

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No.3472/Del./2015
(Assessment Year : 2009-10)**

M/s. Planet EDU Pvt. Ltd., vs. JCIT, Range II,
304, 3rd Floor, Park Centra, Gurgaon.
Sector – 30, NH – 8,
Gurgaon – 122 001 (Haryana)

(PAN : AACCP3937A)

**ITA No.3473/Del./2015
(Assessment Year : 2010-11)**

M/s. Planet EDU Pvt. Ltd., vs. DCIT, Circle 2,
304, 3rd Floor, Park Centra, Gurgaon.
Sector – 30, NH – 8,
Gurgaon – 122 001 (Haryana)

(PAN : AACCP3937A)

**ITA No.3702/Del./2015
(Assessment Year : 2009-10)**

JCIT, Range II, vs. M/s. Planet EDU Pvt. Ltd.,
Gurgaon. 304, 3rd Floor, Park Centra,
Sector – 30, NH – 8,
Gurgaon – 122 001 (Haryana)

(PAN : AACCP3937A)

ITA No.3574/Del./2015
(Assessment Year : 2010-11)

DCIT, Circle 2, vs. M/s. Planet EDU Pvt. Ltd.,
Gurgaon. 304, 3rd Floor, Park Centra,
Sector – 30, NH – 8,
Gurgaon – 122 001 (Haryana)
(PAN : AACCP3937A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sanjay Sood, CA
REVENUE BY : Shri Saras Kumar, Senior DR

Date of Hearing : 23.01.2020
Date of Order : 31.01.2020

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER

Present cross appeals filed by the assessee as well as by the Revenue are being disposed off by way of composite order to avoid repetition of discussion.

2. Appellant, M/s. Planet EDU Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeals sought to set aside the impugned orders both dated 31.03.2015 passed by the Commissioner of Income-tax (Appeals)-1, Gurgaon qua the assessment years 2009-10 & 2010-11 respectively on the grounds inter alia that :-

“ITA No.3472/Del./2015 FOR AY: 2009-10 (Assessee’s Appeal)

1. THAT in the facts and circumstances of the case, the Learned CIT(A) uphold the addition made by A.O. that rent paid was excessive

to the extent of Rs.6,17,580/- and disallowable u/s 40A(2)(b) of the Income Tax Act.

2. *THAT in the facts and circumstances of the case, the Learned CIT(A) erred in confirming the order of A.O. , and in confirming disallowance of expenditure on gifts to the extent of Rs.5,47,622/-.*

3. *THAT in the facts and circumstances of the case, the Learned CIT(A) erred in confirming the order of A.O. , and confirming the disallowance made by A.O. of outstanding balance of sundry creditors - Phone. in Baroda of Rs.3,53,626/-.*

4. *THAT in the facts and circumstances of the case, the Learned CIT(A) erred in confirming the order of A.O. , and confirming the disallowance made by A.O. of outstanding balance of sundry creditors - Indoor & Exteriors of Rs.4,88,497/-.*

5. *THAT in the facts and circumstances of the case, the Learned CIT(A) erred in confirming the order of A.O. who erred in correctly computing the 'Carried Forward loss and Unabsorbed Depreciation.*

6. *THAT in the facts and circumstances of the case, the Learned CIT(A) erred in confirming the order of A.O. who erred in not allowing MAT Credit paid in the earlier years.”*

ITA No.3473/Del./2015 FOR AY : 2010-11 (Assessee's Appeal)

“1. *THAT in the facts and circumstances of the case, the Learned CIT(A) uphold the addition made by A.O. that rent paid was excessive to the extent of Rs.6,17,580/- and disallowable u/s 40A(2)(b) of the Income Tax Act.*

2. *THAT in the facts and circumstances of the case, the Learned CIT(A) erred in confirming the order of A.O. who erred in making an addition on account of depreciation on car of Rs.10,04,258/-.*

3. *THAT in the facts and circumstances of the case, the Learned CIT(A) erred in confirming the disallowance on account of interest paid to NBFC, M/s Kotak Mahindra Primus Ltd. of Rs.3,97,817/-.*

4. *THAT in the facts and circumstances of the case, the Learned CIT(A) erred in confirming the order of A.O. who erred in not adjusting the Brought Forward Losses/Unabsorbed Depreciation from earlier years.*

5. *THAT in the facts and circumstances of the case, the Learned CIT(A) erred in confirming the order of A.O. who erred in correctly computing the Carried Forward loss and Unabsorbed Depreciation.*

6. *THAT in the facts and circumstances of the case, the Learned CIT(A) erred in confirming the order of A.O. who erred in not allowing MAT Credit paid in the earlier years.”*

3. Appellants, JCIT, Range II, Gurgaon and DCIT, Circle 3, Gurgaon (hereinafter referred to as 'the Revenue') by filing the present appeals sought to set aside the impugned orders both dated 31.03.2015 passed by the Commissioner of Income - tax (Appeals)-1, Gurgaon qua the assessment years 2009-10 & 2010-11 respectively on the grounds inter alia that :-

ITA No.3702/Del./2015 FOR AY : 2009-10 (Revenue's appeal)

1. *On the facts and circumstances of the case, the Ld. C!T(A) has erred on facts and in law, in not upholding the decision of AO rejecting the book results u/s 145(3) of the Income Tax Act in spite of the fact that the books of accounts are not complete.*

2. *On the facts and circumstances of the case, the Ld. C!T(A) has erred on facts and in law, in not upholding the decision of AO rejecting the book results u/s 145(3) of the Income Tax Act inspite of the fact that there were unverifiable sundry creditors.*

3. *On the facts and circumstances of the case, the Ld. C!T(A) has erred on facts and in law, in not upholding the decision of AO rejecting the books results u/s 145(3) of the Income Tact Act inspite of the fact that various expenses have been debited which are not genuine or excessive.*

4. *On the facts and circumstances of the case, the Ld. C!T(A) has erred on facts and in law, in holding that the expenditure of Rs.2,26,14,880/- on project Edexcel, UK is revenue in nature and that no new asset has come into existence ignoring the facts that the assessee itself has treated the same as fixed asset being expenditure incurred for expansion of business in its original return and in schedule 'C' of Balance Sheet.*

5. *On the facts and circumstances of the case, the Ld. C!T(A) has erred on facts and in law, in deleting the addition of Rs.2,26,14,880/- by treating it as revenue expenditure, In doing so, Ld. CIT(A) has ignored the fact that the expenditure was incurred for rendering services to project Edexcel, UK. The assessee must have charged for such services from them but the assessee has not furnished any details/evidences to prove that any such amount was charged from Edexcel, UK.*

6. *On the facts and circumstances of the case, the Ld. CIT(A) has erred on facts and in law in holding that the expenditure of*

Rs.2,26,14,880/- allocated to project Edexcel, UK is revenue in nature ignoring the fact that when the amount so allocated was capitalized as per Companies Act, 1956, it is not allowable as revenue expenditure under Income Tax Act, 1961.”

ITA No.3574/Kol./2015 AY: 2010-11 (Revenue’s appeal)

1. On the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law, in not upholding the decision of AO rejecting the book results u/s 145(3) of the I.T. Act in spite of the fact that the books of accounts are not complete.

2. On the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law, in not upholding the decision of AO rejecting the book results u/s 145(3) of the I.T. Act in spite of the fact that there were unverifiable sundry creditors.

3. On the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law, in not upholding the decision of AO rejecting the book results u/s 145(3) of the I.T. Act in spite of the fact that various expenses have been debited which are not genuine or excessive.

4. On the facts and circumstances of the case, the Ld. CIT(A) has erred, in facts and in law, in deleting the addition made by the AO after rejecting the books of accounts despite the assessee not being able to substantiate his books even after repeated opportunities given by the AO.”

4. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee company is into the business of providing logistics support services in conducting tests/exam etc. and during the year under assessment, such tests were mainly conducted all over India for IELTS Australia. Assessing Officer (AO) after rejecting the books of account of the assessee under section 145 (3) of the Income-tax Act, 1961 (for short ‘the Act’) in AYs 2009-10 & 2010-11 made addition of Rs.6,17,580/- each being the rent paid on the excessive side u/s 40A(2)(b) of the Act.

AO in AYs 2009-10 & 2010-11 has also not allowed MAT credit claimed by the assessee having been paid in the earlier years.

5. In AY 2009-10, AO made disallowance of Rs.5,47,622/- Rs.3,53,626/- and Rs.4,88,497/- on account of gifts, outstanding balance of sundry creditor viz. Phone.in Baroda and outstanding balance of sundry creditor viz. Indoor & Exteriors respectively. AO has also reportedly not computed the carried forward losses and unabsorbed depreciation correctly.

6. In AY 2009-10, AO disallowed the expenditure to the tune of Rs.2,26,14,880/- incurred by the assessee on house, rental, travel, business promotion, advertisement, printing & stationery, professional charges, etc. claimed by the assessee as capital in balance sheet and then treated the same as revenue in computation, resulting in loss to the revenue.

6. In AY 2010-11, AO made addition by way of disallowance on depreciation of car to the tune of Rs.10,04,258/-. AO also made disallowance of Rs.3,97,817/- on account of interest paid to NBFC, M/s. Kotak Mahindra Primus Ltd. AO also reportedly not adjusted brought forward losses/unabsorbed depreciation from earlier years nor has he correctly computed the carried forward losses and unabsorbed depreciation.

7. Assessee carried the matter before the Id. CIT (A) by way of filing the appeals who has partly allowed the appeals for AYs 2009-10 & 2010-11. Feeling aggrieved by the orders passed by the Id. CIT (A), both the assessee as well as the Revenue have come up before the Tribunal by way of filing the present cross appeals.

8. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

9. Undisputedly, the Id. CIT (A) has annulled the order of the AO rejecting the books of account u/s 145 (3) of the Act and estimating the profit @ 5% of the gross receipts, which action of the Id. CIT (A) has been challenged by the Revenue for both the AYs 2009-10 & 2010-11.

**GROUNDS NO.1, 2 & 3 OF
REVENUE'S APPEAL FOR AY 2009-10**

**GROUNDS NO.1, 2, 3 & 4 OF
REVENUE'S APPEAL FOR AY 2010-11**

10. Perusal of para 3.2 of the assessment order goes to show that the AO proceeded to reject the books of account u/s 145 (3) of the Act on the ground that despite repeated opportunities, assessee has failed to produce the books of accounts and supporting evidence.

However, at the very outset, in para 1 of the assessment order, AO specifically recorded the fact that, “*books of account along with bills and vouchers were called for examination on test check basis.*”

11. When we examine impugned order passed by the Id. CIT (A) particularly paras 4.2 to 4.5, it has come on record that Id. CIT (A) has examined threadbare every reason recorded by the AO for rejecting the books of account in the light of the settled principles of law, the operative part of which is extracted for ready perusal as under :-

“ On an a careful examination of the facts of the case, I find that the A.O. had, in arriving at this decision, been mainly guided by the unexplained points listed in the assessment order, and the absence of the details of major expenses. The appellant had exhibited that details of major expenses had been filed before the A.O. The vouchers for July 2008 and December 2008 too have been examined by the A.O. It is only after such examination could the A.O. record observation that expenses on venue/professional expenses are self made. The appellant has maintained records of expenditure for each test conducted at locations all over the country for such tests, venue is selected at leading hotels, where payments have been made by cheque. In support of its claim, appellant reproduced before me the payment details for the month of April 2008. Further at such venue invigilators etc have to be engaged who are essential to oversee the tests. The test, it was explained, also has a verbal part, wherein knowledge through announcements etc in English are also examined. Some expenditure has been incurred at such venues on local conveyance, hiring of coolies refreshments etc. examination of vouchers of July 2008 and December 2008, produced for my verification, revealed that where the expenditure was in cash it was vouched and is not significant in comparison to the total expenditure.

After verifying expenses on account of venue and professional expenses, I hold that the AO, without pointing out a

specific deficiency in certain bills/vouchers, should not have rejected the books of account of the appellant on this basis. Furthermore, no opportunity was provided to the appellant to rebut the materials so gathered. The Division Bench in the case of ADDL ITO V Ponkunnam Traders (1976) 102 ITR 366 (Ker), confirmed the order of the Single Judge, who had quashed such additions ,where opportunity not been provided to the appellant.

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4.5 In the present case the A.O rejected the books of account without specifying as to whether any of the above three conditions was satisfied. Furthermore, instead of passing order u/s 144 of the Income Tax Act, the A.O, even after rejecting the books of account, passed the order u/s 143(3) which is fallacious. If the A.O wanted to reject the books of account he should have given certain specific instances which could have proved that the accounts of the appellant are incorrect/incomplete. Besides, since the appellant company has been regularly following mercantile system of accounting, it has not violated provision of Section 145(1) of the Income Tax Act. As none of the conditions for rejection of books, mentioned in section 145 were satisfied, I hold that A.O should not have rejected the books of account in the appellant's case by making sweeping remarks and without examining voluminous documents submitted by the appellant during the course of assessment proceedings.”

12. So, the aforesaid reasons recorded by the Id. CIT (A) for accepting the books of account/documents brought on record by the assessee go to prove inter alia that the details of major expenses incurred by the assessee along with vouchers have been furnished before the AO and have been so examined by the AO; that record has been maintained by the assessee qua the expenditure incurred for each test conducted at various locations across the country; that payment details of all the expenditure incurred by the assessee have been duly produced before the Id. CIT (A) who has verified the same; that expenses for hiring the invigilators and examiners

for conducting the oral test, for local conveyance, hiring of police, etc. along with vouchers have been duly brought on record and verified as such by the Id. CIT (A); that AO without pointing out any specific/clear deficiency in bills/vouchers proceeded to reject the books of account on the basis of surmises for which assessee has not been provided any opportunity to rebut the same; that when there was no valid ground for AO to reject the books of account u/s 145 (3), the question of estimating the gross profit @ 5% of the gross receipts does not arise.

13. Even otherwise, AO has not recorded any categoric finding that the accounts produced by the assessee were defective or incomplete rather rejected the same on the hyper-technical ground that certain details have not been brought on record.

14. Hon'ble Delhi High Court in case of *CIT vs. Paradise Holidays (2010) 325 ITR 13 (Del.)* decided the identical issue on rejection of books of account u/s 145 (3) by returning following findings :-

“The accounts which are regularly maintained in the course of business and are duly audited, free from any qualification by the auditors, should normally be taken as correct unless there are adequate reasons to indicate that they are incorrect or unreliable. The onus is upon the Revenue to show that either the books of account maintained by the assessee were incorrect or incomplete or that the method of accounting adopted by him was such that true profits of the assessee cannot be deduced therefrom.”

15. One glaring aspect has come on record in this case is that AO by recklessly rejecting the books of account proceeded to estimate the income by applying profit @ 5% of the gross receipt at Rs.76,94,395/- whereas assessee company has already assessed its income from business at Rs.1,03,37,625/- (before depreciation). So, AO for the reason best known to him has assessed the income of the assessee substantially less than the returned income.

16. So, in these circumstances, we are of the considered view that Id. CIT (A) has rightly and validly accepted the books of account and set aside the estimation of gross profit @ 5% and proceeded to examine the sustainability of the various allowances claimed by the assessee independently. So, Grounds No.1, 2 & 3 of Revenue's appeal for AY 2009-10 and Grounds No.1, 2, 3 & 4 of Revenue's appeal for AY 2010-11 are determined against the Revenue.

**GROUND NO.4, 5 & 6 OF
REVENUE'S APPEAL FOR AY 2009-10**

17. The assessee claimed an amount of Rs.2,26,14,880/- being expenditure on its new project (Project 'EDEXCEL'). AO after considering the reply filed by the assessee disallowed the expenses of Rs.2,26,14,880/- u/s 37 (1) of the Act on the ground that the

assessee has failed to prove incurring of such expenses. However, Id. CIT (A) deleted these expenses.

18. For proceeding further, we would like to extract the expenditure for Project EDEXCEL claimed by the assessee for ready perusal as under :-

<i>Sr. No.</i>	<i>Particulars</i>	<i>Allocation of Expenditure to Edexcel</i>
<i>1.</i>	<i>Salary</i>	<i>10,222,952</i>
<i>2.</i>	<i>Rent Amritsar</i>	<i>2,67,894</i>
<i>3</i>	<i>Rent-BAB Tower</i>	<i>249,489</i>
<i>4</i>	<i>Rent Baroda Office</i>	<i>536,692</i>
<i>5</i>	<i>Rent BPTP 3ra Floor</i>	<i>3,579,585</i>
<i>6</i>	<i>Rent Chennai Office</i>	<i>712,271</i>
<i>7</i>	<i>Rent Kolkata Office</i>	<i>778,273</i>
<i>8</i>	<i>Rent Ludhiana</i>	<i>306,039</i>
<i>9</i>	<i>Rent Pune</i>	<i>721,304</i>
<i>10</i>	<i>Traveling Foreign</i>	<i>998,955</i>
<i>11</i>	<i>Tour and Traveling</i>	<i>1,864,206</i>
<i>12</i>	<i>Business Promotion</i>	<i>1,552,106</i>
<i>13</i>	<i>Advertisement Exp</i>	<i>227,781</i>
<i>14</i>	<i>Printing and Stationery</i>	<i>87,469</i>
<i>15</i>	<i>Professional Charges`</i>	<i>512,865</i>
	<i>TOTAL</i>	<i>22,614,880</i>

19. Perusal of the aforesaid expenditure claimed by the assessee shows that the same are on account of salary, rent paid for hiring office premises at difference places, foreign travelling expenses, tour and travelling expenses, business promotion expenses, advertisement expenses, printing & stationery expenses and professional expenses.

20. AO has not only disallowed the amount of Rs.2,26,14,880/- claimed by the assessee in computation of income but also the amount which had been capitalized in the books of account.

21. Ld. AR for the assessee contended that the AO has not only disallowed the amount in computation of income but also made separate addition of this amount of Rs.2,26,14,880/- which amounts to double disallowance. Ld. DR for the Revenue, however, relied upon the order passed by the AO.

22. AO has primarily disallowed these expenses on the ground that the assessee has failed to prove incurring of such expenses wholly and exclusively for the purpose of business u/s 37(1) of the Act and also observed that it is not admissible to the assessee as it has claimed such expenditure as capital expenditure for its new project.

23. When it is an undisputed fact that assessee is into providing logistic services for testing establishments holding tests in India and its major client is IELTS Australia rendering services to Project EDEXCEL for holding tests on their behalf in India by spreading its infrastructure at different rented locations and by having extra staff, it is certainly a business expenditure. Moreover, assessee has brought on record the fact that :-

“EDEXCEL is a organization based in the UK and has been accredited to award ‘O’ and ‘A’ level certificates of Cambridge University. Several schools in India have a system to test their students in the aforesaid ‘O’ and ‘A’ level in addition to regular exams of Indian Boards. This is a growing business in India and Plant Edu. (P) Ltd., has been appointed by EDEXCEL to promote and conduct such tests in India.

The assessee company had in an effort to show improved results to its shareholders/potential investors/PES etc. allocated various costs to such EDEXCEL Project and included the same as part of fixed assets in the Balance Sheet under Company Law. Treatment by the assessee, for company law purpose, an asset, cannot be change the expenditure.”

24. When we examine the functions being performed by EDEXCEL organisation of UK having been accredited to award ‘O’ and ‘A’ level certificate issued by Cambridge University again it is part and parcel of the business carried out by the assessee company, thus has been proved on record that EDEXCEL has been hired by the assessee to promote and conduct such tests in India.

25. Bare perusal of the assessment order goes to prove that except for repeating the language of section 37(1) of the Act, AO has not written a word as to how these expenditure claimed by the assessee are not business expenditure.

26. In AY 2008-09, Revenue itself vide order dated 22.02.2012 passed by the Id. CIT (A) in Appeal No.76/GGN/2010-11 thoroughly examined these expenditure incurred on Project EDEXCEL and held the same of revenue in nature following the decisions of the Hon’ble Supreme Court in cases of *Kedarnath*

Jute Manufacturing Co. vs. CIT 82 ITR 363 and CIT vs. Indian Discounts Co. Ltd. 75 ITR 91. Order passed by the Id. CIT (A) was challenged by the Revenue before the Tribunal who has remanded the matter back to AO and AO vide assessment order dated 11.05.2016, available at pages 57 to 59 of the paper book, accepted the claim of the assessee qua Project EDEXCEL expenses, thus the issue has attained finality.

27. Hon'ble Supreme Court in case of *Sutlej Cotton Mills Ltd. vs. CIT 116 ITR 1* held that :-

“the way in which entries are made by an assessee in his books of account is not determinative of the question whether the assessee has earned any profit or suffered any loss. The assessee may, by making entries which are not in conformity with the proper accountancy principles, conceal profit or show loss and the entries made by him cannot, therefore, be regarded as conclusive one way or the other. What is necessary to be considered is the true nature of the transaction and whether in fact it has resulted in profit or loss to the assessee.”

