

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH  
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.4256/Mum/2016  
(Assessment Year :2011-12)**

DCIT, Cir, 6(1)(1) R.No.502, 5 <sup>th</sup> Floor Aayakar Bhavan, M.K.Road, Mumbai – 20	Vs.	M/s. Aditya Birla Money Mart Limited One Indiabulls Centre Tower 1, 14 <sup>th</sup> Floor, 841, Jupiter Mill Compound S.B. Marg, Elphinstone Road Mumbai – 400 013
<b>PAN/GIR No.AAACB8843M</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**CO No.12/Mum/2018  
(Arising out of ITA No.4256/Mum/2016)  
(Assessment Year :2011-12)**

M/s. Aditya Birla Money Mart Limited One Indiabulls Centre Tower 1, 14 <sup>th</sup> Floor, 841, Jupiter Mill Compound S.B. Marg, Elphinstone Road Mumbai – 400 013	Vs.	DCIT, Cir, 6(1)(1) R.No.502, 5 <sup>th</sup> Floor Aayakar Bhavan, M.K.Road, Mumbai – 20
<b>PAN/GIR No.AAACB8843M</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Yogesh Thar & Ms. Ikshu Shah
Revenue by	Ms. Shailaja Rai
<b>Date of Hearing</b>	<b>28/06/2022</b>
<b>Date of Pronouncement</b>	<b>19/09/2022</b>

## **आदेश / ORDER**

### **PER M. BALAGANESH (A.M):**

This appeal in ITA No.4256/Mum/2016 & CO No.12/Mum/2018 for A.Y.2011-12 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-16, Mumbai in appeal No.CIT(A)-16/IT-136/DCIT 8(1)/2014-15 dated 30/03/2016 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 26/03/2014 by the Id. Dy. Commissioner of Income Tax-8(1), Mumbai (hereinafter referred to as Id. AO).

Identical issues are involved in both these appeals, hence, they are taken up together and disposed of by this common order.

Let us take up the Revenue appeal first.

2. The first issue raised by the Revenue is challenging the action of the Id. CIT(A) in allowing depreciation on intangible assets.

2.1. We have heard rival submissions and perused the materials available on record. The assessee is engaged in the business of marketing and distribution of financial products such as mutual fund units, fixed deposits, bonds, initial public offers, real estate broking and deriving management fees. The assessee also offers services such as investment, planning and research. The issue in dispute is a recurring issue coming to the assessee from A.Y.1999-2000 onwards. We find that the same is covered in favour of the assessee by the order of this Tribunal in ITA No.5874/Mum/2009 for A.Y.1999-2000 dated 25/09/2018 wherein by

placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Smifs Securities Ltd., reported in 348 ITR 320, this Tribunal had already granted depreciation on the intangible assets to the assessee. Similar depreciation was allowed to the assessee upto A.Y.2010-11. We find that the Id. CIT(A) after narrating the entire facts from para 6.2.1. to 6.2.7 of his order had placed reliance on the orders passed by his predecessor for A.Yrs. 2003-04 to 2010-11 and had granted relief to the assessee. The Id. AR before us placed on record the consolidated Tribunal order passed for A.Yrs. 1999-00 to 2010-11 in the case of the assessee on 25/09/2018 wherein this issue is covered in favour of the assessee. Respectfully following the said Tribunal order, the ground No.1 raised by the Revenue is dismissed.

3. The ground No.2 & 3 raised by the Revenue are challenging the action of the Id. CIT(A) in deleting the disallowance of assessee's claim of exceptional losses on account of certain trades of Rs.95,68,91,785/-.

3.1. The brief facts of this case are that the assessee company was acting as authorised person and has entered into business partner agreement with ABML on 23/08/2010 which interalia required the assessee bank to make customers or essential customers aware of the products and the services of ABML from time to time and sharing details of all such customers who have evinced interest in availing such products and services. Under the agreement, the assessee company was entitled to a share of 70% of the brokerage revenue earned by ABML from the customers referred by the assessee. For carrying out such business, the assessee company was appointed as authorised person of ABML in terms of SEBI Circular No.MISR/DR1/CIR-16/09 dated 06/11/2009. Subsequently, and approval from National Stock Exchange of India Ltd.,

was obtained on 20/08/2010 and later from BSE and MCX-SX. Accordingly, the business partner agreement was entered with ABML by the assessee on 23/08/2010. The assessee contended that as part of the business agreement, it had referred its existing customers as clients for the options maxima scheme offered by ABML. It was contended by the assessee that these clients were continued to be serviced by the assessee as per their investment need and objectivity including advisory on various third party financial products and services on securities and securities related instruments etc.,

