IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. _1982/Del/2019
[Assessment Year: 2014-15

DCIT, Circle-11(1), New Delhi.	Vs	M/s Hero Motocorp ltd., 34, Basant Lok, Vasant Vihar, New Delhi-110057. PAN- AAACH0812J
APPELLANT		**RESPONDENT**
Assessee represented by	**Shri Ajay Vohra, Sr. Advocate; Shri Rohit Jain, Advocate; & Ms.Manisha Sharma, Adv.**	
Department represented by	**Shri K.M. Mahesh, CIT(DR)**	
Date of hearing	**22.11.2022**	
Date of pronouncement	**03.02.2023**	

O R D E R

PER KUL BHARAT, JM:

This appeal, by the Department, is directed against the order of the learned Commissioner of Income-tax (Appeals)- -4, New Delhi, dated 31.12.2018, pertaining to the assessment year 2014-15. The Department has raised following grounds of appeal:

"1. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the adjustment of Rs. (-) 8,58,000/- made by the AO towards non-inclusion of freight inward and clearing charges while calculating its closing stock?

2. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the adjustment of Rs. 99,000/- to the value of closing stock on account of cost of rejection?

3. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 113,14,76,486/- made on account of provision for increase in price of material as the same emanated from retrospective price amendments and were contingent in nature?

4. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 2,70,364/- on account of value of scrap lying in stock at the end of the financial year under assessment, which the assessee has failed to account for in its books of accounts.

5. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 9,84,73,658/- made by the AO on the ground that the same represented expenses pertaining to prior period?

6. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 16,76,78,109/- made by the AO relating to the provisions for advertisement expenses at Head Office, not appreciating the fact such quantification of provision was devoid of basis, facts and evidence.

7. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.65,99,940/- made by the AO on account of excess claim of depreciation owing to wrong classification of assets under the head 'computers"

8. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 44,73,72,000/- made by the AO on account of related-party purchases made by the assessee on excessive price?

9. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 8,63,00,000/- relating to payment received on behalf of M/s Hero Honda Fincorp Ltd. Deemed as dividend under section 2(22)(e) of the Act since the payment (i.e. advances) were not given in the ordinary course of business?

10. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 101,49,17,767/- on account of disallowance of turnover/sales discount etc. to dealers under section 40a(ia) of the Act for failure to deduct TDS thereon.

11. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.6,70,864/- on account of disallowance under section 40(a)(ia) of legal & professional expenses for failure to deduct TDS.

12. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.2,99,39,39,885/- made by the AO on account of treatment of income from sale of investments as business income.

13. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in setting aside the addition of Rs. 97,75,000/- made by the AO towards disallowances made by the AO towards disallowances under section 14A of the Act.

14. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the adjustment of Rs. 38,82,000/- in the value of closing inventory in respect of proportionate amount of depreciation on model fee incurred during the year debited to the profit and loss account.

15. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the disallowance of Rs. 4,71,04,265/- (comprising of Rs. 1,28,96,252/- in respect of Dharuhera, Gurgaon and Haridwar Plants and Rs. 3,42,08,013/- in respect of head office expenses) out of expenditure towards re-imbursement of foreign travel expenses incurred by employees, made by the AO on the ground that the same were not supported with evidences/bills of expenditure incurred abroad.

16. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.91,87,60,935/- (after allowing depreciation at the rate of 25%) made by the AO on account of disallowance of royalty and Technical Fee Guidance.

17. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the disallowance of expenditure Rs. 67,40,312/- incurred under the head of 'Corporate Social Responsibility'.

18. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting disallowance of deduction of Rs. 46,00,000/- under section 80IC made by the AO with respect to inter-unit transfer of goods/items from non-eligible units to eligible units.

19. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the disallowance of Rs. 252.38 Crore out of the deduction claimed under section 80IC of the Act made by the AO on account of profits attributable to advertisement and marketing activities carried out at Head Office.

20. Whether, on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the disallowance of Rs. 2,02,05,032/- out of deduction claimed deduction under section 80IC of the Act made by the AO in respect of certain incomes earned by the eligible unit on the ground that such incomes were not derived from the business of manufacture of specific articles or things.

21. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal."

2. Briefly stated facts are that in this case the assessee had filed his return of income on 28.11.2014 declaring income of 2634,76,78,500/- after claiming deduction u/s 80-IC of the Income-tax Act, 1961, hereinafter referred to as the "Act", of Rs. 459,10,20,516/- and declared income u/s 115JB at Rs.

2854,10,52,698/-. The case of the assessee was selected for scrutiny assessment and the assessment u/s 143(3) of the Act was framed vide order dated 27.12.2017. It is pertinent to mention here that in this case the assessee's case was referred to the Transfer pricing officer (TPO), as the assessee was involved in international transactions with its associates, on 4.10.2016 after obtaining the requisite approval of PCIT for an order u/s 92CA(3) of the Act. The TPO passed order u/s 92CA(3) of the Act on 30.10.2017, whereby no adjustment was proposed. Thereafter assessment u/s 143(3) of the Act was framed. Thereby the Assessing Authority made various additions and computed total income at Rs. 35,32,72,57,820/- under normal provisions and Rs. 2984,69,82,290/- under section 115JB of the Act. Aggrieved against this the assessee preferred appeal before learned CIT(Appeals), who after considering the submissions deleted the disallowances and allowed the appeal of the assessee. Aggrieved against this the Revenue is in appeal before this Tribunal.

3. At the outset learned counsel for the assessee submitted that all the issues are covered in favour of the assessee by the various decisions of the Tribunal in assessee's own case. Ground-wise chart has been filed. Learned counsel for the assessee has reiterated the submissions as mentioned in the chart.

4. However, the learned CIT(DR) supported the assessment order and submitted that the finding of the assessing authority may be confirmed.

5. We have heard rival submissions and perused the entire material available on record.

6. The relevant contents of submissions as made by the assessee in its Ground-wise chart are as under:

> ***"Ground no. 1*** *– Addition of freight inward/import clearing expenses to cost of closing inventory:*
>
> ***Remarks***
>
> *"The assessee ordinarily purchases raw material on CIF basis and, therefore, freight cost for delivery of goods is ordinarily included in purchase price and are factored in the value of closing inventory.*
>
> *In exceptional circumstances viz. material shortage, where assessee has to immediately lift material, transport charges are paid, which are not loaded to the purchase price, but are separately debited to profit and loss account, since invoices of transporters are receive after consumption of material.*
>
> *Such freight amount is not included in the valuation of closing stock, as per regularly consistently followed method of valuation of stock accepted by the Revenue in the past.*
>
> ***Detail of freight inwards and import clearing charges are enclosed at page nos. 78- 80 of PB (Merits).***
>
> ***AO:***
>
> *The Assessing officer held that proportionate amount of Rs. 164.60 lacs out of the total amount of freight inward charges and import clearing charges incurred as attributable to the value of closing stock on account of above expenses. However, since the assessing officer had made similar addition of Rs.173.18 lacs on account of above in the closing stock of the last year,*

which constituted opening stock of the year under consideration, the assessing officer allowed deduction for the said amount, resulting in net reduction of (-) 8.58 lacs (i.e. Rs. 164.60 - 173.18 lacs).

CIT(A):

The CIT(A) deleted the aforesaid adjustment to the closing stock made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

Submission:

It would be pertinent to point out that the aforesaid issue stands decided in favour of the assessee by the order of the Delhi Bench of the Tribunal in the assessee's own case for the assessment year 2007-08, 2008-09, 2010-11 and 2011-12. The Tribunal, in the aforesaid cases, deleted the impugned addition on the ground that the assessee was following consistent system of accounting, which was unnecessarily disturbed by the Revenue, without change in facts. It was further held that tinkering with the accounting method was unjustified, when the exercise did not materially alter the profits of the assessee company.

Following the orders for the assessment years 2010-11 and 2011-12, the Flon'ble Tribunal vide orders dated 13.06.2018 and 20.06.2018 decided the aforesaid issue in favour of the assessee in the assessment years 2012-13 and 2013-14 respectively.

Further, in the order passed for assessment year 2009-10, 2015-16 and 2016-17, the Hon'ble Tribunal has decided the issue in favor of the assessee by following the orders passed for the assessment years 2010-2011 to 2013-14.

In view of the above, the adjustment to closing stock made by the assessing officer was rightly deleted by the CIT(A).

Ground no. 2:- Addition on account of cost of rejection of semi-furnished goods and obsolete items to the value of closing stock:

Facts:

The assessee debited Rs. 1648.01 lacs to the profit and loss account representing the cost of material / semi-fmished goods rejected in the course of manufacturing or obsolete items. The aforesaid rejections comprised of abnormal rejections arising in the course of manufacturing, like rejections on account of obsolescence, etc.

According to the principles of accounting standard-2 (AS-2), as also consistent with the regular and accepted method of accounting, the assessee only considers normal wastages arising in the course of manufacturing for the purposes of allocation to closing inventory.

Since, the aforesaid expenditure comprised of abnormal wastages, it was not practically feasible to segregate normal and abnormal wastages and, therefore, the assessee as per the consistent method of accounting did not consider aforesaid costs for purposes of allocation to closing inventory.

It would be appreciated that it is not practically possible for the assessee to segregate normal and abnormal wastages embedded in the aforesaid costs and, therefore, the assessee, as per the consistent and regular method of accounting, accepted by the Revenue as such in the earlier years, did not consider the aforesaid expenditure for the purposes of valuation of closing inventory of finished goods. ***Detail of cost of reiection of semi-finished goods and obsolete items are enclosed at page nos. 81 - 82 of PB on Merits.***

AO:

The assessing officer held that cost of rejection needs to be attributed and included in the value of closing inventory, and accordingly computed the proportionate amount of Rs. 9.87 lacs out of the total cost of rejections as attributable to the value of closing stock. However, since the assessing officer had made similar addition of Rs. 10.88 lacs on similar account in the closing stock of the last year, which constituted opening stock of the year under consideration, the assessing officer made reduction of (-)Rs.0.99 lacs (i.e. Rs. 9.87- 10.88 lacs).

CIT(A):

The CIT(A) deleted the aforesaid adjustment to the closing stock made by the assessing officer by relying on the order passed by the Homble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

***Submission**:*

The aforesaid issue stands decided in favour of the assessee by the order of the Delhi Bench of the Tribunal in the assessee's own case for the assessment year 2007-08 and 2008-09, whereby similar adjustment made in that year was deleted.

It would be pertinent to point out that the aforesaid issue has been decided in favour of the assessee by the order of the Homble Tribunal in assessment year 2010-11 and 2011-12, wherein the Tribunal held that only normal loss is to be loaded/added to the cost of closing inventory which was in consonance with the Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI).

While deciding the appeal for the assessment years 2012-13 and 2013-14, the Hon'ble Tribunal decided the issue in favor of the assessee following the orders for the assessment years 2010-11 and 2011-12.

In view of the above, the adjustment to closing stock made by the assessing officer was rightly deleted by the CIT(A).

***Ground no. 3**: disallowance of provision for increase in price of material.*

Facts:

The assessee has appointed various vendors for supply of material to be used in the process of manufacturing of vehicles. The assessee, at the time of issuing of purchase order, negotiates the price at which the particular component/ components shall be supplied by the vendor. Subsequently, vendors are provided supply of component schedule annually.

In the business of manufacturing vehicles, the assessee purchases raw material from vendors with the express understanding that the rates would be revised, if there is substantial increase/decrease in cost of materials, at the agreed interval.

It would be appreciated that it is common trade practice to contract with vendors on such express terms for payment of arrears in the event of substantial increase/ decrease in cost, in order to maintain continuous supply of raw materials without being affected by market fluctuations,

especially in light of the volume of purchases made by the assessee. It is submitted that in the absence of such understanding/ contract with the vendors, the assessee would not be able to operate and continue manufacturing operations without disruption.

This same process is followed when there is reduction in cost elements of component prices, company informs the vendors for reduction in price of components.

Accordingly, while price revisions are pending or negotiations are on, the vendors keep on supplying the material provisionally at the agreed rates, with the understanding that pursuant to negotiations being finalized, the arrears of the amount due to them would be paid to them retrospectively. Such price revisions, being an accrued liability at the time of purchase of raw materials, are recorded in the books of accounts by the assessee.

At the year end, the company estimates the additional liability on account of price revision under negotiation and makes upward/downward provision, as the case may be, in relation to material supplied until the end of the relevant year. ***Detail of provision created for increase in price of material is enclosed at page no. 83 of PB on Merits.***

AO:

In the assessment order, the assessing officer held that the aforesaid provision of Rs. 113.14 crores is not an allowable business expenditure. The assessing officer held that provisions emanating from retrospective price amendments are contingent in nature and thus, not an allowable business expenditure.

CIT(A):

The CIT(A) deleted the disallowance made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

Submission:

In this regard, it is submitted that the provision for the material is worked out as under:

(1) Provision for price increase of Rs. 103.29 crores in respect of which price amendments were already issued on 31.03.2014: *The aforesaid provision was made on the basis of actual supplies made upto the end of the year as per price amendments actually issued as on 31.03.2014. Therefore, the assessee has made provision of Rs.103.29 crores on the basis of actual PO issued to vendors for the change in prices during the year and it involved no estimation.*

(2) ***Provision made on best estimate basis of Rs.9.85 crores of which price amendments were not finalized by the end of the year:*** *The provision for price increase of Rs. 9.85 crores was made on the basis of per vehicle increase / decrease in metal cost during 3rd / 4th Quarter multiplied by actual dispatch during the corresponding period.*

It may be pertinent to point out that similar provision for increase in prices as at the end of the year was accepted and allowed in the assessment order for the assessment year 2007- OS. In that year, it was only the provisions which were found to be excessive in the succeeding year, i.e., AY 2008-09, on actual crystallization of price amendments and reversed in that year, were disallowed in the assessment order for AY 2007-08, which, too, was allowed and accepted, on merits by the Tribunal and set-aside for the limited purpose of verification of the provision, which too was deleted in the set-aside order dated 30.10.2014 passed by the assessing officer.

Further, in the assessment order for AY 2008-09, similar disallowance of provision was made by the assessing officer in complete disregard of the findings of the assessing officer in the preceding assessment year, viz. AY 2007-08 as also the consistent method followed by the appellant. In that year, the Delhi bench of the Tribunal, vide order dated 13.06.2014 passed in the appellant's own case for assessment year 2008-09 was pleased to delete the disallowance made by the assessing officer keeping in view the principle of materiality and consistency followed by the appellant.

Further, the Delhi bench of the Tribunal, vide consolidated order dated 24.10.2016 passed in assessee's own case for assessment year 2010-11 and 2011-12, decided the aforesaid issue in favour of the assessee, holding that the provisions was made on scientific basis and the transaction is revenue neutral.

While deciding the appeal for the assessment years 2009-10, 2012-13 and 2013-14, the Hon'ble Tribunal decided the issue in favor of the assessee following the orders for the assessment years 2010-11 and 2011-12.

Under the provisions of section 115JB of the Act, *the assessing officer, it is respectfully submitted, has limited powers of only making adjustments of items as provided in Explanation to that section. The assessing officer does not, it is respectfully submitted, has the authority to make adjustments which are not consistent with the items specified in Explanation to Section 115JB of the Act.*

In terms of clause (c) of Explanation 1 to Section 115JB, the profit as shown in the profit and loss account, prepared in accordance with Parts II and III of Schedule VI to the Companies Act, can be adjusted by the amount of provision for unascertained liabilities. The aforesaid provision, it would be appreciated, is applicable only to unascertained liabilities and not where provision has been made on an actual and scientific basis, which constitutes a real and accrued liability. In this regard, it is submitted that the auditors while issuing Report in Form 29B under section 115JB of the Act, specifically examined the aforesaid provision and no qualification thereof was made in the report wherein NIL amount was stated against the column of 'unascertained liability on account of provision for advertisement expenses.' Therefore, it would be noted that no qualification was made by the auditors to the 'book profit' as shown in the P&L account of the company.

Reliance is placed on the following decisions, wherein it has been held that provision for accrued liabilities, made on the basis of management's best estimate on scientific basis or on the basis of actuarial valuation, etc., will not be regarded as provision for unascertained liability, liable to be added back to 'book profits' under section 115JB of the Act:

- *CIT vs. H.P. Tourism development Corpn. Ltd: 217 Taxman 148 (HP)*
- *ACIT vs. NHPC Ltd.: 67 SOT 317 (Del. Trib.)*

The assessing officer, thus, has limited power of adjusting the book profit as shown in the P&L account in accordance with the adjustments provided in the Explanation to section 115JB of the Act and does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the said Explanation.

Even otherwise, it is a settled law that where liability has accrued during the previous year, the same needs to be provided in the books, provided the same is capable of being estimated with reasonable certainty, even if the liability is quantified and discharged at a future date. [Refer: Bharat Earth Movers v. CIT: 245 ITR 428 (SC); CIT v. Armour Consultants (P.) Ltd. 214 Taxman 444 (Mad.); Bayer Bio Science (P) Ltd.: 148 TTJ 73 (Mum.)]

In view thereof, it is submitted that the provision for increase in price of material being an ascertained liability made on an actual and scientific basis for the reasons submitted above would also be allowable while computing book profits under section 115JB of the Act.

The Hon'ble Tribunal in appeal for AY 2009-10 deleted the addition made while computing book profits under section 115 JB of the Act.

In view of the above, the addition/disallowance made by the assessing officer was rightly deleted by the CIT(A).

***Ground no. 4**: Disallowance of scrap:*

***Facts**:*

In the course of the business of manufacturing, the process generates some scrap on account of rejection of components, obsolescence of components, etc.

In the course of manufacturing process, scrap is generated mainly on account of grinding scrap in machining process of various components. Such scrap generated in the course of manufacturing is not separately debited to the profit and loss account but is claimed as the part of cost of material consumed in the course of manufacturing. The wastage generated in the manufacturing process is negligible compared to the overall consumption of material during the year. Further, such wastage is normal and inherent in the manufacturing process and, in any case, within tolerable limits.

Scrap generated in the aforesaid manner is transferred to scrap yard with proper approval of respective 'Shop head' and 'Process, Planning & Control department' in the manufacturing unit and sold after necessary processing (e.g. crushing of components), if any. The sale proceeds from sale of scrap is directly credited to the profit and loss account and shown as income.

Having regard to the nature of scrap/wastage generated during the course of business i.e. empty oil drums, corrugated wooden boxes, plastic bags, etc., it is not possible to maintain scrap register at the shop floor containing item wise details of scrap generated. However, the assessee maintains record/register of each item of scrap sold during the year.

The sale proceeds from sale of scrap is directly credited to the P&L A/c and shown as income. The assessee realized 23.42 crores from sale of scrap generated in the course of manufacturing, which was credited to the profit and loss account and shown as income.

AO:

In the assessment order, the assessing officer alleged that the assessee erred in not estimating the value of scrap lying in the factory premises as on the last date of the previous year, viz., 31.3.2014, which should have been credited to profit and loss account as part of the closing stock. The assessing officer estimated the value of such scrap at an amount of Rs.2, 70,364 (computed on the basis of average scrap sales in the last 15 days of the relevant year and first 15 days of next year, vis-a-vis, after reducing the scrap sale as on the last days of the relevant year) and made addition of the same to the closing stock and consequently to the income of the assessee. ***Detail of scrap sales is enclosed at page nos. 84 - 95 of PB on Merits.***

CIT(A):

The CIT(A) deleted the addition made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

Submission:

It would be pertinent to point out that the aforesaid issue has been decided in favour of the assessee passed by the Hon'ble Tribunal in assessee's own case for the assessment year 2010-11 and 2011-12, wherein the Tribunal accepted the method as followed by the assessee of accounting income on sale of scrap on a consistent basis and deleted the impugned addition on the ground that the assessee was not dealing in scrap and/or holding the scrap as inventory, and thus was not required to value the closing stock after taking into account the value of scrap.

The Tribunal, in coming to the aforesaid conclusion, laid emphasis on the fact that such transaction was revenue-neutral and held that considering the size of the assessee company, it could not be expected to keep quantitative tally of miniscule items.

It is pointed out that the Tribunal in assessee's own case for the AY 2007-08 and 2008-09, had restored the matter back to the file of the assessing officer

to compute the value of closing stock on consistent basis, as per method to be followed by the assessing officer in the set-aide order. The assessee had filed an appeal against the aforesaid order of the Tribunal, which was admitted by the High Court vide order dated 19.1.2015 as involving substantial question of law.

The AO had, in the set aside proceedings for AY 2007-08, vide order dated 31.10.2014, confirmed such disallowance on an ad-hoc basis by estimating the average of scrap lying in the closing stock as a proportion of scrap sales for the last 15 days for the ended 31.03.20007 and the first 15 days of the subsequent financial year, to the extent of Rs. 4 lacs. On further appeal, the CIT(A) vide order dated 01.02.2018 deleted the disallowance made by the AO in the set aside order.

It would, however, be pertinent to point out that the aforesaid disallowance sustained by the Tribunal in assessment years 2007-08 and 2008-09 has been categorically distinguished by the ITAT in the AY 2010-11 (referred supra), wherein the Tribunal held that the earlier orders were passed without due consideration of AS-2 and application thereof to scrap generated during manufacturing process has not been examined.

Following the orders for the assessment years 2010-11 and 2011-12, the Hon'ble Tribunal vide orders dated 13.06.2018 and 20.06.2018 decided the aforesaid issue in favour of the assessee in the assessment years 2012-13 and 2013-14 respectively.

Further, in the order passed for assessment year 2009-10, 2015-16 and 2016-17, the Hon'ble Tribunal has decided the issue in favor of the assessee by following the orders passed for the assessment years 2010-2011 to 2013-14.

***Ground no. 5**: Disallowance of prior period expenses:*

***Facts**:*

The assessee is a large size manufacturing company which receives services from several vendors, running into hundreds.

The assessee makes reasonable attempt to quantify the liability incurred towards expenses during the relevant previous years and provide for it. It is not humanly possible to consider and provide for all expenses, in absence of relevant details/material/information for various reasons like non-receipt of

bills/invoices from the vendors, the contract terms with vendors not being settled, disputes in relation to bills received, services contracted by zonal/regional/branch officer not intimated to the head office, etc.

Accordingly, the assessee claimed deduction for miscellaneous expenses aggregating to Rs.9,84,73,658 pertaining to prior period. ***Details enclosed at page no. 96 of PB on Merits.***

AO:

In the assessment order, the assessing officer has disallowed the aforesaid expenses, on the ground that same pertained to prior period and are not allowable revenue expenditure against income of the relevant year.

CIT(A):

The CIT(A) deleted the disallowance made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

Submission:

The aforesaid issue is covered by the order passed by the Hon'ble Tribunal in the assessee's own case for assessment year 2008-09, wherein, the Hon'ble Tribunal taking into consideration the finding of the DRP principally decided the issue in favor of the assessee and remanded the matter to the file of the assessing officer for correcting calculation errors.

Further, the aforesaid issue has been decided in favour of the assessee by the order of the Hon'ble Tribunal for assessment year 2010-11 and 2011-12.

While deciding the appeal for the assessment years 2012-13 and 2013-14, the Hon'ble Tribunal decided the issue in favor of the assessee following the orders for the assessment years 2010-11 and 2011-12.

Further, in the order passed for assessment years 2009-10 2015-16 and 2016-17, the Hon'ble Tribunal has decided the issue in favor of the assessee by following the orders passed for the assessment years 2010-2011 to 2013-14.

Ground no. 6*: Provisions of advertisement expenses at Head office*

Facts:

At the end of year, the assessee makes provision for various expenses incurred during the year on the basis of reasonable estimate, since in the absence of receipt of bills/invoices from the vendors, which are received in the succeeding year, the exact amount payable there against was not ascertainable.

In the succeeding year, on receipt of bills from vendors, exact amount payable to vendors was ascertained. The amount of provision in excess of actual amount payable was reversed in the books of account. In case of shortfall, the profit and loss account is debited with the amount of shortfall.

The assessee made provisions for advertisement expenses Rs.91.90 crore in F.Y. 2013-14 on the basis of Purchase Orders ('PO') issued and agreement entered into with various parties. The total PO of Rs.306.06 crores were released in financial year 2013-14 out of which payment of Rs. 192.70 crore was made on the basis of bills received. Out of the balance PO aggregating to Rs. 113.36 crore (Rs.306.06 - 192.70), Rs. 21.46 crore related to activity of next year 2014-15 and accordingly, no provision was made for this amount. Thus, a provision was made only in respect of purchase orders relating to financial year 2013-14 amounting to Rs. 91.90 crore. Out of the total PO of Rs. 306.06 crores released during the financial year 2013-14, work on PO to the extent of Rs. 16.47 crores (included in Provision) did not materialize and were therefore reversed. Thus provision for advertisement expenses was made on reasonable and justified basis.

The aggregate provision for advertisement expenses incurred at the head office made at the end of the relevant previous year, which was reversed in succeeding year amounted to Rs. 16.46 crores. ***Detail of alleged excess provision of advertisement expenses is enclosed at page nos. 97-111 of PB on Merits.***

AO*:*

In the assessment order, the assessing officer disallowed the provisions made at the end of the year, to the extent of Rs. 16.46 crores, which were reversed in the succeeding year on receipt of bills from the vendors on conclusion of negotiations with the vendors, on the ground that the provisions to that extent were excessive and represented contingent liability, which is not allowable deduction.

That apart, the assessing officer also added back the aforesaid provision of Rs. 16.46 crores, while computing 'book profit' under section 115JB, holding the same to be an unascertained liability.

***CIT(A)**:*

The CIT(A) deleted the disallowance made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

***Submission**:*

In this regard, it is submitted that the provision for advertisement expenses, in the year under consideration as well, has been made on the basis of actual Purchase orders and agreements and thus, has been made on reasonable and scientific basis.

It would be pertinent to point out that the Hon'ble Tribunal, in the immediately preceding ! assessment years, viz. AY 2010-11 and 2011-12, has decided the issue in favour of the i assessee following the order for assessment year 2008-09 holding that the provision was \ made on rational and scientific basis, and thus the same was to be allowed as business ' deduction, notwithstanding that part thereof was reversed in the succeeding year. The Tribunal, in coming to the aforesaid conclusion, also held that the disallowance cannot be made on the issues which are revenue neutral.

The aforesaid issue, it would be noted, is also covered in favour of the assessee by the decision of the Hon'ble Tribunal in assessee's own case for the assessment year 2008-09, wherein the Tribunal reversed the action of assessing officer in disallowing provision on the ground that the amount reversed there against in the succeeding year exceeded 15% of the amount of provision. The Tribunal held that the said approach followed by the AO had no valid basis and was purely ad-hoc. The Tribunal also held that the assessing officer was bound to follow the practice and stand taken by the Department on this issue in the earlier years and, accordingly, restored the matter back to the file of the assessing officer to reconsider the issue, having regard to the method of making provisions followed by the assessee and accepted by the Revenue in preceding years.

The assessing officer, in the set-aside proceedings, vide order dated 26.02.2015, accepted the claim of the assessee and allowed relief on the aforementioned identical issue by observing that the assessee had computed the provision on the basis of actual Purchase Orders, which was scientific and logical in nature.

While deciding the appeal for the assessment years 2012-13 and 2013-14, the Hon'ble Tribunal decided the issue in favor of the assessee following the orders for the assessment years 2010-11 and 2011-12

Further, in the order passed for assessment year 2009-10, 2015-16 and 2016-17, the Hon'ble Tribunal has decided the issue in favor of the assessee by following the orders passed for the assessment years 2010-11 to 2013-14. In the aforesaid orders, the Tribunal also held that the provision for advertisement expenses was also allowable while computing book profit under section 115JB of the Act.

***Ground no. 7**: Disallowance of excess depreciation claimed on computer and computer peripherals @ 60%*

Facts:

During the relevant previous year, the assessee claimed depreciation @ 60% on certain assets such as UPS, scanners, printers and other network equipments, which were acquired and used with computers and formed integral part of computer for the purposes of assessee. ***Detail of addition made to computer is enclosed at page no. 112 of PB on Merits.***

AO:

In the assessment order, the assessing officer held that certain items of computer peripheral which are capable of use of standalone basis independent of computer are not computer and, therefore, are not eligible for depreciation @ 60%. Therefore, the assessing officer allowed depreciation on such items at normal rate applicable to plant and machinery and disallowed the excess claim of depreciation amounting to Rs.65,99,940.

CIT(A):

The CIT(A) deleted the disallowance made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

Submission:

It may be pointed out that aforesaid issue has been decided in favour of the assessee by the order of the Hon'ble Tribunal in assessee's own case for the assessment year 2008-09.

It would further be appreciated that similar disallowance made by the assessing officer in the draft assessment order for assessment years 2010-11 and 2011-12 on identical basis as adopted in the draft assessment order for the relevant assessment year, was deleted by the Hon'ble DRP and consequential Department appeal before Tribunal was also been dismissed vide consolidated order dated 24.10.2016.

***Ground no. 8**: Disallowance of alleged excessive purchases from related parties as per AS-18*

***Facts**:*

In the course of business of manufacturing two-wheelers, the assessee, inter alia, procures certain critical components like shock absorbers, carburetors, etc., which are fitted in the two-wheelers manufactured by the assessee, from a single vendor, having the requisite technology to manufacture the same, in accordance with the specifications given by the assessee. The assessee, it may be pertinent to point out, does not procure such components from any other vendor.

The purchase price of components which are purchased from various suppliers are based upon negotiations with such vendors and are different due to various factors, like level of automation of vendor, amount of investment by vendor, age of the plant, capacity utilization (impacting fixed cost recovery), volume of supply, geographical differences (which could impact cost of freight, labour, power), lead time, indirect tax costs (CST vs. VAT) etc. Further, the assessee also prefers purchasing material from certain suppliers, due to business/commercial expediency, viz., de-risking the supply chain to reduce dependence, inability of existing supplier to meet demand increase, etc.

The said parties are not related to assessee, in terms of the provisions of section 40A(2)(b) of the Act.

In addition to above, the assessee in the course of manufacturing two wheelers, places purchase orders on vendors of certain customized intermediary products like wheel assembly, seat assembly, etc. The assessee, while placing aforesaid purchase orders to the vendors, also specifies the specifications of the raw materials/components to be used in manufacture of customized intermediary products as also the name of suppliers from whom the former vendor would purchase such materials/components at prices predetermined by the assessee.

During the relevant previous year, the assessee made total purchases of various raw materials, etc. aggregating to Rs. 18,363.25 crores. Out of the aforesaid total purchases, purchases from related parties, i.e., parties related to the assessee, in accordance with definition given in AS-18 issued by the Institute of Chartered Accountants of India (ICAI) and as disclosed in the notes to accounts of the audited accounts of the relevant previous year, but admittedly not related in terms of definition provided in section 40A (2) of the Act, amounted to Rs. 2005.38 crores. ***Detail of price variation on purchase of material from related parties in comparison to non-related parties is enclosed at page nos. 113 - 141 of PB on Merits.***

AO*:*

The AO after comparing purchase price of certain products, which were purchased from the aforesaid related parties as also from unrelated parties, alleged that the purchase price from related parties was excessive in order to reduce the taxable income. The AO also alleged that the assessee has conducted itself in such a manner that the parties do not qualify as 'related party' under section 40A(2) of the Act, even though said parties were related to assessee in terms of AS- 18.

It was observed that the assessing officer had the power to lift the corporate veil, to disallow excessive purchase price paid to the aforesaid parties, notwithstanding that the said parties were not related, in terms of provisions of section 40A(2) of the Act.

Accordingly, the assessing officer computed excessive purchase price at Rs. 14,56,22,000 in respect of purchases from related parties for which internal comparable of similar [1] products purchased from related parties were available. In respect of other category of purchases from related parties for which no internal comparable was available, the I assessing officer worked out an amount of Rs.30,17,50,000, in the same proportion as that of purchases for which internal comparable were available alleging the same to be excessive. Thus, assessing officer made total disallowance of Rs.44.74 cr out of related parties purchases.

CIT(A):

The CIT(A) deleted the disallowance made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and ***2011-12.***

Submission:

It would be appreciated that the aforesaid issue is squarely covered in favour of the assessee by the decision of the Delhi Bench of Tribunal in the assessee's own case for assessment year 2007-08 and 2008-09, wherein identical disallowance made in that year was deleted on the ground that since in the first place, the parties were not related to the assessee company in terms of section 40A (2), disallowance on ground of excessive purchase price could not have been made under that section. Further, the Tribunal held that the transactions were entered by the assessee on account of commercial expediency and when the recipients had paid tax on payments received from the assessee company, disallowance could not be made by applying provisions of section 40A(2) of the Act.

It would be pertinent to point out that similar disallowance made in the immediately preceding two assessment years, viz. AY 2010-11 and 2011-12 was also reversed by the Hon'ble Tribunal, following the aforementioned order of the Tribunal for assessment years 2007-08 and 2008-09.

While deciding the appeal for the assessment years 2012-13 and 2013-14, the Hon'ble Tribunal decided the issue in favor of the assessee following the orders for the assessment years 2010-11 and 2011-12

Further, in the order passed for assessment years 2009-10 2015-16 and 2016-17, the Hon'ble Tribunal has decided the issue in favor of the assessee by following the orders passed for the assessment years 2010-2011 to 2013-14.

Ground no. 9: *Payment received on behalf of Hero Honda FinCorp. Ltd. (HFCL) deemed as dividend under section 2(22)(e).*

Facts:

Hero FinCorp Limited (HFCL) is a related company which is engaged primarily in the business of financing of vehicles.

In pursuance of the said business, HFCL extends to the dealers of the assessee company, facility of financing vehicles purchased by the dealers from the assessee company. The dealers on purchase of vehicles from the assessee, get the bill of purchase raised by the assessee, discounted from HFCL and remit payment to the assessee. The dealers are required to make payment of aforesaid discounted bills to HFCL on maturity thereof. Subsequently, when payments by dealers to HFCL are due, the dealers, due to convenience of facility of collection centers of the assessee available all over India, make payment into the assessee's bank account, for and on behalf of HFCL, which is in turn remitted by the assessee to HFCL in 2-3 days. ***Detail of relevant extract from annual report of hero Fincorp ltd. showing addition made to reserve and surplus is enclosed at page nos. 142- 202 of PB on Merits.***

AO:

The AO held the aforesaid amount received by assessee from dealers as loan/advance given by HFCL to assessee and consequently deemed the same as dividend under section 2(22)(e) of the Act. It was further observed that the aforesaid advances were not given by HFCL to the assessee in the ordinary course of business since the aforesaid payments were given by customers of HFCL and not by HFCL directly.

CIT(A)*:*

The CIT(A) deleted the addition made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

Submission:

In AY 2007-08, the Hon'ble Tribunal decided the issue in favour of the assessee holding that assessee's intention did not reflect that the amount was received as loan or advance to as to attract the provisions of section 2(22)(e) of the Act. The Hon'ble Tribunal further held that the assessee was holding the money as a custodian and the amount would be exempted in terms of clause (ii) section 2(22)(e) since the amount was given in the ordinary course of business. In assessment year 2008-09, 2010-11 and 2011-12, the Hon'ble Tribunal following the order for assessment year 2007-08 deleted the disallowance.

While deciding the appeal for the assessment years 2012-13 and 2013-14, the Hon'ble Tribunal decided the issue in favor of the assessee following the orders for the assessment years 2010-11 and 2011-12.

Further, in the order passed for assessment years 2009-10 2015-16 and 2016-17, the Hon'ble Tribunal has decided the issue in favor of the assessee by following the orders passed for the assessment years 2010-2011 to 2013-14.

