IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"A" BENCH, MUMBAI

BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER

ITA No. 3583/MUM/2018 (A.Y. 2014-15)

DCIT – 15(1)(1) Room No. 470, 4th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	*v.*	M/s. Arti Industries Ltd., 71, Udyog Kshetra, 2nd Floor Mulund-Goregoaon Link Road Mulund(W), Mumbai -400080 **PAN: AABCA2787L**
Appellant		**Respondent**

ITA No. 3695/MUM/2018 (A.Y. 2014-15)
&
C.O. No. 145/MUM/2019
[ARISING OUT OF ITA.No. 3583/MUM/2018 (A.Y. 2014-15)]

M/s. Arti Industries Ltd., 71, Udyog Kshetra, 2nd Floor Mulund-Goregoaon Link Road Mulund(W), Mumbai -400080 **PAN: AABCA2787L**	*v.*	DCIT – 15(1)(1) Room No. 470, 4th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020
Appellant		**Respondent**

Assessee by	**:**	**Shri Vijay Mehta**
Revenue by	**:**	**Ms. Shailaja Rai & Shri Mehul Jain**
Date of Hearing	**:**	**11.01.2022**
Date of pronouncement	**:**	**30.03.2022**

ORDER

PER S. RIFAUR RAHMAN (AM)

1. These cross-appeals are filed by the assessee and Revenue against order of Learned Commissioner of Income Tax (Appeals)-24, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 12.02.2018 for the A.Y. 2014-15 and arises out of assessment completed u/s 143(3) of the Income Tax Act, 1961 (in short the "Act").

ITA No. 3695/MUM/2018 (A.Y. 2014-15)-ASSESSEE APPEAL

2. Assessee has raised following grounds in its appeal: -

1.0 That on the facts and in the circumstances of the case, Learned CIT(Appeal) earned in confirming section 14A r.w.r. 8D(2)(iii) disallowance in computing Book Profit u/s 115JB the Income-tax Act.

Additional Grounds

2.0 That on the facts and in the circumstances of the case, fertilizers subsidy received under Nutrient Based Subsidy (NBS) Policy by the Appellant ought to be treated as capital receipt after considering the purpose test and hence not chargeable to tax in computing income as per normal provisions and Book Profit u/s 115JB the Income-tax Act.

3.0 That on the facts and in the circumstances of the case, subsidy received under Status Holder Incentive Scripts (SHIS) by the Appellant ought to be treated as capital receipt after considering the purpose test and hence not chargeable to tax in computing income as per normal provisions and Book Profit u/s 115JB the Income-tax Act.

4.0 That the appellant craves leave to add, to amend, modify, rescind, supplement or alter any of the Grounds stated here-in-above, either before or at the time of hearing of this appeal.

3. Assessee raised following additional grounds in its appeal*: -*

"1) On the facts and circumstances of the case and in law, the CIT(A) ought to have held that the assessee is eligible for deduction under section 80-IA of the Act in respect of profits and gains derived by the undertakings engaged in generation of steam.

2) On the facts and circumstances of the case and in law, the CIT(A) ought to have held that the fertilizer subsidy received by the assessee is a capital receipt and hence not chargeable to tax while computing income under normal provisions as well as while computing book profit u/s 115JB of the Act

3) On the facts and circumstances of the case and in law, the CIT(A) ought to have held that the export subsidy (SHIS) received by the assessee is a capital receipt and hence not chargeable to tax while computing income under normal provisions as well as while computing book profit u/s 115JB of the Act.

4. Assessee further raised following additional ground in its appeal: -

"9. ***Deduction of Education and Secondary & Higher Education Cess***

9.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have allowed deduction for the cess paid by the Appellant on income-tax and dividend distribution tax based on the following aspects:

i. the said cess is a revenue expenditure;

ii. the said cess is not a rate or tax debarred by section 40(a)(ii) of the Act.

The Appellant craves leave to alter, amend or withdraw all or any grounds or add any further grounds as may be considered necessary either before or during the hearing."

5. At the outset, with regard to Ground No. 1 which is in respect of disallowance u/s. 14A of the Act while computing book profits u/s. 115JB of the Act, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse for the A.Y. 2011-12 and 2012-13 and 2013-14 and against the department (Copy of the orders is placed on record).

6. Ld. DR has fairly accepted the submissions of the Ld.AR.

7. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Ys. 2011-12, 2012-13 and 2013-14. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 5077/Mum/2017 dated 31.07.2020 for the A.Y. 2011-12 held as under: -

> *"3. Vide Ground No. 2 to 2.3, the assessee has challenged the action of the Ld. CIT (A) in upholding the action of AO in making addition of disallowance u/s 14A amounting to Rs. 68,06,776/- while computing tax liability u/s 115JB of the Act. The assessee had earned dividend income of Rs. 58,88,059/- and claimed exemption. The AO computed the disallowance u/s 14A r.w.r. 8D amounting to Rs. 68,06,776/-. The AO added the said sum to the book profit u/s 115JB of the Act holding that since the said expenditure is held to be incurred in relation to the income not forming part of the total income, the same is required to be added to the book profit u/s*

115JB of the Act. The Ld. CIT(A) confirmed the action of AO. The Ld. counsel submitted that the Ld. CIT (A) has wrongly confirmed the action of the AO ignoring the decision of the Special Bench of the ITAT Delhi in the case of ACIT vs. Vireet Investments Pvt. Ltd. 82 taxmann.com 415 (Delhi-Trib. SB) in which it has been held that computation under clause F of Explanation 1 to section 115JB (2) is to be made without resorting to the computation as contemplated under section 14A r.w.r. 8D of the Income Tax Rules. The Ld. counsel further submitted that since the findings of the Ld. CIT (A) are contrary to the law laid down by the Special Bench of the Tribunal aforesaid, the same is liable to be set aside.

4. On the other hand, the Ld. Departmental Representative supported the order passed by the Ld. CIT (A).

5. We have perused the material on record including the decision relied upon by the Ld. counsel. As pointed out by the Ld. counsel, the Special Bench of the ITAT, Delhi has decided the identical issue in favour of the assessee by holding that the computation under clause (f) of Explanation 1 to section 115JB (2) is to be made without resorting to the computation as contemplated under section 14 r.w.r. 8D of the Income Tax Rules, 1962. Hence, respectfully following the decision of the Special Bench of the ITAT Delhi in the case of ACIT vs. Vireet Investments Pvt. Ltd.(supra), we allow this ground of appeal and set aside the findings of the Ld. CIT (A) and accordingly direct the AO to delete the addition of Rs. 68,06,776/- made on account of disallowance under section 14A, in the computation of tax liability under section 115JB of the Act."

8. Similarly, in ITA.No. 7126 & 7127/Mum/2017 dated 25.11.2021 for the A.Y. 2012-13 and 2013-14 the Coordinate Bench held as under: -

"27. The issue raised in ground no. 1 is against the order of ld.CIT(A) upholding the order of AO on the issue that disallowance made u/s 14A r.w.r. 8D has to be added to the book profit u/s. 115JB.

28. At the outset the ld counsel of the assesse submitted that the issue is squarely covered by the order of coordinate bench m assesse own case wherein the identical issue has been decided in favour of the assesse in ITA No. 5077/Mum/2017 A.Y. 2011- 12 & others vide para no.3 to 5 and therefore the ground no. 1 may be allowed. The ld DR on the other hand relied on the order of ld CIT(A) on this issue.

29. We have perused the facts on records and the impugned order of the co-ordinate bench in ITA No 5077/Mum/2017 A.Y. 2011-12 & others and find the identical issue has been decided by the bench vide para no. 3 to 5 by allowing the issue in favour of the assessee. Since the facts before us are same, we therefore respectfully following the order of the coordinate bench set aside the order of ld.CIT(A) on this issue by allowing the ground no.1"

9. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y.2011-12 is respectfully followed, ground raised by the assessee is accordingly allowed.

10. With regard to Ground No. 2 and also the additional ground No.1, which are in respect of deduction u/s. 80-IA of the Act in respect of steam, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case for the A.Y. 2011-12 in M.A.No. 256/Mum/2020 arising out of ITA.No. 5077/Mum/2017 dated 31.07.2020 (Copy of the order is placed on record) and submitted that Tribunal has set aside the matter to the file of the Assessing Officer and Ld. Counsel for the assessee requested the same may be adopted for the appeal under consideration.

