आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.: 1604 & 1605/Chny/2019**
निर्धारण वर्ष / Assessment Years: 2013-14 & 2014-15

M/s. Wheels India Ltd., Padi, Chennai – 600 050. **[PAN:AAACW-0315-K]**	v.	The Deputy Commissioner of Income Tax, Large Taxpayer Unit -1, Chennai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./**ITA Nos.: 1696 & 1697/Chny/2019**
निर्धारण वर्ष / Assessment Years: 2013-14 & 2014-15

The Deputy Commissioner of Income Tax, Large Taxpayer Unit -1, Chennai.	v.	M/s. Wheels India Ltd., Padi, Chennai – 600 050. **[PAN:AAACW-0315-K]**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by : Shri. Vikram Vijayaraghavan, Advocate
Department by : Shri. S. Senthil Kumaran, CIT

सुनवाई की तारीख/Date of Hearing : 01.03.2023
घोषणा की तारीख/Date of Pronouncement : 08.03.2023

आदेश /O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This bunch of four cross appeals filed by the assessee as well as revenue are directed against separate but identical orders of learned Commissioner of Income Tax (Appeals)-9,

Chennai, dated 28.02.2019 and pertains to assessment years 2013-14 & 2014-15. Since facts are identical and issues are common, for the sake of convenience, these cross appeals filed by the assessee as well as revenue are being heard together and are disposed off by this consolidated order.

ITA NOs: 1604 & 1605/CHNY/2019:

2. The assessee has more or less raised common grounds of appeal for both assessment years. Therefore, for the sake of brevity, grounds of appeal filed for assessment year 2013-14 are reproduced as under:

> *1. The order of the Commissioner of Income tax (Appeals) is contrary to law, facts and circumstances of the case.*
>
> *2 The CIT(A) erred in remitting back the disallowance of expenditure u/s.14Ar.w.r 8D of the IT Rules amounting to Rs. 91,52,609/-.*
>
> *2.1 The CIT(A) ought to have appreciated that during the relevant year, the appellant had not received any exempt income from the investments.*
>
> *2.2 The CIT (A) had mentioned that, statement of account filed by the appellant during appeal proceedings does not establish that the appellant was in receipt of any exempt income and directed the AO to delete the disallowance in case of non-receipt of exempt income during the year under consideration whereas in the submission it has been clearly stated by the appellant in the details of other income in the page number 148 of paper book.*
>
> *3. The Commissioner of Income tax (Appeals) erred in*

confirming the disallowance of weighted deduction claimed u/s 35(2AB) amounting to Rs.48,19,513/-.

3.1 The Commissioner of Income tax (Appeals) ought to have appreciated that the appellant has satisfied all the requirements of section 35(2AB) as required by DSIR guidelines. The appellant has submitted to the DSIR application along with all Annexures giving the particulars of expenditure incurred in the approved R&D facilities and hence, the appellant's claim of weighted deduction ought to have been allowed.

3.2 The appellant relies on the following decisions:

CIT Vs Claris Lifesciences Ltd - 326 ITR 251 (Guj)
Wheels India Ltd - 336 ITR 513 (Mad)
Cadilia Healthcare Ltd Vs Addl.CIT - 2012-TIOL-366-ITAT-Ahm

4. The CIT(A) erred in remitting back the allocation of R&D Expenditure in the computation of 80-IC unit Rs. 24, 84, 941/-.

4.1 The ClT ought to have appreciated that RaD unit has no direct proximate connection with the 80IC unit

4.2 The CIT ought to have appreciated that the benefit of the deduction given by the Act to the individual undertaking and resultantly flows to the assessee.

5 The Commissioner of Income tax (Appeals) erred in directing the AO while considering the (net) loss on forward contracts Rs. 1,04,01,000/-(net of unrealized gain Rs. 75.56 Lakhs and realized loss Rs. 179.57 lakhs)

5.1 The Commissioner of Income tax (Appeals) erred in directing the AO that while considering the realized loss Rs. 1,04,01,0020/-, whether the forward contract was in excess of the export turnover of the Appellant and also examine whether there was any premature cancellation of forward contract following the order of CIT(A) for the AY 2012-13.

5.2 The CIT(A) ought to have appreciated that loss arising from forward contract in respect of export turnover which did not fructify is also allowable as a business loss and cannot be considered as speculative and therefore CIT(A) should not have remitted the issue back to A0. The cancellation of forward contract is a routine transaction done during the course of

business and the CIT(A) ought not to have directed A0 to check whether there were any such cases to allow the above said realized loss.

6. The Commissioner of Income tax (Appeals) erred in directing the AO while considering the realized loss on long term forward contracts Rs. 12,46,11,000/

6.1 The Commissioner of Income tax (Appeals) erred in directing the AO that while considering the realized loss Rs. 12,46,11,000/-, whether the forward contract was in excess of the export turnover of the Appellant and also examine whether there was any premature cancellation of forward contract following the order of CIT(A) for the AY 2012-13.

6.2 The CIT(A) ought to have appreciated that loss arising from forward contract in respect of export turnover which did not fructify is also allowable as a business loss and cannot be considered as speculative and therefore CITIA) should not have remitted the issue back to A0. The cancellation of forward contract is a routine transaction done during the course of business and the CIT(A) ought not to have directed AO to check whether there were any such cases to allow the above said realized loss.

7. The CIT(A) erred in holding that the loss arising from restatement of . working capital (Packing Credit facility) loan Rs. 3,54,43,000/- is not allowable as a deduction. The CIT (A) had mentioned that the loss on reinstatement packing credit outstanding was not debited to Profit and Loss Account while the same has actually been debited by the appellant in its books of accounts and the relevant details is stated in the submission of paper book.

7.1 The Commissioner of Income tax (Appeals) erred in confirming the unrealized loss debited in the Profit & Loss account as notional loss which was not been debited in the P&L account on the ground that deduction can be allowed at the time of settlement of the claim.

7.2 The CIT(A) erred in holding that the loss arising from reinstatement of the foreign loan liability is an allowable deduction as held by the Apex Court in the case Woodward

Governor v CIT 312 ITR 254. ONGC v CIT 322 ITR 180 SC.

8. The Commissioner of Income tax (Appeals) erred in confirming the disallowance of interest of Rs.1,32,38,245/- u/s 36(1)(iii).

8.1 The Commissioner of Income tax (Appeals) ought to have appreciated that the appellant had capitalized a sum of Rs.1,32,38,245/- as being the notional interest attributable to fixed assets on utilization of borrowed funds taken for working capital funds.

8.2 The Commissioner of lncome tax (Appeals) ought to have appreciated that notional capitalization was as per the requirement of AS 16 and the said amount neither formed part of cost of acquisition of fixed assets not covered by the proviso to section 36(1)(iii).

8.3 Without prejudice to our above contention, the CIT(A) ought to have allowed the depreciation on the said sum since this was held to be an interest paid in respect of the capital borrowed for acquisition of assets."

3. The assessee had also filed a petition for admission of additional grounds in terms of Rule 11 of Income Tax (Appellate Tribunal) Rules, 1963 and relevant additional grounds of appeal filed by the assessee are reproduced as under:

"1. The schemes operated under the foreign trade policies are subsidies given to the exporter to enhance the Indian export potential in the international market and with a view to enhance India's export competitiveness and to improve the technology to enable the Indian exporters the foreign countries and hence these subsidies does not amount to revenue during the course of its business but amount to capital receipt

to enhance the capacity and competence to export. Therefore, the same is not taxable.
2. The appellant relies on the decision of Rajasthan High Court in the case of Pr. Commissioner of Income Tax Vs. M/s Nitin Spinners Ltd (Tax appeal number 31/2019). 3. Therefore, appellant submits that subsidy of SHIS Rs. 2,20,40,394/- received under SHIS scheme shall not be treated as revenue income.

4. The appellant further submits that only profit on sale of DEPB have been held to be revenue income and hence the face value of the licence could not be constituted revenue income. The appellant contends that Rs. 1,88, 65,939/- received as ace value of DEPB licence shall be reduced from the taxable income offered. The appellant craves leave to add, alter, omit or amend any of the above grounds of appeal."

4. The brief facts of the case are that, the assessee company is engaged in the business of steel wheels for commercial vehicles, passenger cars and utility vehicles, filed its return of income for the assessment year 2013-14 on 29.11.2013 by declaring a total income of Rs. 13,46,85,330/- and book profit of Rs. 44,55,37,002/- u/s. 115JB of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The assessment has been completed u/s. 143(3) r.w.s. 92CA of the Act on 26.12.2016 and determined total income of Rs. 36,48,83,723/-, by making the following additions:

Add:	1) Disallowance of additional depreciation u/s. 32(1)(iia)	1,50,17,982/-
	2) Disallowance of loss on foreign exchange fluctuation	17,04,55,000/-
	3) Disallowance u/s. 40(a)(i)	3,44,60,790/-
	4) Disallowance u/s. 36(1)(iii)	1,32,38,245/-
	5) Disallowance u/s. 35(2AB)	48,19,513/-
	6) Disallowance of excess depreciation of Printers & Scanners	2,54,584/-
	7) Disallowance u/s. 14A r.w. Rule 8D	91,52,609/-
	8) Disallowance u/s. 80IC	24,84,941/-

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the ld. CIT(A) and challenged various additions made by the AO. The ld. CIT(A), for the reasons stated in their appellant order dated 28.02.2019, partly allowed appeal filed by the assessee. Being aggrieved by the CIT(A) order, the assessee as well as the revenue are in appeal before us.

6. Ground no. 1 of assessee's appeal for both assessment years is general in nature and thus, same is not specifically adjudicated.

7. The first issue that came up for our consideration from ground no. 2 of assessee's appeal for both assessment years is disallowance u/s. 14A r.w.r. 8D of IT Rules, 1962. The Ld.

Counsel for the assessee, at the time of hearing submitted that the assessee does not want to press this ground, because the assessee has got allowed relief from the A.O while giving effect to order of the ld. CIT(A), for which the Ld. DR has no objection. Therefore, ground no.2 of assessee's appeal for both assessment years is dismissed as not pressed.

8. The next issue that came up for our consideration from ground no. 3 of assessee's appeal for both assessment years is disallowance of weighted deduction claimed u/s. 35(2AB) of the Act, and restricted to the extent of amount approved by DSIR. The AO has allowed deduction claimed u/s. 35(2AB) of the Act, on the basis of Form 3CL issued by the Competent Authority DSIR, towards expenditure incurred for R&D purposes. The excess expenditure over and above what was certified by the competent authority has been disallowed and added back to the total income. The Ld. Counsel for the assessee, submitted that once expenditure incurred for R&D purpose and said facility has been approved by the competent authority, then the total expenditure incurred for said purpose should be allowed as deduction irrespective of the fact that

whether the Competent Authority has certified the expenditure or not.

9. The Ld. DR, on the other hand supporting the order of the CIT(A) submitted that, once Competent Authority certifies expenditure allowable u/s. 35(2AB) of the Act, then the question of allowing deduction towards excess expenditure does not arise. Therefore, the Ld. CIT(A) after considering relevant facts has rightly sustained additions made by the AO and their order should be upheld.

10. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The provisions of section 35(2AB) of the Act, deals with weighted deduction for R&D expenditure incurred for in-house Research and Development purpose. As per prescribed rules, the assessee should submit the details of expenditure to the Competent Authority i.e., DSIR and said authority will certify whether expenditure incurred by the assessee is eligible for weighted deduction u/s. 35(2AB) of the Act. In this case, the assessee has submitted details of expenditure to DSIR and the DSIR has certified a sum of Rs. 6,47,12,000/- as eligible expenditure for the purpose of section 35(2AB) of the Act.

The AO, after considering Form 3CL issued by the DSIR dated 27.07.2015, has disallowed excess expenditure over and above what was certified by the Competent Authority amounting to Rs. 48,19,513/- and added back to the total income. In our considered view, there is no error in the reasons given by the AO to disallow uncertified expenditure u/s. 35(2AB) of the Act, and thus, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the assessee for both assessment years.

11. The next issue that came up for our consideration from ground no. 4 of assessee's appeal for both assessment years is allocation of R&D expenditure in the computation of profits of 80IC units. The Ld. Counsel for the assessee, submitted that the assessee does not want to press this ground, because the AO has allowed the claim of the assessee, while giving effect to the order of the ld. CIT(A). The ld. DR, on the other hand has no objection for withdrawal of ground. Having heard both the sides and considered the request of the ld. Counsel for the assessee, we dismiss ground no. 4 of assessee's appeal for both assessment years as not pressed.

12. The next issue that came up for our consideration from no. 5 of assessee's appeal for both assessment years is disallowance of loss on forward contract. The Ld. Counsel for the assessee, submitted that the assessee does not want to press this ground, because the AO has allowed relief to the assessee while giving effect to the order of the Ld. CIT(A) by following the decision of ITAT, Chennai benches in assessee's own case for assessment year 2009-10, for which the ld. DR, has not raised any objections. Therefore, ground no. 5 of assessee's appeal for both assessment years has been dismissed as not pressed.

13. The next issue that came up for our consideration from ground no. 8 of assessee's appeal for both assessment years is realized loss on long term forward contract. The ld. Counsel for the assessee, submitted that the assessee does not want to press this ground, because the AO has allowed relief to the assessee while giving effect to the order of the Ld. CIT(A), by following the decision of ITAT Chennai Benches, in assessee's own case for assessment year 2009-10. The ld. DR, on the other hand does not raise any objection. Therefore, ground

no. 8 of assessee's appeal for both assessment years has been dismissed as not pressed.

14. The next issue that came up for our consideration from assessee's appeal for both assessment years is disallowance of interest on borrowed capital u/s. 36(1)(iii) of the Act. The AO has disallowed interest paid on borrowed capital u/s. 36(1)(iii) of the Act, and proviso thereto on the ground that, the assessee has borrowed capital for the purpose of acquisition of capital asset and thus, interest paid on said borrowed capital should be capitalized to the asset till such asset is put to use. It was the argument of the assessee that, interest paid on borrowed capital is for the purpose of working capital requirement of the assessee. Therefore, the assessee has rightly debited said interest to the profit and loss account. It was further contended that, in case interest paid on borrowed capital is required to be capitalized to the cost of asset, then necessary depreciation may be allowed as per the law.

15. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts brought on record by the Assessing Officer

clearly indicate that, the assessee has borrowed loans from financial institutions for the purpose of acquisition of capital asset. As per provisions of section 36(1)(iii) of the Act, proviso provided thereto, any amount of interest paid in respect of capital borrowed for acquisition of asset shall not be allowed as deduction till the date of such asset first put to use. Therefore, we are of the considered view that, there is no error in the reasons given by the AO to disallow interest paid on borrowed capital u/s. 36(1)(iii) of the Act and thus, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the assessee for both assessment years.

16. In so far as alternate plea of the assessee for depreciation, we find that when interest paid on borrowed capital is added to the cost of the asset, then the assessee is eligible for depreciation on value of asset including interest paid on borrowed capital, if any capitalized to said asset account. Therefore, we direct the AO to verify the claim of the assessee and allow depreciation as per the law.

17. The next issue that came up for our consideration from additional grounds of appeal filed by the assessee for both

assessment years is treatment of focus marketing subsidy received from Government as capital receipt. The Ld. Counsel for the assessee, referring to additional grounds of appeal filed by the assessee submitted that, focus marketing scheme subsidy received by the assessee from Government of India is capital in nature which cannot be treated as revenue income. Since, the assessee could not raise grounds on this issue by inadvertent error, the same has been raised in the form of additional grounds. Thus, additional grounds of appeal filed by the assessee should be admitted and the issue should be decided on merits.

18. The Ld. DR, on the other hand strongly opposing additional grounds of appeal filed by the assessee for both the assessment years submitted that, the additional grounds filed by the assessee should not be admitted, because the assessee could not make out the case on facts with regard to said grounds which were already filed before the AO. The Ld. DR further submitted that, the issue of focus market subsidy received by the assessee from Government is covered in favour of the revenue by the decision of ITAT, Chennai Benches in the case of M/s. Hyundai Motors India Ltd vs ACIT

in ITA No. 3192/Chny/2017 for assessment year 2013-14, where a similar issue has been considered by the Tribunal and held that, focus market subsidy received by the assessee is revenue is nature, which cannot be considered as capital receipts.

19. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. In so far as admission of additional grounds filed by the assessee, we find that additional grounds filed by the assessee is purely a legal issue, which can be raised at any time of proceedings, including pending proceedings before the Tribunal and thus, by following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd vs CIT 229 ITR 383 (SC), we admit additional grounds filed by the assessee for both assessment years for adjudication.

20. In so far as focus market subsidy received by the assessee from Government of India, we find that an identical issue has been considered by the Tribunal in the case of M/s. Hyundai Motors India Ltd vs ACIT (Supra), where the Tribunal after considering relevant facts held that, focus market

scheme subsidy received by the assessee from Government of India is revenue in nature and the same was given to offset higher cost of freight and other disabilities of exporters to be more competitive in exports to certain regions. Therefore, same cannot at any stretch of imagination be considered as capital in nature, as claimed by the assessee. The relevant findings of the Tribunal are as under:

> *"32. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The Government of India, Ministry of Commerce and Industry has come out with Foreign Trade Policy for the period 1st September, 2004 to 31.03.2009 and as per the said policy, it has announced a scheme for exporters of certain goods to certain regions called Focus Market Scheme . As per said scheme, export of products to those countries which are covered under list of countries in Schedule 37C would be entitled for duty credit scrip equivalent to 2.5% of FOB value of exports. The assessee being eligible exporter had received licenses/duty credit scrip/ market linked focus scrips amounting to Rs.150.57 crores for the year under consideration. The assessee has considered amount received under focus market scheme as revenue receipt and offered to tax. However, based on some subsequent decisions of appellate authorities has filed an additional claim seeking exclusion of said receipt from taxation on the ground that it is in the nature of capital receipt and not exigible for tax. Therefore, in order to understand whether amount received from Focus Market Scheme is revenue in nature or capital receipt, which is exempt from tax, one has to understand objectives of Focus Market Scheme announced by Govt. of India. As per Foreign Trade Policy document, the objective of the scheme is to offset high freight cost and other disabilities to select international market with a view to enhance our competitiveness to these countries. On the basis of objectives of the scheme alone, it can be easily concluded that amounts received under the scheme is revenue in nature, because it is*

primarily focusing to reduce cost of our exporters to compete with other export markets to these regions. However, various courts including Hon'ble Supreme Court in number of cases has examined nature of subsidy received from Govt. of India on the basis of purpose test and has held capital or revenue in nature depending upon purposes for which said subsidy was given. In our considered view, this controversy can be resolved if we apply test laid down in the judgement of Hon'ble Supreme Court in the case of Sahney Steel & Press Works Ltd. Vs. CIT (228 ITR 253). The importance of judgement of Hon'ble Supreme Court in the above case lies in the fact that it has discussed and analyzed the entire case laws on the issue and it has laid down basic test to be applied in judging the character of subsidy. That test is the character of receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is given. In other words, in such cases, one has to apply purpose for test. The point of time at which subsidy paid is not relevant. The source is immaterial. The form of subsidy is immaterial.

33. Therefore, in the light of decision of the Hon'ble Supreme Court, in the case of Sahney Steel & Press Works Ltd. Vs. CIT(supra), if we examine facts of the present case, we are of the considered view that duty credit scrips received by the assessee from Govt. of India for export of certain goods to some specified regions is certainly in the nature of revenue receipt, because which is primarily given to offset higher freight cost and other disabilities to select international markets, with a view to enhance our export competitiveness to these countries. We further, are of the opinion that this subsidy was given by way of assistance in carrying on of trade or business and to meet recurring expenses, but it was not for acquiring any capital asset. It was not to meet part of the cost to manufacturing activity. It was not granted for production or bringing into existence any new asset. The subsidy was given year after year only after setting up of industry and only after commencement of production and therefore, such subsidy could only be treated as assistance given for the purpose of carrying on business of the assessee. It is well settled principles of law that any subsidy given for the purpose of offsetting part of cost of setting up of new industry, as per industrial policy of various State Governments or Govt. of India is considered as part of capital contribution and capital in nature, whereas subsidy given after commencement of

production of products and further for enhancing profitability of the assessee is certainly in the nature of assistance given for running of business of the assessee more profitable and hence, it is definitely revenue in nature.

34. In this case, on perusal of facts available on record including foreign trade policy of Government of India, it is very clear from documents that main objective of Focus Market Scheme is to offset high freight cost and other disabilities of exporter to select international market with a view to enhance our export competitiveness to these countries. The expenditure incurred by the assessee under this scheme for exploring new market across the globe is mainly freight cost and other recurring expenses like sales promotion expenses, including manpower cost of staff employed in marketing department. Those expenses are generally in the nature of revenue expenditure and thus, can be considered as revenue expenditure. Since, the assessee got duty credit scrip benefit to offset cost incurred for exploring new market including higher freight cost and further, said expenditure is in the nature of revenue expenditure, then any subsidy including duty credit scrips given by Govt. of India for such purpose is definitely in the nature of revenue receipt. Thus, at any stretch of imagination, the amount received under Focus Market Scheme cannot be considered as capital in nature, which is given to offset cost or part of cost of any asset or facility created by the assessee. Moreover, in this case, the assessee itself had considered amount received under Focus Market Scheme as revenue receipts and offered to tax, considering nature and purpose of receipt of subsidy from the Govt. of India. It is a well known fact that the assessee is best judge to decide a particular item of income or expenditure, because it is well aware facts of its case. In this case, the assessee, after considering nature and purpose of amount received under Focus Market Scheme, has very well considered the same as revenue receipt and offered to tax. Therefore, based on some judgements of higher forum making a claim for excluding said receipt from tax by claiming that it is in the nature of capital receipt is not correct, unless the assessee demonstrates that facts of those case laws considered by appellate forum and facts of assessee's case are similar in nature. As regards various case laws relied upon by the assessee including the decision of ITAT., Chennai in the case of Eastman Exports Global Clothing Pvt.Ltd. in ITA No.47 & 48/Chny/2016, we find

that the ITAT, Chennai Bench in above case has not apprised facts in right perspective of law and hence, the judgment of Chennai Bench is not considered. As regards decision of Hon'ble Rajasthan High Court in the case of Pr.CIT Vs. Nitin Spinners Ltd. in Income Tax Appeal No.31 of 2019, we find that facts of case before Hon'ble High Court and facts of present case are different and hence, same is not considered.

35. In this view of the matter, and considering facts and circumstances of the case, we are of the considered view that duty credit scrips received from Govt. of India under Focus Market scheme is revenue in nature and further, same was given to offset higher cost of freight and other disabilities of exporters to be more competitive in exports to certain regions. Thus, the same cannot at any stretch of imagination be considered as capital in nature. Hence, we reject the ground taken by the assessee."

21. In this view of the matter and considering facts and circumstances of this case and also by following the decision of ITAT, Chennai Benches in the case of Hyundai Motors India Ltd vs ACIT (Supra), we are of the considered view that, focus market scheme subsidy received by the assessee from Government of India is revenue in nature, which cannot be considered as capital receipt. Further, in fact the assessee itself has considered subsidy received from Government of India as revenue receipts and thus, there is no merit in additional grounds filed by the assessee for both the assessment years to treat focus market subsidy as capital in

nature. Hence, we reject additional grounds of appeal filed by the assessee for both assessment years.

22. In the result, appeals filed by the assessee for assessment years 2013-14 & 2014-15 are partly allowed.

ITA NOS: 1696 & 1697/CHNY/2019:

23. The Revenue has more or less raised common grounds of appeal for both assessment years. Therefore, for the sake of brevity, grounds of appeal filed for assessment year 2013-14 are reproduced as under:

> *"1. The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.*
>
> *2. The learned CIT(A) has erred in allowing additional depreciation on the assesst acquired by the assessee in* ***the second half of the preceding Assessment Year.***
>
> *3. The learned CIT(A) has erred in allowing the depreciation @ 60% on UPS holding it as part of computer without appreciating, among other aspect that:*
>
> *(a) Rule 5 of Incometax Rules,1962 specifically allows high rate of depreciation at 60%, only on computer and not on computer accessories?*
>
> *(b) UPS is only a source of alternative supply of power to the computer and is not an integral part of computer?*
>
> *(c) Computer can function independently without the UPS and even the UPS generally can be used to ensure an uninterrupted power supply to the other equipment besides computer.*

4. The learned CIT(A) has erred and directed the AO to restrict the disallowance made u/s 14A to the earning of exempt Income. If no exempted Income delete the disallowance made u/s 14 r.w.Rule 8D.

5. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing officer be restored."

24. The first issue that came up for our consideration from ground no. 2 of revenue's appeal for both assessment years is additional depreciation u/s. 32(1)(iia) of the Act, for Rs. 1,50,17,982/-. The facts with regard to the impugned dispute are that the assessee has claimed 50% of additional depreciation u/s. 32(1)(iia) of the Act, for the impugned assessment years, even though addition to fixed asset was taken place in the immediate preceding previous year. The AO has disallowed additional depreciation claimed by the assessee, on the ground that additional depreciation is allowable u/s. 32(1)(iia) of the Act, in the year in which said asset is purchased, but not in the subsequent assessment year.

24(a). The ld. Counsel for the assessee, submitted that this issue is covered in favour of the assessee by the decision of Hon'ble High Court of Madras in the case of CIT vs Brakes

India Limited (2017) TIOL-710-HC-MAD-IT in TCA No.551 of 2013 dated 04.03.2017, where the Hon'ble High Court after considering relevant facts and also by taking into account provisions of section 32(1)(iia) of the Act, held that the assessee is entitled for balance 50% additional depreciation in the year following the previous year in which the said asset is installed and put to use.

24(b). The Ld. DR, on the other hand supporting the order of the AO submitted that as per law, the additional depreciation is allowable in the year of acquisition of asset.

25. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The issue of additional depreciation in subsequent year has been considered by the jurisdictional High Court of Madras in the case of Brakes India ltd vs DCIT 2017-TIOL-710-HC-MAD-IT, where the Hon'ble High Court has considered the issue in light of provisions of section 32(1)(iia) of the Act and held that balance additional depreciation in the year following the previous year in which the said asset is installed and put to use is allowable. The ld. CIT(A), after considering relevant

facts and also by following the decision of Brakes India Ltd vs DCIT (supra), and also the decision in the case of CIT vs TP Textiles Private Limited [2017] 394 ITR 483, deleted additions made by the AO and thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject ground taken by the revenue for both assessment years.

26. The next issue that came up for our consideration from ground no. 3 of revenue's appeal for both assessment years is depreciation on UPS @ 60% as against 15% allowed by the AO. The assessee has claimed 60% depreciation on UPS on the ground that, UPS is an integral part of computer and computer software. The AO has allowed 15% depreciation on UPS, on the ground that UPS is not a part of computer and computer software. We find that this issue is covered in favour of the assessee by the decision of ITAT, Chennai Benches in the assessee's own case for assessment year 2013-14, where the Tribunal held that UPS, Printer and Scanner are integral part of computer and computer software and eligible for higher depreciation of 60% as applicable to computer software. The relevant findings of the Tribunal are as under:

> *"38. We have perused the order of co-ordinate Bench of this Tribunal in the case of Indian Overseas Bank in ITA*

No.1815/Mds/2011 dated 2.4.2013 and find that the issue is squarely covered in favour of the assessee where the co-ordinate Bench held that assessee is entitled to get 60% of UPS observing as under:-

> *"8. We find that this issue has already been adjudicated by us in ITA No.818/Mds/2010 relevant to the assessment year 2007-08. The relevant extract of the order of the Tribunal in ITA No.818/Mds/2010 is reproduced herein below:-*
>
> *"The next ground of appeal relates to claim for depreciation on UPS at 80%. The AR submitted that the CIT(A) has failed to appreciate that UPS is an energy saving device, therefore, depreciation @ 80% should have been allowed. However, he also relied on the judgement of the Hon'ble Delhi High Court in the case of Orient Ceramics & Industries Ltd., reported as 56 DTR (Del) 397, wherein the Hon'ble High Court has allowed depreciation @ 60% on UPS treating it as part of computer hardware. On the other hand, learned DR relied on the order of the Delhi Bench of the Tribunal in the case of Nestle India Vs. DCIT., reported as 111 TTJ 498 wherein the Tribunal has held UPS at par with plant and machinery and rejected the contention of assessee to treat it as part of computer.*
>
> *28. We do not agree with the submissions of the AR that the UPS is an energy saving device, therefore, depreciation @ 80% should be granted. However, we are in consonance with the decision of Hon'ble Delhi High Court in the case of Orient Ceramics & Industries Ltd. (supra), wherein the Hon'ble Court has granted depreciation @ 60% by treating UPS as part of computer hardware. Accordingly, we allow depreciation @ 60% on UPS and partly allow the ground of appeal of the assessee."*
>
> *For the reasons recorded above, we hold that the assessee is entitled to claim depreciation @ 60% on the UPS. Accordingly, this ground of appeal of the assessee is partly allowed."*

39. Respectfully following the above decision of this Tribunal, we sustain the order of the Commissioner of Income Tax (Appeals) on this issue and reject the grounds of appeal

raised by the Revenue.The appeal of the Revenue is dismissed accordingly."

27. In this view of the matter and consistent with the view taken by the Co-ordinate bench in assessee's own case for earlier assessment years, we are of the considered view that the assessee is entitled for higher depreciation of 60% on UPS and thus, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the revenue for both assessment years.

28. The next issue that came up for our consideration from ground no. 4 of revenue's appeal for both assessment years is disallowance u/s. 14A r.w.r. 8D of IT Rules, 1962. The ld. Counsel for the assessee, submitted that for the assessment year 2013-14, the assessee has not received any dividend income and hence, there can be no disallowance u/s. 14A of the Act. For assessment year 2014-15, the AO has allowed relief to the assessee, while giving effect to the order of the CIT(A).

29. The Ld. DR, on the other hand, submitted that as per provisions of section 14A, disallowance is required to be computed in terms of Rule 8D of IT Rules, 1962, whether or

not any dividend income received for the relevant assessment year.

30. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. It is a well settled principle of law by the decisions of various courts including the Hon'ble High Court of Madras in the case of Redington India Ltd vs ADIT 97 CCH 219, where it has been clearly held that in absence of any dividend income, disallowance contemplated u/s. 14A cannot be made. In this case, there is no dispute with regard to the fact that the assessee has not received any dividend income and hence, there can be no disallowance u/s. 14A of the Act. The Ld. CIT(A), after considering relevant submissions of the assessee has rightly deleted additions made by the AO u/s. 14A r.w.r. 8D of IT Rules, 1962. Thus, we are inclined to uphold the findings of the Ld. CIT(A) and reject ground taken by the revenue for both assessment years.

31. The next issue that came up for our consideration from ground no. 5 of revenue's appeal for both assessment years is disallowance of loss on unrealized exchange loss in respect of derivative transactions. The Ld. Counsel for the assessee,

submitted that the assessee does not want to press this ground because the AO has allowed relief in favour of the assessee while giving effect to the order of the CIT(A) by following the decision of ITAT in assessee's own case for assessment year 2009-10. The ld. DR, does not raise any objections. Therefore, the grounds of appeal filed by the revenue challenging deletion of disallowance towards loss on unrealized exchange loss in respect of derivative transactions is dismissed as not pressed.

32. In the result, appeals filed by the revenue for assessment years 2013-14 & 2014-15 are dismissed.

33. As a result, appeals filed by the assessee for assessment years 2013-14 & 2014-15 are partly allowed and appeals filed by the revenue for assessment years 2013-14 & 2014-15 are dismissed.

Order pronounced in the court on 8th March, 2023 at Chennai.

Sd/-	Sd/-
(वी दुर्गा राव)	**(मंजुनाथ. जी)**
(V. DURGA RAO)	**(MANJUNATHA. G)**
न्यायिकसदस्य/Judicial Member	**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated: 8th March, 2023
JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF