आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL**
**'D' BENCH: CHENNAI**

**श्री महावीर सिंह, माननीय उपाध्यक्ष,** एवं
श्री **मंजूनाथा.जी, माननीय** लेखा सदस्य **के समक्ष**
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND SHRI MANJUNATHA.G, HON'BLE ACCOUNTANT MEMBER**

**IT (TP) A No.48/Chny/2019**
**ITA No.802/Chny/2016**
**IT (TP) A No.54/Chny/2018 &**
**ITA No.2725/Chny/2019**
निर्धारण वर्ष **/Assessment Years: 2009-10, 2011-12, 2014-15 & 2015-16**

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| M/s.Intimate Fashions (India)-Pvt. Ltd.,<br>517-519,<br>Tirupporur Kottamedu High Road,<br>Nandhivaram Village,<br>Guduvancheri-603 202.<br>Kanchipuram District. | **v.** | The DCIT / JCIT,<br>Corporate Circle-2(2),<br>Chennai. |
| [**PAN:** AAACI 2706 C]<br>**(**अपीलार्थी**/Appellant)** | | **(**प्रत्यर्थी**/Respondent)** |

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| अपीलार्थी की ओर से/ Appellant by | : | Mr.Sriram Seshadri, CA<br>Mr.Ashik Shah, CA &<br>Ms.C.Sowndarya, CA |
| प्रत्यर्थी की ओर से /Respondent by | : | Dr.S.Palanikumar, CIT |
| सुनवाई की तारीख/Date of Hearing | : | 06.04.2023 |
| घोषणा की तारीख /Date of Pronouncement | : | 31.05.2023 |

## आदेश **/ O R D E R**

**PER MANJUNATHA.G, ACCOUNTANT MEMBER:**

The assessee has filed four appeals. The appeals filed by the assessee for AYs 2009-10, 2011-12 & 2014-15 are directed against final

assessment order of the Assessing Officer (in short "AO") passed u/s.143(3) r.w.s.144C(13) of the Income Tax Act, 1961 (in short "the Act"), in pursuant to Dispute Resolution Panel (in short "DRP") directions issued u/s.144C(5) of the Act, dated 06.05.2019 & 31.07.2018. The appeal filed by the assessee for AY 2015-16 is against the order of the Commissioner of Income Tax (Appeals)-6, Chennai, dated 25.06.2019. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

**2.** The assessee has, more or less, raised common grounds of appeal in all four assessment years. Therefore, for the sake of brevity, grounds of appeal filed in IT (TP) A No.48/Chny/2019 for the AY 2009-10, are re-produced as under:

> The grounds of appeal listed below are without prejudice to each other.
>
> *1. The order passed by the Joint Commissioner of Income tax (OSD), Corporate Circle - 2, Chennai (Assessing Officer or the AO) pursuant to the order of the Deputy Commissioner of Income-tax, TPO-2(2) (Transfer pricing officer or TPO) and the directions issued by the Dispute Resolution Panel - 2, Bangalore ('DRP'), is erroneous and bad in law, to the extent the same is prejudicial to the Appellant.*
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> *2. The TPO/AO/DRP erred in law and in facts, in not identifying any uncontrolled comparable transaction while considering Comparable Uncontrolled Price ('CUP') method as the most appropriate method to benchmark the impugned international transactions pertaining to payment of sales commission which is contrary to the requirement of law based on Rule 10C of the Income Tax Rules, 1962.*
>
> *3. The TPO/AO/DRP having failed to identify any comparable uncontrolled transaction, erred in law and facts in not considering either the uncontrolled price as provided in RBI manual or Transactional Net Margin Method (TNMM) undertaken by the appellant as secondary analysis for benchmarking.*
>
> *The TPO/AO/DRP further erred in not appreciating the fact that the appellant's profit margin (14.10%) was higher than that earned by the comparable companies (6.36%) under*

*secondary analysis using TNMM, which demonstrates that the appellant had no intention to erode tax base.*

*4. The TPO/AO/DRP erred in not considering the evidence or substantial documentation submitted by the Appellant in the proper perspective for proving the services received and the benefits derived for making the payment of commission.*

*Also, the TPO/AO/DRP failed to appreciate that Hon'ble Tribunal in its order for subject assessment year (AY 2009-10) had not doubted the documents that were adduced before the TPO/DRP (in first round of proceedings) to establish the services rendered by its AE and the benefits derived therefrom.*

*Further, in AY 2001-02. AY 2002-03 and AY 2003-04, the Hon'ble Tribunal in appellant's own case had set aside the order for impugned transaction of payment of sales commission and restored the file to the AO with direction to decide it de novo in accordance with law. Thereafter, the Assessing officer perused the supporting documents provided by the Assessee and considering all the facts and circumstances, allowed the payment of sales commission.*

*5. The TPO/AO/DRP grossly erred, in law and in facts, by exceeding their jurisdiction in determining whether or not a transaction should have been carried out by the Appellant while determining the ALP as 'Nil'. Further, by doing so, the TPO questioned the commercial expediency which is ultra vires of the Act.*

*Further, the TPO/AO/DRP failed to appreciate that the Hon'ble Tribunal in the appellant's own case in AY 2009-10, AY 2012-13 and AY 2013-14 has accepted that the agency commission paid by the Appellant was for the purpose of business wholly and-exclusively based on the turnover and therefore TPO/AO/DRP should not have questioned the transaction entered into,*

*6. The TPO/AO/DRP erred in law and in facts, by violating the principles of consistency and judicial discipline by not following the binding judicial precedents in Appellant's own case as well as other decisions of higher appellate forums, thereby leading to undue harassment to the appellant and chaos in administration of tax laws.*

*The TPO/AO/DRP ought to have appreciated that the agency commission payment made by the Appellant has been accepted in the past (by the TPO up to AY 2007-08 and during AY 2010-11; by the AO in his order post Hon'ble Tribunal's direction in AY 2001-02, 2002-03 and 2003-04 and post CIT(A) order in AY 2004-05), to be allowable as arm's length and there is no change in facts and circumstances of the impugned international transaction vis-a-vis such years.*

*7. The TPO/AO/DRP erred in holding that the complete JV agreement was not made available to the tax authorities in the earlier assessment years despite sharing evidences to the contrary.*

*8. The TPO/AO/DRP have failed to appreciate that the Appellant is a three party Joint Venture ('JV') where in the JV partners act as independent parties and that no independent party would agree to make a payment without receipt of services.*

*9. The TPO/AO/DRP have grossly erred in facts by holding the sales orders provided by Triumph to Appellant as obligatory, basis an erroneous interpretation of the JV agreement between the partners, when the Agency Agreement between Appellant and Triumph explicitly requires a compensation to be paid for provision of such sales orders.*

*10. The DRP/ TPO/ AO have failed to appreciate that the sale price of products exported to Associated Enterprises ('AE') has been fixed keeping in mind the FAR analysis of the Appellant and that sales commission would be payable for sale orders obtained by AEs.*

*Further, the DRP/ TPO/ AO have retained TNMM as most appropriate method for determining the ALP of other transactions, but has failed to appreciate the fact that payment of agency commission is already factored in the sales price and hence is at arm's length.*

*11. The learned AO erred in levying interest under section 234B and 234C of the Act.*

*12. The learned AO has erred in initiating penalty proceedings under section 271(1)(c) of the Act*

*The Appellant craves leave to add to / alter / amend / substitute any of the above grounds of appeal, at the time, before or at the time of hearing of the appeal, so as to enable the Appellate authority to decide this appeal according to law.*

**3.** The brief facts of the case are that the assessee, M/s.Intimate Fashions India Pvt. Ltd., (in short "M/s.IFIPL") is a joint venture between M/s.MAS Capital Pvt. Ltd., Sri Lanka (in short "M/s.MAS, Sri Lanka"), M/s.Triumph International Overseas Ltd., Liechtenstein (in short "M/s.Triumph") and M/s.Mast Industries Inc., USA (in short "M/s.Mast, USA"). The company is engaged in the business of manufacturing and sale of intimate garments, lingerie, briefs, swimwear and other related items and primarily exports the manufactured garments to M/s.Mast, USA. The assessee had entered into international transactions, which were duly reported in the transfer pricing documentation. During the course of scrutiny assessment proceedings, the TPO/AO made certain adjustments/disallowances to the assessee's income, which was upheld by the DRP/Ld.CIT(A). Below is the summary of adjustments made by the AO/TPO and upheld by the DRP/Ld.CIT(A), against which, the assessee is in appeal before the Tribunal:

| Issues | Assessment Year | | | |
|---|---|---|---|---|
| | 2009-10 (Remand) | 2011-12 | 2014-15 | 2015-16 |
| | IT (TP) A No.48/Chny/ 2019 | ITA No.802/ Chny/ 2016 | IT (TP) A No.54/Chny/ 2018 | ITA No.2725/ Chny/ 2019 |
| Transfer Pricing Adjustment towards payment of agency commission | √ | √ | √ | - |
| Disallowance under Section 36(i)(v)(a) of the Income Tax Act, 1961 ('the Act') | - | Grounds withdrawn | - | - |
| Disallowance of additional depreciation claimed under Section 32(i)(iia) of the Act on Air Circuit Breakers on the basis that they are not a part of plant and machinery | - | Grounds withdrawn | - | - |
| Disallowance of additional depreciation claimed under Section 32(i)(iia) of the Act @ 10% claimed in Year 2 | - | - | Grounds withdrawn | - |
| Disallowance under Section 80JJAA of the Act | - | √ | √ | √ |

**4.** The first issue that came up for our consideration from assessee's appeal for AYs 2009-10, 2011-12 & 2014-15, TP is adjustment towards payment of agency commission. The facts with regard to impugned dispute are that the assessee had entered into an agency agreement dated 18.03.1999 with M/s.Triumph, and agreed to pay 5% sales commission on the net sales for rendering various agency services. Subsequently, the assessee had entered into an agreement dated 14.09.2009 with M/s.MAS Intimate (Private) Ltd., Sri Lanka, (in short "M/s.MAS Intimate, Sri Lanka") for provision of agency services in connection with sale of products outside India, and agreed that 5% sales commission on net sales will be paid in respect of agency services, and 3% on net sales in case of designated products/services. The above payments were established to be at Arm's Length Price (in short "ALP") as per the bench marking under Comparable

Uncontrolled Price (in short "CUP") method adopted by the assessee for AYs 2009-10 & 2011-12 considering that rate of 5% was less than the rate prescribed by RBI which was at 12.5%. The assessee had also alternatively bench marked the international transactions under TNMM for the AYs 2009-10 & 2011-12 and claimed that operating profit margin on cost of the assessee is higher than that of comparable companies. Further, for the AY 2014-15, the transactions were established to be ALP as per TNMM. Alternatively, the rate of agency commission was also bench marked under CUP based on the rate prescribed by the RBI. The TPO rejected the bench mark approach adopted by the assessee and concluded that agency commission paid by the assessee to M/s.Triumph & M/s.MAS, Sri Lanka, at 'nil' on the basis that the assessee could not furnish necessary evidences to prove rendering of services by the AEs and need for such payment. Since, the entire sales were made to M/s.Mast, USA, one of the joint venture partners and shareholders of the assessee company, the TPO concluded that since no independent party would be willing to pay such commission as per CUP, the ALP of the transaction was determined at 'NIL'. The DPR/Ld.CIT(A) upheld the downward adjustment made by the TPO/AO towards agency commission paid to AEs on the ground that except furnishing few samples, e-mail correspondence between assessee's company and AEs, no credible evidence has been submitted to prove rendering of services, and payment of agency commission, which is

commensurate with services rendered by the AE. Aggrieved by the order of the DRP/Ld.CIT(A), the assessee is in appeals before us.

**5.** The Ld.Counsel for the assessee, at the first stage, submitted that the issue related to payment of agency commission was under dispute from AY 2001-02, where the Tribunal for the AY 2001-02, has set aside the issue to the file of the TPO/AO to re-examine the ALP of international transactions with respect to agency commission paid to AEs in light of various evidences filed by the assessee including scope of work specified in agreement between the parties, relevant evidences filed in support of rendering of services, etc. He, further submitted that the Ld.CIT(A) for the AY 2004-05 had relied upon the order of the Tribunal for AYs 2001-02 to 2003-04, and deleted the disallowance of agency commission and Revenue not challenged the said order of the Ld.CIT(A) and the issue had reached finality. He further submitted that once the matter has reached finality, for subsequent years without there being any change in the facts, different view cannot be taken. In this regard, he relied upon the decision of the Hon'ble Madras High Court in the case of M/s.Sutherland Global Services Pvt. Ltd., Chennai, in TCA No.32 of 2019 dated 23.09.2020.

**6.** The Ld.Counsel for the assessee further submitted that the TPO has placed reliance on the Article-5 of the Joint Venture (in short "JV") agreement, wherein M/s.Mast, USA, has an obligation to buy at least 50%

of the goods produced by the assessee. Based on this clause, the TPO arrived at a conclusion that since one of the JV partners only buying goods, there is no need to pay commission to another JV partner. The Ld.Counsel for the assessee in this regard submitted that JV agreement between parties is not a new fact brought on record for the first time and the same has always available before the lower authorities even in earlier assessment years. He further submitted that the issue of payment of agency commission was referred to the TPO from AYs 2003-04 to 2007-08, wherein, no adjustment was proposed by the TPO. For AY 2010-11, the TPO issued a show cause notice and no adjustment was made. He, further submitted that when Revenue accepted payment of agency commission is genuine for some years, for few years, it cannot dispute the payment only on the ground that JV partner is buying goods. He further submitted that the assessee has filed the details of rendering of services by AEs and also filed various correspondence including e-mails between the assessee and AEs to prove that both parties are specialized in marketing of goods manufactured by the assessee and also provided various services. Once, the AO/TPO accepted the fact that AEs have provided services, then, the TPO cannot question the necessity of such services and in this regard, he relied upon the decision of the Hon'ble Delhi High Court in the case of CIT v. M/s.EKL appliances reported in [2012] 345 ITR 241. He further submitted that the JV was formed by three independent parties.

Accordingly, it must be appreciated that no independent JV partner will allow to pay agency commission to one of the JV partners without actual benefit arriving to the JV. He further submitted that the AO/TPO is disregarded aggregation approach adopted by the assessee for benchmarking the transaction and in this regard, he relied upon the decision of the Hon'ble Delhi High Court in the case of M/s.Magneti Marelli Powertrain India (P) Ltd. v. DCIT reported in [2016] 290 CTR 60 (Delhi) and submitted that the same has been approved by the Hon'ble Supreme Court in the case of SLP (Civil) No. 15244/2017 dated 25.10.2016. Therefore, he submitted that when the AO is not disputing rendering of services by the AEs, then, he cannot question necessity of such services and payment made thereon.

**7.** The ld.CIT-DR, on the other hand, supporting the order of the DRP/Ld.CIT(A) submitted that for AYs 2001-02 to 2004-05, agency commission has been disallowed u/s.37(1) of the Act, and hence, those years cannot be considered. For AYs 2005-06 to 2007-08, no adjustment has been made by the TPO/AO. For AY 2008-09, the issue is pending for adjudication. For AY 2009-10, the issue has been set aside to the file of the AO/Ld.CIT(A) to examine the claim of the assessee. The TPO/AO brought out clear facts that except email correspondence, no evidence has been filed to justify, and rendering of services by AEs. Further, as per JV agreement between the assessee and its partners, there is an obligation on

M/s.Mast, USA, to buy 50% of goods manufactured by the assessee. The assessee has sold 100% to JV partner as per agreement. Under these facts, the assessee could not explain why it has paid agency commission to an entity in Hong Kong when entire services have been rendered in connection with sales made in USA. Therefore, the AO/TPO has made adjustments towards agency commission and their orders should be upheld.

**8.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The assessee is a Joint Venture between M/s.MAS, Sri Lanka, M/s.Triumph and M/s.Mast, USA. The company is engaged in the business of manufacturing and sale of intimate garments and accessories. As per JV agreement between the assessee and its partners, one of the JV partner M/s.Mast, USA, must buy at least 50% of goods manufactured by the assessee. Further, as admitted by the Ld.Counsel for the assessee 100% sales achieved by the assessee company for these three assessment years is only made to M/s.Mast, USA. Therefore, it is necessary to examine payment of agency commission to M/s.Triumph and M/s.MAS, Sri Lanka, in light of JV agreement between the parties and agency agreement between two AEs and assessee and relevant evidences filed by the assessee. There is no dispute with regard to the fact that this issue is subject matter of litigation right from AY 2001-02 onwards. In initial years and up to AY 2004-05, the AO has disallowed agency

commission u/s.37(1) of the Act, on the ground that said expenditure is not incurred wholly and exclusively for the purpose of business of the assessee. For AYs 2005-06 to 2007-08, there is no adjustment. The issue has been first disputed by the AO under TP regulations for AY 2009-10 and subsequent assessment years, and which is pending for adjudication before this Tribunal. In the first round of litigation for AY 2009-10, the issue has been set aside for de novo consideration by following the decision of Tribunal for earlier assessment years. Therefore, it can be said that the issue has not adjudicated by the Tribunal on merits and thus, arguments of the Ld.Counsel for the assessee that the issue has attained finality because of the order of the Tribunal for earlier assessment years in view of the fact that the Ld.CIT(A) has directed the AO to delete additions for AYs 2001-02 to 2003-04 is not correct.

**9.** Having said so, let us come back to the issue on hand. It is an admitted fact that as per JV agreement between assessee and its partners, M/s.Mast, USA, must purchase at least 50% of goods manufactured by the assessee. It is also an admitted fact that 100% sales made by the assessee for these three years is sold to M/s.Mast, USA alone. But, the assessee has paid commission to M/s.Triumph, M/s.MAS, Sri Lanka, two AEs which are situated in different countries. The assessee claimed that AEs have provided services in connection with marketing, production of garments manufactured by the assessee and in this regard, the Ld.Counsel for the

assessee took us to various clauses of agency agreement and scope of services specified in said agreement. The Ld.Counsel for the assessee had also took us to few email correspondence between the assessee and its AEs in connection with manufacturing and selling of goods. We have gone through JV agreement between assessee and its JV partners and as per said agreement, M/s.Mast, USA, must buy at least 50% of goods and merchandise manufactured by the assessee and in fact, the assessee has sold 100% sales to M/s.Mast, USA alone, and there is no dispute in this regard. We have also gone through agency agreement between M/s.Triumph & assessee, and M/s.MAS, Sri Lanka & assessee, and we find that although, various scope of work has been specified in the agreement, but fact remains that the assessee could not file any credible evidence to prove that what services these two AEs are provided to the assessee in connection with sales made to M/s.Mast, USA. We further noted that the assessee explains general clauses in agreement between the assessee and AEs and argued that these services, including design for product manufactured by the assessee in line with change in industrial requirements and scheduling of production & sales, advisory in connection with procurement of materials, etc., had been provided, but could not file any evidences to prove the AEs have rendered services to the assessee. We have also gone through a chart showing few samples, email correspondence between the assessee and AEs for all three assessment

years and on perusal of these emails, what we understood is that these are general correspondence between assessee and its AEs regarding follow up on orders and delivery, production planning, and capacity assessment introduction of a new model and communications of order confirmations, etc., However, these emails does not show any light on the services rendered by these two AEs in connection with sales made in USA. Therefore, we are of the considered view that the assessee could not file any evidences to prove that AEs have rendered services to justify payment of agency commission.

**10.** Further, it is not a case of the assessee that sales agents (AEs) have rendered services in connection with achieving sales targets, identifying new customers, collection follow up, etc. The assessee could not even furnish any evidences to prove that there are negotiations between the assessee and the AEs with regard to marketing strategy, sales targets, credit period, etc. In absence of any evidences with regard to rendering of services by the AEs, in our considered view, the TPO/AO has rightly bench marked payment of agency commission as 'nil', because, it is for the assessee to discharge its onus by filing necessary evidences to prove rendering of services, which is pre-requisite for making any payment. In so far as arguments of the assessee that in light of decisions of the Hon'ble Delhi High Court in the case of M/s.EKL appliances (supra) and also in the case of CIT v. Gujarat Guardian Ltd., reported in [2009] 222 CTR 526

(Delhi), we find that there is no dispute with regard to ratio laid down by the Hon'ble Delhi High Court in so far as cost benefit ratio, because, the AO cannot question necessity to incur such expenditure and also the benefit derived by the assessee by incurring cost. But, what is relevant to see is whether the assessee has filed evidences to prove rendering of services to justify payment of commission. In this case, the assessee could not even file any evidences except few email correspondence and thus, we are of the considered view that there is no error in the reasons given by the TPO/DRP/Ld.CIT(A) to reject the arguments of the assessee.

**11.** Coming back to the arguments of the assessee in light of principle of res judicata and rule of consistency in light of certain judicial precedents. The Ld.Counsel for the assessee, in light of decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT reported in [1991] 100 CTR 267 (SC) submitted that even though, res judicata is not applicable to income tax proceedings, but the rule of consistency needs to be followed, unless there is a change in facts when compared to earlier Financial Years. We find that the Hon'ble Supreme Court held that res judicata is not applicable to the income tax proceedings. However, rule of consistency needs to be followed. There is no dispute on this legal aspect, because, when there is no change in the facts and circumstances of the case, the AO needs to take a consistent view on this issue. But, in the present case, if you go through sequence of events right from AY 2001-02 onwards, the

Department has disputed payments of agency commission and in earlier assessment years, the same has been disallowed u/s.37(1) of the Act, as wholly and exclusively not incurred for the purpose of business and up to AY 2008-09, the issue has been in some years accepted by the AO without any dispute and in some years, the addition has been made by the AO was finally deleted by the Ld.CIT(A). It is also an admitted fact that the assessee paying agency commission on the basis of very same agreement, but fact remains that from AY 2009-10 onwards, the issue has been examined in light of TP provisions, where ALP of international transactions of the assessee is required to be verified with reference to price charged by similar entities in uncontrolled transactions and also payments should be examined in light of evidences filed by the assessee. In this case, the TPO has made downward adjustment towards agency commission at 'nil' on the ground that the assessee could not file evidences to justify rendering of services by AE and payment of commission is commensurate with rendering of services. Therefore, in our considered view, the arguments of the assessee in light of rule of consistency and res judicata does not hold good. We further noted that the assessee also argued the issue in light of aggregation approach adopted by the assessee and benchmark method adopted by the TPO in light of Rule 10B(1) of the Income Tax Rules, 1962, under CUP method the price charged or paid for property transferred or services provided in a comparable uncontrolled transaction, or a number of

such transactions, is identified. Thus, for the purpose of applying CUP method, services rendered by the assessee have to be compared with price paid for similar services received by parties in uncontrolled transactions. No doubt, in order to apply CUP method, the AO has to bring on record comparable cases of similar nature in uncontrolled transactions. But, fact remains that in the present case, the AO categorically held that the assessee could not prove rendering of services by its AE for the business and also how assessee made payment of agency commission to two parties when 100% goods sold by the assessee was purchased by one of the JV partners as per JV agreement. Therefore, we are of the considered view that the arguments of the assessee with regard to aggregation approach and bench marking method adopted by the TPO, is incorrect. In so far as various case laws relied upon by the assessee those case laws are not applicable to this case, because, the TPO has made 100% adjustment on the ground that said expenditure is paid without any services from its AEs.

**12.** In this view of the matter and considering facts and circumstances of the case, we are of the considered view that there is no error in the reasons given by the DPR/Ld.CIT(A) to sustain additions made by the AO/TPO towards TP adjustment on payment of agency commission and thus, we are inclined to uphold the findings of the DRP/Ld.CIT(A) and reject the ground taken by the assessee for AYs 2009-10, 2011-12 & 2014-15.

**13.** The next issue that came up for our consideration from assessee's appeal is for AYs 2011-12, 2014-15 & 2015-16 is disallowance u/s.80JJAA of the Act. During the AYs 2011-12, 2014-15 & 2015-16, the assessee claimed deduction u/s.80JJAA of the Act, in respect of additional wages paid to newly appointed employees and claim made by the assessee, has been allowed in the year in which assessee has made its claim. However, the AO restricted the deduction u/s.80JJAA of the Act, to 30% of the salary paid to additional employees in subject assessment year alone, but disallowed claim of remaining amount in successive two assessment years.

**14.** The Ld.Counsel for the assessee referring to provisions of Sec.80JJAA of the Act, submitted that as per said provisions, deduction is allowed to an amount equal to 30% of additional wages paid to new workmen employed by the assessee in the previous year for three assessment years, including the assessment year relevant to previous year in which such employment is provided. Therefore, he submitted that the assessee is entitled for deduction to the extent of 30% of the additional wages during subject assessment year and for consecutive two years, and thus, suitable directions may be given to the AO to verify the claim of the assessee and allow as per law.

**15.** The CIT-DR, on the other hand, fairly agreed that the issue may be set aside to the file of the AO for verification and to decide the issue in accordance with law as per provisions of Sec.80JJAA of the Act.

**16.** We have heard both the parties, and perused the materials available on record. As per provisions of Sec.80JJAA of the Act, where the gross total income of an assessee to whom section 44AB applies, includes any profits and gains derived from business, there shall, subject to the conditions specified in sub-section (2), be allowed a deduction of an amount equal to thirty per cent of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided. From the above provision, it is evident that the assessee is eligible for deduction u/s.80JJAA of the Act, to the extent of 30% of additional wages paid during the subject assessment year and for consecutive two years. Therefore, we are of the considered view that the AO is erred in not allowing deduction claimed u/s.80JJAA of the Act, for subsequent two assessment years, even though, the law is very clear in as much as the assessee is entitled for deduction for next two assessment years @ 30% wages paid to new workmen and this proportion is supported by the decision of ITAT Bangalore Benches in the case of DCIT v. Page Industries Ltd., reported in [2015] 60 taxmann.com 498 (Bangalore-Trib.),

where it has been clearly stated that the assessee is entitled for deduction u/s.80JJAA of the Act, for subsequent two assessment years. We further noted that the DRP has accepted the claim of the assessee for the AY 2011-12 and directed the AO to verify whether conditions are satisfied to allow deduction for three consecutive years. Therefore, we are of the considered view that the issue needs to go back to the file of the AO and thus, we set aside the issue to the file of the AO for all three assessment years, and direct the AO to verify the claim of the assessee in light of our discussion given hereinabove, and if assessee satisfies conditions specified in sub-section (2), then, the AO is directed to allow the claim of the assessee for subsequent two assessment years.

**17.** The next issue that came up for our consideration from assessee's appeal for AY 2011-12 is disallowance u/s.36(1)(v)(a) r.w.s.43B of the Act, towards employee's contribution to PF & ESI. The Ld.Counsel for the assessee submitted that the assessee wants to withdraw the ground, and thus, grounds of appeal filed by the assessee for AY 2011-12 on the issue of disallowance u/s.36(1)(v)(a) of the Act, is treated dismissed as withdrawn.

**18.** The next issue that came up for our consideration from assessee's appeal for AYs 2011-12 & 2014-15 is disallowance of additional depreciation claimed on Air Circuit Brakers. The Ld.Counsel for the assessee submitted

that the assessee wants to withdraw the ground relating to disallowance u/s.32(1)(iia) of the Act, towards additional depreciation on Air Circuit Brakers, and thus, grounds of appeal filed by the assessee for AYs 2011-12 & 2014-15 are treated dismissed as withdrawn.

**19.** In the result, appeal filed by the assessee in IT (TP) A No.48/Chny/2019 for AY 2009-10 is dismissed and appeals filed by the assessee in ITA No.802/Chny/2016 & IT (TP) A No.54/Chny/2018 for AYs 2011-12 & 2014-15 are partly allowed for statistical purposes and appeal filed by the assessee in ITA No.2725/Chny/2019 for AY 2015-16 is allowed for statistical purposes.

Order pronounced on the 31st day of May, 2023, in Chennai.

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| ***Sd/-*** | ***Sd/-*** |
| **(महावीर सिंह)** | **(मंजूनाथा.जी)** |
| **(MAHAVIR SINGH)** | **(MANJUNATHA.G)** |
| **उपाध्यक्ष /VICE PRESIDENT** | लेखा सदस्य**/ACCOUNTANT MEMBER** |

चेन्नई/Chennai,
दिनांक/Dated: 31st May, 2023.
***TLN***

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

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