3.2. ABML introduced options maxima scheme and offered it to various customers (i.e. its own clients as well as the clients referred by assessee company). In September 2010, the client's position in options maxima scheme offered by ABML showed a high amount of mark to market losses for the following principal reasons:-

- Continuous rise in NIFTY for 10 trading days;
- Increase of margin requirements by NSE, due to the upward trend in the index;
- Inability to roll over positions due to high Span margins imposed by NSE;
- Inability to reduce positions due to high mark to market losses;
- High volatility;
- Low liquidity, as Aditya Birla Money held more than 50% of the open interest in certain strikes.

3.3. Risk disclosure document was signed between clients and ABML and assessee is not at all involved in this. As per the risk disclosure document, any loss that occurs to the client under the options maxima scheme offered by ABML would have to be borne by the clients. In the

instant case, the loss incurred by clients under the options maxima scheme offered by ABML has been absorbed by the assessee company which is not at all a party to the agreement entered into between ABML and clients. The assessee contended that as per Clause 2.1A of business partner agreement dated 23/08/2010 entered into between ABML and assessee, it was agreed that assessee would absorb all the losses or defaults, amounts due and payable by clients serviced by it. Accordingly, the assessee company paid Rs.90 Crores to ABML on 29/09/2010, Rs.153,33,063/- on 30/06/2011, Rs.36,00,401/- on 20/07/2011 and balance amount was adjusted through income receivable from ABML. This payment made was on account of absorbing loss incurred by the clients under the options maxima scheme offered by ABML. This was claimed as exceptional loss by the assessee as a deduction in the return of income which was sought to be disallowed by the Id. AO as assessee had got no linkage with the said transaction except referring its customers to make investments in the options maxima scheme offered by ABML. For the referral made by the assessee, the assessee had earned brokerage income. The Id. AO observed that there is absolutely no risk that could be fastened on the assessee in this transaction as the risk disclosure document for making investment in options maxima scheme offered by ABML has been entered only between the clients and ABML. Hence, the clients were very much aware about the possible risk that would arise in this investment transaction of options maxima scheme offered by ABML. Hence, there is no point in assessee absorbing the said loss in the garb of maintaining the goodwill of the clients. If at all the clients are to be retained by the Aditya Birla group, then ABML should have come forward to absorb loss on behalf of the clients. The Id. AO observed that merely by way of business partner agreement dated 23/08/2010 entered into between ABML and assessee would not make the assessee legally liable

to take over the losses of some other company for a particular transaction to which it is not at all connected with. With these observations, the Id. AO disallowed the loss claimed by the assessee in the sum of Rs.95,68,91,785/- in the assessment.

3.4. The assessee before the Id. CIT(A) vehemently argued that the decision of absorbing losses incurred by the clients under the 'Options Maxima Scheme' offered by ABML was taken in order to keep the clients in good humour and also to maintain the goodwill of Aditya Birla group including the assessee company. In respect of collaterals that were obtained by ABML by way of margins, the losses incurred by the clients were pursuant to risk disclosure document entered into between clients and ABML, ABML chose not to recover the losses of clients by way of collaterals deposited with them and chose to refund the collaterals back to the client as there was no contractual obligation for them i.e. ABML to bear the loss of the clients. This was submitted in view of the fact that a separate business partner agreement dated 23/08/2010 has already been entered into by ABML with assessee company wherein vide clause 2.1A, the losses incurred by the clients would have to be absorbed by assessee company. Accordingly, the decision to refund the collaterals back to the clients by ABML and decision to bear the loss of the clients by the assessee company was taken as a measure of commercial expediency. On the ground of commercial expediency, the assessee relied on various decisions of the Hon'ble High Courts and Hon'ble Supreme Court before the Id. CIT(A). Accordingly, it was argued that if the assessee which carries on business finds that it is commercially expedient to incur certain expenditure directly or indirectly, it would be open to such an assessee to do so, notwithstanding the fact that a formal deed does not warrant the incurring of such expenditure. Heavy reliance was placed on Clause 2.1A

of the business partner agreement dated 23/08/2010 entered into between ABML and assessee company by virtue of which the loss of clients under 'Options Maxima Scheme' offered by ABML was borne by the assessee company. It was also pointed that the entire losses incurred by the clients were not absorbed by assessee company. Instead the losses incurred by those clients which were referred by assessee company were alone absorbed by the assessee company and in respect of other clients i.e. clients belonging to ABML, the losses incurred thereon were absorbed by ABML. It was submitted that the clients were familiar with the Relationship Managers of the assessee company and not with ABML. Considering the outcome of the 'Options Maxima Scheme', the clients would not have conducted further transactions with their Relationship Manager which would in turn affect the business of the assessee company. Hence, the assessee was compelled to bear the losses of the clients in order to maintain its goodwill and reputation with the clients. Accordingly, the conscious decision was taken in the Board Meeting dated 27/10/2010 and 24/01/2011 wherein the decision to absorb losses of the clients by the assessee company and provision for such loss to be made in the books of the assessee company, were taken.

3.5. The Id. CIT(A) in para 6.3.25 had categorically stated that the business partner agreement dated 23/08/2010 entered into between ABML and assessee is more of an agency agreement. The Id. CIT(A) on placing reliance on the business partner agreement dated 23/08/2010 entered into between ABML and assessee especially Clause 2.1A thereon, observed that assessee would be contractually liable for absorbing the losses incurred by the clients under 'Options Maxima Scheme' and therefore the said loss would become an allowable deduction in the hands of the assessee company as a measure of commercial expediency.

3.6. We find that the assessee is in the business of distribution of financial products and services and was also providing referral arrangement to ABML. It is a fact that the assessee had received 70% of the brokerage revenue earned by ABML from the customers referred by it. This is clearly a referral fee earned by the assessee for sourcing its clients to ABML for making investment in the various products and Options Maxima Scheme of ABML.

3.7. It is not in dispute that ABML had deployed the Options Maxima Scheme developed by it for trading in the accounts of the clients introduced by the assessee and also for its own clients. Since the Options Maxima Scheme deployed by the main broker i.e ABML failed, the clients had suffered heavy losses. We find that the Id. AO had observed that the broker is supposed to collect up front margin and sufficient collateral securities and then only allow clients to trade in derivative segment. Accordingly, the Id. AO observed that in the brochure of Options Maxima Scheme brought in by ABML, clients have been offered two options of paying margins i.e Base Capital Securities of Rs 3 lakhs or Cash Margin of Rs 2 lakhs. Hence as per the brochure, ABML is supposed to collect adequate margins from its clients before allowing them to trade under Options Maxima Scheme. It is not in dispute that ABML had collected collateral securities in the form of shares from its clients. In the instant case, soon after the losses were incurred by the clients of ABML, it chose to refund the shares to the clients and passed on the losses in the clients accounts to the assessee before us. It is not in dispute that the Options Maxima Scheme developed by ABML had failed miserably and all its clients who had made investment thereon, had incurred huge losses. In our considered opinion, the clients had clearly understood the terms and

conditions of the risk disclosure document signed with ABML while making the investment in Options Maxima Scheme. Hence any loss that had occurred to the clients in the Options Maxima Scheme would only be the loss of the clients. In case if ABML wants to indemnify those losses to its clients, then it is for ABML to bear the said loss either after recovering the value of collateral securities or without enforcing the securities, as per its desire. But in no case, this loss could be shifted on the assessee herein, which has got absolutely no role to play except introducing some of its clients to ABML to make investment in Options Maxima Scheme. Even though the clients of assessee were introduced to ABML for making investment in Options Maxima Scheme developed by ABML, the risk disclosure document has been signed with the concerned client by ABML wherein the risk associated with the capital market is clearly informed to the clients. At this juncture, it would be relevant to address the relevant clause number 2.1A of the Business Partner Agreement dated 23.08.2010 which has been heavily relied upon by the Id. AR to buttress his argument that the loss incurred by clients is to be absorbed by the assessee. For the sake of convenience, the said clause 2.1A of the Business Partner Agreement dated 23.08.2010 is reproduced below:-

*"The Business Partner shall be solely liable for all (i) losses , defaults, amounts due and payable by clients serviced by the Business Partner , (ii) penalties levied on ABML as a result of any actions or omissions by the clients serviced by the Business Partner".*