***Ground no. 10**: Disallowance under section 40(a)(ia) for alleged default of non-deduction of TDS on quarterly target and turno9ver discount and Sales Discount.*

***Facts**:*

During the relevant year, the assessee incurred expenditure of Rs. 101,49,17,767 on account of various incentives/discounts offered to dealers under various schemes on purchase of spare parts/vehicles from the assessee. The aforesaid expenditure, aggregating to Rs.51,63,34,099, relates to amount of discounts offered by the company to various stockists/dealers on purchase of spare parts made by the latter in accordance with sales incentive/discount scheme prevalent during the relevant previous year. The assessee has further given trade discount amounting to Rs.49,85,83,668 to the dealers on the sales invoice at the time of sales. ***Details enclosed at page nos. 203 to 208 of PB on Merits.***

AO:

The AO held that the assessee was liable to deduct tax from aforesaid discounts/incentives under section 194H of the Act since the payments made

were on the basis of performance of dealers and targets achieved by dealers which was not in the nature of "discount" as the same was not given at the time of taking delivery of goods by the dealers but was given subsequently.

In view of above, the assessing officer held that incentive paid by the assessee to dealers was not in the nature of 'discount', but was paid as reward for effecting sale of vehicles of assessee by the dealers and, therefore, fell within the meaning of the term 'commission' as defined in section 194H of the Act. Since, the assessee failed to deduct tax at source from the aforesaid incentive under section 194H, the assessing officer disallowed the entire expenditure of Rs. 101,49,17,767/- under section 40(a)(ia) of the Act.

Further, the assessing officer held that the entire total trade discount of Rs. 56,90,94,045 given to dealers on sales invoice at the time of sale while alleging that the same was based on achievement of turnover targets which represented commission on which TDS under section 194H was liable to be deducted.

***CIT(A)**:*

*The CIT(A) deleted the disallowance made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and **2011-12**.*

***Submission**:*

The Hon'ble Tribunal in assessment year 2007-08 decided the issue in favour of the assessee relying on the decision of Delhi High Court in the case of CIT vs. Mother Dairy Ltd. (ITA No. 1925/2010) and Jai Drinks Pvt. Ltd. (336 ITR 383), holding that the discount in question is not in the nature of commission but an incentive for higher sale targets.

It is respectfully submitted that the aforesaid finding was followed by the Hon'ble Tribunal in the AY 2010-11 and 2011-12, wherein similar disallowance made by the assessing officer was deleted.

While deciding the appeal for the assessment years 2012-13 and 2013-14, the Hon'ble Tribunal decided the issue in favor of the assessee following the orders for the assessment years 2010-11 and 2011-12

Further, in the order passed for assessment years 2009-10, 2015-16 and 2016-17, the Hon'ble Tribunal has decided the issue in favor of the assessee by following the orders passed for the assessment years 2010-2011 to 2013-14.

Further, the Courts have in the following decisions rendered after the order passed by the Tribunal also reiterated the aforesaid legal positions:

- *Ahmedabad Stamp Vendor Association v. Union of India [2002] 257 ITR 202 - affirmed by the Hon'ble Supreme Court in 348 ITR 378.*
- *Bharti Airtel Ltd. v. DCIT: [2015] 372 ITR 33 (Karnataka HC)*
- *PCIT v. Gujarat Narmada Valley Fertilizer And Chemicals Ltd.: [2019] 266 Taxman 19 (Gujarat)(MAG)*
- *CIT (TDS) v. OCM India Ltd. - [2018] 408 ITR 369 (P&H)*
- *Hindustan Coca Cola Beverages (P.) Ltd. v. CIT: [2018] 402 ITR 539 (Raj. HC)*

***Without prejudice to the above,** it is submitted that the assessing officer erred in disallowing 100% of the impugned expenditure incurred, instead of restricting the disallowance to 30% of the said total expenditure, in terms of the provisions of section 40(a)(ia) as amended by the Finance (No.2) Act, 2014.*

It would be pertinent to point out that although the Finance (No.2) Act, 2014 states the aforesaid amendment to be effective from 01.04.2015, however the aforesaid amendment was made with an intent to remove the hardship, the same is also applicable retrospectively including the year under consideration.

Reliance in this regard is placed on the following decisions wherein it has been held that the aforesaid amendment of reducing the amount of disallowance from 100% to 30% is retrospective:

- *Muradul Haque v. ITO: 2020] 184 ITD 58 (Delhi - Trib.)*
- *Smt. Kanta Yadav vs. ITO (ITA No. 6312/Del/2016)*
- *Shri Rajendra Yadav vs. ITO (ITA No. 895/JP/2012)*
- *Smt. Sonu Khandelwal vs. ITO (ITA No. 597/JP/2013)*

In that view of the matter, without prejudice to the submissions above that there was no failure on the part of the appellant to deduct tax at source from

the impugned payment, the disallowance, if any, should be directed to be reduced to 30% of the total expenditure.

For the aforesaid cumulative reasons, no portion of the aforesaid expenditure incurred during the year calls for being deleted during the year under section 40(a)(ia).

Ground no. 11: *Disallowance of reimbursement of expenses under section 40(a)(ia)*

Facts:

During the year under consideration, the assessee claimed expenses of Rs. 6,70,864 on account of reimbursement of actual expenses towards conveyance, air fare, out of pocket expenses, taxi charges, lodging etc. incurred and claimed by various persons on cost to cost basis. Details of expenses reimbursed alongwith copies of sample vouchers alongwith supporting evidencing are enclosed at pages ***209-288 of PB on Merits.***

It is submitted that the said expenses amounting to Rs.6,70,864 were pure reimbursement of expenses incurred on cost to cost basis and there was no profit element involved. Since re-imbursement of expenses did not constitute income in the hands of the recipient, the assessee was not liable to deduct tax at source therefrom and, therefore, no portion of the said expenditure calls for being disallowed under section 40(a)(ia)of the Act.

AO:

The AO disallowed the aforesaid expenses, invoking section 40(a)(ia), for the alleged failure of the assessee to deduct tax at source therefrom under section 194J of the Act. While the AO did not doubt that the payment was made by assessee towards reimbursement of expenses, it was still held that assessee was liable to deduct tax at source under section 194J of the Act.

CIT(A):

The CIT(A) deleted the disallowance made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

Submission:

The aforesaid issue is squarely covered in favour of the assessee by the decision of Delhi bench of Tribunal in the assessee's own case for the

assessment years 2007-08 and 2008- 09, wherein disallowance of expenditure on account of re-imbursement of out-of-pocket expenses incurred by professionals/vendors under section 40(a)(ia) was deleted on the ground that same did not have any element of income in the hands of the recipient.

It would also be pertinent to point out that similar disallowance made in the draft AO order, but subsequently deleted by the DRP, was challenged in Revenue's appeal for AY 2010-11 and 2011-12. However, the Hon'ble Tribunal upheld the order of the DRP and confirmed the deletion of disallowance on account of non-deduction of tax on reimbursement of expenses following the order for assessment years 2007-08 and 2008- 09.

While deciding the appeal for the assessment years 2012-13 and 2013-14, the Hon'ble Tribunal decided the issue in favor of the assessee following the orders for the assessment years 2010-11 and 2011-12.

Further, in the order passed for assessment years 2009-10 and 2015-16, the Hon'ble Tribunal has decided the issue in favor of the assessee by following the orders passed for the assessment years 2010-2011 to 2013-14.

***Ground no. 12**: Gains from sale of investments income treated as business income.*

Facts:

The assessee invests surplus funds arising in the course of business under various modes of investment like mutual funds/PMS, shares, etc., The gains realized from sale of such various instruments, amounting to 299.39 crores during the relevant previous year, were disclosed under the head 'capital gains'.

AO:

The AO held that, having regard to the magnitude/volume of total turnover from sale of i investments, the aforesaid income was taxable under the head "business income', j Therefore, the assessing officer made an addition of 299.39 crores under the head ! 'business income' instead of "capital gains" as declared by the assessee.

***CIT(A)**:*

The CIT(A) deleted the disallowance made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

Submission:

The aforesaid issue is squarely covered in favour of the assessee by the decision of the Delhi bench of the tribunal in the assessee's own case for the AY 2007-08 and 2008-09, wherein after considering the legal position and intention of the assessee company, the Tribunal came to the conclusion that income from sale of shares/mutual funds/PMS etc. would be taxable as capital gains, instead of business income brought to tax by the assessing officer on the basis that the assessee (a) was not a trader in stock; (b) had no intention of holding the shares as stock; (c) sales were effected by delivery (d) that the department had itself in earlier years taxed such transactions under the head capital gains.

It would be apposite to note that the Tribunal, vide order dated 24.10.2016 passed in the assessee's own case for AY 2010-11 and 2011-12, reversed the action of AO in changing the head of income and held that in cases where an assessee treats investments made in shares as capital assets, in view of Circular 6/2016 of the Board, gains/profits on sale of such investments shall be treated as capital gains and not income from business/profession.

While deciding the appeal for the assessment years 2012-13 and 2013-14, the Hon'ble Tribunal decided the issue in favor of the assessee following the orders for the assessment years 2010-11 and 2011-12.

Further, in the order passed for assessment years 2009-10, 2015-16 and 2016-17, the Hon'ble Tribunal has decided the issue in favor of the assessee by following the orders passed for the assessment years 2010-2011 to 2013-14.

***Ground no. 13**: Disallowance under section 14A, as per Rule 8D.*

***Facts**:*

During the relevant previous year, the assessee company earned dividend/interest income of Rs. 15,11,45,290 from investments in shares,

*bonds, and mutual funds, which was exempt under section 10(34)/l 0(35)/l 0(15)(iv)(h) of the Act. [Details of exempt income is at **pages 289-290 of Paperbook (merits)].** In view of the provisions of section 14A of the Act, the assessee suo moto disallowed Rs. 67.04 lacs in the return of income, being salary of two employees of the company who were involved in treasury function alongwith portfolio management fee. (Refer working at page nos. 291-292 of Paperbook Merits.*

AO:
In the assessment order, the assessing officer, without giving any reasons, did not accept the method of disallowance adopted by the assessee and made a disallowance of Rs. 97.75 lacs invoking provisions of Rule 8D of the Rules after reducing the suo moto disallowance made by the assessee in the return of income, in the following manner:

S. No.	*Particulars*	*Amount (in Lacs)*	
(i)	*Expenditure directly related to exempt income*	*-*	*0*
(ii)	*Disallowance of interest expenditure*		
	A. Interest expenditure incurred during the year	*1,182*	
	B. Average value of investment	*26,588*	
	C. Average of total assets	*9,86,947.50*	
	*D. Disallowance=A*B/C*		*31.84*
(iii)	*½% of average value of investments [0.5%x3,32,90,205]*		*132.94*
Total disallowance			*164.78*
Less: Suo moto disallowance made in the return			*67.03*
Net disallowance made in the assessment order			*97.75*

The assessing officer has alternately proposed to disallow interest expenditure to the extent of Rs.31.84 lacs under section 36(l)(iii) and amount of Rs. 65.91 lacs [132.94 -67.03], being half percent of average investment, under section 37(1) of the Act.

Further, the assessing officer, while computing 'book profit', made an adjustment of Rs.97.75 lacs computed under section 14A read with Rule 8D of the Rules, without assigning any reason.

CIT(A):

The CIT(A) deleted the disallowance made by the assessing officer under section 14A read with Rule 8D(ii) of the Rules holding that the assessee had sufficient interest free funds and the interest expenditure incurred by the assessee did not have any nexus with investment yielding exempt income. Further, the CIT(A) after relying upon the decision of the Hon'ble Delhi High Court in the case of ***ACB India ltd. v. ACIT:374 ITR 108 (Del)*** *held that only investment which yielded exempt income during the year would be considered for computing disallowance under section 14A read with Rule 8D(2)(iii) of the Rules and considering that the disallowance computed as per the said method was Rs. 19.07 Lacs which was lesser than the suo motu disallowance of Rs. 67.03 Lacs, the disallowance made by the assessing officer was not justified.*

Regarding the alternate action of the assessing officer in disallowing interest expenditure to the extent of Rs.31.84 lacs under section 36(l)(iii) and amount of Rs. 65.91 lacs [132.94 -67.03] under section 37(1) of the Act, the CIT(A) held that since borrowed funds have been utilized in regular business activities and not for making the investment, the aforesaid disallowance made by the assessing officer is not sustainable.

Further, the disallowance under section 14A read with Rule 8D made while computing book profits under section 115JB of the Act was deleted by the CIT(A) after relying on the decision of the Hon'ble Delhi High Court in the case of ***PCIT v. Bhushan Steel: ITA No. 593/2015.***

Submission:

As per section 14A(2), disallowance under that section as per Rule 8D can be made only if the assessing officer records satisfaction/finding as to the incorrectness in the method of I disallowance followed by the assessee. In the absence of any satisfaction recorded in the assessment order, the disallowance as per Rule 8D needs to be deleted. Reliance in this . regard is placed on the following decisions:

- *CIT vs. Walfort Share & Stock Brokers 326 ITR 1(SC)*
- *Godrej & Boyce Manufacturing Company Ltd. VS. DCIT: 394 ITR 449(SC) Maxopp Investment Ltd: 347 ITR 272 (Del.)- Affirmed by the Hon'ble Supreme Court in 402 ITR 640*
- *CIT v. Essar Teleholdings Ltd.: 401 ITR 445 (SC)*
- *PCIT v. Vedanta Ltd.: [2019] 261 Taxman 179 (Delhi)*

- H.T. Media Limited v. PCIT: 399 ITR 576 (Del)
- Eicher Motors Ltd. vs. CIT: 398 ITR 51 (Del)
- PCIT vs. U.K. Paints (India) (P.) Ltd.: 392 ITR 552 (Del.)
- CIT v. Abhishek Industries Ltd.: 380 ITR 652 (P&H)
- CIT vs. I.P. Support Services India (P) Ltd: 378 ITR 240 (Del)
- Joint Investments (P.) Ltd. v. CIT: 372 ITR 694 (Del) (Del)
- CIT v. Taikisha Engg. India Ltd.: 370 ITR 338 (Del.)

Even otherwise, there is no nexus of expenses, like interest expenditure and other administrative expenses with investments, warranting disallowance under section 14A.

Interest Expenditure [Disallowance under Rule 8D(ii)l

The assessee is a cash rich company, which does not borrow funds for making investment. The marginal interest expenditure of Rs. 11.82 crores was incurred on other temporary loans/dealers deposit, having nexus with main business function. Further, no direct nexus of interest expenditure with investments or earning of dividend income was established by the assessing officer, for which the initial burden was on the assessing officer.

The assessee, it is submitted, had substantial free reserves of Rs.4966.30 crores at the beginning of the relevant previous year and had also generated substantial surplus/interest free funds of Rs. 633.63 crores during the year, against which additional investments made during the year was of Rs. 198.41 crores only. In such circumstances, it is to be presumed that only interest free funds have been utilized for making investments during the year. Reference, in this regard, is made to the following decisions:

- *East India Pharmaceutical Works Ltd. v. CIT: 224 ITR 627 (SC)*
- *CIT v. Reliance Industries Ltd.: 410 ITR 466 (SC)*
- *CIT v. UTI Bank Ltd.: 215 Taxman 8 - The Supreme Court dismissed the revenue's*
- *SLP in Civil Appeal No. 468/2014*
- *Woolcombers of India Ltd. v. CIT: 134 ITR 219 (Cal.)*
- *PCIT v. Basti Sugar Mills Co. Ltd.: ITA No. 205 of 2018 (Del HC)*
- *PCIT v. Reebok India Company: [2018] 259 Taxman 100 (Delhi)*
- *Indian Explosives Ltd. V. CIT: 147 ITR 392 (Cal.)*
- *Alkali & Chemicals Corp of India Ltd. v CIT: 161 ITR 820 (Cal)*
- *CIT v Radico Khaitan Ltd : 274 ITR 354 (All)*
- *CIT v Dhampur Sugar Mills Ltd : 274 ITR 370 (All)*

- *CIT v. United Collieries Ltd. : 49 Taxman 227 (Cal)*
- *CIT v. Enamour Investment Ltd.: 72 Taxman 370 (Cal)*
- *CIT v. Caroline Investment Ltd.: 87 Taxman 238 (Cal)*
- *CIT v. Kanoria Investment (P) Ltd.: 232 ITR 7 (Cal)*
- *CIT vs. Hotel Savera: 239 ITR 795 (Mad)*
- *Smt. Chanchal Katyal v. CIT: 298 ITR 182 (All.)*
- *CIT v. Reliance Utilities and Power Ltd.: 313 ITR 340 (Bom)*
- *CIT v. HDFC Bank Ltd.: 284 CTR 414 (Bom.)*
- *Hero Honda Finlease Ltd vs. ACIT: ITA No. 3726 & 6102/Del/2012 (Del)*

Reliance is also placed on the following cases, wherein, the Courts have repeatedly held that interest expenditure cannot be disallowed under section 14A of the Act, where the assessee had sufficient surplus funds and there was no finding by the assessing officer of any direct nexus of borrowed funds with investments:

- *South Indian Bank Ltd. v. CIT: 438 ITR 1 (SC)*
- *Godrej & Boyce Manufacturing Company Ltd. VS. DCIT: 394 ITR 449(SC)*
- *Pr. CIT vs. GMM Pfaulder Ltd.: ITA No. 506 of 2017 dated 31.07.2017 (Guj)*
- *CIT v. Max India Ltd.: 388 ITR 81 (P&H)*
- *CIT vs. Suzlon Energy Ltd.:[2013] 215 Taxman 272 (Gujarat)*
- *CIT vs. M/s. Ashok Commercial Enterprises: ITA No. No.2985 of 2009 (Bom)*
- *Lubi Submeribles Ltd.: ITANo.868 of 2010 (Guj)*
- *CIT vs. K. Raheja Corporation Pvt Ltd: ITA No. 1260 of 2009*
- *Gujarat State Fertilizers and Chemicals Ltd : Tax Appeal No. 82 of 2013 (Guj HC)*
- *Hero Honda Finlease Ltd vs. ACIT: ITA No. 3726/Del/2012 (Del)*
- *Eimco Elecon (India) Ltd. v. Addl. CIT: 142 ITD 52 (Ahd.)*

Administrative expenses [Disallowance under Rule 8D(iii)|

The expenses debited in the profit and loss account (other than those suo moto disallowed) pertains to main business activity of manufacturing of two wheelers; revenue earned wherefrom was Rs. 25,124.91 crores as against exempt income of Rs.15.11 crores earned by way of dividend from investments which is only 0.06% of the total revenue.

The assessee company instead of keeping idle the liquid funds generated from the aforesaid business, temporarily lying in bank accounts, invests them in various shares/mutual funds/portfolio management schemes. The decision to make such temporary investment, which is part of daily cash management, is not taken by the directors of the company, who are involved in the core business functions carried out by the company. The board of directors has delegated the aforesaid task to the treasury department. It would be appreciated that the treasury department was responsible for managing the overall fund flow of the company and different roles had been assigned to different people depending on their calibre and expertise. Accordingly, a team of certain persons (2 employees during the relevant year) in the treasury department, who on the basis of broad investment guidelines/policy of the company, invest idle/liquid funds on daily basis in various schemes, depending upon the funds requirement. Apart from salary of the aforesaid two employees, which was suo moto disallowed in the return of income, no other expenditure, including interest expenditure, was incurred in relation to earning of exempt income nor has the same been pointed out by the assessing officer.

In that view of the matter, in the absence of any additional administrative expenditure being incurred by the appellant nor being pointed by the Respondent, no further disallowance was warranted under clause (iii) of Rule 8D of the Rules.

Even otherwise, it is submitted that no expenses alleged to have been incurred for earning exempt income during the year could be disallowed applying the method/formula prescribed in clause (iii) of sub rule (2) of Rule 8D of the Rules for the reasons submitted as under:

At the outset, it is submitted that for the purposes of computing disallowance under section 14A read with Rule 8D(2)(iii) of the Rules, only those investments which actually yielded tax exempt income during the year are considered as against the total investments appearing in the balance sheet for the relevant year.

In the present case, it is submitted that, during the year under consideration, the appellant earned dividend/interest income of Rs. 15.11 crores from following investments in shares, which are exempt under section 10(34)/l 0(35)/l 0(15)(iv)(h) of the Act:

Source	*Name of securities*	*Amount*

		(in Rs.)
Detail of dividend exempt u/s 10(34)/10(35)		
Mutual Fund	*IDFC Arbitage Fund dividend (Direct plan) 68,74,941*	*68,74,941*
	Birla Sunlife Cash Plus-Daily Dividend- Direct Plan Reinvestment	*44,987*
Shares	*BSE LTD.*	*5,61,600*
	Hero Honda FinLease Ltd.	*2,19,30,900*
Detail of interest exempt u/s 10(15)(iv)(h)		
Bonds	*IIFCL(Tax Free)-6.85%*	*5,55,50,685*
	IRFC(Tax Free)-6.70%	*96,78,288*
	IRFC-7.18%	*1.83,21,712*
	HUDCO-7.34%	*1,83,50,000*
	HUDCO-8.51%	*45,46,438*
	NHPC-8.18%	*54,13,927*
	PFC-8.18%	*98,71,812*
	Total	*15,11,45,290*

Detailed working of disallowance under section 14A of the Act computed in terms of provisions of clause (iii) of sub-rule (2) of Rule 8D of the Rules considering only those investment wherefrom dividend of Rs. 15.11 crores has been earned during the year under consideration is tabulated as under:

Security	*Opening Balance*	*Closing Balance*	*Average Balance*
Shares			
BSE LTD	*5.94*	*5.94*	*5.94*
Hero Honda Finlease LTD	*56.31*	*56.47*	*56.39*
Mutual Funds			
IDFC Arbitage Fund dividend (Direct plan)68,74,941	*-*	*30.75*	*15.375*
Birla Sunlife Cash plus-Daily Dividend –Direct plan Reinvestment	*252.65*	*50*	*151.325*
Bonds			
IIFCL(Tax Free)-6.85%	*100.90*	*-*	*50.45*
IRFC(Tax Free)-6.70%	*15.23*	*15.23*	*15.23*

IRFC-7.18%	*25.00*	*25.00*	*25.00*
HUDCO-7.34%	*25.00*	*25.00*	*25.00*
HUDCO-8.51%	*-*	*25*	*12.50*
NHPC-8.18%	*-*	*16.11*	*8.055*
PFC-8.18%	*-*	*32.39*	*16.195*
Total of average value of investments yielding exempt income (A)			*381.46*
0.5% of (A)			*0.19073*
Suo Moto disallowance made by the assessee			*0.67037*

In view of the above, it is submitted that the disallowance of expenses of Rs. 19.07 lacs under section 14A of the Act, computed as per clause (iii) of sub rule (2) of Rule 8D of the Rules, is less than the suo moto disallowance Rs. 67.03 lacs made by the appellant in the return of income, therefore, no further disallowance in warranted under section 14A of the Act.

Reliance, in this regard is placed on the following decisions wherein the Courts held that only those investments from which exempt income is earned are to be considered for the purpose of computing disallowance under section 14A of the Act:

Attention, in this regard, is invited to the decision of the ***jurisdictional Delhi High Court in the case of ACB India Ltd. v. ACIT: 374 ITR 108.*** *In that case, the assessee, during the relevant previous year, earned exempt income of Rs. 18,26,360 from investments aggregating to Rs.3,53,26,800. The assessing officer, however, applied Rule-8D(iii) of the Rules, and computed disallowance of Rs. 19,96,242 under section 14A of the Act by applying 0.5% on total investments appearing in the balance sheet amounting to Rs.38,61,09,287.*

In first appeal, the CIT(A) directed the assessing officer to compute disallowance as per Rule 8D by adopting value of investment as Rs.3,53,26,800, being investments which actually yielded exempt income during the relevant year, instead of total investments of Rs.38,61,09,287 adopted by the assessing officer. The Tribunal, however, reversed the order of the CIT(A).

On further appeal, the Hon'ble Delhi High Court, allowing the appeal of the assessee upheld the order of the CIT(A) and observed as under:

"Therefore, the first condition for application of Section 14A was fulfilled. In such eventuality the AO is required by the mandate of Rule 8D to follow Rule 8D(2). Clauses 1, 2 and 3 detail the methodology to be adopted. Clauses are of importance, they read as follows:

The AO, instead of adoptins the averase value of investment of which income is not part of the total income i.e. the value of tax exempt investment, chose to factor in the total investment itself. Even though the CIT(Ayyeals) noticed the exact value of the investment which yielded taxable income, he did not correct the error but chose to apply his own equity. Given the record that had to be done so to substitute the flsure of Rs. 38,61,09,287 with the fisure of Rs. 3,53,26,800 and thereafter arrive at the exact disallowance of .05%.

In view of the above reasonins, the findings of the ITAT and the lower authorities are hereby set aside. *The appeal is allowed and the matter is remitted to work out the tax effect to the AO who shall do so after giving due notice to the party. " (emphasis supplied)*

To the similar effect are the following decisions:

- *PCIT v. Caraf Builders & Constructions (P.) Ltd.: 414 ITR 122 (Del) – SLP*

filed by the Department dismissed in SLP(C) No. 25130/2019 reported in 268 Taxman 317

- *REI Agro Ltd vs. DCIT: 144 ITD 141 (Kol. Trib.) - Department appeal dismissed in CIT v. REI Agro Ltd.: I.T.A.TNo.220 of 2013 (Cal. HC)*
- *ACIT v. Vireet Investment (P.) Ltd.: 165 ITD 27 (Del) (SB)*
- *Religare Enterprises Ltd. v. DCIT: 1549/Del/2014 (Del Trib.)*
- *Religare Securities Ltd vs. ACIT: ITA 2282/Del/2013*
- *Religare Securities Ltd vs. DCIT: ITA 230/Del/2017*

Amendment in section 14A vide Finance Act, 2022, w.e.f., 01.04.2022 prospective in nature

For sake of completeness, it is pointed out that vide Finance Act, 2022, w.e.f. 01.04.2022 the following two amendments have been made in section 14A by the Finance Act, 2022, w.e.f. 01.04.2022:

a. The words, "Notwithstanding anything to the contrary contained in this Act, for the purposes of, has been inserted in sub-section (1); and

b. New Explanation has been inserted after proviso below sub-section (3) of section 14A of the Act, which reads as under:

*"Explanation-**For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act**, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income'". (Emphasis supplied)*

It is respectfully submitted that the aforesaid amendments in section 14A of the Act by the Finance Act, 2022 are prospective in nature inasmuch as the same have been made w.e.f., 01.04.2022 and are, therefore, applicable from assessment year 2022-23 and onwards and not applicable to the relevant assessment year 2014-15.

*Reliance in this regard is placed on the recent decision of Hon'ble Delhi Court in the case of **PCIT v. Era Infrastructure (India) Ltd.: ITA 204/2022** (decision dated 20th **July,** 2022) wherein the Court held that "the amendment of section 14A, which is "for removal of doubts " cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood. "*

*Similarly, the Mumbai bench of Tribunal in the case of **ACIT v. K Raheja Corporate Services Pvt. Ltd: I.T.A Nos.2521-2527/Mum/2021 (decision dated 17.06.2022) (Mum. Trib.)** held that the Explanation inserted in section 14A of the Act by the Finance Act, 2022 is prospective in nature.*

In that view of the matter, the aforesaid amendment in section 14A of the Act is not applicable to the relevant assessment year and the decision of the

Delhi High Court in the case of ACB India Ltd. (supra) would continue to hold the field.

Re: Alternative disallowance under section 36(l)(iii) and section 37(1)

Further, the assessing officer has alternately proposed to disallow interest expenditure to the extent of Rs.41.06 lacs under section 36(l)(iii) and amount of Rs. 124.01 lacs, being half percent of average investment, under section 37(1) of the Act.

In this regard, it is respectfully submitted that the assessing officer erred in not appreciating that no borrowed funds were utilized for the purpose of making investments since the appellant had sufficient interest-free surplus funds to make investments and the expenses incurred during the year, including interest expenditure, was for the purpose of regular business activities. Accordingly, it would be appreciated that such expenses had no nexus with investment in shares, and were, therefore, allowable business deduction under section 36(l)(iii) and 37(1) of the Act.

Further, it may be pertinent to point out that in coming to the aforesaid conclusion, the assessing officer further erroneously observed that interest expenditure incurred during the year and having nexus with investment in shares would also not be allowable under section 48 of the Act without appreciating that such finding was extraneous and beyond jurisdiction to assessment year under consideration inasmuch as the said issue could be raised only in the year of sale of investment(s).

For the aforesaid cumulative reasons, additional disallowance made in the assessment order under section 14 A of the Act calls for being deleted.

Re: Orders passed by the Tribunal in appellants own case in earlier years

The Hon'ble Tribunal, vide consolidated order dated 24.10.2016 passed in ITA Nos 1545/del/2015 and 914/Del/2016 in assessee's own case for the immediately preceding assessment years AY 2010-11 and 2011-12 decided the issue in favor of the assessee on the ground that there was no reason/satisfaction recorded by the assessing officer under section 14A(2)/(3) of the Act while proceeding with disallowance made under section 14A of the Act. The Tribunal also held that there was nothing to demonstrate that any additional expenditure had been incurred by the assessee for earning exempt income and the assessee had surplus funds/idle funds for making investment.

It would further be appreciated that the Hon'ble Tribunal vide order dated 31.05.2018, while dismissing the appeal of the Revenue for the assessment

year 2006-07, held that the assessing officer is bound to record dissatisfaction qua the incorrectness of the suo moto disallowance made by the assessee. In the relevant assessment year, the assessee suo moto disallowed proportionate amount of salary paid to the employees of the treasury division.

In all fairness, it may be pointed out that Hon'ble Tribunal while deciding the issue in the assessment years 2009-10, 2012-13, 2013-14, 2015-16 and 2016-17 restored the matter to the file of the assessing officer to decide the issue afresh after taking into consideration the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT: 402 ITR 640 (SC).

Re: Disallowance under section 14A of the Act added while computing Book Profits under section 115JB of the Act

Insofar as disallowance of made under section 14A read with Rule 8D of the Rules cannot be added while computing book profits under section 115 JB of the Act, it is submitted as under:

In this regard, it is respectfully submitted that section 14A contained in Chapter IV of the Act begins with the phrase — ***"For the purposes of computing the total income under this Chapter ….."*** *Being so, section 14A has application only for the purposes of Chapter-IV. Income under the normal provisions of the Act is computed under the five heads specified in section 14 of the Act. Provisions relating to computation of income under different heads are contained in sections 14 to 59 forming part of Chapter IV of the Act.*

In other words, Chapter IV provides for computation of income of an appellant under the normal provisions of the Act. As a necessary corollary, provisions of section 14A cannot be extended to any Chapter, other than Chapter IV of the Act, i.e., while computing income under the normal provisions.

Section 115 JB finds place under Chapter XII-B of the Act. Being so, provisions of section 14A contained in Chapter IV cannot be imported and incorporated under section 115JB, more so when clause (f) to Explanation 1 to the said section contains no reference to section 14A of the Act.

Reliance in this regard is placed on the decision of the Delhi High Court in the case of PCIT v. Bhushan Steel Ltd.: ITA No. 593/2015, dated 29.09.2015, wherein, the Court upheld the decision of the Tribunal that disallowance under section 14A read with Rule 8D could not be added while computing book profits as per section 115JB and declined to frame question of law.

Further, the Special Bench of the Delhi Tribunal in the case of ***ACIT vs Vireet Investments (P.) Ltd: 165 ITD 27 (Del Trib.),*** *inter alia, placing reliance on the judgement of Delhi High Court in the case of* ***Bhushan Steel Ltd. (supra),*** *likewise held that computation under clause (f) of Explanation 1 to section 115 JB(2) of the Act is to be made without resorting to computation as contemplated under section 14A read with rule 8D of the Rules.*

In view of the above, it is submitted that applicability of provisions of section 14A is confined to computation of tax liability under the five heads of income enumerated in section 4 under normal provisions contained in Chapter-IV of the Act. The said section 14A cannot be extended and read into section 115JB falling under Chapter XII-B of the Act.

Covered in favour of the assessee by order passed by the IT ATfor AY 2015-16

It would further be appreciated that similar addition made by the assessing officer in the assessment year, viz., AY 2015-16 was deleted by the Tribunal vide recent order dated 14.04.2021 by relying on the decision of the Delhi High Court in the case of Bhushan Steels (supra) and the decision of the Delhi Bench of the Tribunal in the case of Vireet Investments (P.) Ltd (supra).

Ground no. 14*: Proportionate cost of Model Fee considered in valuation of closing stock.*

Facts:

The assessee manufactures two-wheelers under technical collaboration agreement entered into with Honda Motor Co. Ltd., Japan ('Honda'). In accordance with the above collaboration agreement, the assessee pays model fee to Honda to obtain design / knowhow to manufacture a new

model of two-wheeler. The said expenditure is incurred prior to commencement of production of the new model.

***AO**:*

The assessing officer held that expenditure incurred by the assessee towards model fee is directly related to manufacture of new models of two-wheelers and, therefore, needs to be attributed to the value of closing stock of finished goods of two-wheelers. Accordingly, the assessing officer on proportionate basis, worked out a sum of Rs. 38,82,000 out of depreciation on model fee debited to the profit and loss account, as attributable to the value of closing stock and made addition of the said amount to the income of assessee

CIT(A):

The CIT(A) deleted the disallowance made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case *for assessment years 2010-11 and 2011-12.*

***Submissions**:*

The aforesaid issue is squarely covered in favour of the assessee by the decision of the Delhi Bench of the Tribunal in assessee's own case for assessment years 2010-11 and 2011-12 wherein following the order for assessment year 2008-09, similar disallowance of depreciation on model fee was deleted by the Tribunal on the ground that expenditure was incurred on new model fees prior to commencement of production of new models of two wheelers, and even otherwise this exercise would be revenue neutral in a broader perspective as the same adjustment would be required to be made to the opening stock of finished goods for the year under consideration.

While deciding appeal for the assessment years 2012-13 and 2013-14, the Hon'ble Tribunal decided the issue in favor of the assessee following the orders for the assessment years 2010-11 and 2011-12.

Further, in the order passed for assessment years 2009-10, 2015-16 and 2016-17, the Hon'ble Tribunal has decided the issue in favor of the assessee

by following the orders passed for the assessment years 2010-2011 to 2013-14.

In view of the above, the disallowance made by the assessing officer was rightly deleted by the CIT(A).

***Ground no. 15**: Disallowance of reimbursement of foreign traveling expenses to directors/employees*

***Facts**:*

In the course of discharge of official duties, the employees of the company are required to travel abroad and incur incidental expenses in foreign currency like local conveyance, boarding and lodging expenses, telephone expenses etc.

The assessee had introduced a policy fixing per diem allowance payable to employees, depending upon the grade/category of the employees and the place/country of travel. ***(Copy of the policy and details of foreign travelling expenses alongwith supporting evidences are enclosed at page nos. 300-343 of** PB **on Merits).** The employees are not entitled to any extra allowance in the event actual expenditure incurred by the employee is in excess of such per diem allowance.*

For payment of per diem allowance, as per policy, the assessee does not require the expenses to be necessarily supported / backed by bills considering the practical difficulties/impossibilities in producing invoices for petty expenses like local conveyance, telephone bills, etc.

The employees are only required to submit details of expenditure incurred in specified form, on basis of which travel bill is settled.

AO

In the assessment order, the AO made disallowance of Rs.4,71,04,265 (comprising of Rs. 1,28,96,252 in respect of Dharuhera, Gurgaon and Haridwar plants and Rs. 3,42,08,013 in respect of head office expenses) out of expenditure incurred towards re-imbursement of foreign travel expenses incurred by employees, on the ground that declaration furnished by the employees was not sufficient evidence to establish incurrence of actual

expenses, which were required to be supported with bills/invoices of factual expenditure incurred by the employees.

***CIT(A)**:*

The CIT(A) deleted the disallowance made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

Submissions

The aforesaid issue is squarely covered in favour of the assessee by the decision of Delhi bench of tribunal in the assessee's own case for the AY 2007-08 and 2008-09, wherein the Tribunal held that disallowance cannot be made merely on the basis that vouchers were not produced by the employees, which has been reaffirmed by the Tribunal in the order dated 24.10.2016 passed for the assessment years 2010-11 and 2011-12.

While deciding appeal for the assessment years 2012-13 and 2013-14, the Hon'ble Tribunal decided the issue in favor of the assessee following the orders for the assessment years 2010-11 and 2011-12.

Further, in the order passed for assessment years 2009-10, 2015-16 and 2016-17, the Hon'ble Tribunal has decided the issue in favor of the assessee by following the orders passed for the assessment years 2010-2011 to 2013-14.

In view of the above, the disallowance made by the assessing officer was rightly deleted by the CIT(A).

***Ground no. 16**: Disallowance of expenditure on account of Royalty on the ground of being capital in nature:-*

***Facts**:*

The assessee, on the basis of technology provided by M/s. Honda Motors Co. Ltd., Japan ("HM"), has been manufacturing and selling two wheelers in the Indian Market since 1985. HM being a global player has strong R & D Centre and has inter alia developed various automobile products from time to time. As per the said agreement, HM provided know how, technical

information and necessary technical support to use such intellectual property rights with respect to the parts and products. The assessee has since launched various models of motorcycles by obtaining the technology provided by the associated enterprises. The assessee company has been manufacturing two wheelers in India on the basis of technology provided by HM. ***Detail of royalty payment made is enclosed at page no. 344 of PB on Merits.***

However, during financial year 2010-11, on account of commercial considerations, HM decided to exit the joint venture. Consequently, a Memorandum of Understanding ('MOU') dated December 16, 2010 was entered into between the assessee and HM and the license agreement was mutually terminated. ***(Copy enclosed at pages no. 345-353 and page nos. 354-382 of PB on Merits)*** *Further, in terms of the MOU two new license agreements were entered into between the assessee and HM.*

Copy of License Agreement (License A product) and License Agreement (License B product) dated 22.01.2011 are enclosed at page nos. 383-426 and 427-463 of PB onMerits, respectively.

In terms of the license agreement for License 'A' Products, the assessee received the following rights:

(i) Rights to use the technology, design and drawings for manufacture of 18 specific models of motor cycles till perpetuity
(ii) Right to make modifications to the technology, design and drawings
(iii) Unrestricted right to export such products in the overseas markets.

Since the aforesaid right/license was acquired by the assessee in perpetuity, compensation by way of Royalty and License fee paid under the aforesaid agreement was suo motu capitalized by the assessee.

In terms of License B Products Agreement the assessee was provided right to manufacture 4 new models (namely (a) Passion XPRO, (b) Ignitor, (c) Maestro and d) Impulse) using the technology provided by HM on payment of lump sum model fee and royalty.

The assessee after separation from Honda Motors Corporation, Japan, was not in a position to independently develop and launch new models of motorcycles immediately. Therefore, in order to survive in a highly competitive market the assessee requested HM to provide right and technology for manufacture of four new models of motor cycles, for which the assessee had limited rights.

During the relevant previous year, in terms of the aforesaid License B agreement, the assessee incurred expenditure of Rs. 122.50 crores towards royalty which was claimed asrevenue deduction.

The aforesaid payments were made after deducting tax at source @10% being the rate of tax applicable in relation to payment of royalty and fees for technical services under Article 12 of Indo-Japan DTAA.

***AO**:*

In the assessment order, the AO treated the aforesaid expenditure incurred by way of royalty paid to Honda as capital expenditure on the ground that the assessee had received benefit of enduring nature. The assessing officer, accordingly, disallowed Rs. 91.87 crores, out of total expenditure of Rs. 122.50 on account of royalty after allowing depreciation @ 25% thereon.

CIT(A):

The CIT(A) deleted the disallowance made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

Submissions:

The CIT(A) by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12 deleted the disallowance made by the assessing officer.

Royalty- not capital expenditure

No ownership rights - only limited right to use

During the currency of the agreement, the assessee only had a limited right to use the technology of Honda. Ownership/proprietary rights in the technical know-how continued to vest in Honda and the assessee was not authorized to transfer, assign or convey the know-how/technical information to any third party as the assessee only acquired limited right to use and exploit the know-how.

Non-exclusive license

The aforesaid right vested with the assessee was not exclusive in as much as, in terms of Article 2 and article 9 of License B agreement, Honda reserved the right to provide technology to its affiliates to manufacture motorcycles. That aforesaid limited right were available to the assessee and the fact of such rights being not exclusive can be gathered from the following clauses of the agreement:-

***ARTCILE 2** - Grant of License and Exclusivity*
***ARTICLE 17** - Maintenance of Secrecy*
***ARTICLE 18** - Limitation of Use, and other Prohibition*
***ARTICLE 21** - Validity and Infringement*
***ARTICLE 27** -Trademarks*
***ARTICLE 33** - Effect of Expiry and Termination*

***Re: Continuing use of know-how after expiration of the contract**:*

Further, on perusal of Article 22 of the License B agreement, it would be appreciated that on termination of the agreement, the assessee was required to return all the documents and materials to Honda and promptly discontinue the use of trademarks licensed by Honda and the assessee did not have any right to continue using such know-how. It is thus clear that there is no explicit or implied intention to transfer or create ownership in the technical know-how /technical information in the assessee. On the contrary, it is unequivocally agreed to between the parties that the know-how should at all times remain the property of Honda. Further, the conditions in the agreement as to non-assignability, confidentiality and the secrecy of the know-how also indicate that the assessee merely obtained the right to use the know-how during the currency of the agreement.

Payment under the agreement - allowable revenue expenditure

As per the various clauses of the agreement, it would be appreciated that the royalty payable to Honda is only for the purpose of use of technical assistance in the manufacture and sale of products and the assessee has not acquired any capital asset, much less in the nature of intellectual property rights or patents belonging to Honda, which, in unequivocal terms, as provided in the agreement vested in absolute ownership of Honda at all times.

Reliance in this regard is placed on the following decisions wherein it has been held that where payment is made to simply use the technical know-how/knowledge provided by the foreign collaborator as opposed to

acquisition of ownership rights therein, the payment made would be regarded as revenue expenditure.

- *CIT v. Ciba India Ltd.: 69 ITR 692 (SC)*
- *CIT vs. British India Corp. Ltd. [1987] 165 ITR 51 (SC)*
- *Alembic Chemical Works Co. Ltd. v. CIT: 177 ITR 377 (SC)*
- *Shriram Refrigeration Industries Ltd. v. CIT: 127 ITR 746 (Del HC)*
- *Triveni Engineering Works Ltd. vs. CIT : 136 ITR 340 (Del)*
- *Addl. CIT vs. Shama Engine Valves Ltd. : 138 ITR 217 (Del)*
- *CIT vs. Bhai Sunder Dass & Sons P. Ltd. : 158 ITR 195 (Del)*
- *CIT vs. Lumax Industries Ltd. : 173 Taxman 390 (Del)*
- *Shriram Pistons & Rings Ltd. vs. CIT : 171 Taxman 81 (Del)*
- *CIT vs. Shri Ram Pistons and Rings Ltd. : 220 CTR 404 (Del)*
  Goodyear India Ltd. vs. ITO : 73 ITD 189 (Del)(TM)
- *ITO vs. Shivani Locks : 118 TTJ 467 (Del)*
- *Climate Systems India Ltd. vs. CIT: 319 ITR 113 (Del-HC)*
- *CIT vs. Sharda Motor Industries Ltd: 319 ITR 109 (Del-HC)*
- *CIT vs. Essel Propack 325 ITR 185 (Bom)*
- *CIT v. Modi Revlon (P) Ltd: (2012) 9 TMI 48 (Del.)*
- *Mafatlal Denim Ltd. V. DCIT: 2011 (12) TMI 351 (Mum.)*
- *Climate Systems India Ltd. vs. CIT: 319 ITR 113 (Del-HC)*
- *Goodyear India Ltd. vs. ITO : 73 ITD 189 (Del)(TM)*
- *CIT v. Avery India Ltd. 207 ITR 813 (Cal)*
- *CIT v. Bhai Sunder Dass & Sons P. Ltd.: 158 ITR 195 (Del)*
- *CIT v. DCM Ltd.: ITA No. 87-89/1992 (Del.)(HC)*
- *CIT v. Denso India P. Ltd.: ITA 16/2008 (Del.) (HC)*
- *CIT v. Eicher Motors Ltd.: 293 ITR 464 (MP)(Indore Bench)*

Since, no proprietary rights in the know how vested in the assessee, the assessee being a mere licensee with limited rights to use the technical assistance during the currency of the agreement, there is no explicit or implied intention to transfer or create ownership in the technical know-how /technical information in the assessee.

In view of the aforesaid, expenditure by way of royalty incurred by the assessee was allowable revenue deduction since-

- *payment was made for limited license to use the know-how provided by Honda, as the proprietary and ownership rights in the same continued to remain vested with Honda at all times and, therefore, there was no absolute parting of know-how in favour of the assessee resulting in*

acquisition of any asset,

- *no benefit of enduring nature in the capital field accrued to the assessee, even if the license to manufacture and sell products in India is assumed to be exclusive, except for grant of license to HMSI,*

- *the subject payment made did not cover consideration paid for setting up of the manufacturing facility in India,*

- *On termination of the agreement, the assessee was required to return all the documents and materials to Honda and promptly discontinue the use of trademarks licensed by Honda and the assessee did not have any right to continue using such know-how.*

The aforesaid issue is covered in favour of the assessee by the decision of Tribunal in the assessment years 2000-01, 2001-02, 2002-03, 2006-07, 2007-08, 2008-09, 2009-10, 2010- 11, 2015-16 and 2016-17 wherein the Tribunal has held that annual payment of royalty was allowable revenue expenditure.

It would be pertinent to note that he aforesaid orders of the Tribunal relating to assessment years 2000-01 to 2002-03 have been affirmed by the Delhi High Court in the assessee's own case reported as ***CIT v. Hero Honda Motors Ltd.: 372 ITR 481.*** *Copy of order in appellants's own case is* ***enclosed at page nos. 464 - 472 of PB on Merits.***

In orders passed by the Tribunal for assessment years 2011-12 to 2013-14, 2015-16 and 2016-17, the royalty paid in terms of license B agreement has been held to be an allowable revenue deduction.

In view of the above, the disallowance made by the assessing officer was rightly deleted by the CIT(A).

Ground no. 17: Disallowance of expenses incurred on account of Corporate Social Responsibility (CSR)

Facts

During the relevant assessment year, the assessee incurred expenditure of Rs.67,40,312 which was debited under the head "community development expenses'" ('CSR activity') in the books of accounts. The expenses were mainly incurred for the following purposes:

- *Expenditure for security guard, horticulture and plantation activities at*

such traffic park.
- *Repairing of hand pump etc. at the places where company employees are residing.*
- *Paid for providing medical aid and appliances to physically challenged persons.*

Detail of expenses on CSR activities are enclosed at page nos. 473 - 582 of PB on Merits.

AO

AO disallowed the aforesaid expenses on the ground that it was not incurred wholly and exclusively for the purposes of earning business income from the activity of manufacture and sale of two-wheelers and, therefore, such expenditure was not allowable deduction under section 37(1) of the Act.

It was also observed that the aforesaid payments were in the nature of application of income, which were not allowable as expenditure under the provisions of the Act.

CIT(A):

The CIT(A) deleted the disallowance made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

Submission

In this regard, it would be pertinent to point out that the aforesaid disallowance made by the assessing officer in the preceding assessment years, viz., 2010-11 and 2011-12 has been deleted by the Hon'ble Tribunal vide consolidated order dated 24.10.2016, wherein the Tribunal held that the expenditure incurred by the assessee company on Corporate Social Responsibility, prior to insertion of Explanation 2 to Section 37(1) of the Act vide Finance No. (2) Act, 2014, w.e.f, 01.04.2015, was an allowable business deduction under the said provision. The Tribunal, in the said order, further elaborated that the role of the assessee was not restricted to merely earning profit, but also discharging certain community related

expenses, which would be considered to have been incurred on account of commercial/ business expediency.

While deciding the appeal for the assessment years 2012-13 and 2013-14, the Hon'ble Tribunal decided the issue in favor of the assessee following the orders for the assessment years 2010-11 and 2011-12.

In the following decisions, Courts/Tribunal have also that the Explanation 2 to Section 37(1) of the Act vide Finance No. (2) Act, 2014, w.e.f., 01.04.2015 is applicable from assessment year 2015-16 and is not applicable to previous assessment years:

- *PCIT v. Gujarat Narmada Valley Fertilizer and Chemicals Ltd. : [2020] 422 ITR 164 (Gujarat)*
- *National Small Industries Corpn. Ltd. v. DCIT: 175 ITD 601 (Del.)*
- *NTPC-SAIL Power Co. (P.) ltd. v. DCIT: Trib.)/[2022] 193 ITD 473 (Delhi-Trib.)*
- *Nuclear Power Corporation of india Ltd. v. CIT : [2019] 101 Taxmann.com 524 (Mumbai-Trib.)*
- *Garden Reach Ship Builders & Engineers Ltd. v. PCIT: Trib.) [2022] 193 ITD 649(Kolkata - Trib.)*
- *ACIT v. Jindal Power Ltd.: [2016] 179 TTJ 736 (Raipur - Trib.)*

In view of the above, the disallowance made by the assessing officer was rightly deleted by the CIT(A).

***Ground no. 18**: Disallowance of deduction under section 80-IC of the Act on account of inter-unit transfer of goods.*

Facts

The assessee is engaged in the business of manufacturing two-wheelers. For the aforesaid activity, the assessee purchases various components required to be used in the assembly of two-wheelers, like gear box, fuel tank, etc., from third party vendors.

In the present transaction, the aforesaid components were first purchased by non-eligible units at Gurgaon or Dharuhera from third parties, due to proximity of location of such units with third parties, business relationship, etc. and were thereafter transferred at the same purchase price to the

eligible unit at Haridwar. In such a transaction, no value addition in such components was carried out by the non-eligible units.

In the books of accounts of the plant at Haridwar, which is eligible for deduction under section 80IC of the Act, goods aggregating to Rs.6,73,91,732, were shown to have been procured from other units, i.e., Dharuhera and Gurgaon plants.

Out of the aggregate transactions of Rs.6.74 crores, (i) components having value of Rs. 0.53 crores were semi-finished goods for which nominal processing was carried out at other units before transfer to the Haridwar plant, and (ii) balance components having value of Rs.6.21 crores were procured by the aforesaid non-eligible units from third parties and were transferred to the eligible unit at material cost. Freight charges on transfer of the aforesaid items were always booked at the receiving unit. ***Detail of inter-unit transfer of spares and components from Dharuhera, Gurgaon and Neemrana to Haridwar unit*** *is enclosed at page no. 583 of PB on Merits.*

AO;

In the assessment order, the assessing officer applied the provisions of section 80IA(8) read with section 80IC(7) of the Act and disallowed deduction under section 80-IC by an amount of Rs.46,00,000, holding that for the purpose of computing deduction under the latter section, inter-unit transfer of goods should have been recorded at market price, instead of cost price as carried out by the assessee.

Accordingly, the assessing officer attributed markup of 7.03%, being the net profit rate of Gurgaon Unit, on the cost of goods aggregating to Rs. 5.16 crores and mark up of 4.54% on the cost of goods aggregating to Rs. 1.58 crores, procured by the eligible unit at Haridwar from Gurgaon and Dharuhera units respectively, which was purchased and transferred without processing, thus reducing the quantum of deduction by Rs. 0.46 crores.

CIT(A):

The CIT(A) deleted the disallowance made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

Submission:

In the present case, it is submitted that goods were not purchased by the eligible unit at Haridwar from non-eligible unit(s) owned by the assessee since in respect of inter-unit transfer of goods, what had happened is that the aforesaid components were first purchased by non-eligible units at Gurgaon, Neemrana and Dharuhera from third parties and were thereafter transferred at the same purchase price to the eligible unit at Haridwar. In such a transaction, no value addition in such components was carried out by the non- eligible units. The non-eligible units in the aforesaid transaction merely incurred the cost of purchase on behalf of the eligible unit, which was subsequently debited to such unit.

Accordingly, the aforesaid transaction was not in the nature of inter-unit purchase and sale of goods, covered within the provisions of section 80IA(8) read with section 80IC(7) of the Act.

Accordingly, in the absence of any enhancement in the market price of the aforesaid component, no substitution of actual material cost was warranted by applying provision of section 80IA(8) read with section 80IC(7) of the Act for the purpose of computing deduction under the latter section.

Re: Covered in assessee's own case by order passed by the Tribunal in preceding years

It would be pertinent to point out that the aforesaid issue stands squarely covered in favour of the assessee, by the order passed by Hon'ble Tribunal in the preceding assessment years, i.e. AY 2010-11 to AY 2013-14, wherein identical disallowance made by the assessing officer has been deleted. The Tribunal, in allowing the claim of the assessee under section 80-IC of the Act, held that for the purpose of computing market price of inter-unit transfer of goods, when the non-eligible units procured goods at market price from third party vendors and supplied the same to the eligible unit at the same purchase price no further substitution of such price is warranted in terms of section 80IA(8) of the Act and the transaction was a genuine business transaction home out of commercial expediency.

Further, in the order passed for assessment years 2009-10, 2015-16 and 2016-17, the Hon'ble Tribunal has decided the issue in favor of the assessee by following the orders passed for the assessment years 2010-2011 to 2013-14.

In view of the above, the disallowance made by the assessing officer was rightly deleted by the CIT(A).

***Ground no. 19**: Disallowance under section 80iC of the Act on account of profit attributable to advertisement and marketing activities carriet out at Head Office.*

Facts

In the business of manufacturing and selling two-wheelers, including goods manufactured at eligible unit, the assessee was required to incur marketing expenses. The said expenses were incurred by the Head Office at Delhi.

The common expenses, including advertisement/brand creation expenses, etc. incurred at Head Office were allocated to various manufacturing units of the assessee-company, including the unit eligible for deduction under section 80IC, on a rational and scientific basis.

In that view of the matter, the expenses on brand /advertisement, etc. incurred at Head Office were duly allocated to manufacturing units and have been deducted, while computing profits of the unit eligible for claim of deduction under section 80IC of the Act.

The price realized on sale of the products, i.e., two wheelers, is credited to the profit and loss account and direct and indirect expenses, including advertisement expenses, incurred in relation to sale of the products are reduced therefrom, for purpose of computing profits of the eligible unit and corresponding claim of deduction under section 80IC of the Act.

***AO**:*

The AO held that profits are derived by the assessee-company on account of three assets, viz., (1) manufacturing assets, (2) brand assets and (3) marketing assets whereas deduction under section 80IC is available only on

profits derived from business of manufacturing of specified articles or things.

It was further observed that the manufacturing and marketing activities were carried out at Head Office and, therefore, the brand developed was not owned by the eligible unit, which came into existence much later than the existence of the assessee-company as a whole. Thus, part of the profits earned by eligible unit should have been attributed to advertisement/marketing activities carried out by head office.

In order to attribute profits to marketing/advertisement activities, AO computed rate of net profit for the financial year 1984-85, being the first year of operations of the assessee I company, at 6.85% on an arbitrary basis and applied the same to arrive at the profit solely I attributable to the manufacturing activity of Haridwar unit. On the basis of above, the assessing officer computed profit attributable to the manufacturing activity Rs.206.72 crores. Accordingly, deduction under section 80IC qua remaining profit of Rs. 252.38 crores, allegedly attributable to marketing and advertisement activity was disallowed.

CIT(A):

The CIT(A) deleted the disallowance made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

Submission:

It would be pertinent to point that the issue is squarely covered in favor of the assessee by the order dated 24.10.2016 passed by the Tribunal for immediately preceding assessment years, i.e. AY 2010-11 and AY 2011-12, wherein identical disallowance made by the AO has been deleted. The Tribunal, in coming to the aforesaid discussion, reiterated that the head office is not a separate profit centre and, therefore, no profit is to be separately attributed to such activity. It further observed that, for the purpose of working out eligible deduction under section 80-IC of the Act, actual expenses incurred at the head office are to be allocated between various profit centres on a rational and scientific basis.

While deciding the appeal for the assessment years 2012-13 and 2013-14, the Hon'ble Tribunal decided the issue in favor of the assessee following the orders for the assessment years 2010-11 and 2011-12.

Further, in order passed for assessment years 2009-10, 2015-16 and 2016-17, the Hon'ble Tribunal has decided the issue in favour of the assessee by following the orders passed for the assessment years 2010-11 to 2013-14.

In view of the above, the disallowance made by the assessing officer was rightly deleted by the CIT(A).

***Ground no. 20**: Disallowance of deduction under section 80-IC of the Act in respect of interest income earned by eligible unit on loans gien to employees/vendors*

***Facts**:*

During the relevant previous year, the eligible unit at Haridwar earned the following interest income, which were credited in the profit and Loss Account of that unit:

S. No.	*Name/Type of Other Income*	*Amount (in Rs.)*
1	*Interest on loan given at subsidized rates of the employees*	*11,39,825*
2	*Interest on loan provided for working capital support to vendors*	*1,90,65,207*
	TOTAL	*2,05,97,446*

Detail of Form 10CCB of Haridwar unit is enclosed at page nos. 584-602 of PB on merits. In the return of income, the assessee claimed deduction under section 80IC on the aforesaid 'other incomes' since the said receipts had direct and immediate nexus with the business of manufacturing and selling of specific articles or things.

AO:

The assessing officer, without considering the nature of each of the aforesaid receipts, held that the aforesaid interest income were not derived from the business of manufacturing of articles or things and were, therefore, taxable under the head "income from other sources". Accordingly, the assessing officer disallowed deduction under section 80IC by an amount of Rs 2,02,05,032.

CIT(A):

The CIT(A) deleted the disallowance made by the assessing officer by relying on the order passed by the Hon'ble Tribunal in assessee's own case for assessment years 2010-11 and 2011-12.

Submissions:

It would be pertinent to point out that similar disallowance made by the assessing officer in the preceding assessment years, i.e. AY 2010-11 and AY 2011-12 has been deleted by the Hon'ble Tribunal vide consolidated order dated 24.10.2016. The Tribunal, after examining the nature of the aforesaid incomes. held that other incomes in the nature of ***Interest on loan to employees, interest on loan to vendors for working capital support,*** *freight recovery, sundry sales, cash discounting from vendors and exchange fluctuation gain, etc. earned by a unit eligible for deduction under Section 80IC of the Act shall be considered as incidental to the activity of carrying out manufacturing and thus eligible for deduction under that section. Accordingly, the aforesaid issue stands squarely covered in favour of the assessee.*

While deciding the appeal for the assessment years 2012-13 and 2013-14, the Hon'ble Tribunal decided the issue in favor of the assessee following the orders for the assessment years 2010-11 and 2011-12

Further, in the order passed for assessment years 2009-10, 2015-16 and 2016-17. the Hon'ble Tribunal has decided the issue in favor of the assessee by following the orders passed for the assessment years 2010-2011 to 2013-14.

In view of the above, the disallowance made by the assessing officer was rightly deleted by the CIT(A)."

7. Learned DR could not controvert the fact that the issues have been decided

in favour of the assessee by the Coordinate Bench of this Tribunal in earlier years. The Revenue has also not pointed out any change into the facts and circumstances of the present case. Therefore, looking to the totality of the facts we do not see any reason to deviate from the reasoning and conclusions arrived at by the Tribunal in earlier years. The findings by the Coordinate bench in respect of respective issues would apply mutatis mutandis in this year as well. Therefore, the grounds raised by the Revenue are hereby rejected.

8. Appeal of the Revenue is dismissed.

Order pronounced in open court on 03.02.2023.

Sd/-	**Sd/-**
(NARENDRA KUMAR BILLAIYA)	**(KUL BHARAT)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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