stand dismissed.

70. Grounds 2.6 and 2.7 challenges the decision of ld. CIT(A) in deleting the addition made on account of excess depreciation on building of ₹2,02,55,619/-.

71. This issue was raised by the Revenue for the assessment year 2010-2011 in ITA No. 2012/CHNY/2016, wherein we decided the issue in favour of the assessee vide para 18 of above. Fact situation being the same, grounds of appeal No.2.6 and 2.7 of the Revenue for assessment year 2012-2013 also stand dismissed.

72. In the result, the appeal filed by the Revenue in ITA No.2014/CHNY/2016 for assessment year 2012-2013 stands dismissed.

73. Now, we take up Revenue appeal in ITA No.2744/CHNY/2016 for assessment year 2013-2014.

74. The Revenue raised the following grounds of appeal.

> *"1.The order of the learned CIT(A) is contrary to law and facts of the case.*
>
> *2.)The Ld CIT(A) erred to direct the AO to allow the ESOP expenses of Rs. 1,99,602/-*
>
> *2.1. Ld CIT(A) failed to appreciate that ESOP expenditure is incurred in relation to issue of shares and is not relatable regular business.*
>
> *2.2) Ld CIT(A) failed to appreciate the facts mentioned in the case of Brooke Bond India Ltd and Punjab State Industrial Development Corporation that expenditure incurred in relation to increase in share capital is not allowable*
>
> *2.3 The Ld CIT(A) erred to direct the AO to delete the disallowance of Rs.1,17,70,125/- u/s 14A of the IT Act.*

2.4. The Ld CIT(A) failed to appreciate that the decision of the Honourable ITAT relied upon Learned CIT(A) in the assessee's group case, for the assessment years 2010-11& 2011-12 order has not become final and the department has preferred appeal before the Honourable High Court of Madras U/s 260A.

2.5 The Ld CIT(A) failed to appreciate that the addition made u/s 14A on the reasoning that assessee did not earn any exempt income during the year overlooking the fact the assessee made investments in assets earning exempt income and incurred expenditure towards such investments during the year which was claimed as deduction while computing taxable income.

2.6The Ld CIT(A) erred to allow the 100% depreciation on addition leased building of Rs.3,36,89,844/-.

2.7. The Ld CIT(A) failed to appreciate that addition made to leasehold premises when the expenditure incurred was towards interior and exterior decoration, partition work and related civil and electrical work for the purpose of creation of the office atmosphere which is having enduring benefit whereas depreciation @ 100% is available only for temporary wooden structures.

2.8) CIT(A) failed to note that the facts of the case of Amway India Enterprises Vs DCIT ITAT Delhi, it is to be noted that AMway India Enterprises was having the same premises for last several years and this fact was also considered. But in this case no information is furnished to show that premises was under occupation for several years. As the facts are difference on some counts, the decision cannot be applied to the case of the assessee.

2.9) CITI(A) failed to appreciate the facts that as per the explanation 1 to as per Sec 32 of the IT Act, if an assessee incurs expenditure on leasehold premises for the construction of any structure or doing of any work in or in relation to or byway of renovation or improvement, it is considered to be a capital expenditure and depreciation will be provided accordingly. Hence, in this case expenditure incurred by assessee for improvement in leasehold building is treated as capital expenditure.

3 The Ld CIT(A) failed to appreciate that the decision of the earlier CIT(A)'s order in the assessee's own case for the assessment year 2012-13 has not become final and the Department has preferred appeal before the ITAT Chennai vide ITA NO 275/CIT(A) -15 dated 22/03/2016.

4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored".

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

76. Grounds 2 to 2.2 challenges the decision of ld. CIT(A) in allowing ESOP expenses as revenue expenditure.

77. This issue was raised by the Revenue for the assessment year 2009-2010 in ITA No. 2011/CHNY/2016, wherein we decided the issue in favour of the assessee vide para 10 of above. Fact situation being the same, grounds of appeal No.2 to 2.2 of the Revenue for assessment year 2012-2013 also stand dismissed.

78. Grounds 2.3 to 2.5 challenges the decision of ld. CIT(A) in deleting the disallowance of ₹1,17,70,125/- made u/s.14A of the Act.

79. This issue was raised by the Revenue for the assessment year 2011-2012 in ITA No. 2013/CHNY/2016, wherein we decided the issue in favour of the assessee vide para 45 of above. Fact situation being the same, grounds of appeal No.2.3 to 2.5 of the Revenue for assessment year 2013-2014 also stand dismissed.

80. Grounds 2.6 to 2.9 challenges the decision of ld. CIT(A) in deleting the addition made on account of excess depreciation on building of ₹3,36,89,844/-.

81. This issue was raised by the Revenue for the assessment year 2010-2011 in ITA No. 2012/CHNY/2016, wherein we decided the issue in favour of the assessee vide para 18 of above. Fact situation being the same, grounds of appeal No.2.6 to and 2.9 of the Revenue for assessment year 2012-2013 also stand dismissed.

82. In the result, the appeal filed by the Revenue in ITA No.2744/CHNY/2016 for assessment year 2013-2014 stands dismissed.

83. To summarize the results, the appeals of the assessee for ITA Nos. 1604 & 1740/CHNY/2016 for assessment years 2011-12 and 2012-2013 stand allowed, whereas the appeals of the Revenue for

ITA Nos.2011 & 2012/CHNY/2016 for assessment years 2009-10 and 2010-2011 are partly allowed for statistical purposes and ITA Nos. 2013 & 2014, 2744/CHNY/2016 for assessment years 2011-12, 2012-2013 and 2013- 2014 stand dismissed.

Order pronounced on 8th day of January, 2020 at Chennai.

Sd/-	Sd/-
(धुव्वुरु आर.एल रेड्डी)	(इंटूरी रामा राव)
(DUVVURU RL REDDY)	**(INTURI RAMA RAO)**
न्यायिक सदस्य/JUDICIAL MEMBER	लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 8th January, 2020.

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