11. Ld. DR has fairly accepted the submissions of the Ld.AR.

12. Considered the submissions and material placed on record, we observe from the record that identical issue is decided for the A.Y. 2011-12. Coordinate Bench of the Tribunal in M.A.No. 256/Mum/2020 arising out of ITA.No. 5077/Mum/2017 dated 31.07.2020 has set aside the issue to the file of the Assessing Officer, while holding so it held as under: -

> *"3. We have perused the material on record in the light of the submissions made by the counsel for the applicant. As pointed out by the Id. counsel, the Tribunal has omitted to give findings on the additional grounds raised by the applicant/assessee, which is in our considered view a mistake apparent from record and requires rectification.*
>
> *4. Hence, in view of the aforesaid facts and submissions made by the Ld. Counsel, we rectify the mistake apparent from the record and allow the additional grounds of appeal raised by the assessee. Since, the assessee has filed these grounds for the first time before the Tribunal, we deem it necessary to send these grounds to the AO for deciding the same. Accordingly, we send these grounds to the AO with the direction to decide these grounds after affording a reasonable opportunity of being heard to the assessee."*

13. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2011-12 is respectfully followed, accordingly, ground raised by the assessee is allowed for statistical purpose.

14. With regard to Ground No. 3 and also the additional ground No.2, which are in respect of Non taxability of fertilizer subsidy and other

incentives, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case for the A.Y. 2011-12 in M.A.No. 256/Mum/2020 arising out of ITA.No. 5077/Mum/2017 dated 31.07.2020 (Copy of the order is placed on record) and submitted that the Tribunal has set aside the matter to the file of the Assessing Officer and Ld. Counsel for the assessee requested the same may be adopted for the appeal under consideration.

15. Ld. DR has fairly accepted the submissions of the Ld.AR.

16. Considered the submissions and material placed on record, we observe from the record that identical issue is decided for the A.Y. 2011-12. Coordinate Bench of the Tribunal in M.A.No. 256/Mum/2020 arising out of ITA.No. 5077/Mum/2017 dated 31.07.2020 and set aside the issue to the file of the Assessing Officer, while holding so the Tribunal held as under: -

> *"3. We have perused the material on record in the light of the submissions made by the counsel for the applicant. As pointed out by the Id. counsel, the Tribunal has omitted to give findings on the additional grounds raised by the applicant/assessee, which is in our considered view a mistake apparent from record and requires rectification.*
>
> *4. Hence, in view of the aforesaid facts and submissions made by the Ld. Counsel, we rectify the mistake apparent from the record and allow the additional grounds of appeal raised by the assessee.*

Since, the assessee has filed these grounds for the first time before the Tribunal, we deem it necessary to send these grounds to the AO for deciding the same. Accordingly, we send these grounds to the AO with the direction to decide these grounds after affording a reasonable opportunity of being heard to the assessee."

17. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2011-12 is respectfully followed, accordingly, ground raised by the assessee is allowed for statistical purpose.

ITA No. 3583/MUM/2018 (A.Y. 2014-15) – REVENUE APPEAL

18. Revenue has raised following grounds in its appeal: -

"1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in appreciating the findings of the AO that some of the most important criteria for claiming deduction was not satisfied. It is ascertained that during the same period power distribution companies purchased 14407 Million units of power from various power generation companies in Gujarat at an average rate of Rs.4.22 per unit. Whereas, the assessee prepared its standalone accounts for its power plants assuming the average rate of selling price at Rs.7.11 per unit.

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in accepting the rate of charged by the power generation to the power distribution company have to be market value for the purpose of determining fair prize inter unit transfer of power under clause (iii) of explanation to sec. 80IA(8).

3. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in considering that the stand of the Revenue is vindicated by Landmark decision of the Hon'ble Kolkata High Court in the case of CIT vs. ITC Limited (2015)64 taxmann.com 214 (Calcutta)".

4. "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition on account of disallowance~ of weighted deduction u/s. 35(2AB) amounting to Rs.13,97,23,024/-, ignoring that the assessee has failed to produce the copies of agreement entered with the prescribed authority and the report in Form 3CL was also incomplete."

5. "On the facts and in the circumstances of the case and in law, the Ld-CIT(A) erred in deleting the addition made u/s 14A of the Act r.w.r. 8D of the I T Rules by merely relying on the decisions in the case of Reliance Utilities Ltd. vs. CIT [313 ITR 340 (Bom)], ignoring the facts stated in the assessment order."

6. "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the depreciation in respect of unrealized Foreign Exchange Loss of earlier years, ignoring that as the forex loss was unrealized the upward adjustment made by the assessee company to the block of plant and machinery was not allowable as per the provisions of Section 43A of the Act.

7. "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the additional depreciation u/s 32(1)(iia) of Rs.11,49,18,592/-, ignoring that section 32(1)\iia) lays down that the benefit of additional depreciation shall be given only on the assets in the year of purchase only and not in the next financial year.

8. "The appellant prays that the order of the CIT(A), Mumbai on the above directions be set-aside and that of the assessing officer be restored."

9. "The appellant craves leave to amend or alter any of the aforesaid grounds or add a new ground of appeal, which may be necessary at any time before or at the time of hearing of appeal."

19. With regard to Ground Nos. 1 to 3 which are in respect of deduction u/s. 80-IA of the Act, this issue is similar to the grounds of appeal raised by the assessee in ITA.No. 3695/Mum/2018 and the decision taken therein shall

apply mutatis-mutandis. Accordingly, we remit the issue back to the file of the Assessing Officer. We order accordingly.

20. With regard to Ground No. 4 which is in respect of deduction u/s. 35(2AB) of the Act, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case for the A.Y. 2011-12 in ITA.No. 4943/MUM/2017 dated 31.07.2020 (Copy of the order is placed on record) and for the A.Y. 2012-13 and 2013-14, and submitted that the Tribunal has decided the issue in favour of the assessee and Ld. Counsel for the assessee requested the same may be adopted for the appeal under consideration.

21. Ld. DR has fairly accepted the submissions of the Ld.AR.

22. Considered the submissions and material placed on record, we observe from the record that identical issue is decided for the A.Y. 2011-12. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4943/Mum/2017 dated 31.07.2020 held as under: -

> *"7. Vide Ground No. 2, the revenue has challenged the action of the Ld. CIT (A) in deleting the addition on account of disallowance of weighted deduction u/s 35(2AB) amounting to Rs. 4,40,26,667/-. The Ld. DR submitted that since the assessee has failed to provide*

copies of agreement entered with the prescribed authority and since the report in Form 3CL was incomplete, the Ld. CIT (A) ought to have confirmed the addition made by the AO.

8. On the other hand, the Ld. counsel for the assessee submitted that this issue has been decided in assessee's favour by the Ld. CIT (A) in assessee's own case for the AY 2010-11. The Ld. counsel further submitted that since the ITAT has decided the identical issue in favour of the assessee in assessee's case pertaining to the AY 2008-09 and earlier assessment years, the Ld. CIT (A) has rightly decided the identical issue in favour of the assessee. The Ld. counsel further pointed out that the appellant had received the formal approval from DSIR in Form 3CL and 3CM. Hence, the assessee was entitled for deduction u/s 35(2AB). Accordingly, the Ld. counsel submitted that there is no merit in the appeal of the revenue.

9. We have perused the material on record in the light of the contentions of the parties. We notice that the Ld. CIT (A) has decided this issue by following the decision of his predecessor in assessee's own case for the AY 2010-11 and the decision of the coordinate Benches in assessee's appeals pertaining to the assessment years 2003-04 to 2007-08. The findings of the Ld. CIT (A) read as under:-

> *"Ground No. 3 is against the action of the Ld. AO in disallowing the weighted deduction u/s 35(2AB). The Ld. AR has submitted that the appellant has claimed 35(2AB) deduction for its in-house R&D facility. At the outset, it has been stated that the issue has been decided in appellant's favour by Ld. CIT (A) in appellant's own case for A.Y. 2010-11 (date of order 31.03.2016), AY 2009-10 (date of order 17.08.2014) and AY 2008-09 (date of order 17.01.2014). Further, the order of the Ld. CIT (A) for AY 2008-09 has also been confirmed by the Hon'ble Income Tax Tribunal in the appeal made by the Ld. AO in the appellant's own case. Further, the Hon'ble ITAT has for A.Y. 2003-04, A.Y. 2004-05, A.Y. 2005-06 and AY 2007-08 decided the ground in favour of the Appellant. There being no change in the facts and circumstances, respectfully following the decision of the then CIT (A), Mumbai where he following the decision in appellant's own case for A.Y. 2010-11, Appellant is eligible for deduction u/s 35(2AB). Thus, Ground No. 3 is allowed."*

10. Since, the decision of the Ld. CIT (A) is in accordance with the decisions of the coordinate Benches rendered in the assessee's own case for the AYs 2003-04 to 2007-08 and since the revenue has

not pointed out any change of facts and circumstances in the present case, we do not find any reason to interfere with the findings of the Ld. CIT (A). We therefore, affirm the findings of the Ld. CIT (A) and dismiss this ground of appeal of the revenue."

Similarly, for the A.Y. 2012-13 and 2013-14, the Tribunal has upheld the order of the Ld.CIT(A) and dismissed the ground raised by the revenue.

23. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2011-12 is respectfully followed, accordingly, ground raised by the revenue is dismissed.

24. With regard to Ground No. 5 which in respect of disallowance u/s. 14A of the Act, this issue is similar to Ground No. 1 of grounds of appeal raised by the assessee in ITA.No. 3695/Mum/2018 and the decision taken therein shall apply mutatis-mutandis. Accordingly, we dismiss the ground raised by the revenue.

25. With regard to Ground No. 6 which is in respect of depreciation of foreign exchange loss disallowed in earlier year, Ld. Counsel for the assessee submitted that no factual inaccuracy or confusion is there in the order of the authorities below. The assessee is granted depreciation allowance on the

opening written down value (WDV) arising out of the foreign exchange difference of loans actually repaid. The depreciation allowance has been granted by the Assessing Officer himself in earlier Assessment Years. Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case for the A.Y. 2011-12 in ITA.No. 4943/MUM/2017 dated 31.07.2020 (Copy of the order is placed on record) and for the A.Y. 2012-13 and 2013-14, and submitted that the Tribunal has decided the issue in favour of the assessee and Ld. Counsel for the assessee requested the same may be adopted for the appeal under consideration.

26. Ld. DR has fairly accepted the submissions of the Ld.AR.

27. Considered the submissions and material placed on record, we observe from the record that identical issue is decided for the A.Y. 2011-12. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4943/Mum/2017 dated 31.07.2020 held as under: -

> *"Vide Ground No. 4, the revenue has challenged the action of the Ld. CIT (A) in deleting the addition on account of disallowance of depreciation in respect of foreign exchange loss on earlier year amounting to Rs. 47,78,382/-. The Ld. DR submitted before us that since the forex loss was unrealized, the upward adjustment made by*

the assessee company to the block of plant and machinery was not allowable in terms of section 43A, the Ld. CIT (A) has wrongly allowed the depreciation.

15. On the other hand, the Ld. counsel for the assessee submitted before us that the AO has himself allowed the amount in depreciation on realized portion of foreign exchange losses in the AY 2009-10 and 2010-11. Since, the AO has allowed the same by in the AY 2009-10 and 2010-11, the Ld. CIT (A) has rightly allowed the depreciation in the assessment year under consideration. The Ld. counsel accordingly submitted that there is no infirmity in the findings of the Ld. CIT (A).

18. We have heard the rival submissions and perused the material on record. As pointed out by the Ld. counsel for the assessee, the Ld. CIT (A) has decided this issue holding that since the depreciation was allowed in the earlier year in assessee's case, the assessee is entitled for the depreciation in the assessment year under consideration. The findings of the Ld. CIT (A) read as under:-

> *"Ground No. 7 is against the disallowance of depreciation on unrealized forex loss of earlier years. The Ld. AR has submitted that Ld. AO has himself allowed the amount of depreciation on realized portion of foreign exchange losses of Rs. 4,40,91,189/- incurred in AY 2009-10. The Ld. AO for the earlier AY 2009-10 and AY 2010-11 has allowed depreciation of Rs. 66,13,678/- and Rs. 56,21,627/- respectively, but denied the depreciation on the same amount in AY 2011-12. On-going through the facts of the case and AO's order for AY 2009-10 and AY 2010-11, I find merits in the claim of the appellant that the depreciation on foreign exchange losses incurred in AY 2009-10 which was allowed in AY 2009-10 and AY 2010-11 ought to be allowed in AY 2011-12 as well. Further if once the asset enters the block of asset and forms part of the opening WDV the Assessing Officer is ought to allow the depreciation. If the depreciation is allowed in the earlier year in case of the Appellant itself then if the facts*

remain the same, then the depreciation for the current year ought to be allowed. Accordingly, the said ground is allowed."