28. So, in view of the matter, we are of the considered view that when identical issue has already been decided by the Revenue in favour of the assessee in 2008-09 and such expenses have been accepted as revenue expenses in AY 2010-11 also, the rule of consistency has to be followed by the Revenue particularly when there is no change in the business model and facts and circumstances of the case. So, aforesaid expenditure incurred on

salary, hiring premises on rent, business promotion expenses, etc. have been rightly treated as revenue in nature by the Id. CIT (A) with which no new assets have come into existence, hence no ground is made out to interfere in the findings returned by the Id. CIT (A), consequently Grounds No.4, 5 & 6 of Revenue's appeal for AY 2009-10 are determined against the Revenue.

**GROUND NO.1 OF ASSESSEE'S APPEAL
FOR AYs 2009-10 & 2010-11**

29. AO made addition of Rs.55,58,220/- EACH for AYs 2009-10 & 2010-11 qua rental paid by the assessee regarding premises No.304, 3rd Floor, Park Centre, Sector 30, Gurgaon having covered area of 10293 sq.ft. by assessing its rent @ Rs.5 per sq.ft. as against Rs.90 per sq.ft. stated to have been paid by the assessee on the ground that the rent paid by the assessee qua this premises to its director is highly excessive.

30. Ld. CIT (A), on the other hand, after examining the lease deed of the premises in question and premises rented out by Mrs. Baweja of Greenwood Plaza of the adjoining premises for AY 2011-12 which was at the rent of Rs.85 per sq.ft., assessed the rent of the premises in question @ Rs.85 per sq.ft. and restricted the

addition to the extent of Rs.6,17,580/- each u/s 40A(2)(b) of the Act for AYs 2009-10 and 2010-11.

31. Except for the facts that the premises at Greenwood Plaza had covered area of 1858 sq.ft. and open terrace of 462 sq.ft and the fact that new premises is in better location, no new facts have been brought on record by the assessee. So, we are of the considered view that Id. CIT (A) has determined the rent in the light of the facts and circumstances of the case by examining the lease deed of two premises taken on rent by the assessee company itself, which is carrying out the same business in the two premises. So, we find no scope to interfere into the findings returned by the Id. CIT (A). So, ground no.1 in assessee's appeal for AYs 2009-10 & 2010-11 is determined against the assessee.

**GROUND NO.2 OF ASSESSEE'S APPEAL
FOR AY 2009-10**

32. AO made addition of Rs.16,42,866/- claimed by the assessee company on account of gift of silver items on the ground that the assessee has not furnished the details called for by the AO nor it is proved that such gifts are given for the purpose of business. However, Id. CIT (A) disallowed 1/3rd of such expenses u/s 37(1) of the Act being on excessive side.

33. We are of the considered view that Id. CIT (A) has decided the issue summarily without looking into the facts of this case on estimation basis. On the one hand, Id. CIT (A) has categorically returned the finding that, *“the entire payment has been made by cheque which is supported by relevant evidence and also considered the business exigency but in the same breath observed that gift items were excessive.”* Ld. AR for the assessee contended that gift given in AY 2009-10 were hit by the provisions of FBT u/s 115WV(2)(O) applicable to AY 2009-10 and disallowance has been made in FBT return which had been accepted by the AO and as such no addition can be made which would amount to double disallowance. When the disallowance has already been made by the assessee company in FBT return which has been accepted by the AO no separate addition can be made which would amount to double disallowance. So, we hereby delete this addition of Rs.5,47,622/- sustained by the Id. CIT (A) for AY 2009-10, however subject to verification by the AO qua the facts brought on record by the assessee. Hence, ground no.2 in assessee’s appeal for AY 2009-10 is determined in favour of the assessee.

**GROUND NO.3 & 4 OF ASSESSEE'S APPEAL
FOR AY 2009-10**

34. Ld. CIT (A) confirmed the disallowance of Rs.3,53,626/- and Rs.4,88,497/- made by the AO on account of outstanding balance of sundry creditors, namely, Indoor & Exteriors and Phone.in Baroda respectively. Ld. AR for the assessee contended that both these creditors relate to capital expenditure qua which depreciation has been duly claimed. It is also contended by the Id. AR for the assessee that in case of addition of Rs.3,53,626/- qua Phone.in Baroda dispute arisen and ultimately outstanding balance has been added back in the accounts of AY 2013-14 which has been offered to tax. Assessee has brought on record the accounts in this regard. So, when the outstanding balance has been added back in the accounts for AY 2013-14 itself and has been offered to tax, addition thereof cannot be made during the year under assessment. So, it is ordered to be deleted subject to verification by the AO.

35. However, so far as disallowance of Rs.4,88,497/- on account of sundry creditors, namely Indoor & Exterior is concerned, Id. AR for the assessee contended that supplier had moved to Australia and the amount was not paid to him and as such, amount capitalized could be reduced as expenditure incurred leading to

reduction in cost of the same. When the Revenue has not disputed the fact that supplier has not supplied the goods which is apparent from the copy of account of supplier to whom payment had otherwise been made through banking channel, no addition can be made on this account. So, we are of the considered view that the addition of Rs.4,88,497/- is not sustainable and ordered to be deleted, however subject to verification by the AO. Consequently, Grounds No.3 & 4 of assessee's appeal for AY 2009-10 are determined in favour of the assessee.

**GROUND NO.5 OF ASSESSEE'S APPEAL
FOR AY 2009-10**

**GROUNDS NO.4 & 5 OF ASSESSEE'S APPEAL
FOR AY 2010-11**

36. Assessee has challenged the computation of carry forward losses and unabsorbed depreciation qua the year under assessments by the AO and confirmed by the Id. CIT (A) on the ground that the same has not been correctly computed. Since it is a factual mistake pointed out by the Id. AR for the assessee, AO is directed to correctly compute the carry forward losses and unabsorbed depreciation to arrive at the logical assessment. Hence, ground

no.5 of AY 2009-10 and grounds no.4 & 5 of AY 2010-11 of assessee's appeal are allowed for statistical purposes.

**GROUND NO.6 OF ASSESSEE'S APPEAL
FOR AYs 2009-10 & 2010-11**

37. Ld. AR for the assessee contended that the AO has not allowed MAT credit paid in earlier years in both the AYs 2009-10 and 2010-11 and pointed out the facts from the financials. Since this is a factual mistake committed by the AO/CIT(A), AO is directed to allow the MAT credit paid by the assessee in the earlier years after due verification. Hence, ground no.6 of AYs 2009-10 and 2010-11 of assessee's appeal are allowed for statistical purposes.

**GROUND NO.2 OF ASSESSEE'S APPEAL
FOR AY 2010-11**

38. Ld. CIT(A) confirmed the addition made by the AO on account of depreciation on Innova car to the tune of Rs.10,04,258. Undisputedly, assessee company has purchased 8 seater Innova car from the company funds but registered in the name of its Director, Shri Sanjay Malaviya. AO as well as CIT(A) have disallowed the depreciation claimed by the assessee company on the ground that

assessee company has failed to prove that car registered in the name of Director of the company was actually used in the company's business.

39. These findings when attributed to AO are correct to the extent that the AO has rejected the books of account. However, when the books of account have been accepted by the Id. CIT (A) and order of Id. CIT (A) has held to have been sustainable by the Bench as per findings in the preceding paras, depreciation cannot be disallowed because vehicle running and its maintenance expenses have been duly charged to the accounts. Moreover, when vehicle is proved to be purchased from the company's funds, depreciation cannot be disallowed merely on the basis of surmises that it was not used for the business of the assessee. So, car having been purchased from the company's fund though in the name of the Director and expenses as to its maintenance and running have been duly charged to the account which are audited one and have been duly accepted, disallowance made by the AO and confirmed by the Id. CIT (A) is not sustainable, hence ordered to be deleted. Ground No.2 of assessee's appeal for AY 2010-11 is determined in favour of the assessee.

**GROUND NO.3 OF ASSESSEE'S APPEAL
FOR AY 2010-11**

40. Ground No.3 of assessee's appeal for AY 2010-11 is not pressed during the course of hearing, hence dismissed.

41. Resultantly, the appeals filed by the assessee for AYs 2009-10 and 2010-11 are partly allowed and appeals filed by the Revenue for AYs 2009-10 & 2010-11 are dismissed.

Order pronounced in open court on this 31st day of January, 2020.

**SD/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER**

**SD/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 31ST day of January, 2020
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.