3.8. The said clause specifies that assessee shall be solely liable for all losses, defaults, amounts due and payable by clients serviced by it. In this regard, it would be pertinent to understand the relationship between

ABML and assessee. The assessee had merely sourced its clients to ABML and it is ABML who had marketed its Options Maxima Scheme product before its clients and the clients of ABML had decided to make investment in the said Options Maxima Scheme. Hence the relationship between assessee and ABML would have to be construed only as Agent-Principal relationship, wherein ABML being Principal and assessee being the agent of ABML, which fact is also accepted by the Id. CIT(A) in para 6.3.25 of his order and it is not controverted by the Id. AR before us by cogent evidence. The work of the agent assessee is only to source the clients to ABML. Thereafter the transaction is purely between ABML and the clients. In this regard, we find that the Id. AO had rightly observed that as per section 225 of the Indian Contract Act, 1873, the Principal must make compensation to his agent in respect of any injury caused to such agent by the Principal's neglect for want of skill. Here it is actually the reverse, wherein the Principal had shifted its loss to the agent. This fact is further fortified by the replies given by the 109 clients in response to notices issued u/s 133(6) of the Act by the Id. AO, wherein they had stated that ABML personnel had referred the Options Maxima Scheme to them. When this fact was confronted to the assessee during the assessment proceedings, the assessee had replied that the clients had erroneously mentioned ABML instead of ABMML (i.e the assessee herein). Hence in no way, the loss incurred by the clients of ABML in Options Maxima Scheme at the behest of ABML's neglect or for whatever reason, be shifted to the assessee herein, who has got absolutely no locus standi with the said transaction. First of all, there is no business conducted by the assessee herein as far as Options Maxima Scheme is concerned. The entire activities were carried out only by ABML with its clients as well as the clients sourced by the assessee. Hence we hold that the reliance placed on Clause 2.1A of Business Partner Agreement dated 23.08.2010 is

thoroughly misplaced and devoid of merits and totally against human probabilities. It is trite law that the substance of the transaction is to be recognized than its form. Hence the reliance placed on Clause 2.1A of the Business Partner Agreement entered into between ABML and assessee would not come to the rescue of the assessee.

3.9. The Id.AR before us vehemently argued that the clients sourced by assessee to ABML were part of large High Net Worth Individual (HNI) customer base and that their continued association with the assessee would be critical for the business growth of the assessee including future revenue generation. He argued that considering the long term business relationship the assessee had with these clients and as part of the comprehensive investment advisory proposition and an overall strategy to retain these clients since critical for the future business potential as well as goodwill, a decision was taken to take over the debit balances of these clients and transfer the amount to ABML directly. The payment so made was claimed as loss by the assessee herein. We are unable to persuade ourselves to accept to this argument of the Id. AR in view of the fact that the clients had incurred losses due to neglect of ABML. Hence it is the goodwill of ABML that would be ruined and not the assessee. Hence there is no question of retention of goodwill for which this loss was absorbed by the assessee. Even assuming if the goodwill of the assessee is to be retained by keeping its clients in good humor by absorbing their losses, the assessee should have recovered the said loss from ABML as admittedly the loss had been incurred only due to neglect of ABML and not the assessee herein. In any event, there is absolutely no justification for the assessee to claim the said loss in its books as deduction. Hence we deem it fit and appropriate to address the entire issue on the first principle basis without placing reliance on any decisions. The ratio laid

down in each of the decision is to be seen from the facts prevailing in those cases and could be made applicable only for those facts. Hence the various decisions relied upon by the Id. AR on the aspect of commercial expediency principle and the loss being allowable as trading loss of the assessee either u/s 28 or u/s 37 of the Act would not advance the case of the assessee.

3.10. The Id. AR before us also submitted that the losses incurred by clients of ABML in Options Maxima Scheme were not due to any neglect of ABML and it was caused due to various other factors which were outside the control of ABML. We find that ABML is only the main broker who had developed Options Maxima Scheme and offered it to its clients pursuant to Risk Disclosure Document signed by the clients in favour of ABML. Actually if there is any loss incurred on the said transaction, the same shall have to be borne only by the clients. Even if the clients losses are to be indemnified, it is for ABML to absorb those losses in its books. Merely because those clients had been sourced or referred by assessee to ABML, the losses of those clients cannot be shifted by ABML to assessee by placing reliance on Clause 2.1A of Business Partner Agreement dated 23.08.2010.

3.11. In view of the aforesaid observations, we hold that the loss of clients incurred under Options Maxima Scheme claimed by the assessee in its return is not allowable and accordingly we reverse the findings of the Id. CIT(A) in this regard and uphold the findings of the Id. AO on the impugned issue. Accordingly, the Ground Nos. 2 & 3 raised by the revenue are allowed.

4. The ground No.4 raised by the Revenue is challenging the action of the Id. CIT(A) in deleting the disallowance made on account of assessee's claim of Rs.1,63,27,011/- on account of loss arising out of irregularities committed by certain employees.

4.1. We have heard the rival submissions and perused the materials available on record. The assessee had claimed loss of Rs 1,63,27,011/- on account of embezzlement made by its branch employee as a loss incurred in the regular course of business. The Id. AO had disallowed the same on the ground that no details were furnished by the assessee during the course of assessment proceedings. Before the Id. CIT(A), the assessee pleaded that no details regarding this embezzlement were called for by the Id. AO and hence no details were filed. However, due disclosure of the said loss has been made in the accounts regarding the same and also in the notes to computation of income filed during the course of assessment proceedings. We find that the assessee had duly furnished the details of embezzlement loss before the Id. CIT(A) which is enclosed in page 145 of the paper book filed before us. The facts relating to this issue are narrated in the statement of facts filed by the assessee before the Id. CIT(A) which are reproduced hereunder for the sake of convenience :-

"i. The assessee had incurred the losses of Rs. 1,63,27,011/- on account of certain irregularities by a branch employee at of the assessee and thus ought to be allowed as a business loss/ expenditure under section 28/37 of the Act;

The AO however disallowed the aforesaid stating that that the assessee has not been able to submit details of embezzlement i.e,

nature, place and proceedings started against those employees. In this regard The assessee submits as under:

ii. During the year under consideration, the assessee has claimed losses of Rs. 1,63,27,011/-on account of certain irregularities by a branch employee u/s 37(1)/28 of the Income tax Act. The assessee had disclosed the details of such losses in the Notes to Computation of Income with a note that the "Assessee craves leave to submit the detail submission at the time of assessment proceedings."

iii. The learned AO did not ask any particular details of the said losses instead of clear disclosure of loss by the assessee in notes to computation of total income as well as in Balance Sheet.

iv. The background as mentioned in Ground above regarding the provision of the services to various clients by the assessee continues to hold good in respect of the ground under consideration. In continuance, an agreement was also entered into with ABML which mandated to source clients to ABML. In lieu of such service, the assessee earned margin of as high as 70% of the brokerage generated by such clients to ABML.

v. Certain employees of the company along with employee of ABML met certain clients and convinced them to enter into some hedged trading strategies which will give 1%-2% returns with no or minimal risk of capital erosion. In this connection, the assessee on being assured of high returns to the Clients had introduced 42 clients to ABML These clients were publishers, professionals, senior managers of corporate and such other professionals.

Subsequently, in the month of August 2010, some of the clients sourced by the assessee started complaining about the loss in their accounts due to some naked short selling of Bank Nifty & purchase of some stocks which was against the clients promise. On scrutiny, the assessee learnt and came to know the entire transaction and the involvement of branch employee in such irregularity and who were neither attending to calls of the Clients nor were meeting with them and thus it created suspicion in the assessee's head office at Mumbai. Further, with no loss of time, in the beginning of September 2010 the assessee decided to take some corrective measures realizing that the losses were in the manageable limits.

vi. However, the losses of the Clients with Open Positions piled up to Rs. 1.86 Crs. Pursuant to which, the clients were approached to absorb the losses, however, by such time the news spread through media & by the clients of option maxima that "Birla group had made good the client's losses." In this regard, some of the customer accepted the losses to the tune of 23 lacs, and signed the SOA with the commitment of reversal of brokerage & late payment charges by the assessee while others did not absorb the losses aggregating to Rs. 1.63 Cr (inclusive of brokerage + late payment charges). It was thus, to ensure continuity of business and to avoid any contagious effect to retain existing clients and ability to acquire new clients, the assessee decided to write off the entire amount of 1,63,27,011/ out of commercial expediency.

vii. The assessee thus states that the defalcation made by the branch employee is to be treated as a trading loss, which,

according to the assessee, arose in the course of carrying on the business. Accordingly when the employee of the assessee make defalcation after being entrusted with cash for trading on behalf of its client be allowed as a trading loss / expenditure us 28/37 of the Act.

4.2. We find that the details of embezzlement loss mentioned in page 145 of the paper book contains the name of the clients, their addresses and some amounts mentioned therein together with the PAN of the clients. But from the narration of above facts, it is not clear as to whether the losses had occurred due to embezzlement carried out by employees of assessee or employees of ABML. This matter requires factual verification which would decide the issue in dispute before us. The reliance placed on the decision of Hon'ble Apex Court in the case of *Badridas Daga vs CIT* reported in 34 ITR 10 (SC) would certainly come to the rescue of the assessee, if the employee of the assessee had embezzled . On the contrary, if the employee of ABML had done some mischief, then the said loss though borne by the assessee on behalf of the clients should have to be recovered from ABML by the assessee. Hence the allowability of loss could be decided on the facts being brought on record in this regard. Hence we deem it fit and appropriate, in the interest of justice and fairplay, to remand this issue to the file of Id. AO for deciding in accordance with law in the light of aforesaid directions. Accordingly, the Ground No. 4 raised by the revenue is allowed for statistical purposes.

5. The Ground No. 5 & 6 raised by the revenue is general in nature and does not require any specific adjudication.

6. In the result, appeal of the Revenue is partly allowed for statistical purposes.

**CO No.12/Mum/2018 (A.Y.2011-12) Assessee Cross Objection**

7. At the outset, we find that there is a delay of 16 days in filing of these cross objections by the assessee. The reasons stated by the assessee are convincing and hence, we are inclined to condone the delay of 16 days and admit the cross objections for adjudication.

8. The only issue to be decided in these cross objections of the assessee is regarding the disallowance of provision made for expenses amounting to Rs.59,815/- u/s.40(a)(ia) of the Act.

8.1. We have heard rival submissions and perused the materials available on record. We find that the Id. AO in para 3.1 of his order had noted that assessee had created provision for call centre expenses payable to M/s Tele Access e-Services Pvt. Ltd., amounting to Rs. 59,815/-. This expenditure provision in the opinion of the Id. AO was liable for deduction of tax at source @10% in terms of Section 194J of the Act. Since, tax deduction at source was not complied with by the assessee, the Id. AO proceeded to disallow the same u/s.40(a)(ia) of the Act. The assessee always pleaded that it had made provision only in respect of the amount for which invoices / debit notes / claims that were not received and provision was made on a best estimate basis. It was argued that merely because provision was made at the end of the year, the same does not automatically trigger the liability to deduct tax at source. It was further submitted that due tax deduction has been made at

the time of making payment of the aforesaid expenses and it was also pointed out that payment has been made after the due date of filing of return of income for A.Y.2011-12.

8.2. The Id. CIT(A) categorically observed that there is no dispute on the applicability of provisions of Section 194J of the Act in the present facts. He held that the TDS provisions would become applicable at the time of making provision or payment whichever is earlier. We find that the Id. AR placed reliance on the decision of this Tribunal dated 25/09/2018 vide para 32-37 thereon. But on perusal of the same, we find that the Tribunal had stated that the said expenses are cost to cost payments falling under the ambit of reimbursement. In that context, it was decided that TDS would not be applicable thereon. Whereas for the year under consideration, we find that assessee had never taken a plea that it is reimbursement of expenses. Even in the statement of facts filed before the Id. CIT(A), the assessee had only stated that these are provisions for expenses made on best estimate basis and tax would be deducted at the time of making actual payment thereon. Hence, we hold that reliance placed on the decision of this Tribunal in assessee's own case dated 25/09/2018 would not come to the rescue of the assessee. However, in the interest of justice, we hold that assessee would be liable for deduction of this expenditure in the year in which the tax deducted at source had been duly remitted to the account of the Central Government. Accordingly, the ground raised in the cross objection of the assessee is partly allowed.

**9. In the result, appeal of the Revenue is partly allowed for statistical purposes and Cross Objection of the assessee is partly allowed.**

Order pronounced on 19/09/2022 by way of proper mentioning in the notice board.

**Sd/-**  
**(VIKAS AWASTHY)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 19/09/2022  
KARUNA, *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,

(Sr. Private Secretary / Asstt. Registrar)  
ITAT, Mumbai