17. Since, the AO has allowed the said depreciation in the assessment years 2009-10 and 2010-11 amounting to Rs.66,13,678/- and Rs. 56,21,627/- respectively, there was no reason for the AO to deny the same in the assessment year under consideration. Moreover, the Ld. DR did not point out any change of circumstances in the assessment year under consideration. Under these circumstances, we find merit in the contention of the Ld. counsel for the assessee. Accordingly, we uphold the findings of the Ld. CIT (A) and dismiss this ground of appeal of the revenue."

Similarly, for the A.Y. 2012-13 and 2013-14, the Tribunal has upheld the order of the Ld.CIT(A) and dismissed the ground raised by the revenue.

28. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2011-12 is respectfully followed, accordingly, ground raised by the revenue is dismissed.

29. With regard to Ground No. 7 which is in respect of Additional depreciation u/s. 32(1)(iia) of the Act, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case for the A.Y. 2011-12 in ITA.No. 5077/MUM/2017 dated 31.07.2020 (Copy of the order is placed on record) and for the A.Y. 2012-13 and 2013-14, and submitted that the Tribunal has

decided the issue in favour of the assessee and Ld. Counsel for the assessee requested the same may be adopted for the appeal under consideration.

30. Ld. DR has fairly accepted the submissions of the Ld.AR.

31. Considered the submissions and material placed on record, we observe from the record that identical issue is decided for the A.Y. 2011-12. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 5077/Mum/2017 dated 31.07.2020 held as under: -

> *"10. Vide ground No. 4 the assessee has challenged the action of the Ld. CIT(A) in upholding the disallowance made by the AO on account of the balance 10% of additional depreciation u/s 32(1)(iia) in respect of assets capitalized in the AY 2010-11. The Ld. counsel submitted before us that since this issue is covered in favour of the assessee in assessee's own cases for the assessment years 2009-10 and 2010-11, the impugned order passed by the Ld. CIT(A) is liable to be set aside.*
>
> *11. The Ld. DR on the other hand admitted that the Tribunal has decided this issue in favour of the assessee in assessee's appeal for the earlier assessment years, however, supported the orders passed by the Ld. CIT(A).*
>
> *We have perused the material on record including the decision of the coordinate Benches in assessee's appeals. We notice that the coordinate Benches of the Tribunal have already decided the identical issue in favour of the assessee in assessee's appeals for the earlier assessment years. The coordinate Bench of the Tribunal has decided the identical issue in assessee's appeal ITA No. 4398/Mum/2016 A.Y. 2010-11 by following the decision of the*

coordinate Bench in assessee's case for the AY 2009-10. The observations of the coordinate Bench is as under:-

> *"10. The Ld. Counsel for the assessee, at the outset submits that this issue is decided in favour of the assessee by the Tribunal for the Assessment year 2009-10. It is submitted that the Assessing Officer and the Ld. CIT (A) followed the findings given for the Assessment year 2009-10. We have perused the orders of the Tribunal for the Assessment year 2009-10 and find that the claim of the assessee has been accepted, following the judgment of the Hon'ble Karnataka High Court in the case of Rittal India (P.) Ltd. [380 ITR 428]. Respectfully following the same, we direct the Assessing Officer to allow the additional depreciation u/s 32(1)(iia) of the Act."*
>
> *12. Since, the coordinate Bench has decided the identical issue in favour of the assessee in assessee's own cases, we respectfully following the decision of the coordinate Bench, set aside the findings of the Ld. CIT (A) and allow this ground of appeal of the assessee. Accordingly, we direct the AO to allow the additional depreciation claimed by the assessee under section 32(1) (iia) of the Act."*

Similarly, for the A.Y. 2012-13 and 2013-14, the Tribunal directed the Assessing Officer to allow the additional depreciation claimed by the assessee u/s. 32(1)(iia) of the Act.

32. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2011-12 is respectfully followed, accordingly, ground raised by the revenue is dismissed. Since, we dismissed the revenue appeal, the cross objection filed by the assessee also dismissed.

33. It is observed by us that decision relied on by the Ld.DR in the case of Everest Industries Ltd., [90 taxmann.com 330] is distinguishable to the facts of the instant case and cannot be applied.

34. In the result, appeal filed by the assesse is allowed for statistical purpose and appeal filed by the revenue is partly allowed for statistical purpose.

Order pronounced in the open court on 30.03.2022.

Sd/-	Sd/-
(AMARJIT SINGH)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai / Dated /03/2022
Giridhar, Sr.PS

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum