IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 1018/MUM/2018
(Assessment Year: 2014-15)

Essel Mining & Industries Limited,
Industry House, 18th Floor, 10,
Camac Street, Kolkata - 700017
[PAN: AAACE6607L] ..... **Appellant**

Vs

Deputy Commissioner of Income Tax Central Circle – 1(4), Mumbai,
9th Floor, Old CGO Building, M K Road,
Mumbai - 400020 ..... **Respondent**

ITA No. 1553/MUM/2018
(Assessment Year: 2014-15)

Joint Commissioner of Income Tax (OSD), Central Circle – 1(4), Mumbai,
Room No. 902, Pratistha Bhavan,
9th Floor, Old CGO Building, Annexe,
Mumbai – 400020
[PAN: AAACE6607L] ..... **Appellant**

Vs

M/s Essel Mining & Industries Limited,
Industry House, 18th Floor, 10,
Camac Street, Kolkata - 700017
[PAN: AAACE6607L] ..... **Respondent**

Appearance

For the Appellant/Assessee	:	Shri Yogesh Thar Ms. Sukanya Jayaram
For the Respondent/Department	:	Shri Biswanath Das

Date	:	17.05.2023
Conclusion of hearing	:	27.06.2023
Pronouncement of order		

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. These are cross appeals arising out of the order, dated 26/12/2017, passed by the Ld. Commissioner of Income Tax (Appeals)-47, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2014-15, whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 30/12/2016, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Assessee has raised following grounds of appeal in ITA No. 1080/Mum/2018:

"1. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating the fact that since the entire borrowed fund has been utilized by the appellant exclusively for business purposes, no part of the interest paid by it, could be disallowed u/s 14A by applying the Rule 8D(2)(ii) and thus he erred in not deleting the entire disallowance u/s 14A/Rule 8D(2)(ii).

2. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating the fact that the AO while computing average investment for the purpose of disallowance u/s 14A/Rule 8D has wrongly considered investments in subsidiary and associate entities.

3. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating the fact that the disallowance u/s 14A of the Act should not exceed the exempted dividend income.

4. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in not allowing a deduction of Rs. 18,72,74,339/- in AY 2014-15 against the additions made in AYS 2008-09 to 2011-12 on account of alleged illegal mining.

4.1 That the CIT(A) erred in confirming the action of AO of double taxation on the same production quantity once in the year in which production was shown in mining returns and secondly when the same production was shown in the Tax Audit Report.

4.2 That the CIT(A) erred in not appreciating the fact that appellant is not seeking any benefit of Revenue in the proceeding u/s

153A/153C of the Act. He failed to appreciate that there was no proceeding u/s 153A/153A in AY 2014-15, Further, the appellant's alternate claim of deduction of Rs. 18,72,74,339/- in AY 2013-14 is consequential to additions made in proceeding u/s 153A/153C in AYS 2008-09 to 2011-12.

5. *That without prejudice to the contention raised in Ground No. 4 above, the CIT(A) failed to appreciate that the Supreme Court decision in the case of Goetz (India) Ltd. was relevant only in relation to the Assessing Officer's power and not in respect of the power of an Appellate authority and thus he erred in applying the said decision in relation to the claim made by the appellant at the Appeal stage.*

6. *That on the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the action of the AO of short allowing investment allowance u/s 32AC by Rs. 55,26,445/-."*

3. The Revenue has raised following grounds of appeal in ITA No. 1553/Mum/2018:

"1. On the facts and the circumstances of the case and in law the Ld. CIT(A) erred in giving on the issue of disallowance u/s 14A of the Act."

2. *On the facts and the circumstances of the case and in law the Ld. CITIA) erred in directing the AO to follow the decision of the Hon'ble ITAT Kolkata in assessee's own case for A.Y. 2008-09 on the issue of disallowance u/s 14A and consider only those shares which have yielded dividend income during the year under consideration without appreciating that the issue is challenged in further appeal.*

3. *On the facts and the circumstances of the case and in law the Ld. CIT(A) erred in allowing deduction u/s. 80IA of the Act, of Rs. 75,52,11,139/- in respect of rail system.*

4. *On the facts and the circumstances of the case and in law the Ld. CIT(A) erred in allowing deduction u/s. 801A of the Act, of Rs. 75,52,11,139/- in respect of rail system relying upon the decision of the Hon'ble ITAT in the case of M/s. Ultratech Cement Ltd. For A.Y. 2010-11 without appreciating the decision of the Hon'ble ITAT has not been accepted by the department and further appeal has been filed."*

5. *On the facts and the circumstances of the case and in law the Ld. CIT(A) erred in holding that the sum of Rs. 6,38,56,961/- received as Carbon Credit Income is Capital receipt.*

6. On the facts and the circumstances of the case and in law the Ld. CIT(A) has erred in holding that the sum of Rs.. 6,38,56,961/- received as Carbon Credit Income is Capital receipt relying on the decision of the Hon'ble ITAT in case of Ultratech Cement Ltd. for 2010-11 without appreciating that the said decision has not been accepted by the department and further appeal has been filed in the Hon'ble Bombay High Court".

7. On the facts and the circumstances of the case and in law the Ld. CIT(A) has erred in allowing deduction u/s. 801A of the Act of Rs. 48,79,600/- disallowed on account of common expenses.

8. On the facts and the circumstances of the case and in law the Ld. CIT(A) has erred in allowing deduction u/s. 80IA of the Act of Rs. 48,79,600/- disallowed on account of common expenses relying on the decision of the Ld. CIT(A) in the case of the assessee for AY. 2011-12 and 2012-13, without appreciating that these decisions were not accepted by the department and further appeal has been pursued. The Appellant craves leave to add, to amend and / or to alter any of the grounds of appeal, if need be.

The Appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-47, Mumbai, may be set aside and that of the Assessing Officer restored.

A copy of the CIT (A)-47, Mumbai, order was received on 09-01-2018. Last date for filing second appeal is 09-03-2018"

4. Brief facts of the case are that the Assessee is a public limited company, inter alia, engaged in the business of raising of iron ore, manufacturing of ferro alloys, generation of electricity (wind power & solar power), railway siding for captive use and operating lease of solar energy equipment.

4.1. The Assessee filed return of income on 30/11/2014 declaring total income of INR 431,30,32,630/-.

4.2. A search & seizure action under Section 132(1) of the Act was conducted by the Investigation Wing, Delhi on the basis of information received from the Central Bureau of Investigation (CBI) on 15/10/2013 that during a search action being carried out by CBI

at the premises of Aditya Birla Group at 4th Floor, UCO Bank Building, Parliament Street, New Delhi huge amount of cash has been found at the said premises of M/s Aditya Birla Management Corporation Pvt. Ltd. (hereinafter referred to as ÁBMCPL'). The search & seizure action resulted into seizure of unaccounted cash, jewellery, bullion and incriminating documents from the office of ABMCPL and from the residence of Shri Shubhendu Amitabh, which were searched. During the search, several books of account, documents, computer hard disks and laptop were also found and seized which included a petty cash book of the Assessee-company. Further, material seized also showed that Assessee-company owned unaccounted income. Therefore, proceedings under Section 153C read with Section 153A of the Act were initiated against the Assessee on 26/11/2014 requiring the Assessee to file return of Income for AY's 2008-09 to 2013-14. The cross appeals before us pertain to Assessment Year 2013-14. The Assessing Officer completed the assessment vide, order dated 30.12.2016 assessing the total income of the Assessee at INR 573,39,28,420/- after making a number of additions/disallowances including the following:

Sr.No.	Particulars	Amount (INR)
(i)	Disallowance under Section 14A of the Act	31,51,33,449/-
(ii)	Carbon Credit treated as Revenue Income	6,38,56,961/-
(iii)	Disallowance under Section 32AC	55,26,445/-
(iv)	Disallowance - 80IA Railway Siding Unit	75,52,11,139/-
(v)	Disallowance - Common Expenses	48,79,600/-
(v)	Disallowance – Illegal Mining Expenses	18,72,74,339/-

4.3. Being aggrieved the Assessee preferred appeal before CIT(A) against the Assessment Order, dated 30/12/2016. The CIT(A) partly allowed the appeal of the Assessee vide order, dated 26/12/2017.

4.4. Both, the Assessee and the Revenue are now in cross-appeals before us against the order dated 26/12/2017 passed by the CIT(A) on the

grounds reproduced in paragraph 2 and 3 above which are taken up hereinafter. The grounds raised by the Assessee and Revenue pertaining to same issues are being considered together

Ground No.1, 2 & 3 of Appeal by Assessee along with Ground No. 1 of Appeal by the Revenue

5. Ground No. 1 to 3 of the Appeal by Assessee and Ground 1 & 2 of the Appeal by Revenue pertain to disallowance of INR 31,51,33,449/- (INR 31,60,07,285/- less INR 8,73,836/-) made by the Assessing Officer under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules') while computing income under normal provisions of the Act.

5.1. While computing taxable income the Assessee has made disallowance of INR 8,73,836/- under Section 14A of the Act being part of salary of three employees and other overhead expenses estimated by the management to be related to earning of exempt dividend income of INR 83,16,271/- on units of Mutual Fund. During the assessment proceedings, the Assessing Officer noted that the Assessee had earned interest income of INR 49.16 Crores and incurred interest expenses of INR 267.19 Crores, thus, suffering a loss of INR 217.98 Crores. According to the Assessing Officer that there was no presumption under the provisions of the Act that if an assessee had interest free loans as well as interest bearing funds and such assessee earned exempt income as well as taxable income, then it should be presumed that exempt income was earned out of the own funds of such assessee. Therefore, the Assessing Officer invoked provisions of Section 14A of the Act read with Rule 8D of the Rules to make disallowance of INR 26,66,31,950/- under Rule 8D(2)(ii) and INR 4,93,75,335/- under rule 8D(2)(iii) of the Rules.

5.2. In appeal preferred by the Assessee, the CIT(A) granted relief to the Assessee by directing the Assessing Officer to compute disallowance under Section 14A read with Rule 8D(2)(ii) of the Rules according to the directions issued by the Kolkata Bench of the Tribunal in the case of the Assessee for the Assessment Year 2008-09 (ITA No. 786/Kol/2013, dated 10/03/2017). For the purpose of computing the disallowance under Section 14A read with Rule 8D(2)(iii) of the Rules, the CIT(A) directed the Assessing Officer to compute disallowance by taking into account only those shares which have yielded exempt dividend income during the relevant previous year.

5.3. Being aggrieved, both the Assessee as well as Revenue have preferred appeal before the Tribunal. Ground No. 1 to 3 preferred by Assessee and Ground No.1 and 2 preferred by the revenue pertained to the issue under consideration.

5.4. The learned Authorized Representative advancing arguments on behalf of the Assessee submits that the Assessee had sufficient own funds which exceeded investments. He further submitted that only investments which have yielded exempt income should be considered for the purpose of computing disallowance under Section 14A of the Act. Without prejudice to the aforesaid, Learned Authorised Representative for Assessee submitted that the disallowance under Section 14A of the Act could not, in any case, exceed the amount of exempt income. In support of the said contentions, the Learned Authorised Representative for Assessee relied upon the following judicial precedents – decisions of Kolkata Bench of the Tribunal in the case of the Assessee for the Assessment Year 2008-09, 2008-09 and 2009-10 in ITA. No. 786/Kol/2013, ITA. No. 1069 & 2064/Kol /2013 and ITA. No. 1004&1294/Kol /2013,

respectively as well the judgment in the case of South India Bank Ltd. Vs. CIT [2021] 438 ITR 1 (SC) and Assistant Commissioner of Income-tax, Circle 17 (1), New Delhi Vs. Vireet Investment Pvt. Ltd.: [165 ITD 27] (Delhi Trib.)

5.5. Per contra, Ld. Departmental Representative relied upon the order passed by the Assessing Officer and submitted that the Assessing Officer was correct in making the additions under Section 14A of the Act as per method of computation specified in Rule 8D of the Rules.

5.6. We have heard the rival submissions, perused the material on record and examined the legal position.

5.7. We find merit in the contentions advanced by the Learned Counsel for the Assessee. The Hon'ble Supreme Court has, in the case of South India Bank Ltd (supra) held that in case own funds of the Assessee are sufficient for making investments, no disallowance is warranted under Section 14A of the Act read with Rule 8D(2)(ii) of the Rules. We note that in paragraph 21.10 of the order impugned, the CIT(A) has recorded the submissions of the Assessee wherein it has been stated that as on 31.03.2014, the own funds of the Assessee stood at INR 6612.74/- Crores as against the investments of INR 988.54 Crores. Since the own funds were sufficient to cover the amount of investments, no disallowance of interest was warranted under Section 14A of the Act read with Rule 8D(2)(ii) of the Rules. Accordingly, disallowance of INR 26,66,31,950/- made by the Assessing Officer under Rule 8D(2)(ii) of the Rules is deleted.

5.8. Further, for the purpose of computing amount of disallowance under Rule 8D(2)(iii) only the investments yielding exempt income should be considered as per the decision of the Special Bench of the

Tribunal in the case of Vireet Investments Pvt. Ltd. 165 ITR 27 (Delhi Trib.) (SB). The Assessee has filed details of investment yielding exempt dividend income during the relevant previous year according to which such investments stood at INR 23,69,68,301/- and INR 19,69,68,307/- as on 31.03.2013 and 31.03.2014, respectively. The Assessing Officer is directed to verify the same and computed the amount of disallowance under Section 14A read with Rule 8D(2)(iii) of the Rules after taking into accounts only investments yielding exempt dividend income during the relevant previous year.

5.9. As rightly contended by the Learned Counsel for the Assessee, disallowance under Section 14A of the Act cannot, in any case, exceed the amount of exempt income earned by the Assessee during the relevant previous year as per the judgment of Hon'ble Supreme Court in the case of PCIT vs. State Bank of Patiala : [99 taxman.com 286 (SC)]. Accordingly, it is clarified that the aggregate amount of disallowance under Section 14A of the Act read with Rule 8D of the Rules shall not exceed the amount of exempt income of INR 83,16,271/-.

5.10. In terms of the above , Ground No. 1 and 3 raised by the Assessee are allowed, Ground No, 2 raised by the Assessee is partly allowed and Ground No. 1 & 2 raised by the Revenue are dismissed.

Grounds No. 4 & 5 of Appeal by Assessee

6. In Ground No. 4 & 5 raised by the Assessee, claim of deduction of expenses in respect of addition of illegal mining income made in Assessment Years 2008-09 to 2011-12 was set up by the Assessee. During the course of hearing the Counsel for the Assessee stated under instructions that the Assessee does not wish to press the

aforesaid grounds as the corresponding additions stand deleted. In view of the aforesaid, Ground No. 4&5 are dismissed as being not pressed.

Grounds No. 6 of Appeal by Assessee

7. Ground No. 6 raised by the Assessee pertains to short deduction of investment allowance under Section 32AC of the Act by INR 55,26,445/- by the Assessing Officer which was confirmed by the CIT(A).

7.1. During the course of assessment proceedings the Assessing Officer asked the Assessee to show cause why the claim of deduction of INR 55,26,445/- in respect of investment allowance pertaining to addition to plant and machinery of INR 3,68,42,969/- transferred from capital-work-in progress should not be disallowed.

7.2. In response the Assessee filed reply letter, dated 20/01/2016, stating as under:

i) The Assessee has claimed Investment Allowance on Plan & Machinery of INR 141,23,31,330/- out of which only INR 3,68,42,969/-, being 2.60% total addition of Plant and Machinery, was transferred from Capital Work-in-Progress and the same represent mainly store items which were issued from store for installation of machines on 21.03.2013.

ii) Out of the aforesaid amount of INR 3,68,42,969/-, INR 3,64,00,000/- related to Ore Crushing Plant for which store items (such as MS Plates & other Steel Items, Oxygen Cylinders, Electorate, Angles, Bolt, cables and other store items issued from time to time), and included payment to contractors for erection Ore Crushing Plant. As on 31.03.13 these store

items were not in the shape of Plant and Machinery and accordingly shown under the head Capital Work-in-Progress and not under the head Plant and Machinery.

iii) The erection of Ore Crushing Plant was completed during Previous Year 2013-14 and therefore, the Assessee claimed investment allowance on such amount in the return for the Assessment Year 2014-15.

iv) The Plant & Machinery were acquired & installed in Financial Year 2013-14 whereas in the Financial Year 2012-13 only store items were purchased or payments were made to contractors.

7.3. However, the Assessing Officer was not convinced and therefore, the Assessing Officer proceeded to disallow investment allowance of INR 55,26,445/- against addition to Plant & Machinery of INR 3,68,42,969/-.

7.4. The CIT(A) dismissed the ground raised by the Assessee in appeal challenging the above disallowance of investment allowance of INR 55,26,445/- holding as under:

> *"42.1From the provisions of Section 32AC, it is evident that deduction of investment allowance is available only against the plant and machinery acquired and installed after 31.03.2013 but before 01.04.2015. In the present case, the appellant itself has accepted that Plant and Machinery to the extent of Rs. 3,68,42,969/- were acquired prior to 31.03.2013 and kept as Capital in Work in Progress. Further, the judicial decision in the case of Euro Pratik Ispat Pvt ltd relied upon by the appellant is not relevant in the facts of the present case. The said decision was rendered on the issue of Additional Depreciation and not on Investment Allowance. Accordingly, it is held that the judgement of Euro Pratik Ispat Pvt ltd, supra is distinguishable on facts.*
>
> *42.2 In view of these facts and circumstances, this Ground of Appeal No 9 is dismissed."*

7.5. The Assessee in now in appeal before us on this issue.

7.6. Both the sides reiterated the stand taken before authorities below. We find that substantial part of the Plant & Machinery was acquired and erected after 31.03.2013 but before 01.04.2015. The dispute before us pertains to 2.6% of the total addition to plant and machinery only. Further, the stand taken by the Assessee is supported by the decision of Mumbai Bench of the Tribunal in the case of UltraTech Cement Ltd. Vs. DCIT [ITA No. 2462/Mum/2018] wherein in identical facts and circumstances the deduction for investment allowance was allowed. Therefore, we direct the Assessing Officer to allow investment allowance of INR 55,26,445/-. Ground No. 5 raised by the Assessee is allowed.

Additional Ground raised by the Assessee

8. The additional ground raised by the Appellant, vide letter dated 23.08.2021, pertains to claim for deduction for Education Cess and Secondary & Higher Education Cess (collectively referred to as 'Education Cess') aggregating to INR 4,42,71,845/- raised for the first time before the Tribunal as a legal plea. During the course of hearing, the Ld. Authorised Representative for the Assessee submitted that in view of retrospective amendment in Section 40(a)(ii) of the Act and the judgment of Hon'ble Supreme Court in the case of Joint Commissioner of Income Tax Vs. Chambal Fertilisers & Chemicals Ltd. : [2023] 450 ITR 164 (SC), the Assessee does not wish to pursue the additional ground. Accordingly, the additional ground raised by the Assessee is dismissed as not pressed.

Grounds No. 3 & 4 of Appeal by Revenue

9. *The* Assessee had claimed deduction under Section 80IA(4) of the Act in respect of Railway Siding Unit situated at P.O. Jajang, District-

Keonjhar, Barbil, Orissa. The net profit of the aforesaid unit stood at INR 75,52,11,139/- being around 83% of the gross receipt of INR 90,62,29,259/-. The Railway Siding Unit was treated as infrastructure facility by the Assessee and therefore, deduction under Section 80IA(4) of the Act was claimed in respect of Railway Siding Unit.

9.1. During the assessment proceedings, the Assessing Officer concluded that the railway sidings were being used by the Assessee as a private facility and therefore, the same was not in the nature of infrastructure facility of public utility. The actual operation (i.e. running of goods train) on the private sidings between the serving railway station and the plant premises upto the interchange point/exchange yard was being done by Indian Railways and not by the Assessee. The mining site of the Assessee having private sidings was notified as independent booking station and freight was being charged by the Indian Railway for the entire distance including the portion of private sidings upto interchange point/exchange yard. According to the Assessing Officer the Assessee had shown exorbitant profit from Railway Siding Unit and had claimed deduction of INR 75,52,11,139/- under Section 80IA(4) of the Act on such private railway sidings. Therefore, the Assessing Officer disallowed the aforesaid deduction claimed by the Assessee under Section 80IA(4) of the Act terming the said claim of deduction as patently false. While doing so, the Assessing Officer placed reliance upon the order passed by the CIT(A) in appeal for the Assessment Year 2010-11 in the case of M/s UltraTech Cement Ltd., a group for the Assessee.

9.2. Being aggrieved, the Assessee carried the issue before CIT(A). During the appellant proceedings before CIT(A), the Assessee relied

upon the decision of the Tribunal in the case of UltraTech Cement Ltd. for the Assessment Year 2010-11 whereby the order of the CIT(A) relied upon by the Assessing Officer was overturned by the Tribunal vide order dated 05/04/2017 in ITA No. 7631/Mum/2014. Relying upon the aforesaid order Mumbai Bench of the Tribunal, the CIT(A) directed the Assessing Officer to allow the claim of the Assessee under Section 80IA(4) of the Act.

9.3. Being aggrieved, by the Revenue has challenged the above relief granted by the CIT(A) in Ground No.3 & 4 of the appeal.

9.4. We have considered the rival submission and perused the material on record. The Assessing Officer has, in the assessment order, dealt with the issue under consideration at Paragraph 13. The conclusions derived by the Assessing Officer are in paragraph 13.2 onwards and the same read as under:

> *" 13.2 The assessee's submission has been considered carefully and is found not acceptable because:-*
>
> *13.2.1 After verification the submissions filed by the assessee and finding given by the then ld. CIT (A)-5, Mumbai in case of M/s Ultratech Cement Limited for AY-2010-11, notice under section-133(6) was issued to the Chief Commercial Manager, South Eastern Railway, Kolkata. In reply to this, it was communicated that the private siding is not owned by the railways. It is planned, constructed, operated for handling goods traffic of the siding owner. The operation of racks in the siding is undertaken on the basis of private siding agreement executed by the Zonal Railway concerned with the Authorised representative of the company.*
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> *13.2.2 On verification of the details, it was found that the accessee company has developed and operating the Railway Siding after entering into an agreement for the said business with South Eastern Railway. Agreements were entered for constructing the Private Railway for catering their business requirements. As per the agreements the railway did not allow Private Enterprises to operate any Rail system (in between the serving station to the interchange point/buffer end at the plant site) on private siding instead Indian Railway operate the Rail System on the private siding by levying*

siding charges. The agreements entered between the assessee company and the Railway Authorities with certain terms and conditions as any agreement for development, operation and maintenance of any Rail System. The Rail System of the assessee company is simply a Private siding for own use and not any infrastructure facility for public utility.

i) The so called 'Rail System' of the assessee company are simply a private sidings and not any infrastructure facility of Public Utility. The infrastructure of such private sidings are treated as "Private Facility".

ii) The agreement entered between the assessee company and railway department contained the terms and conditions for construction of Private Sidings and that cannot be treated as any agreement for development, operations and maintenance of any Rail System.

iii) The various conditions given in section 80 IA were not met with.

iv) The actual operation of rail system (i.e is running of goods train) on to the private sidings between the serving railway station and plant premises [upto interchange point/ exchange yard] was being done by the Indian Railways and not by the assessee company.

v) The mining site having private sidings was notified as independent booking station and the freight was charged by the railway department for the entire distance including the portion of private sidings [upto inter exchange point/ exchange yard].

vi) The notional profit computed for so called rail system has been very exorbitant and the method is also not correct. The net profit ratio of the private siding is 83.33%. The transactions are between two units of the same company and therefore they have been so arranged in the course of business that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business. Hence, the provision of section 80IA (10) of the IT Act are also applicable in this case.

13.2.3 The profit of the rail system so claimed was notional and arrived at under the presumption that prior to setting up of private sidings, the assessee used to transport the goods from its plant site to the nearest railway of serving station and in that case it was to carry out loading and unloading of goods at that point too; and that on construction of sidings, the assessee could avoid the expenditure incurred on road transport and

multiple loading and unloading at serving station yard. Based on that, it had computed savings that it could make by avoiding the road transport and multiple loading & unloading of goods and claimed that as a profit of a separate undertaking of rail system [on stand-alone basis]. This working itself is ill-conceived as the transportation of goods was actually done by the rail department and not by the assessee company. What is deductible u/s 80- IA is the real profit [of any infrastructure such as rail system] derived on actual operation and not notional profit computed the manner as done by the assessee.

13.2.4 Accordingly it is held that assessee's claim of deduction as regards to profit, if any, on its rail system [rather private sidings] made u/s 80 IA is patently false, and as such, it is not eligible for any benefit of deduction under section 80IA. Therefore, the deduction claimed under section 80IA(4) of the IT Act on Private Railway Siding amounting to Rs. 75,52,11,139/- is disallowed and added to the total income of the assessee. Penalty proceedings under section 271(1)(c) of the IT Act 1961 is separately initiated for furnishing inaccurate particulars of income." (Empahsis Supplied)

9.5. During the appellant proceedings before the CIT(A), the Assessee pointed out that the order of the CIT(A) in the case of Ultratech Cement for the Assessment Year 2010-11 on which reliance was placed by the Assessing Officer has, since, been reversed by the Mumbai Bench of the Tribunal in ITA No. 7614/Mum/2014 vide order, dated 05/04/2017. It was contended by the Assessee that there was no requirement that the infrastructure facility should be used for public purpose. The Assessee had commenced the operation of Railway Sidings Unit on 29/04/2005, after receiving necessary approvals from South Eastern Railways. Assessment Year 2006-07 was the initial year for claiming deduction under Section 80IA of the Act. The deduction under Section 80IA of the Act was allowed in the Assessment Order passed under Section 143(3) of the Act on 15/12/2008 for the Assessment Year 2006-07 within, the initial assessment year. For Assessment Years 2006-07 to 2012-13, in original assessment proceedings under Section 143(3) of the Act, deduction under Section 80IA of the Act was allowed to the Assessee

and in every assessment order and the Assessing Officer has taken note of the fact that the Assessee is making captive use of railway sidings. Therefore, the Assessee was eligible to claim deduction under Section 80IA(4) of the Act. The aforesaid submissions of the Assessee found favour with the CIT(A) who was pleased to allow deduction under Section 80IA(4) of the Act in respect of Railway Siding Unit holding as under:

> *" 30.0 I have gone through the assessment order, the submissions off the appellant company and various other material on record, on this issue.*
>
> *30.1 The appellant company had commenced operation of its Railway Siding Unit from 29.04.2005, after receiving necessary approvals from the South Eastern Railways. Further, the appellant has been claiming deduction u/s 80IA since AY 2006-07, the initial year. The deduction u/s- 80IA was allowed in the assessment order u/s -143(3) dated 15.12.2008 for 2006-07, which is the initial assessment year. The appellant has stated the deduction u/s- 80IA of the Act was allowed in the original assessment proceedings for all the assessment years starting from AY-2007-08 to AY-2012-13.*
>
> *30.2 For disallowing the claim of the appellant company u/s- 80 IA in the proceedings u/s- 153C of the Act, the AO has mainly relied on the finding given by the ld. CIT(A)-5, Mumbai, in case of M/s Ultratech Cement Ltd., a group concern for the AY 2010-11. During the course of the appellate proceedings, the appellant has filed a copy of the order dated 05.04.2017 of the Hon'ble Mumbai ITAT in ITA No.7631/MUM/2014 in the case of M/s Ultratech Cement Ltd. wherein the findings of the CIT(A) has been reversed. The relevant excerpts of the said order of the Hon'ble ITAT are reproduced hereunder:*
>
> > *"46. Therefore the agreements as entered into by the assessee with Indian Railways are as envisaged u/s 80-IA(4)(i) and in no case it can be inferred that they are not the required agreements under section 80-IA.*
> >
> > *47. We also found that no siding charges are levied by Indian Railways for the rail systems developed by the assessee. The assessee has developed, operates and maintains the rail systems. The systems are being operated by the assessee as permitted under the agreements entered into with Indian Railways and under the rules and regulations of Indian Railways from time. The entire cost was borne by the assessee and is appearing in the balance sheet of the assessee as placed*

on record. We have also verified the same and found it correct…..

49. From the record we found that the rail systems were developed under the agreements entered into with Indian Railways and assessee operates and maintains the same in accordance with terms and conditions of the Agreements, under the supervision and as per guidelines of Indian Railways. We have carefully gone through the relevant clauses of the agreements substantiating the same which reads as under:

> *a) Clause No. 2, Agreement to Construct Siding - Wherein it is mentioned that "the Railway administration will at the cost and the expenses of the applicant, in all respect, construct the railway sidings " Further kindly be informed that, for construction of the siding under the supervision of the Railways, the contract for construction and supervision has been awarded by the applicant and the entire cost has been borne by the applicant.*
>
> *b) Clause no. 6 - Payment by Applicant against the total estimated cost – where.in it is mentioned that, "The applicant will pay in advance to the railway administration the total estimated cost of the work consisting of the estimated costs of work done by the party and those by the railway administration ....*
>
> *"c) Clause no. 7(a) - Permanent way materials - "The applicant will provide and deliver at site the permanent way and other materials (which includes Girders, Rails, Sleepers, fastenings, points, crossings, fencings, signals and overhead structures and any other things connected therewith for electric tractions and other machinery and equipments necessary for working of the sidings) in accordance with the Railway administration's standards and specifications. All charges incurred in laying and fitting the permanent way materials and all other equipments which may be provided shall entirely be borne by the applicant."*
>
> *d) Clause No. 17 - Working of the Siding - wherein it is mentioned that " ... the applicant shall provide labour for and bear the cost of all Operations on the siding. The applicant shall be responsible for the strict compliance by himself and his employees and agents of all rules, regulations and standing orders made by the railway administration from time to time for the working of sidings and for all accidents, loss or damage that may be ensured or be caused by reasons of negligence or non-*

observance of such rules, regulations and orders .... " Further, the appellant carries out all the operations for smooth movement of its goods, viz. Shunting of the Wagons, placing of the wagons at appropriate locations, Loading / Unloading of Wagons within the stipulated time and stipulated methods of Indian Railways through Wagon Loading Machines and Wagon Tipplers, Weighing of Wagons on Motion Weigh Bridges, Maintaining signa ling systems, Wagons, Couplings, Rake formation for dispatch, hauling of Wagons through its own locomotives, etc. Further, in Clause No. 14 - Traffic on Siding - it is mentioned that " .... applicant undertakes to shunt the wagons from such point to his premises and back with his own labour and the railway administration would not be responsible for any delay, loss and damages caused in consequence of the failure of the applicant to arrange for such shunting." Thus, the rail system is being operated by the appellant and the cost of above operations is borne by appellant.

e) Clause No. 8(b) - Wherein it is mentioned that, Maintenance and other Charges for the portion of the sidings - The applicant will at their own cost and expenses in all things and to the satisfaction of the railway administration and if required by the railway administration under its supervision maintains in good order and repair the said portion of the siding. Such charges as may be fixed by the railway for the supervision rendered shall be paid by the applicant. There are other various clauses wherein it is evident that the Development, Operation and Maintenance is done by the appellant and the entire cost for the same is borne by the appellant.

50. <u>The question of allowability of the deduction u/s. 80IA in respect of rail systems has been settled in earlier years by the Hon'ble ITAT in assessee's own case</u>. The facts and the agreements were also placed before authorities in those years. Therefore, the claim based on same facts needs to be allowed following the principle of Consistency in assessment proceedings. Even though the 'principles of res judicata' do not apply to income tax proceedings and each assessment year being a separate unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be appropriate to allow the position to be changed in a subsequent year. The above principles have been accepted in

the undernoted case: • Shah & Co (HA) v. CIT (1956) (30 ITR 618) (Bom) • Amalgamated Coalfields vs. Janapada Sabha AIR 1964 SC 1013 • South India Trust Association vs. Telugu Church Council (1996) 2 SCC • Radhasoami Satsang vs. CIT (1992) 193 ITR 321 (SC).

……

63. As per materials placed on record, all the railway systems are established and owned by the assessee which is a Company as defined under the Income tax Act. This is an undisputed fact and there is no adverse remark by the AO or CIT(A) in this regard.

64. As per clause (b) of Section 80IA (4)(i) an agreement has to be entered with the Central Government or a State Government or a Local Authority or any other statutory body for (i) developing or (ii) Operating and maintaining or (iii) Developing, Operating and Maintaining the infrastructure facility. The Indian Railways, with whom the assessee has entered into an agreement, is the statutory body designated under the Indian Railways Act.

65. We also observe that the agreements entered into by the assessee are for the development, operation and maintenance of the Railway siding. Thus this fulfills the requirement in clause (b)…….

70. As per our considered view, the operation of Rail System is not simply running of goods train. Operation of Railway Systems comprises of various activities viz. shunting of the wagons, placing of the wagons at appropriate locations, loading/unloading of wagons within the stipulated time and stipulated methods of Indian Railways through Wagon Loading Machines and Wagon Tipplers, weighing of wagons on Motion Weigh Bridges, wagon couplings and de-couplings, rake formation for dispatch, hauling of wagons through its own locomotives within the factory premises, etc. Thus, the rail system is being operated by the assessee and the cost of above operations is borne by assessee…..

……

96. In view of the above discussion and respectfully following the order of the Tribunal in assessee's own case for the A.Y.2004-05 to 2008-09, we do not find any merit in the action of the Revenue authorities declining the claim of deduction u/s.80IA(4). Accordingly AO is directed to allow the deduction

as claimed by the assessee with respect to its rail system. We direct accordingly."

……..

30.3 During the course of the appellate proceedings, the appellant has also stated that there is no provision for withdrawal of deduction u/s 80IA for the subsequent year i.e. AY 2013-14 under appeal, unless the deduction granted in initial year i.e. AY 2006-07 is withdrawed. In this regard, reliance is placed on the judgment of the Hon'ble Bombay High Court's Order in the case of Paul Brothers (216 ITR 548), the relevant excerpts of which are reproduced hereunder:-

"6. Either in section 80HH or in section 80J, there is no provision for withdrawal of special deduction for subsequent years for breach of certain conditions. Hence unless the relief granted for the assessment year 1980-81 was withdrawn, the Income Tax Officer could not withheld the relief for the subsequent years."

30.4 In view of these facts and circumstances and following the order of the Hon'ble ITAT, Mumbai for the AY- 2010-11 in the case of M/s Ultratech Cement Ltd a group concern, the AO is directed to allow the claim of the appellant under section 80IA (4) of the Act" .(Emphasis Supplied)

9.6. In the appellate proceedings before us, both, sides reiterated their respective stand/submission. Having considered the same and on perusal of record, we do not find any infirmity in the order passed by the CIT(A). In the identical facts and circumstances, the claim of the Assessee for deduction under Section 80IA(4) of the Act in respect of Railway Siding Unit was accepted by the Revenue for the Assessment Year 2006-07 to 2012-13. The Assessing Officer had relied upon the decision of the CIT(A) in the case of UltraTech Cement Ltd for the Assessment Year 2010-11 while disallowing deduction under Section 80IA(4) which has been overturned by the Tribunal vide order dated 05.04.2007 passed in ITA No.7631/MUM/2014 and the Tribunal has, in identical facts and circumstances, allowed the claim for deduction under Section 80IA(4) of the Act in respect of railway siding unit utilised for captive use. The CIT(A) has also reproduced the relevant excerpts of the

aforesaid decision of the Mumbai Bench of the Tribunal in the case of M/s Ultratech Cement Ltd. [ITA No.7631/MUM/2014, dated, 05.04.2017] which support the order passed by the CIT(A). It is not the case of the Revenue that the aforesaid decision of the Tribunal has been overturned or stayed. Accordingly, we do not find any infirmity in the order passed by the CIT(A) to the extent the CIT(A) holds that the Assessee eligible to claim deduction under Section 80IA(4) of the Act in respect of Railway Siding Unit utilised for captive use as per the terms of agreement with Indian Railways, a statutory body designated under the Indian Railways Act, by following the decision of the Mumbai Bench of the Tribunal in the case of Ultratech Cement Ltd. [ITA No.7631/MUM/2014, dated 05.04.2017]. As regards the computation of quantum of deduction, we note that the Revenue had contended that the profits of the Railway Siding Units were very high. Since the Assessing Officer had rejected the claim of the Assessee under Section 80IA of the Act, the issue of computation of deduction was not examined. Accordingly we direct the Assessing Officer to verify the computation of deduction claimed by the Assessee keeping in view the applicability or otherwise of the provisions of Section 80IA(8)/(10) of the Act before allowing claim of deduction of INR 75,52,11,139/- under Section 80IA(4) of the Act. In terms of the aforesaid, ground No. 4&5 raised by the Revenue are disposed off as partly allowed.

Grounds No. 5 & 6 of Appeal by Revenue

10. During the relevant previous year the Assessee received INR 6,38,56,961/- on sale of carbon credits. Treating the same as capital receipts, the Assessee did not offer such receipts to tax. The Assessing Officer treated the receipts on sale of carbon credits are revenue receipts and brought the same to tax. In appeal by the

Assessee, the CIT(A) accepted the claim of the Assessee that INR 6,38,56,961/- received on sale of carbon credits was in the nature of capital receipts and therefore, not liable to tax. Being aggrieved the Revenue has carried the issue in appeal before us.

10.1. Both the sides agreed that identical issue was decided in favour of the Assessee by the Tribunal in appeal in the case of the Assessee for the Assessment Year 2015-16 [ITA No. 602/Mum/20121, decided on 27/07/2022]. The relevant extract of the aforesaid decision of the Tribunal read as under:

> *"9. Next ground of appeal pertains to taxability of Carbon Credit received by assessee amounting to Rs. 10, 20,587/-. We have gone through the order of AO and ld. CIT (A). The decisions of various High Courts and Co-ordinate Benches of Tribunal relied upon by the ld. CIT(A) are distinguishable and not applicable to the facts of the case.*
>
> *10. Issue is whether receipts received by the assessee on sale of alleged carbon credit is revenue in nature or capital in nature.*
>
> *11. Thus, taking into consideration resolution of litigation on this issue by the Legislature itself, which had made provision for taxation of such receipts at the rate of 10 per cent from the assessment year 2018-19. Thus, any sum received on account of carbon credit or protecting the environment is not included in the business income however, subsequently there is an amendment by Finance Act, 2017 whereby Section 115BBG has been inserted in the statute w.e.f 01.04.2018 which reads as under: — "Following section 115BBG shall be inserted after section 115BBF by the Finance Act, 2017, w.e.f. 1-4-2018: Tax on income from transfer of carbon credits. 115BBG. (1) Where the total income of an assessee includes any income by way of transfer of carbon credits, the income tax payable shall be the aggregate of— (a) the amount of income-tax calculated on the income by way of transfer of carbon credits, at the rate of ten per cent; and (b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by*

the amount of income referred to in clause (a). (2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of subsection (1). Explanation.—For the purposes of this section "carbon credit" in respect of one unit shall mean reduction of one tonne of carbon dioxide emissions or emissions of its equivalent gases which is validated by the United Nations Framework on Climate Change and which can be traded in market at its prevailing market price." Thus, the income by way of transfer of carbon credit has been given a special treatment as chargeable to tax @ 10% and not as part of the normal business income of the assessee. The said amendment is prospective in nature and therefore, cannot be applied to the assessment years under consideration.

12. The ld. AR for the assessee brought to the notice of the Bench that the identical issue has already been decided by the Co-ordinate Bench of Tribunal in favour of assessee in case cited as DCIT Vs. M/s Dawarkesh Sugar Industry Ltd. in ITA No. 312/Mum/2019 for A.Y. 2014-15 by following the decisions rendered by the Hon'ble Andhra Pradesh High Court in the case of My Home Powers Ltd. (2014) 365 ITR 082 (AP). 13. We have perused the order passed by the Co-ordinate Bench of Tribunal in case of M/s Dawarkesh Sugar Industry Ltd. (supra), wherein identical issue has been decided in favour of the assessee by returning following findings.

> *"7. Considered the submissions of the learned Counsel for both the parties and perused the material on record. While going through the judicial pronouncements relied upon by the learned Counsel for the assessee, we find that the issue for our adjudication is squarely covered by the aforesaid decisions relied upon by the learned Counsel wherein in one of the cases relied upon in CIT v/s My Home Power Ltd., [2014] 365 ITR 082 (AP) (supra) filed by the Revenue, the Hon'ble Andhra Pradesh High Court held that the Tribunal had factually found that Carbon Credit was not off-shoot of business but off-shoot of environmental concerns and no asset was generated in course of business but it was generated due to environment concerns. Further we find that the Hon'ble A.P. High Court agreed with the factual analysis as the assessee carried on business of power generation and Carbon Credit was not even directly linked with power generation. It is held that on sale of excess Carbon Credits income was received and the Tribunal correctly held that*

it is capital receipt and could not be a business receipt or income. As a matter of convenience, the observations of the Hon'ble A.P. High Court in CIT v/s My Home Power Ltd., [2014] 365 ITR 082 (AP) (supra) is reproduced below:

> *"ITAT have considered the aforesaid submission and ITAT are unable to accept the same, as the learned Tribunal has factually found that "Carbon Credit is not an offshoot of business but an offshoot of environmental concerns. No asset is generated in the course of business but it is generated due to environmental concerns' ITAT agree with this factual analysis as the Assessee is carrying on the business of power generation. The Carbon Credit is not even directly linked with power generation. On the sale of excess Carbon Credits the income was received and hence as correctly held by the Tribunal it is capital receipt and it cannot be business receipt or income. In the circumstances, we do not find any element of law in this appeal."*

14. Following the order passed by Co-ordinate Bench of Tribunal in case of M/s Dawarkesh Sugar Industry Ltd. (supra) which is based upon the decision rendered by Hon'ble Andhra Pradesh High Court in case of My Home Power Ltd. (supra), we are of the considered view that sale of Renewable Energy Certificate (Carbon Credit) of income received by the assessee is a capital receipt and could not be business receipt or income nor it is directly linked with the business of the assessee nor any asset is generated in the course of business but it is generated due to environmental concern. So the addition of Rs. 10,20,587/- by the AO from the sale of Carbon Credit and confirmed by the ld. CIT(A) is not sustainable, hence, ordered to be deleted." (Emphasis Supplied)

10.2. We note that the Tribunal has granted relief to the Assessee by placing reliance on the decision of Co-ordinate Bench of the Tribunal in the case of DCIT Vs. M/s Dawarkesh Sugar Industry Ltd [ITA No. 312/Mum/2019, Assessment Year 2014-15] which has in-turn relied upon the decision of the Hon'ble Andhra Pradesh High Court in CIT Vs. My Home Power Ltd., [2014] 365 ITR 082 (AP). We note that CIT(A) had also granted relief to the Assessee by placing reliance, inter alia, on the aforesaid decision of the Hon'ble Andhra Pradesh

High Court wherein the it has been held that Carbon Credit is not an offshoot of business but an offshoot of environmental concerns and therefore, a capital receipt. Accordingly, we do not find any infirmity in the order passed by the CIT(A). Ground No. 5 & 6 raised by the Revenue are, therefore, dismissed.

Grounds No. 7 & 8 of Appeal by Revenue

11. That the Ground No. 7 & 8 pertains to disallowance of common expenses while claiming deduction under Section 80IA of the Act.

11.1 During the Assessment proceedings, the Assessing Officer the Assessing Officer formed a view that the Assessee had not deducted the proportionate Travelling and Conveyance expenses while arriving at the profits of the Railways Siding Unit and Wind Power Unit eligible for deduction under Section 80IA/10B of the Act. This has resulted in overcharging of expenses to other business/units and resulting in understatement of income. Therefore, the Assessing Officer allocated the aggregate travelling and conveyance expenses of INR 1127.75 Lakhs to Railway Siding Unit and Wind Power Unit in the ration of turnover. Since the Assessing Officer had disallowed the deduction under Section 80IA(4) in respect of Railways Siding Unit, the Assessing Officer made addition only to the extent of INR 48,79,600/- by disallowing the proportionate conveyance and travelling expenses allocated to Railways Siding Unit.

11.2 In appeal, the CIT(A) deleted the disallowance returning a finding that separate audited accounts for each unit were maintained by the Assessee. Respective expenses including conveyance and travelling expenses have been allocated.

11.3 Being aggrieved the Revenue has carried the issue in appeal before

us.

11.4 We have considered the rival submission and perused the material on record. The CIT(A) has deleted the addition/disallowance of INR 48,79,600/- holding as under:

> *"38.0 I have considered the contentions of the A.O. in the assessment order, the submissions of the appellant company and perused the materials available on record, on this issue.*
>
> *38.1 A note has been taken of the contention of the appellant that accounts of the undertakings are separately maintained, audited and respective expenses including travelling & conveyance have been properly allocated and debited in Profit & Loss A/c of respective Undertakings. It has been noted that the allocation of the travelling & Conveyance expenses to the respective undertakings by the Appellant Company have been held to be reasonable by my Ld. Predecessor CIT(A)'s in A.Y.s 2011-12 and 2012-13. Accordingly, my Predecessor CIT(A)'s in A.Y.s 2011-12 and 2012-13 has deleted the addition made by the A.O. on account of travelling & Conveyance expenses. Thus, following the orders of my Predecessor CIT(A)'s, I direct the AO not to disturb the allocation of travelling & conveyance expenses, already made by the Appellant Company."*

11.5 Thus, the CIT(A) directed the Assessing Officer not to disturb the allocation of travelling and conveyance expenses being convinced that the same have been properly allocated to respective undertakings. The factual finding returned by the CIT(A) have gone uncontroverted in absence of any material on record to support the stand taken by the Assessing Officer. On the other hand, we find that in identical facts and circumstances, the Kolkata Bench of the Tribunal has, in Assessee's own case for the Assessment Year 2009-10 [in ITA No. 1069 & 2064/Kol/2021, dated 21/08/2018]. The relevant extract of the aforesaid order read as under:

"21. Coming to next ground no. 4 taken by the revenue is against the action of the Ld. CIT(A) in restricting the allocation of expenses on legal and professional and travelling and conveyance to the eligible undertaking u/s. 80IA and 10B of Rs.30,99,000/- and Rs.5,63,000/- as opposed to the total disallowance of Rs.115.82 lacs made by the AO.

22. Briefly stated facts as are already discussed in the foregoing portion of this order, the assessee had claimed deduction u/s. 80IA and 10B of the Act in respect of its Wind Power Division and 100% EOU unit respectively. In the assessment order the AO had identified certain expenses which in his opinion were 'common' and related to this eligible undertaking as well. The items of expenses, inter alia, included expenses on travelling and conveyance and legal and professional fees of Rs.692.27 lacs and Rs. 875 lacs respectively. The AO worked out the pro-rata percentage of turnover of the eligible undertaking to the company as a whole as 7.39% and accordingly, apportioned these expenses to respective eligible units. On appeal, the Ld. CIT(A) found that in Form 10CCB, the auditors had already identified and allocated the amount of Rs.30,99,000/- and Rs.5,63,000/- out of legal and professional fee and travelling and conveyance pertained to the eligible undertakings. According to the Ld. CIT(A), when the details had already been authenticated by the auditors, no further allocation out of these items of expenses were required. Aggrieved by the action of the Ld. CIT(A), the revenue is before us.

23. We have heard the rival submissions and carefully perused the material available on record. In the paper book filed the assessee has enclosed separate audited P&L Account of the eligible undertakings. From perusal of the schedule of expenses forming part of the audited accounts, we find that legal and profession expenses as well as travelling and conveyance expenses incurred by these undertakings were debited to the stand alone account of these eligible undertakings and hence, no further allocation on account of these items of expenses to the eligible undertakings was warranted. The Ld. DR was unable to controvert this fact which is evident from the documents on record. We, accordingly, uphold the order of the Ld. CIT(A) on this score. Therefore, ground no. 4 of revenue's appeal is dismissed."

(Emphasis Supplied)

11.6 In view of the above, we do not find any infirmity in the order passed by the CIT(A). Ground No. 7 & 8 raised by the Revenue are, therefore, dismissed.

18. In result, the appeal preferred by the Assessee and Revenue are partly allowed.

Order pronounced on 27.06.2023.

Sd/-	***Sd/-***
(Prashant Maharishi)	**(Rahul Chaudhary)**
Accountant Member	**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 27.06.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai