

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 580/MUM/2016
Assessment Year: 2009-10
&
ITA No. 2983/MUM/2015
Assessment Year: 2010-11
&
ITA No. 2984/MUM/2015
Assessment Year: 2011-12
&
ITA No. 5299/MUM/2018
Assessment Year: 2012-13
&
ITA No. 5300/MUM/2018
Assessment Year: 2013-14
&
ITA No. 1884/MUM/2020
Assessment Year: 2014-15**

DCIT-CC-8(3),
Room No. 656, 6th floor,
Aayakar Bhavan,
M.K. Road,
Mumbai-400020.

Appellant

Vs. M/s JSW Energy (Barmer)
Limited, (Formerly known
as M/s Raj Westpower Pvt.
Ltd.), Jindal Mansion, 5A,
Dr. G. Deshmukh Marg,
Mumbai-400026.

**PAN No. AAACR 8812 L
Respondent**

Revenue by : Mr. T. Shankar, CIT-DR &
Smt. Mahita Nair, DR
Assessee by : Mr. Rakesh Joshi, AR
Date of Hearing : 18/10/2022
Date of pronouncement : 30/12/2022



ORDER

PER OM PRAKASH KANT, AM

These appeals by the Revenue have been preferred against separate orders of even date, passed by the learned Commissioner of Income-tax (Appeals)-47, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2009-10 to assessment year 2014-15. In all these appeals common ground of 'expenditure capitalised' and 'depreciation' claimed there on, is involved, therefore, being connected grounds, all these appeals were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. Firstly, we take up the appeal for assessment year 2009-10. The Revenue filed revised Form No. 36 (i.e. the form prescribed for filing appeal) on 03/02/2016, modifying/ revising the original ground dated 17/10/2022 in view of change in name of the assessee company from M/s Rajwest Power Private Limited to M/s JSW Energy (Barmer) Ltd. The revised grounds are reproduced as under:

- 1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of Rs. 88,44,00,000/- on account of capitalization of expenses in the work in progress relying on the appeal orders of the assessee's own case for the A Y 2010-11 &*



2011-12 on similar issue without appreciating the fact that no work has been carried out at the site for Earth work, Excavation and Disposal of Earth for Raw Water Reservoir by M/s. Sunil Hi-Tech Engineers Ltd. and the decision of the Ld. CIT(A) orders in the assessee's own case for the AY 2010-11 & 2011-12 have not been accepted by the department and further appeal has been filed in the ITAT and the same is pending."

2. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of Rs.39.26,00,000/- on account of capitalization of expenses in the work in progress on account of the work done by MIs. sancia Infracprojects Ltd. Without appreciating the fact that M/s. sancia Infracprojects Ltd. had accepted during the course of its assessment proceedings that no work has been carried out by them at the Barmer site.*

3. We find that on behalf of the assessee, an application was filed on 26/04/2018 filing ground in support of the order of the Ld. CIT(A) under rule 27 of the ITAT rules, 1963. The ground raised in application under Rule 27 are reproduced as under :

"1). On the facts and circumstances of the case as well as in law, the Learned Assessing Officer has erred in initiating the proceedings us.153C of the Income Tax Act, 1961, without appreciating the fact that no satisfaction recorded before issuing notice us. 153C of the Income Tax Act, 1961, in both



the capacity as a Assessing Officer of "searched person" and the "other person".

3.1 However during the course of the hearing before us, the Ld. Counsel of the assessee did not press above ground and therefore same is dismissed as infructuous.

4. Briefly stated facts of the case that during the year under consideration, the assessee company was in the process of constructing a 'thermal power plant' of 1080 megawatt (MW) capacity (8x135 MW) at Village 'Bhadresh', District Barmer, Rajasthan. For the year under consideration, the assessee filed return of income on 28/09/2009 declaring income of ₹1,04,03,241/-being interest on fixed deposits.

4.1 Subsequently, a search and seizure action under section 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out on 16/03/2011 at the premises of the JSW group of cases, and books of accounts and other documents belonging to the assessee company were seized, therefore, consequent proceedings under section 153C of the Act were taken up by way of issue of appropriate notices. In response, the assessee filed return of income on 29/12/2012 reiterating the income of ₹1,04,03,241/- which was declared in regular return of income filed. Subsequently, statutory notices were issued and assessment proceedings were commenced. During assessment proceeding, the Assessing Officer noted that in view of incriminating material found during the course



of the search, the JSW group made a disclosure of ₹ 262 Crores, out of which an amount of ₹183,07,07,660/- was made by way of writing back off/reversal of capital work in progress in the books of accounts of the assessee. After considering submission of the assessee, the assessment under section 143(3) read with section 153C of the Act was completed on 28/03/2013 wherein the Assessing Officer disallowed capitalisation of expenses in respect of two parties namely M/s Sunil Hitech engineers Ltd (SHEL) and M/s Gremach Infrastructure Equipments and projects Ltd (subsequently known as M/s Sancia Global Info Projects Ltd or in short SGIPL). On further appeal by the assessee, the Ld. CIT(A) allowed the claim of capitalisation of the expenses by the assessee. Aggrieved with the finding of the Ld. CIT(A), the Revenue is in appeal before the Income-tax Appellate Tribunal (ITAT) by way of raising grounds as reproduced above.

5. The ground No. 1 of the appeal relates to deletion of disallowance of ₹ 88, 44, 00, 000/-made by the Assessing Officer for capitalisation of the expenses on Earth work, excavation and disposal of Earth for Raw water reservoir for Thermal Plant at Barmer (Rajasthan) shown to have been incurred through M/s SHEL during the year under consideration.

6. The brief facts qua the issue in dispute are that the assessee planned to meet water requirement of the thermal power plant at Barmer from the Rajasthan Canal (Now known as Indira Gandhi



Canal) through a 185 kms long dedicated pipeline. It is stated by the assessee that due to closure of release of water from the canal at the time of periodical maintenance, it was imperative for the project to have a buffer reservoir, which could restore water to meet planned requirement during any unforeseen circumstances. The assessee therefore planned to have a water reservoir having capacity of approximately 80 Lakhs cubic meters(m) having dimensions of (1300m x800m x8m). The assessee claimed that the contract for excavation and disposal of Earth for the Raw water reservoir was awarded to M/s SEW construction Ltd, Hyderabad, which was subsequently assigned to M/s SHEL at contract value of ₹ 216 crore, against which expenditure of ₹ 241, 81, 69, 768/-was found to be incurred as in the date of search/survey action i.e. 16/03/2011. During the course of assessment proceeding, from the ledger account of SHEL in the books of accounts of the assessee and the ledger account of the assessee in the books of account of SHEL, it was observed that SHEL raised an invoice dated 24/01/2011 for ₹ 108 crores, out of which ₹ 107 crore had been written back by the assessee. Besides this invoice the SHEL raised running bills of work done for the Barmer thermal project aggregating to ₹ 127, 40, 89, 361/-. Detailed running will along with invoice numbers for assessment years 2009-10 to assessment year 2011-12 have been reproduced by the Assessing Officer in para 5.1 of the impugned assessment order. The Assessing Officer



has further noted that in the books of SHEL ledger of the assessee was having total debit at ₹ 128, 91, 84, 138/- (from assessment year 2009 -10 to AY 2011-12) which was aggregate of running will amount of ₹127,40,89,361/-plus other expenses of ₹1,50,94,777-.

6.1 After referring to the amount of expenditure claimed by the assessee in relation to work assigned to SHEL, the Ld Assessing Officer referred to fact of inflation of expenses by SHEL, without incurring any actual expenditure. The Ld Assessing Officer referred to the statement dated 22/12/2009 recorded during survey action by the investigation wing of Income-tax department Mumbai, on one of the subcontractor of SHEL namely, Sh Kailash Sharma, director of M/s Four Pillars communication private limited , who stated that he had received payment from SHEL in respect of excavation work at Barmer, but neither his company or their subcontractors had done any such excavation work. He further deposed that payment was made by the SHEL to subcontractors without doing any work with the intention to get cash in return of payment made after deducting certain charges. Shri Kailash Sharma, admitted that ₹ 10.21 Crores received by his company for financial year 2008-09 and 2009-10 from SHEL for excavation work at Barmer, was returned back in cash to them either directly or through subcontractors without carrying out any work. She Kailash Sharma also provided name of the person Sh Amit Agrawal, service tax consultant, to whom, service charges at the rate of 0.1% of the total



bill was paid for financial liasioning for Barmer project for SHEL. Relevant part of the statement has been reproduced by the Assessing Officer on page 6 to 9 of the assessment order. In view of above observations, the Assessing Officer issued show cause to the assessee as why the amount of capital work in progress debited for the year under consideration in relation to work given to SHEL should be reduced from the total capital work in progress on Barmer Project.

6.2 The assessee refuted the allegations of the Assessing Officer that no work was done by SHEL and submitted two Google Earth images of the site pertaining to year 2006 and 2009 and stated that those images showed excavation for water reservoir at the site. It was submitted that the plant was fully functional and the water reservoir at the site could also be physically verified. It was submitted that no separate expenses have been claimed by the assessee in respect of the work done by SHEL on the Raw reservoir under any other head of account. The assessee sought details of the investigation by the Income- tax department in relation to SHEL and its subcontractors and requested for cross examination of SHEL.

7. The Assessing Officer issued summon u/s 131 of the Act to SHEL asking to arrange appearance of their responsible officer for cross-examination by the assessee. In response Sh Radheshyam S Tiwari, vice president of SHEL attended on 21/03/2013 and stated



that work had been carried out by SHEL in respect of Earthwork excavation and disposal of raw water reservoir for Barmer plant. He further admitted that the SHEL was not able to substantiate the expenditure in relation to some subcontractors therefore appropriate disclosure in this regard had been made in the hands of SHEL and taxes were also paid. He further stated that SHEL performed half of the excavation work for water Reservoir and dumping of approximately 38,00,000 Cubic meter (m³) of soils and rocks. He submitted that due to certain disputes, the assessee M/s Rajwest power private limited served termination notice against which, SHEL raised performance claim of ₹ 108 Crores. This claim was initially settled in March 2011 for ₹ one crore and finally settled at ₹ 3.72 crores in January 2012. He submitted that details regarding completion of the work had been submitted during the course of their assessment proceeding before their Assessing Officer. He further submitted that he did not have knowledge about exact site location of the execution of the contract. On cross-examination by the authorised representative of the assessee company, he submitted that the assessee M/s Rajwest power private limited had nothing to do with the subcontractor who had supposedly not rendered any service to SHEL.

7.1 The ld. Assessing Officer arrived at following conclusions :

- (i) In view of cross-examination of Sh. Tiwari, the AO opined that he was not having knowledge of the actual work



carried out at Barmer site, not aware of exact location of the excavation site and not aware of distance between the Reservoir site and Project site.

- (ii) The original contract which was awarded to SEW construction Ltd was for Earth work, excavation and disposal of Earth for RAW water reservoir for the project whereas the assignment to SHEL was only for excavation and disposal of earth for raw water reservoir and this variance did not find any mention in the deal of assignment.
- (iii) The SHEL, in assessments for assessment year 2009-10 and 2010-11 has disclosed amount of Rs. 40,00,00,000/- with regard to bogus expenditure in connection with Barmer project of the assessee in Rajasthan
- (iv) From the Google Earth images, it was observed that Reservoir site was adjacent to the project site, whereas in the earlier part of the submission by the assessee it was claimed that reservoir was 185 km away from the site.

7.2 In view of conclusions the Ld Assessing Officer held that aggregate expenditure of ₹128, 91, 84, 138/- claimed to have been incurred by SHEL up to 31/03/2011 was fictitious because no work was executed against the payments made by the assessee to SHEL, therefore payments were not considered for the business and accordingly held as disallowable. The amount of sum capitalised of



₹ 88, 44, 00, 000/-up to 31/03/2009 in connection with excavation and disposal of Earth for water reservoir was accordingly reduced from the capital work in progress and disallowed for capitalisation for the year under consideration.

7.3 On further appeal, the Ld. CIT(A) following the finding of his predecessor, while adjudicating appeals for assessment year 2010-11 and 2011-12, rejected the finding of the Assessing Officer for disallowance of capitalisation of expenses of ₹ 88, 44, 00, 000/-in relation to SHEL.The Ld. CIT(A) rejected the contention of the Assessing Officer of non-genuineness of the expenses in absence of any credible evidences, observing as under:

“5.1.1 On perusal of appeal orders for A.Ys.2010-11 and 2011-12, I find that the same issue came up for adjudication before my id. Predecessor and was duly allowed vide orders no.CIT(A)-36/AP.462/14-15 and CIT(A)-37/AP. 463/14-15 dated 10.03.2015. The relevant portion of the order for AY. 2010-11 is as follows:

6.7 I have examined the facts of the case, statement of witness and other facts marshalled in the assessment order as well as the submission of appellant before AO (as reproduced in assessment order) and also that made during appellate proceedings. It is noticed from para 3 of the assessment order that the AC b-gan with allegation of inflation of invoices by said contractor Sunit High Tech Engineers Ltd. (SHES) on the basis of statement of director of



one of the sub-contractors of SHES during search action on the contractor and then concluded that no work has been executed by the said contractor at Barmer Power Plant Site of the appellant against invoices amounting to 128.91 Crores without adducing any further evidence. The relevant extract of statement of Shri Kailash Sharma, Managing Director of Four Pillars Communications Pt Limited, the sub-contractor of SHEL recorded on 22.12.2009 during the course of search on SHEL has been reproduced in para 3.1 of the assessment order. In response to Q 18 and 19, the deponent had stated that though they had received payment from SHEL in respect of excavation work at Barmer, neither them nor their further sub-contractors had done any such excavation work. Further the deponent admitted that payment was made by SHEL to the sub-contractor without doing any work with intention to get cash in return of payment made. However, in the entire statement, no reference of appellant is found to indicate that the bogus payments to said sub-contractor was made at instance of appellant or appellant was dealing with the sub-contractor.

6.8 The statement dated 21.03.2013 of Shri Redheysyam Tiwari, senior executive of SHEL, recorded by AC u/s 131 of the Act spells out that the work has been carried out by SHEL in respect of earth work excavation and disposai of Raw Water Reservoir for the thermal power plant at Bhadresh, Barmer He admitted that during the search action on SHEL some of their sup-contractors were found to be non-genuine, therefore appropriate disclosure in this regard has been made



in the hands of SHEL and taxes have been paid. But he also submitted that excavation work at power plant site of appellant for raw water reservoir was indeed done by SHEL by deploying its own man and machinery and other subcontractors and the invoices had been raised as per work done under terms of contract. During cross examination by appellant, he admitted the contract was performed by SHEL and appellant had nothing to do with bogus sub-contractors of SHEL. The AQ has disregarded the testimony of Mr Tiwari solely on the ground that he did not have knowledge about exact site location of the execution of contract, despite him stating that he never visited the site and the distance between plant and reservoir be known to the technical/ execution persons. I find that the testimony of Mr Tiwari is important and does not deserve such summary dismissal purely on the ground that he was examined on oath by AC as witness of revenue to cut the truth of transaction against demand made by appellant during assessment proceedings for cross examination of the person who had admitted bogus nature of transaction between appellant and SHEL as alleged. In the entire statement of Shri Tiwari, there is no admission in this regard. On the contrary, he categorically states that the contract work was executed by SHEL by employing its own resources as well as other sub-contractors who were bogus. He also states that SHEL had undertaken excavation of half of the reservoir by excavation, transporting and dumping approx. quantity of 38 Lakh cubic meter for all kinds of soils and rocks for total RA bills of 128.91 Crores till 31.3.2011 before



termination of contract, which matches with claim of appellants.

6.9 As seen as coming out from the statements of sub-contractor and Senior Executive of SHEL, the appellant was not a party to the boous transaction between SHEL and some of its sub-contractors for which SHEL had already admitted a tax liability. There is no substance in minor discrepancies noticed by AO in the original contract document and assignment document regarding contract for Raw Water Reservoir and Project in so far as both documents talk about scope of work as Earthwork, Excavation and Disposal of Earth to the extent of so Lakh cum for a total contract price of 216 Crores. The core issue is whether any actual work was executed on huge raw water reservoir of dimension: 1300m X 800m. X 5m as claimed by appellant at its Barmer Power Plant. There is no dispute that the contract was awarded to Ms SEW for this reservoir under an International Competitive Bidding Process supervised by independent agencies and then the contract was assigned to SHEL on same terms. The genuineness of award of contract, rates and the process has not been disputed. The AO has also referred to any document impounded during the survey action which is proved to be fabricated or bogus or whose genuineness is in doubt. The sole ground on which AO has based his conclusion regarding no work being executed is his finding that the alleged contract work on reservoir has been claimed to be executed at a site 185 Kms away from power plant whereas all the evidences namely plant layout design, Google Earth Images etc indicate



that reservoir site is adjacent to project site. The observations of AO are found to be sort of distortion of facts and devoid of merit. I do not find any document, statement or submission which claims that the reservoir site was 185 Kms away from project site. The submission of appellant made during assessment proceedings and reproduced in assessment order vide para 3.3 states as follows:

"It is submitted that the thermal power project at Barmer is in desert area and one of the main inputs the water is drawn from Rajasthan Canal through a 185 kms long dedicated pipe line. As there is no local water source and the Canal goes into periodical maintenance, it was imperative for the project to have a buffer reservoir which could store water to meet plant requirement during such unforeseen circumstances. Please find attached a copy of plant layout and engineering drawing wherein the location and size of huge raw water reservoirs (1300 X 800 X 8 M) can be easily located. Therefore, contract was awarded to excavate approx 80 Lakh Cubic Meters of all types of soil including grading, shorting, compaction of pits and approaches etc."

The aforesaid statement does not claim any reservoir at 185 kms distance from project but merely speaks of a 185 kms long dedicated pipeline through which water is drawn to plant site from Rajasthan Canal. In the statement appellant talks of requirement of a buffer reservoir and submits a detailed plant layout and engineering drawing wherein the location and size of huge water reservoir can be located. The Google Earth images of reservoir also indicate the location of reservoir at the



same place as per plant layout. Hence, the observation of AO regarding discrepancy in location of raw water reservoir and contract site is without any basis and cannot be considered as a ground for rejecting claim of appellant. Besides this observation, AO has not referred to any report or finding which concludes non execution of work for earthwork at water reservoir site.

6.10 in view of the above, it is held that AOs action of holding the contract work executed by ShEL in respect of earthwork excavation and disposal for Raw Water Reservoir at Bhadresh, Barmer Thermal Power Plant site of appellant being non-genuine in absence of any evidence is not proper. The Ground of appeal is allowed."

As the facts leading to the AO's conclusion in the year under consideration are unchanged, following my id. Predecessor's decision, the disallowance of Rs. 88,44,00,000/- made for the year under consideration is deleted and the ground raised by the appellant is allowed."

8. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The assessee is claiming that work of excavation and disposal of earthwork for construction of reservoir at Barmer plant was assigned to SHEL and said party has executed the work assigned and raised bills /invoices of ₹128,91,84,138/- up to the period of 31/03/2011. However the Revenue is of the view that no work was carried out by the SHEL for excavation and disposal of the reservoir. Therefore, the



issue in dispute before us is whether any actual work was done by SHEL for excavation and disposal of Earth for Raw water reservoir site for the Barmer thermal plant of the assessee. We note that The Assessing Officer has mainly relied upon two evidences. Firstly, statement of subcontractor of SHEL that no work was done by subcontractor company in relation to excavation work for Barmer project, secondly, acceptance of bogus expenses by SHEL in their assessment.

8.1 The Ld. CIT(A) however observed that

- (i) In the entire statement of subcontractor sh Kailash Shrama, director of Four Pillars communication private limited relied upon by the Assessing Officer, there was no reference that bogus payments to said subcontractors was made at the instance of the assessee or the assessee was dealing with the subcontractor.
- (ii) Sh Radheyshaym Tiwari, Vice President of SHEL stated that excavation work was indeed done by SHEL by deploying its own men and machinery and other subcontractors and invoices had been raised as per work done under the terms of contract
- (iii) During cross-examination by the authorised representative of the assessee, sh Tiwari admitted



that contract was performed by SHEL and assessee had nothing to do with the bogus subcontractor of SHEL.

- (iv) Relying on the testimony of Mr Tiwari by the Assessing Officer, solely on the ground that he did not have knowledge about exact site location of the execution of the contract, ignoring his statement that he never visited the site and the distance between the plant and the reservoir would be known to the technical persons, is not justified.
- (v) There is no substance in minor discrepancy noticed by the Assessing Officer in the original contract document and the assignment document, insofar as both documents talk about scope of work as Earthwork excavation and disposal of earth to the extent of 80,00,000 m³ for total contract price of Rs. 216 Crores.
- (vi) The Assessing Officer has not referred to any document impounded during the survey action at the premises of the assessee, which proved to be fabricated or bogus or genuineness was in doubt.
- (vii) The observation of the Assessing Officer of submission of the assessee of distance of



reservoir at a distance of 185 km from the project site is distortion of the facts and actual submission was regarding distance of pipeline of 185 km from Canal to project site.

8.2 In view of the above observation, the Ld. CIT(A) deleted the disallowance of capitalisation of expenses by the assessee. We agree with the above observation of the Ld. CIT(A) on the issues discussed by him. We find that survey proceedings have been carried out at the premises/site and other offices of the assessee alongwith search proceedings at the JSW group, but no adverse observation by the survey teams on the earth work activity or construction work of the Plant has been brought on record either by the Assessing Officer or by the department representative during appellate proceedings before us, which could suggest that no work was done by the SHIL. The assessee during assessment proceedings produced photographs and google images to show that work of earth excavation was duly done and those evidences have not been rejected by the assessing Officer. Further, in cross examination of Sh Tiwari, (Person on behalf of SHIL) when being asked by the authorized representative of the assessee company, he clearly stated that statements of subcontractors had nothing to do with the assessee company. We also note that expenses claimed by SHIL in respect of the subcontractors, has already been offered for tax by the SHIL. In view of above, in our opinion, the finding of the Ld. CIT(A) on the



issue in dispute is well reasoned and we do not find any infirmity in the same. Accordingly we uphold the same. The ground No. one of the appeal of the revenue is accordingly dismissed.

9. The ground No. 2 of the appeal of the revenue relates to deletion of disallowance of ₹39,26,00,000/- on account of capitalization of work-in-progress for expenses in relation of bill of M/s Sancia Global Infraprojects Ltd. (SGIL).

10. Brief facts qua the issue in dispute are that the assessee awarded a contract amounting to ₹39,67,25,187/- of 'Structural work and cranable approach road' at Barmer site of thermal plant to M/s Gremach Infrastructure Equipments & Projects Ltd. (GIE &PL) , now known as SGIL. During search/survey proceedings , the Income-tax department observed incurring of expenditure on said contract at Rs.39,25,54,897/-. The search/survey team found certain discrepancies in documentation of this contract, *interalia*, firstly, contract drafting was mere a paper work and clause of completion of contracted were ante-dated on advice of official of assessee company, secondly, no entry of inward of material in inward Register, thirdly ,fabricated measurement sheets, fourthly, irregularities in award of contract.

10.1 During the course of assessment proceeding, the Assessing Officer made two observations. Firstly, that the contractor company was mainly engaged in the providing of rental of



construction/earthmoving machineries to companies engaged in the infrastructure activity mainly catering to public sector undertakings, whereas the nature of work contracted is for structural work and road construction which is not the business activity of said contractor. Secondly, the Assessing Officer of the contractor i.e. the DCIT Central Circle, Kolkatta, intimated that SGIL admitted the fact of providing accommodation entry to M/s Rajwest power private limited (i.e. the assessee) in the financial year 2008-09 (i.e. the assessment year under consideration) being sales/contract of ₹36,60,40,395/-. The Assessing Officer provided copy of submissions made by the SGIL by its letter dated 31/07/2012 before DCIT, Kolkata to the assessee.

10.2 In view of above observations during the course of the search as well as during the course of the assessment proceedings, the Assessing Officer show caused to the assessee as why the expenses of ₹36,60,40,395/- claimed by the assessee on work in progress might not be disallowed.

10.3 The assessee denied the allegation of the Assessing Officer that the contractor was engaged only in rental of machinery/equipment. The assessee referred to annual report of the said contractor for the year under consideration and stated that the contractor was not only engaged in the business of construction and infrastructure but also in the trading of commodities. It was also submitted that all the documents related to project, Ledger



accounts, running account bills, measurement sheets etc in original were examined and impounded by the Income-tax authorities during the course of survey/search proceeding. Regarding the letter of SGIL, the assessee submitted that according to the letter admission was without prejudice to their right and contention of buying piece of the mind , therefore it is not clear under what circumstances said letter was submitted by the contractor . The assessee sought of copy of entire documents related to acceptance of accommodation entry by SGIL along with cross-examination of the contractor SGIL.

11. The Assessing Officer issued summon to the said contractor, however none attended on the stipulated date and written submission was filed subsequently wherein the SGIL submitted that books of accounts were destroyed in fire occurred while shifting of corporate office from Mumbai to Kolkata and due to financial difficulties and being operated through one staff at registered office, it was not possible to attend the summon proceedings. The relevant part of the letter of the SGIL admitting of providing accommodation entry to the assessee, reproduced by the Assessing officer on page 27 of the assessment order , is extracted as under:

“Further, without prejudice to our right and contentions and buy peace of mind we would like to clarify that during the FY 2008-09 we have provided the entry of sales amounted to Rs.



*152,47,01,711/- (As per Exhibit-i) in lieu of commission of 0.25% and taken the entry of purchases of Rs.120,41,23,721/- (As per Exhibit-1) on commission of 0.15% and this way we have earned the net commission of 0.10% which is amounted to Rs.20.05.569/-11524701711 * 0.25% -1204123721 * 0.15%) and the same we are disclosing for the AY 2009-10.”*

11.1 In view of above, the Assessing officer concluded that no work was done by the SGIL in respect of the contract awarded by the assessee, thus expense claimed not being for business expenditure, same can't be allowed for capitalization.

12. On further appeal, the Ld. CIT(A) after considering submission of the assessee deleted the disallowance observing as under:

“5.2.3 I have carefully considered the facts and I find force in the contentions of the appellant. The AO has based his conclusion on the observation that the line of business of SPIL was not that of the nature of work it was stated to have been engaged for by the appellant. In this respect, it is noted that the appellant's assertion that structural work and construction of a craneable road had been carried out on the site was not controverted by the AO. In response to the observation of the AO that the sales break-up of M/s Sancia Global Infraprojects Ltd. did not reflect the name of the appellant, the appellant has furnished copy of the Final Accounts of M/s Sancia Global Infraprojects Ltd. (then known as M/s Gremach Infrastructure Equipments & Projects Ltd.) for the year ended March 2009 and drawn attention to the fact that the said company declared



'income from operations' to the tune of Rs.2,06,80,30,318/- and also debited sub-contract and hire charges of Rs.1,27,63,47,970/-. It is also pointed out that in Schedule 5 of the Accounts, the said company has shown earth \ moving equipment of Rs.1,05,50,65,242/- and Machinery and Equipments of Rs.41,81,04,048/- Thus it is argued that in this back drop, the observations of the AO are not material. The AC has observed that some of the measurement sheets did not bear the dated signatures of one Mr. Lalit. In this regard the appellant produced copies of the said measurement sheets forming part of Annexure 1 and on perusal of the same it is seen that invoice-wise account statements have been maintained by the appellant company in respect of the work done by M/s Sancia Global Infraprojects Ltd. The invoices and measurement sheets contain detailed descriptions of the work items, quantity, rate, amount and narrate the activities for which the invoice is raised e.g. 'structural boundary wall for switch yard', 'boundary wall for material storage yard for L&T', 'station building staircase - temporary - Unit I' etc. A test check of the invoices and measurement sheets showed that even those sheets that bear the so-called dateless signatures contain full narrative of the work for which the invoice is raised and corroborate each other. In the light of these facts, the mere absence of dates on a few measurement sheets does not, to my mind, establish that the expenses incurred is bogus, especially when the fact that the road was duly constructed is not controverted The AO has placed reliance on the fact that the 'inward register' did not show entries of materials and that Mr.



Pravin Bhansali GM Finance could not refute the absence of the name of M/s Gremach Infrasiructure Equipments & Projects Ltd. in this respect, from the statement of Mr. Pravin Bhensali GM Finance, it is seen that in answer to question 8, he has stated that contract for excavation & structural work & approach road was awarded to M/s Gremach Infrastructure Equipments & Projects Ltd.. From Qn. No.13 it is seen that he was asked to explain the absence of name of the vendor M/s Gremach Infrastructure Equipments & Projects Ltd. and in his response, he has only said that the reply will be given after 7 days. The AO has also drawn support from the statement of Mr. Jayantilal Joshi, AGM (Civil), stating that he could not identify what work was done. Perusal of the said statement shows that Mr. Joshi has started working with the appellant company from August 2010 and in answer to Q.No.8 has stated that as on the date of the recording of the statement he is not aware of M/s Gremach Infrastructure Equipments & Projects Ltd. and that no work was being done by the said company for the appellant at that point of time. To my mind, neither of the statements contain any admission of the work stated to have been done by Gremach as bogus. The other observations of the AO include objection to the phraseology adopted by the AO regarding a time-line of 5-6 months from the date of award of contract being given and the participation of other parties based on the same address as M/s Gremach Infrastructure Equipments & Projects Ltd. In the tender process for the contract - both factors which by themselves cannot be taken as evidence to show the expenses claimed with regard to



the construction of craneable road as bogus. Thus after careful consideration I find that the AO has based his conclusion on conjecture and inference as against any fact on record. That the said road was constructed is not proved incorrect, No evidence of any funds having found their way back to the appellant company after payments were made to M/s Sancia Global Infraprojects Ltd. is placed on record. Other than the contents of letter dated 31.07.2012 from M/s Sancia Global Infraprojects Ltd. to the AO in its own case, which reiterates that the fixed assets owned are genuine and that depreciation is allowable and that the offer of commission income on accommodation entries is being made to buy peace of mind. Perusal of the assessment order and appeal order in the case of M/s Sancia Global Infraprojects Ltd. (on which heavy reliance is placed for the appellant's assessment) shows that therein the AO has indeed gone largely on the admission made by the said company vide letter dated 31.07.2012 which was after the initial assertion wherein sales and purchase for the year under consideration had been stated to have been duly reconstructed and supported by details collected from concerned parties. Aiso the issue decided by the CIT(A) related to the methodology and rate adopted by the AO for the computation of commission income.”

13. Before us the Ld. Departmental Representative submitted that the fact of providing accommodation entry by SGIL has been confirmed by his own admission , which has not been retraced even at the appellate stage, therefore there was no dispute as to the fact



that SGIL had only provided accommodation entry of sales of contract work and no actual work was done by that party, therefore the Ld. CIT(A) is not justified in deleting the disallowance.

14. The learned counsel of the assessee on the other hand relied on the finding of the Ld. CIT(A) and submitted that IT authorities has not brought on record any evidence that such road or the infrastructure referred in the said contract was not found in existence during the course of search or survey action carried out at the premises of the assessee company. He submitted that when existence of road and infrastructure mentioned under the contract has not been disputed by the Assessing Officer, disallowing the corresponding expenses merely for the reason that the contractor admitted of being engaged in providing accommodation entry, is not justified. He also supported the finding of the Ld. CIT(A) that no funds had been shown to have been routed back to the assessee and merely on the basis of admission of third-party, the capitalisation of expenditure cannot be disallowed.

15. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. For disallowing, capitalisation of the expenses under dispute, the Assessing Officer has relied on the admission of the contractor in assessment proceeding. Simultaneously, we find that existence of crenable Road and other infrastructure which was mentioned in the contract has also not been denied by the Assessing Officer. In such



circumstances, only inference could be drawn is that the assessee might have carried out the contract work of construction of road and infrastructure through somebody else that too in cash. The coordinate benches of the Tribunal in various cases of bogus purchases has held that where bills are obtained from one party and actual purchases are made from another party, and assessee gets benefit on account of cash dealings, therefore for compensating the factor of benefit in cash purchases, gross profit or net profit rate of those assessee's deserved to be suitably enhanced. In this regard, it has been noted that considering the peculiar facts and circumstances of the cases, Hon'ble Courts and Tribunals have estimated certain percentage of the bogus expenses. In the case of PCIT v. Purnima Sunil Agrawal [2017-TIOL-2160-HC-AHDM.-IT], the Hon'ble Gujarat High Court has held as under:

“3. Facts on record would show that certain purchases of the assessee would found to be bogus upon which, the Assessing Officer made addition on the entire amount. Commissioner of Income Tax (Appeals) restricted the addition by adopting the net profit rate of 2% on the basis that in similar trade in the region, the profit rate worked out is 0.5% to 0.75%. The assessee has disclosed profit ratio of 1.10%. The Commissioner of Income Tax (Appeals) increased it to 2%. This view of the Commissioner of Income Tax (Appeals) was confirmed by the Tribunal.

4. It can thus be seen that this entire issue if appreciation of record and therefore factual.



5. *No question of law arises. Tax Appeals are therefore dismissed.*”

15.1 Even, the Hon'ble Mumbai ITAT in the case of **Triveni Homes (ITA No. 3780/Mum/2017)** in view of the fact that the architect's certificate along with the quantitative details established the consumption of materials for the purpose of construction of building, have held uphold the addition to the extent of 2% of bogus purchases.

15.2 Respectfully, following the ratio of above cases, we feel that in view of the inference of expenses on contract incurred in cash, 2% of the value of the contract is treated as the benefit to the assessee in the expenses claimed accordingly two percent of the contract value of ₹36,29,00,000/- is disallowed which works out to ₹72,58,000/-. The ground No. 2 of the appeal of the revenue is accordingly partly allowed.

16. The ground of the appeal of the Revenue for assessment year 2010-11 in ITA No.2983/Mum/2015 is reproduced as under:

1. *Whether in the facts and in the circumstances of the case and in law, the Ld.CIT(A) is justified in allowing the sum of Rs.28,20,00,000/- in the capital Work in Progress on account of work done by M/s.Sunil Hi-Tech Engineers Ltd (SHEL) during the year?.*

Tax effect - Rs.9,58,51,800/-



2. *Whether in the facts and in the circumstances of the case and in law, the Ld.CIT(A) is justified in directing the Assessing Officer to recomputed the income from other sources after excluding the sum of Rs.1,48.76,941/- on account of foreign exchange fluctuations gains?.*

Tax effect - Rs.50,56,670/-

17. The ground No. 1 raised in this appeal has already been adjudicated while deciding the ground No. one of the appeal for assessment year 2009-10 in ITA No. 580/Mum/2016, therefore following our finding in assessment year 2009-10, this ground No. one of the appeal is accordingly dismissed.

18. The ground of appeal no.2 relates to the issue as to whether the Id. CIT(A) is justified in directing the Assessing Officer to recompute the Income from Other Sources after excluding the sum of Rs.1,48,76,941/- on account of foreign exchange fluctuation gains.

19. Brief facts qua this issue are that the assessee company had declared income of Rs.16,71,121/- under the head Income from Other Sources in its return of income for the year under consideration. In the Profit & Loss A/c. for the year under consideration, the assessee has shown "Other Income" to the tune of Rs.1,65,48,062/- and accordingly, the Assessing Officer treated the same as Income from Other Sources. Aggrieved by the addition of Rs.1,48,76,941/-, the assessee preferred appeal before the Id.



CIT(A) who deleted the said addition and allowed this issue in favour of the assessee. Aggrieved by the decision of the Id. CIT(A), the revenue is in appeal before us.

20. We have heard the rival contentions made before us and perused the material on record. The Id. Departmental Representative for the revenue relied on the assessment order. The Id. Counsel of the assessee explained that the Assessing Officer has treated the entire Other Income of Rs.1,65,48,062/- comprising of interest income amounting to Rs.16,71,121/- and foreign exchange fluctuation gain of Rs.1,48,76,941/- as Income from Other Sources without appreciating the fact that the foreign exchange fluctuation gain of Rs. 1,48,76,941/- is already offered to tax under the head Income from Business and Profession. Thus, this has resulted into double taxation of the same amount of Rs. 1,48,76,941/- under both the heads of income i.e. Income from Business and Profession as well as Income from Other Sources. The Id. Counsel of the assessee explained that since the commercial operations of the assessee company had commenced and the foreign exchange fluctuation gain is directly associated with the business of the assessee, it has to be considered as business income and not income from other sources.

20.1 We agree with the contention of the Id. Counsel of the assessee and find that the assessee has offered interest income of Rs.16,71,121/- as Income from Other Sources while the foreign



exchange fluctuation gain of Rs.1,48,76,941/- is offered as business income without excluding the same from the Profit as per P&L A/c. while computing Income from Business and Profession. On one hand, the Assessing Officer has accepted the business income as computed by the assessee in the return of income whereas on other hand, he has again made the addition of Rs.1,48,76,941/- under the head Income from Other Sources without any justification. Since the assessee has already commenced its business operations and the foreign exchange fluctuation gain is arising in the ordinary course of its business, it would be proper to treat the same as business income only and not income from other sources. The action of the Assessing Officer has led to taxation of same income twice which is not permissible. Even the order of the Assessing Officer under which the said addition is made, is passed u/s. 143(3) r.w.s. 153C of the Act but there is no finding of any incriminating material in regard to the said issue of foreign exchange fluctuation gain. Accordingly, the Assessing Officer is directed to delete the addition of Rs. 1,48,76,941/- on account of foreign exchange fluctuation gain and hence, this ground of appeal of revenue is dismissed.

21. The grounds raised by the revenue in assessment year 2011-12 in ITA No. 2984/Mum/2015 is reproduced as under:

- 1. Whether in the facts and in the circumstances of the case and in law, the Ld.CIT(A) is justified in allowing the sum of Rs.*



16,34,00,000/- in the capital Work in Progress on account of work done by M/s.Sunil Hi-Tech Engineers Ltd (SHEL.) during the year?.

22. The sole ground raised in this appeal is connected to the ground No. one of the appeal of the assessee for assessment year 2009-10 in ITA No. 580/Mum/2015, therefore following our finding in assessment year 2009-10, this ground of the appeal is also dismissed.

23. The grounds raised by the revenue in assessment year 2012-13 in ITA No. 5299/Mum/2018 are reproduced as under:

1. Whether on the facts and in the circumstances of the case and in the law, the 14 CIT(A) was justified in allowing the claim of depreciation of Rs.3,12,95,521/-with respect to the amount capitalized in earlier years through Capital Work In Progress (CWIP) on account of work done by M/s.Sunil Hi-Tech Engineers Ltd. (SHEL) and M/s.Germach Infrastructure Equipments & Project Ltd.

Tax effect - Rs.96,70,316/-

2. Whether on the facts and circumstances of the case and in the law, the Ld. CIT(A) was justified in deleting the disallowance of Rs.5,91,520/ - made u/s.14A of the LT. Act, by holding that no disallowance u/ s.14A of the 1.T. Act, is called for, once there is no exempt income received or receivable by the assessee during the relevant previous year as held by the Ld. CIT(A) without considering the circular No.5 of 2014 dated



11th February 2014, issued by the Central Board of Direct Taxes which clearly provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income?

Tax effect - Rs. 1,82,779/-

3. Whether on the facts and in the circumstances of the case and in the law, the Ld. CIT(A) was justified in deleting the addition of Rs. 5,91,520/- made by the Assessing Officer u/s.14A for the purpose of computing Book Profit u/s.115]B of the Act without considering that as per Explanation 1(f) to Section 115]B, the book profits have to be increased by the expenditure incurred for earning the exempt income and without appreciating the fact that the Department is in appeal before the Hon'ble Supreme Court on this issue?

24. The ground No. one of the appeal is in respect of the depreciation of the capital work in progress pertaining to M/s SHEL and GIE &PL. The issue of capitalisation of the expenses in respect of SHEL and GIE &PL has already been adjudicated in earlier assessment years 2009-10 to 2011-12, therefore the assessee will be eligible for depreciation on the amount of expenses allowed for capitalisation in those assessment years. Therefore, we direct the Assessing Officer to allow the claim of the depreciation accordingly. The ground No. one of the appeal of the revenue is accordingly allowed partly for statistical purposes.



25. The ground no. 2 of the appeal relates to the disallowance of Rs.5,91,520/- made by the Assessing Officer u/s. 14A of the Act and deleted by the ld. CIT(A).

26. Brief facts qua this issue are that the assessee company has *suo moto* disallowed a sum of Rs. 1,01,520/- u/s. 14A in the return of income for the year under consideration being in the nature of administrative expenditure being 1% of various common expenses aggregating to Rs.1,01,51,959/-. In the assessment completed, the Assessing Officer was dissatisfied with the amount of *suo moto* disallowance made u/s. 14A of the Act by the assessee and applied Rule 8D of the Income Tax Rules. Accordingly, in furtherance to the *suo moto* disallowance made u/s. 14A of the Act by the assessee, he made a disallowance of Rs.4,90,000/- as per the method prescribed in Rule 8D(2)(iii) i.e. 0.5% of the average of opening and closing investments. Aggrieved by the said disallowance, the assessee preferred appeal before the ld. CIT(A) who deleted the said disallowance. Aggrieved by the order of the ld. CIT(A), the revenue is in appeal before us.

27. We have heard the rival contentions and perused the material on record. The ld. Departmental Representative for the revenue argued that the Assessing Officer relying on the decision of Hon'ble jurisdictional High Court in the case of **Godej and Boyce Mfg. Co. Ltd. v. DCIT (194 Taxman 213)** has rightly invoked the provisions of Rule 8D while computing disallowance u/s. 14A of the Act and



hence, the same shall be sustained. The Id. Counsel of the assessee submitted that no exempt income has been earned by the assessee company in the year under consideration and hence, the suo moto disallowance made u/s. 14A of the Act is sufficient and no further disallowance over and above should have been made in light of the decision of Hon'ble Apex Court in the case of **Maxopp Investment Ltd. v. CIT [2018] 91 taxmann.com 154 (SC)**, the relevant extract of which is reproduced as under:-

“40. We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing the theory of dominant intention applied by the High Court...”

27. The Id. Counsel of the assessee further relied on various jurisdictional High court decisions also viz. **CIT v. Delite Enterprise (ITA no. 110/2009)**, **PCIT v. Ballarpur Industries Ltd. (ITA no. 51/2016)**, **PCIT v. Zee News Ltd. [2018-TIOL-**



263](Bom.) apart from other non jurisdictional decisions referred in the order of the ld. CIT(A).

28. We agree with the submission of the ld. Counsel of the assessee that in absence of any exempt income earned in the year under consideration, no disallowance u/s. 14A could have been made by the Assessing Officer over and above the suo moto disallowance made by the assessee. Further, although an Explanation has been inserted in the Finance Act, 2022 u/s. 14A to clarify that the provisions of section 14A shall apply and be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year. The said amendment has taken place effective from 01.04.2022 and should therefore be applied prospectively and not retrospectively. Gainful reference in this regard is made from the decision of Hon'ble Delhi High Court in the case of PCIT v. Era Infrastructure (India) Ltd. (ITA no. 204/2022). Respectfully following the above referred decision, we direct the Assessing Officer to delete the disallowance of Rs. 5,91,520/- made u/s. 14A. Accordingly, this ground of appeal of the revenue is dismissed.

29. The ground no. 3 of the appeal relates to making adjustment of disallowance made u/s. 14A of Rs. 5,91,520/- in computing the Book Profits u/s. 115JB of the Act.



29.1 Since the disallowance u/s. 14A made by the Assessing Officer is already deleted in ground no. 2, there is no question of making any adjustment towards the same in computing the Book Profits u/s. 115JB of the Act. Even otherwise, the disallowance made u/s. 14A r.w.r. 8D is not to be considered or adjusted in computing the Book Profits u/s. 115JB of the Act in view of the decision of the Hon'ble jurisdictional High Court in the case of CIT v. Bengal Finance & Investment Pvt. Ltd. (ITA no. 337 of 2013), relevant extract of which is reproduced below:

“8. As already held in ground No. 1 the provisions of Rule 8D are not applicable to the present A.Y. under consideration. Therefore, disallowance of expenditure by applying Rule 8D is not justified. Further, no actual expenditure was debited in the profit & loss account relating to the earning of exempt income. Therefore the provisions of Sec. 14A cannot be imported into while computing the book profit u/s. 115JB of the Act inasmuch as clause (f) of Explanation to Sec. 115JB refers to the amount debited to the profit & loss account which can be added back to the book profit while computing book profit u/s. 115JB of the Act. In this connection, reliance can be placed upon the decision of ITAT Delhi Bench in the case of Goetze (India) Ltd. Vs CIT (2009) 32 SOT 101 (Del), wherein it has been held that provisions of Sub-Sec. (2) & (3) of Sec. 14A cannot be imported into clause (f) of the Explanation to Sec. 115JA of the Act. In this view of the matter, we therefore, delete the disallowance of expenses confirmed by the CIT(A) while computing book profit u/s. 115JB of the Act. In other words, no addition to the book profit shall be made on account of alleged



expenditure incurred to earn exempt income while computing income u/s. 115JB of the Act. Thus ground No. 2 is decided in favour of the assessee.”

29.2 In view of the above, the ground no. 3 of the appeal of the Revenue is dismissed.

30. The grounds raised by the revenue in assessment year 2013-14 and ITA No. 5300/Mum/2018 are reproduced as under:

1. Whether on the facts and in the circumstances of the case and in the law, the 14. CIT(A) was justified in allowing the claim of depreciation of Rs.3,12,95,521/-; with respect to the amount capitalized in earlier years through Capital Work In Progress(CWIP) on account of work done by M/s.Sunil Hi-Tech Engineers Ltd. (SHEL) and M/s.Germach Infrastructure Equipments & Project Ltd.

Tax effect - Rs.96.70.316/-

2. Whether on the facts and circumstances of the case and in the law, the Ld. CIT(A) was justified in deleting the disallowance of Rs.7,64,060/- made w/s.14A of the LT. Act, by holding that no disallowance w/ s.14A of the 1.T. Act, is called for, once there is no exempt income received or receivable by the assessee during the relevant previous year as held by the Ld. CIT(A) without considering the circular No.5 of 2014 dated 11th February 2014, issued by the Central Board of Direct Taxes which clearly provides for disallowance



of the expenditure even where taxpayer in a particular year has not earned any exempt income?

Tax effect - Rs.2,36,095/-

3. Whether on the facts and in the circumstances of the case and in the law, the Ld. CIT(A) was justified in deleting the addition of Rs.7,64,060/- made by the Assessing Officer u/s.14A for the purpose of computing Book Profit u/s.1151B of the Act without considering that as per Explanation 1() to Section 115]B, the book profits have to be increased by the expenditure incurred for earning the exempt income and without appreciating the fact that the Department is in appeal before the Hon'ble Supreme Court on this issue?

Tax effect - Rs.1,45,591/-

31. The issues raised in ground No. one to 3 of this appeal, are identical to issues raised in grounds of the appeal of the revenue adjudicated by us in the appeal of the revenue for assessment year 2012-13, therefore following our finding in assessment year 2012-13, the ground No. one of the appeal is allowed partly for statistical purposes, whereas ground No. two and three of the appeal are dismissed.

32. The ground raised by Revenue in assessment year 2014-15 is reproduced as under:

1. Whether on the facts and in the circumstances of the case and in the law, the 14. CIT(A) was justified in allowing the



claim of depreciation of Rs.3,12,95,521/-with respect to the amount capitalized in earlier years through Capital Work In Progress (CWIP) on account of work done by M/s.Sunil Hi-Tech Engineers Ltd. (SHEL) and M/s.Germach Infrastructure Equipments & Project Ltd.

Tax effect - Rs. 1,06,37,348/-

33. The sole ground raised by the revenue in this appeal is identical to ground No. one raised in assessment year 2012-13 and therefore following our finding in assessment year 2012-13, this ground of the appeal of the revenue is allowed partly for statistical purposes.

34. In the result, all the appeals of the Revenue are allowed partly for statistical purposes.

**Order pronounced under Rule 34(4) of the ITAT Rules,
1963 on 30/12/2022.**

**Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 30/12/2022
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT



5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Sr. Private Secretary)
ITAT, Mumbai