

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.634/Bang/2023
Assessment Year: 2019-20

M/s. Power Point No.5 Curly Street, Richmond Town Bangalore 560 025 PAN NO : AAFFP9593C	Vs.	DCIT Central Circle-2(2) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Rajeev C Nulvi, A.R.
Respondent by	:	Shri Harishchandra Naik M., D.R.

Date of Hearing	:	09.11.2023
Date of Pronouncement	:	14.11.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of CIT(A) dated 31.7.2023 for the assessment year 2019-20. The assessee has raised following grounds of appeal:

- 1. The order of the below mentioned authorities is bad in law and against the fact and circumstances of the case.*
- 2. On the fact and circumstances of the case and under the provisions of the law, the Assessing Officer erred in denying the index cost of improvement amounting to Rs.7,37,19,400/- without applying his mind on the fact of the case and sworn statement recorded during the course of the survey.*
- 3. On the fact and circumstances of the case and under the provisions of the law, Commissioner of Income Tax (Appeals) erred in sustaining the index cost of improvement amounting to Rs.7,16,41,769/- without applying his mind and without appreciating the circumstantial evidences produced before him.*
- 4. On the fact and circumstances of the case and in the provisions of the law, the Assessing Officer erred in denying and Commissioner of Income Tax (Appeals) erred in sustaining, the index cost of improvement claimed by the Appellant Firm as the said cost relates to the construction of industrial shed and approach road to the industrial shed incurred in the year 2005-06. The*

rental income out of the industrial shed was offered for taxation in the subsequent years.

5. *On the fact and circumstances of the case and in the provisions of the law, the Assessing Officer erred in denying and Commissioner of Income Tax (Appeals) erred in sustaining, the claim of the Appellant Firm of the index cost of improvement, as there is no building existed on the date of sale. The sale was affected after the demolition of the industrial shed at the request of the buyer.*
6. *On the fact and circumstances of the case and under the provisions of the law, the Assessing Officer erred in disallowing and Commissioner of Income Tax (Appeals) erred in sustaining, Rs.32,82,212/- u/s 37 of the Income Tax Act, 1961 as salary expenses claimed by the Appellant Firm which is 30% of Rs.1,09,40,705/- out of the Rs.1,11,10,405/-, only on the ground that genuineness and applicability of TDS, which is against the fact of the case.*
7. *On the fact and circumstances of the case and under the provisions of the law, the Assessing Officer erred in disallowing and Commissioner of Income Tax (Appeals) erred in sustaining, the bad debt claim of Rs.1,02,374/- which has been duly recorded in the books of accounts as per mandate of the law.*
8. *For these and other reasons which may be adduced at the time of the hearing, the Honourable Bench is requested to allow the appeal of the Appellant Firm by directing the Assessing officer to allow the claims of the Appellant Firm in accordance with the Return of Income filed or pass any other order to uphold the justice and law, Honourable Bench may deem think fit.*
9. *The Appellant craves leaves, to add, to alter, to amend and to delete any other grounds at the time of the hearing.*

2. Ground No.1 is general in nature, which does not require any adjudication.

3. First issue for our consideration in ground Nos.2 to 5 is with regard to denying the claim of index cost of improvement of Rs.7,37,19,400/-.

4. Facts of the case are that the Assessee, a partnership Firm going by the name of M/s Power Point, had filed its Return of Income u/s 139(1) of the Income-tax Act,1961 ['the Act' for short] for the year under consideration on 24/10/2019 by admitting total income of Rs. 55,82,99,371/-. Survey u/s 133A of the Act was carried out by Jurisdictional Assistant Commissioner of Income Tax, Circle 7(2)(1), Bangalore on 12/02/2020 in the case of Assessee. During the course of survey, a statement was recorded from one of the partner Mr. Mohammed Yousuff, wherein while answering the question No. 8, the

said partner stated that "we had built 2 Industrial sheds to accommodate our tenants M/s. Sun Technologies and constructed an infrastructure by incurring an expenditure totaling Rs.3,41,50,000/- during the F. Y 2005-06".

4.1 In response to the question No.9, which was regarding the production of bills/voucher or any other evidence to support the claim of such expenditure, the partner replied that "At present, we do not possess bills/voucher for the expenses incurred as most of them have been sent over to his auditor's officer. Unfortunately, his auditor had a personal emergency and is out of Bangalore, therefore, he could not produce the same before the Id. CIT(A). Also, since the bills pertain to a very long time ago i.e., nearly 15 years back, tracing them is a difficult task for him. In such a situation, he voluntarily proposed disallowance of 25% of the claim of such expenses. He reiterated that the expenses were genuine and the declaration is made only to buy peace with the Income Tax Department Voluntary Declaration - Rs. 85,37,500 (actual) i.e., Rs.2,11,54,867 (indexed)". Accordingly, the Assessee Firm revised the Return of Income u/s 139(5) of the Act on 03/03/2020 wherein, it had claimed the cost of the purchase of the said land along with shed on 30/12/2003 for a cost of Rs.2,20,23,255/-, the index cost thereon of Rs. 5,65,73,499/- and claimed the index improvement cost at Rs.7,37,19,400/-. Assessee offered the net capital gain of Rs. 56,36,17,901/- as against the capital gain offered in the original Return of Income Rs.54,24,63,034/-

4.2 As a result of the survey, the Assessee's case was selected for scrutiny based on the guidelines issued for compulsory selection of cases, by issuing a notice u/s 143(2) of the Act on 23/09/2020. Case was centralized to Deputy Commissioner of Income Tax, Central Circle 2(2), Bangalore vide order u/s 127 passed by Pr. Commissioner of Income Tax(Central), Bangalore on 11.01.2021. Subsequently, notices u/s 142(1) dated 25.02.2021 and reminder

letter dated 13.08.2021 were issued by the Deputy Commissioner of Income Tax, Central Circle 2(2), Bangalore, seeking details of claims made in the return of income. In absence of any response from the assessee the Deputy Commissioner of Income Tax, Central Circle 2(2), Bangalore passed the order u/s 144 of the Act by making the following additions:-

- a. Disallowing indexed improvement cost of Rs. 7,37,19,400/-
- b. Disallowance u/s 40(a)(ia) of the Act on account of failure to deduct tax at source u/s 194(1) of the Act for the payment of rent Rs. 2,52,000/- and 30% thereof amounting to Rs. 75,600/-
- c. Disallowance of the salary expenses to the extent of 30% of Rs. 1,09,40,705/- amounting to Rs. 32,82,212/- for not substantiating the genuineness/applicability of provisions of TDS.
- d. Vehicle maintenance: The Assessing Officer disallowed expenses claimed for vehicle maintenance u/s 37 of the Act on adhoc basis at 30% amounting to Rs. 66,420/- on the reason that WDV of the vehicle is Rs. 6,41,903/- wherein the depreciation was claimed at Rs. 96,285/- and claiming of vehicle maintenance amounting to Rs. 2,21,040/-, which does not look genuine.
- e. In the Profit & Loss A/c, the Assessee has debited Rs. 195 on account of interest on TDS, and same was disallowed u/s 37 of the Act.
- f. In the Profit & Loss A/c, the Assessee has debited Rs. 1,02,374/- on account of bad debt and the Assessing Officer disallowed it for the absence of any explanation.

4.3. Against this assessee went in appeal before Id. CIT(A). The Id. CIT(A) given a partial relief on certain issues. Hence, the assessee is in appeal before us.

4.4 With regard to disallowance of claim of index cost of improvement, the assessee claimed the same at Rs.7,37,19,400/- though said claim was reduced by 25% in view of statement recorded u/s 133A of the Act for non-availability of bills/vouchers for incurring such cost of improvement which pertains to more than 10 years old. The total sale consideration was at Rs.69,39,10,800/- and claimed index cost of construction at Rs.8,46,19,469/-. The Id. AO sought supporting documents for claim of the said expenditure at Rs.7,37,19,400/-. But assessee failed to produce necessary details and the assessment has been framed ex-parte. On appeal, assessee produced the following:

1. Statement recorded u/s 133A of the Act.
2. Lease rental agreements dated 12.5.2010, 30.11.2010 and 20.7.2011
3. Copies of purchase deed dated 30.12.2003 and sale deed dated 4.9.2018.
4. Copy of BESCO power sanction letter.

4.5 The Id. CIT(A) called for remand report from the Id. AO in respect of above documents. The Id. AO submitted remand report. In the remand report, the Id. AO stated that the assessee had declared the rental income of Rs. 35,00,000/- for the F.Y 2010-11 relevant to the A.Y 2011-12, Rs. 96,80,000/- for the F.Y 2011-12 relevant to the A.Y 2012-13, Rs. 1,01,22,000/- for the F.Y 2012-13 relevant to the A.Y 2013-14 and Rs. 6,000/- for the F.Y 2013-14 relevant to the A.Y 2014-15, while the fixed assets block for the above referred FYs, was always valued at around Rs.2.5 crores. Further, the Assessing Officer submitted that the property was purchased in FY 2003-04 vide sale deed dated 30-12-2003 for a consideration of Rs.2,00,00,000/- and at the time of purchase, the property had old

industrial sheds built with bricks and with cement sheet roofing with water supply and electricity. The claim of the assessee that it incurred an amount of Rs.3,41,50,000/- for construction of industrial sheds in the Financial Year 2005-06, therefore does not appear to be genuine. The relevant part of the remand report is reproduced as under;-

4. Assessee has now filed below additional documents in support of the claim of acquisition/improvement - Sale deed dated 04.09.2018, Purchase deed 3 dated 30.12.2003, 3 lease agreements dated 12/05/2010, 30/11/2010 and 29/07/2011 and copy of BESCO power sanction letter dated 18.12.2010.

(a) Property was purchased in FY 2003-04 vide sale deed dated 30.12.2003 for a consideration of Rs 2, 00, 00, 000/-. At the time of purchase, the property had old industrial sheds built with bricks and with cement sheet roofing with water supply and electricity supply. Therefore the claim of the assessee in Q.No 8 of the statement recorded u/s 133A on 12.02.2020 that it incurred Rs3,41,50, 000/for construction of sheds in FY 2005-06 does not appear to be genuine. Further he has not furnished any details of source or documents for incurring such high expenditure.

(b) Further assessee has furnished copy of lease deeds with M/S Sun Technics Energy Systems Pvt Ltd (subsequently known as M/S Conergy Energy Systems (India) Pvt Ltd) for the period FY 2010 to FY 2011. In the lease deed dated 30.11.2010, it is mentioned that the owner has to replace the roofing sheets of the industrial sheds and tenant has to construct additional sheds, sump and septic tank.

(c) Further no lease agreements for the period FY 2012-13 to FY 2018-19 have been furnished.

(d) On perusal of returns of income filed by the assessee, it is seen that fixed assets block was always valued at around Rs.2.5 crores and the assessee had received rental income only for a short period.

AY	Rental Income	Fixed Asset-Gross
2017-18	-	2,39,66,349
2016-17	-	2,42,03,649
2015-16	-	2,44,47,921
2014-15	70,56,000	2,5,32,260
2013-14	1,01,22,000	2,46,73,294
2012-13	96,80,000	2,49,91,058
2011-12	35,00,000	2,52,05,684
2010-11	-	2,52,16,619
2009-10	-	2,56,73,441

(e) The only document available on record towards deduction claimed under the head Capital Gain is purchase deed dated 30.12.2003. Indexed cost of acquisition based on the same is Rs.2,00,00,000 * 280/109= Rs.5,13,76,150/- and in assessment

order, Indexed cost of acquisition has been allowed to the extent of Rs 5, 65, 73,499/-

5. *The additional evidence filed by the assessee may be admitted, but it does not substantiate any cost of improvement incurred by the assessee for the property sold, which is a vacant land.*

4.6 The assessee was provided an opportunity to submit rejoinder to the remand report. Assessee filed the rejoinder on 15-03-2023. The relevant part of the same is reproduced as under;-

Hereby we submit our rejoinder for the said remand report as follows

1) *The Assessing Officer up to para 4 stated the facts of the case which we only submitted before your honour, but at para 4(a) the Assessing Officer states that the property was purchased during the financial year 2003-04 vide sale deed 13/12/2003 for consideration of Rs. 2 crores.*

2) *At the time of purchase, in the schedule of property, it was stated that there was an industrial shed constructed with brick and cement sheet roofing and cement flooring with steel doors and windows, but after the purchase was made the Appellant constructed the permanent structure of industrial shed measuring around 48, 000 square feet. The same industrial shed was constructed on the schedule property bearing survey no. 60/1 of Mahadevapura village, KR PuramHobli, Bangalore South taluk.*

3) *The same industrial shed was leased to the tenants who were domestic companies for rent. As admitted by the Assessing Officer in the remand report that the Appellant has received income for the financial year F.Y 2010-11 Rs.35,00,000/- for the F.Y 2011-12 Rs.96,80,000/- for the FY 2012-13 Rs.1,1,22,000/- the F.Y2013-14 Rs.70,56,000/-*

4) *It means the permanent structure of the shed was in existence over the above schedule immovable property bearing survey no. 60/1 of Mahadevapura village, KR pura Hobli, Bangalore South taluk.*

5) *The rental income of the said property was offered for taxation, which is received during the lease period, here the quantum of rent is not material for the improvement cost but existence of permanent structure of industrial shed is material for claiming the improvement cost.*

6) *The Assessing Officer in his remand report states that the rent was received only for short period that doesn 't mean that there was no shed at all.*

7) *The Assessing Officer states that there was no lease agreement between 201213 to 2018-19, his statement is self-contradictory to the statement made by him that the Appellant has received rent for F.Y 2012-13 of Rs. 000/- to F.Y 2013-14 of Rs. 70, 56, 000/-which shows there is an existence of lease agreement, and the lease amount has been received, without which, how can the Appellant declare rental income.*

8) *As stated by the Assessing Officer there was an old industrial shed built with bricks and cement sheet roofing with water and electricity supply, thus the moot question arises that how would the old industrial shed fetch a rent of rupees 1 crore that too in the F. Y 2012-13.*

9) *In the view of the above facts narrated in Assessing Officer's remand report which is based only on suspicion and surmises and on his own assumption of facts which are detrimental to the interest of the Appellant.*

10) *Anyhow, the Assessing Officer is of the opinion that the additional evidence filed by the Appellant may be admitted, that itself means the additional evidences given by the Appellant are of evidential value in support of the Appellant's plea regarding the amount invested in the construction of shed.*

4.7 In continuation to the rejoinder to the remand report of the Assessing Officer, the assessee filed additional submissions dated 11-05-2023 and 19-05-2023, to support its claim of cost of improvement amounting to Rs.2,56,12,500/- and indexed cost of the same at Rs. 7,37,19,400/- and submitted the year-wise and nature of expenditure incurred by the assessee. The relevant part of the submissions dated 11-05-2023 are reproduced as under; -

In the remand report the Assessing Officer is of the opinion that there was a shed at the time of purchasing the said industrial land, which was a very old industrial shed with bricks and cement sheets with a water supply and electrical supply. The said fact was admitted by the Assessing Officer at Para 4. (a) of his remand report. The shed was a very old industrial shed not in a rentable condition at the time of the purchase of the land. Subsequently, during the financial year 2003-2004, the land was purchased and incurred some expenditure. The following is the year-wise cost of improvement incurred by the appellant firm, nature-wise expenditures as under:

<i>Year</i>	<i>Particulars of expenditure</i>	<i>Amount</i>	<i>Index Cost</i>
2003-04	<i>Commission paid on purchase of industrial shed</i>	<i>400,000</i>	<i>10,27,523</i>
2003-04	<i>Advocate fees</i>	<i>1,00,000</i>	<i>2,56,881</i>
2004-05	<i>Construction of shed</i>	<i>1,99,50,000</i>	<i>4,94,33,628</i>
2004-05	<i>Construction of the compound wall</i>	<i>29,00,000</i>	<i>71,85,841</i>
2004-05	<i>Construction of roofing</i>	<i>6,04,196</i>	<i>14,97,123</i>
2004-05	<i>Fabrication of compound wall</i>	<i>2,00,000</i>	<i>4,95,575</i>
2004-05	<i>Construction of road, gate, footpath, streetlights & fittings</i>	<i>19,58,304</i>	<i>48,52,435</i>

2004-05	Borewell	6, 00, 000	14,86,726
2006-07	Conversion fee of land	9,31,882	21,38,746
2010-11	Change of power tariff	10,455	17,529
2010-11	Power sanction deposit	7, 77,410	13,03,442
2010-11	Infrastructure work for power	14,00,000	23,47,305
2010-11	Consultation for industrial work	8, 00, 000	13,41,317
2010-11	Consultancy for land development aid	2, 00, 000	3,35,329
			7,37,19,400

Only after incurring the said expenditure of Rs.2,56, 12,500/-, the shed became a rentable condition, then given on rent from the Financial Year 2010-11 to 2013-14, after that, the shed become vacant and not yielding any rent. Hence the Appellant firm sold the property in the Financial Year 2017-18 for a consideration of Rs.69,39, 10,800/-. The circumstantial evidence is that after the purchase of the property in the year 2003-04, the Appellant firm not generated any income from the said industrial land, though there was an old shed (not in a rentable condition) in the said land.

Subsequently, the Appellant Firm thought of reconstructing the shed to generate income from the shed. Hence, they have incurred expenditures for reconstructing the shed during the Financial Year 2004-05 for the construction of 28,500 square feet by incurring an expenditure of Rs.2, 14, 92, 752/-. Further, during the Financial Year 2006-07 incurred an expenditure of Rs.9,31,882/- and during the Financial Year 2010-11 in the month of April incurred an expenditure of Rs.31,87,865/- for power sanction and erection of infrastructure in the said land. After incurring the said expenditure, the Appellant firm was able to generate a rental income approximately of Rs. 1, 00, 00, 000/- during the financial year 2011-12, 2012-13 and 2013-14.

With these narrative facts, the improvement cost claimed by the Appellant firm is genuine in the revised return filed on 03-03-2020.

4.8 The relevant part of the submissions dated 19-05-2023 are reproduced as under:

Now, herewith we are submitting the proof of payment of the said expenditures which were recorded in the bank statement of Union Bank of India.

A. Before submitting my evidence and supporting documents, year-wise the expenditure incurred. We would like to bring to your kind notice that the Industrial Shed bearing Mahadevapura Municipal Council Khata No. 112 in the survey No. 60/1, K R Puram Hobli, Bangalore South Taluk purchased for a consideration of Rs.2,20,23,255/- including the stamp duty incurred thereon. In the said sale deed, it was mentioned that there was a shed constructed in the year 1970 with bricks, cement sheet roofing, cement flooring and steel doors and windows. Herewith we are enclosing the Approval of the factory layout plan of General Engineering Industries, wherein the factory shed's measurement was 3, 300 square feet.

[Herewith enclosed is the factory shed plan as Annexure — 1] But, wherein, in the lease agreement dated 30-11-2020, it was mentioned that the construction area in the shed premises was 19,500 square feet [the said lease agreement was submitted along with our written submission dated 27-02-2023] with this documentary evidence, it is proved beyond doubt that there was an improvement in the construction of said factory premises/shed of 19,500 square feet from earlier old dilapidated factory premises of 3,300 square feet, which was renovated and addition of 16,000 square feet building was constructed. With this fact of the case, we are submitting herewith the direct evidence and circumstantial evidence in support of incurring improvement expenditure for the construction of the shed year-wise as under:

B. Nature of expenditures and with supporting documents thereon:

1. *The commission paid on the purchase of the industrial shed, the Appellant firm paid Rs.4,00,000/- commission through cheque bearing No. 10618 on 21-01-2004. Herewith enclosed bank statement as Annexure — 2.*

2. *Advocate fee paid Rs.1,00,000/- through cheque No.352998 dated 14-01-2001. Herewith enclosed bank statement as Annexure — 3.*

3. *In the revised return of income, the Appellant firm claimed the expenditure for the construction of the shed of Rs.1,99,50,000 during the year 2004-05. But in fact, the construction of the shed took place during the following years:*

<i>Financial year</i>	<i>Incurring expenditure for the construction of the shed</i>
<i>2006-07</i>	<i>1,07,09,524</i>
<i>2007-08</i>	<i>92,40,491</i>
<i>Total</i>	<i>1,99,50,015</i>

The above-said expenditure was incurred through cheques and duly debited in the books of the Appellant firm during the financial year 2006-07 and 2007-08. The said bank statement along with the list of expenditures incurred date-wise and party-wise along with cheque numbers and amount paid with explanation thereon enclosed herewith for your perusal as Annexure — 4.

4. *Construction of compound wall, herewith we are enclosing date-wise, partywise with cheque numbers and amount paid with explanation thereon.*

<i>No</i>	<i>Expenditure details</i>	<i>Amount incurred</i>
<i>1</i>	<i>Construction of the compound wall</i>	<i>29,00,000</i>
<i>2</i>	<i>Fabrication of the compound wall</i>	<i>200,000</i>

3	<i>Construction of road, gate, footpath, street lights and fittings</i>	19,58,304
4	<i>Borewell paid in cash</i>	6,00,000

The above-said expenditures were incurred through cheque and debited in the bank account for all such expenditures herewith we are enclosing the bank statement along with the list of the said expenditures for the above-said expenditures with the nature of expenditure incurred as Annexure — 5.

5. *Conversion fee paid to the government for converting the land from industrial purpose to commercial purpose BDA certificate dated 21-07-2006 amounting to Rs.9,31,882/-. Herewith enclosed relevant BDA certificate and related documents for your perusal as Annexure — 6.*

6. *Power sanction deposit, BESCOM certificate, challan dated 27-12-2010 of Rs. 7, 77,410/- is enclosed herewith, wherein the extra power has been sanctioned. Herewith enclosed certificate, challan and sanction letter as Annexure — 7.*

7. *Infrastructure work for power sanction amounting to Rs. 14, 00, 000/- was incurred through cheque. The list of expenditures date-wise, party-wise the amount paid along with the bank statement, incurred during the financial year 2010-11 enclosed herewith for your perusal as Annexure — 8.*

8. *Construction of industrial work paid to Mr M G Satish Rs.8,00, 000/- on 14-01-2011 through banking channel, herewith attached bank statement as Annexure*

9. *Consultancy fee paid for land development of Rs.2, 00, 000/- through cheque No.815130, the same was reflected in the Bank statement, herewith attached as Annexure — 10.*

10. *Construction of roofing Rs.6,04, 196/- paid to M/S Kailash Roofing Solutions, the ledger extract of M/S Kailash Roofing Solutions along with respective invoices attached herewith as Annexure — 11.*

All the above expenditures are claimed as improvement costs and paid through the cheque except a few expenditures paid in cash.

The above expenditures might have been wrongly debited to the partner's drawings account instead of the industrial shed account during the respective financial year which is prior to the financial year 2010-11. Since the issues were more than 15 years old, no cash book or financial statements were available with the Appellant firm as stated in the statement recorded u/s 13314. It means the said expenditures were genuinely incurred for the construction of the industrial shed as claimed by the Appellant firm as an improvement cost in the income tax return filed.

There are some changes in the claim for the construction of the shed. The earlier claim was made during the year 2004-05 Rs.1,99,50,000/-. But the said expenditures were incurred during the year 2006-07 and 2007-08.

<i>Financial Year</i>	<i>Incurring expenditure for the construction of the shed</i>
2006-07	1,07,09,524
2007-08	92,40,491
<i>Total</i>	<i>1,99,50,015</i>

Hence the index cost claimed amounting to Rs 4,94,33,628/- on account of said expenditures will get reduced accordingly.

2006-07	272x10709524/122	2,38,76,971.54	
2007-08	272x9240491/129	1,94,83,825.98	
		4,33,60,797.53	
2004-05	<i>Index cost as claimed by the appellant</i>		4,94,33,628.00
2006-07 and 2007-08	<i>Original index cost to be claimed</i>		4,33,60,798.00
			60,72,830.00

Hence disallow the indexed improvement cost to the extent of Rs.60, 72,830/- out of the index cost claimed by the appellant Rs.7, 37, 19,400/-

4.9 The Id. AO was given an opportunity by the Id. CIT(A) to submit report on the above additional evidence submitted by the assessee dated 11-05-2023 and 19-05-2023. The relevant part of the combined remand report submitted by the AO before the Id. CIT(A) dated 14-06-2023 is reproduced as under:-

4. Assessee has now filed additional documents in support of the claim of cost of improvement-

5. Claim of expenditure towards construction of shed and compound wall

5.1 Property was purchased in FY 2003-04 vide sale deed dated 30.12.2003 for a consideration of Rs.2,00,00,000/-. At the time of purchase, the property had old industrial sheds built with bricks and with cement sheet roofing with water supply and electricity supply. The assessee has stated in its submissions filed before your good office that the built-up area of the property at the time of purchase in FY 2003 is only 3300 sq feet.

5.2 Claim of the Assessee:

In the said sale deed, it was mentioned that there was a shed constructed in the year 1970 with bricks, cement sheet roofing, cement flooring and steel doors and windows. Herewith we are enclosing the Approval of the factory layout plan of General Engineering Industries, wherein the factory shed's measurement was 3,300 square feet. But, wherein, in the lease agreement dated 30-11-2010, it was mentioned that the construction area in the shed premises was 19,500 square feet [the said lease agreement was submitted along with our written submission dated 27-02-2023] with this documentary evidence, it is proved beyond doubt that there was an improvement in the construction of said factory premises/shed of 19,500 square feet from earlier old dilapidated factory premises of 3,300 square feet, which was renovated and addition of 16, 000 square feet building was constructed.

5.3 Remarks of AO

As per page 18 of the sale deed dated 30.12.2003, the plinth area is 20,000 sq feet which make it clear that the claim of the assessee is not correct.

5.4 Claim of the assessee

In the revised return of income, the Appellant firm claimed the expenditure for the construction of the shed of Rs.1,99,50,000/- during the year 2004-05. But in fact, the construction of the shed took place during the following years:

<i>Financial Year</i>	<i>Incurring expenditure for the construction of the shed</i>
<i>2006-07</i>	<i>1,07,09,524</i>
<i>2007-08</i>	<i>92,40,491</i>
<i>Total</i>	<i>1,99,50,015</i>

The above-said expenditure was incurred through cheques and duly debited in the books of the Appellant firm during the financial year 2006-07 and 2007-08. The said bank statement along with the list of expenditures incurred date-wise and party-wise along with cheque numbers and amount paid with explanation thereon enclosed herewith for your perusal as Annexure - 4.

Construction of compound wall, herewith we are enclosing date-wise, party-wise with cheque numbers and amount paid with explanation thereon.

<i>S. No</i>	<i>Expenditure details</i>	<i>Amount incurred</i>
	<i>Construction of the compound wall</i>	<i>29, 00, 000</i>
<i>2</i>	<i>Fabrication of the compound wall</i>	<i>2, 00, 000</i>
<i>3</i>	<i>Construction of road, gate, footpath, street lights and fittings</i>	<i>19,58,304</i>
<i>4</i>	<i>Borewell paid in cash</i>	<i>6,00,000</i>

The above-said expenditures were incurred through cheque and debited in the bank account for all such expenditures herewith we are enclosing the bank statement along with the list of the said expenditures for the above-said expenditures with the nature of expenditure incurred as Annexure-5.

Remarks of AO

5.5 The assessee has not furnished any reasons for making wrong claims in the return of income despite having sufficient time and opportunities to reconcile the expenditure incurred for the land sold in September 2018. The inordinate delay in furnishing the evidences for cost of improvement from September 2018 to February 2023 proves that the claim of the assessee in its return of income is without any basis.

5.6 The assessee had furnished copy of lease deeds with M/S Sun Technics Energy Systems Pvt Ltd (subsequently known as M/S Conergy Energy Systems(India) Pvt Ltd) for the period FY 2010 to FY 2011. In the lease deed dated 30.11.2010, it is mentioned that the owner has to replace the roofing sheets of the industrial sheds tenant has to construct additional sheds, sump and septic tank as per its requirement. Had the industrial sheds been recently constructed in FY 2007-08 as claimed by the assessee, tenant would not have asked for replacement of roofing sheets.

5.7 Further on perusal of the breakup of expenditure furnished by the assessee, it is seen that the payments totalling to Rs 1. 99 Crores have been made over a period spanning from April 2006 to March 2008 towards purchase of steel/electric items claimed to have incurred for construction of industrial shed. However no invoices are furnished. The assessee was deriving significant rental income during this period as per its return of income and Form 26AS. The assessee has not explained how the same has been derived when there was major construction activity in the premises. Further in the break up of expenditure for construction of industrial shed furnished, the assessee has not reported any labour or sub-contract cost towards the construction. Assessee has claimed sub-contract expenses of 1.5 Lakhs only when it has claimed to have incurred Rs 29 Lakhs towards construction of the compound wall.

5.8 Profile of the assessee as per its website is as under:

Power Point Electrical Engineers & Contractors [PPEEC] is a leading firm of class 1 Electrical Contractors and Engineers with more than 20 years of experience in Electrical installations & Engineering services. Established in 1988, Power Point has grown from a friendly local contracting company to a nationwide competitor in Electrical Engineering and Contracting. Located at No. 5, Curly Street, Richmond town, Bangalore, we employ more than 500 specialized personnel for design, installation and testing commissioning of Electrical Power Distribution system.

5.9 On perusal of the submissions by the assessee, most of the payments are towards purchases of steel/electrical items. No invoices or approvals have been furnished by the assessee. Nothing has been brought on record to establish that these expenses are not related to its business. Further no reasons have been furnished by the assessee for reporting the WDV of fixed assets at around Rs 2.5 Crores from AY 2007-08 to AY 2017-18 which is almost equal to the purchase price paid as per sale deed dated 30.12.2003.

5.10 Assessee has listed some vendors such as Steel Sun, Mina Electricals and SK Steel Enterprises and stated that it has purchased steel/electrical items from them towards construction of industrial shed and furnished bank statements relating payments to these parties. Nothing has been placed on record to prove identity of the parties. Mere furnishing of bank statement showing some s does not establish that these are incurred for the land at Sy 60/2 Whitefield Road, Mahadevapura.

6. Claim of the assessee regarding other expenditures

1. The commission paid on the purchase of the industrial shed, the Appellant firm paid Rs.4, 00, 000/- commission through cheque bearing No. 10618 on 21-01-2004. Herewith enclosed bank statement as Annexure — 2.

2. Advocate fee paid Rs.1,00,000/- through cheque No.352998 dated 14-01-2001. Herewith enclosed bank statement as Annexure — 3.

3. Construction of industrial work paid to Mr M G Satish Rs.8,00, 000/- on 14-01-2011 through banking channel, herewith attached bank statement as Annexure-9.

4. Consultancy fee paid for land development of Rs.2, 00, 000/- through cheque No.815130, the same was reflected in the Bank statement, herewith attached as Annexure-I O.

5. Construction of roofing Rs.6, 04, 196/- paid to M/S Kailash Roofing Solutions, the ledger extract of M/S Kailash Roofing Solutions along with respective invoices attached herewith as Annexure-11.

Remarks of AO

6.2 Assessee has not furnished any documents to prove the nexus between the payments claimed to be made as advocate fees (on 14.01.2001) of Rs 1, 00, 000/- 3 years prior to conclusion of sale deed in December 2003 Further the payment is claimed to be made in cash withdrawn using cheque which does not establish the end use.

6.3 Further cheque payment of Rs 4,00,000/- through I-IV CLG (High value clearing) on 21.01.2004 does not prove that it is indeed the commission payment for the purchase of land. Moreover identity of the recipients have not been furnished.

With respect to payments made for consultancy for land development and construction of industrial work, the assessee has merely furnished bank statements showing some payments. No further specific details such as nature of work, invoices, identity of the parties have been furnished. In one place it is reported that Rs 8 Lakhs is paid for consultation fees and in another place, assessee is stating it is towards construction of industrial work.

6.4 With respect to payment made for Kailash Roofing solutions in FY 2010-11 2011-12, assessee has furnished some invoices amounting to Rs. 3,94,892/- these expenditure can be considered as minor repairs and fall within the scope of deduction u/s 24(a) of the Act. These can't be termed as major capital expenditure.

7. Claim of the expenditure related to BESCO

6. Power sanction deposit, BESCO certificate, challan dated 27-12-2010 of Rs.7, 77,410/- is enclosed herewith, wherein the extra power has been sanctioned. Herewith enclosed certificate, challan and sanction letter as Annexure-7

Infrastructure work for power sanction amounting to Rs. 14, 00, 000/- was incurred through cheque. The list of expenditures date-wise, party-wise the amount paid along with the bank statement, incurred during the financial year 2010-11 enclosed herewith for your perusal as Annexure-8.

Remarks of AO

7.2 The assessee had furnished copy of lease deeds with M/S Sun Technics Energy Systems Pvt Ltd (subsequently known as M/S Conergy Energy Systems(India) Pvt Ltd) for the period FY 2010 to FY 2011. In the lease deed dated 30.11.2010, in para 8, it is stated that the cost of 500KVA supply (including the equipment and deposit) will be borne by Lessor and lessee in the ratio 40% by lessor and 60% by lessee.

Further as per the details furnished, Rs7,60,000/- is 2 months initial deposit/security deposit. It can't be claimed as an expenditure. Further as per BESCO letter dated 08.12.2010, estimated cost for conversion of power supply to commercial from industrial is reported at Rs 1,74,023/-. Any minor repairs/expenditure incurred by the assessee is covered under deduction claimed u/s 24(a) of the Act. The assessee has claimed Rs 14,00,065/- as "infrastructure work for power " without explaining the details of work nor furnishing any invoices or identity of vendors.

8.1 On perusal of returns of income filed by the assessee, it is seen that fixed assets block was always valued at around Rs 2.5 crores and the assessee had received rental income which was offered to tax under the head Income from house property and claimed deduction u/s 24(b) of the Act. However the assessee is claiming significant cost of improvement to the extent of Rs 3 Crores claimed to be incurred during FY 2006-07 and FY 2007-08. This is not reflecting in the returns of income filed during the period.

	<i>Rental Income</i>	<i>Fixed assets-Gross</i>
2019-20		7,35,738
2018-19		2,37,82,290
2017-16		2,39,66,349
2016-17	-	2,42,03,649
2015-16	-	2,44,47,921
2014-15	70,56,000	2,45,32,260
2013-14	1,01,22,000	2,46,73,294
2012-13	96,80,000	2,49,91,058
2011-12	35,00,000	2,52,05,684
2010-11	-	2,52,16,619
2009-10	-	2,56,73,441
2008-09	4,33,104	2,58,77,140
2007-08	19,60,000	2,40,92,684

8.2 Assessee has explained the above discrepancy as under:

The above expenditures might have been wrongly debited to the partner's drawings account instead of the industrial shed account during the respective financial year which is prior to the financial year 2010-11. Since the issues were more than 15 years old, no cash book or financial statements were available with the Appellant firm as stated in the statement recorded u/s 1334. It means the said expenditures were genuinely incurred for the construction of the industrial shed as claimed by the Appellant firm as an improvement cost in the income tax return filed.

8.3 Assessee has not submitted any reasonable explanation for not reporting the expenditure incurred for the property at Mahadevapura in its books of account. Further it has not established how it has computed cost of improvement when no such account has been maintained in its books of account.

9.1 Revised computation filed by the assessee

In his submissions dated 15.03.2023, the assessee revised its computation of cost of improvement as under:

There are some changes in the claim for the construction of the shed. The earlier claim was made during the year 2004-05 Rs.1,99,50,000/-. But the said expenditures were incurred during the year 2006-07 and 2007-08

<i>Financial year</i>	<i>Incurring expenditure for the construction of the shed</i>
2006-07	1,07,09,524
2007-08	92,40,491
Total	1,99,50,015

Hence, the Index cost claimed amounting to Rs.4,94,33,628/- on account of said expenditures will get reduced accordingly.

DIFFERENCE IN INDEX COST				
2006-07		272X10709524/122	2,38,76,971.54	
2007-08		272x9240491/129	1,94,83,825.98	
			4,33,60,797.53	
2004-05		Index cost as claimed b the appellant		4,94,33,628.00
2006-07 And 2007-08		Original index cost to be claimed		4,33,60,798.00
				60, 72,830.00

Hence disallow the indexed improvement cost to the extent of Rs.60,72,830/-out of the index cost claimed by the appellant Rs. 7,37,19,400/Remarks of AO

9.2 This shows that the assessee claimed the cost of improvement without any supporting documents and even now failed to furnish any valid explanation with supporting documents for the cost of improvement.

10. Payment made to BDA of Rs 9,31,882/-Assessee has furnished BDA letter dated 21.07.2006 which is for conversion of land use. Same may be admitted if deemed fit.

11. The comments on the additional evidence is summarized below:-

<i>Sr. No.</i>	<i>Details in form of additional submissions.</i>	<i>Remarks</i>
	<i>The factory shed plan</i>	<i>As per sale deed in 2003, the plinth area is 20,000 sq.ft.</i>
2	<i>The commissions paid on the purchase of industrial shed of IRS. 4 lakh through cheque on 21.01.2004</i>	<i>Only Bank Statements furnished, no invoices and beneficiaries details furnished</i>

3	<i>Advocate fee paid of IRS. 1 lakh through cheque on 1401.2001</i>	<i>Paid by cash withdrawn from Bank, no invoices and beneficiaries details furnished</i>
4	<i>Expenditure incurred of Rs. 1,99,50,015/- relate to FY 2006-07, 2007-08 through cheque</i>	<i>No invoices or approvals furnished, only bank statements and some names reported as reflecting in bank accounts. No labour or roofing costs reported</i>
5	<i>Expenditure related to construction of compound wall, road, gate, footpath, street lights, and fittings, and Borewell</i>	<i>The cost claimed is disproportionate. No invoices, only bank statements and some names reported as reflecting in bank accounts. Insignificant labour costs reported.</i>
6	<i>Conversion fee paid to the government of Rs 9,31,882/- along with relevant BDA certificate</i>	<i>May be admitted</i>
7	<i>Power sanction deposit of Rs.7, 77,410/- and BESCO certificate</i>	<i>Rs. 7.6 lakh is 2 months deposit, it can't be an expenditure, further it is shared with tenant as per the lease deed</i>
8	<i>Infrastructure work for power sanction of Rs. 14 lakh through cheque</i>	<i>As per BESCO, only 1.6 lakhs is the cost for conversion from industrial to commercial and cost is shared with tenant as per the lease agreement</i>
9	<i>Construction of industrial work paid to Mr M G Satish of Rs. 8 lakh through banking channel</i>	<i>No invoices furnished, only bank statements and names reported as reflecting in the bank accounts. No labour or roofing costs reported. No description of work done.</i>
10	<i>Consultancy fee paid for land development of Rs. 2 lakh through cheque</i>	<i>No description of work done. No invoices, only bank statements and some names reported as reflecting in bank accounts.</i>
11	<i>Construction of roofing of IRS. 6,04196 paid to M/S Kailash Roofing Solutions</i>	<i>Payments is made in FY 2010-11 and FY 2011-12. Will be covered under minor repairs u/s 24(b) of the Act.</i>
12	<i>Cash payment of Rs. 6,00,000/- to Borewell</i>	<i>No invoices or other supporting documents or approvals furnished. The cost appears to be excessive, if incurred too, will be covered.</i>

4.10 The copy of the AO's remand report dated 14-06-2023 was given to the assessee for submission of rejoinder and the relevant part of the rejoinder dated 23-06-2023 are reproduced below for reference:

With the above submission, we would like to file our rejoinder to each of the Paras as under:

1. *The Assessing Officer at Para 2.1, 2.2, 2.3 and 2.4 narrated the fact of the case for which the assessee is in agreement.*

2. *Regarding Para 5.1: It was the admitted fact the assessee purchased the industrial shed on 31-12-2003 for Rs.2,00,00,000/- and incurred transfer charges of Rs.20,23,255/-, which was paid through proper banking channel.*

At the time of purchase, there was an Industrial Shed of 3,300 square feet and it was in dilapidated condition, which was constructed in the year 1970 with bricks and cement roofing, cement flooring with steel windows.

Though in the said sale deed the plinth area is mentioned as 20,000 square feet. But the plinth area shed of 20,000 square feet is nothing to do with the area of the shed, which is 3,300 square feet only. The plinth area is mentioned as the punadi or foundation, not the area of the building.

Since the said building was constructed in the year 1970 was in dilapidated condition and was not fit for either commercial purposes or industrial use. To earn income out of the shed by renting it out, it was essential for the partners of the firm to demolish and construct a new shed of 19,500 square feet by incurring the expenditure on the construction of the shed and converting the industrial shed to a commercial shed by increasing the load capacity of electricity up to 500 KVA with high tension power line and equipment along with Borewell, canteen, warehouse with the septic tank, with this, the assessee constructed the industrial shed of 19,500 square feet in the land area of 48,220 square feet. With these narrative facts, the construction of the commercial shed, from 2005-06 to 2010-11 cannot be brushed aside only because vouchers were not available. But the said payments were made through proper banking channels, which were recorded in the bank account and also a ledger extract of each of the expenditures submitted for your perusal along with bank statements as suggested by your predecessor.

3. *Regarding Para 5.2: For the report of the Assessing Officer in Para 5.2, he has replied in Para 5.3 that "As per the page No. 18 of the sale deed dated 30-12-2003, the plinth area mentioned 20, 000 square feet, but in the rental agreement area mentioned as 19,500 square feet. Hence details of the assessee are not correct. ,*

For the said comment of the Assessing Officer the assessee state that the plinth area is referred to as punadi or foundation of the building area. But the actual building area was 3,300 square feet at the time of purchase. Hence, the Assessing Officer's contention that the assessee's claim was not correct was devoid of fact and based on the wrong assumption of the fact.

4. *Regarding Para 5.4 of the remand report, the Assessing Officer mentioned about the claim of the assessee regarding the construction of the shed amounting to Rs. 1,99,50,015/- out of which the assessee claimed Rs. 1,07,09,524/-, during the year 2006-07 and 2007-08 Rs.92,40,491/- and also claimed the expenditure in relation to:*

A	Construction of compound wall and	29,00,000
B	Fabrication of compound wall	2,00,000
c	Construction of roads, gates, footpaths and streetlights	19,58,304
D	Borewell	6,00,000

For such a claim of the assessee, the Assessing Officer stated that the assessee has not furnished a reason for furnishing a wrong claim having sufficient time and opportunity to reconcile the expenditures as the property was sold in the year 2018 and the assessee came to know with explanation claiming in the year 2006-07 and 2007-18 and also at Para 5.6, he has made the remark about the replacement of roofing sheets and construction of shed, sumps and septic tanks as per the requirement of the tenant. The said requirement of the tenant is mentioned in the rental agreement dated 29-07-2011. But such a requirement was in addition to the construction of the shed taking place in the financial year 2006-07 to 2010-11. Hence the Assessing Officer's comment does not pertain to the expenditure incurred for the construction of the shed. The said opinion of the Assessing Officer is against the fact and one's own guessing and is based on suspicion about the fact of the case.

5. *At Para 5.7, the comment made by the Assessing Officer at Para 5.7 is Assessing Officer one's own imagination and thought of logical thinking about the expenditures incurred. Once again, the assessee reiterates that the said expenditures were genuinely incurred and the shed came into existence to earn a rental income of Rs.1 Crore approximately per annum.*

6. *At Para 5.8: The assessee feels no comments will be submitted as the said statement of the Assessing Officer is based on the website of the assessee which may be untrue.*

7. *Regarding Para 5.9: The said expenditures were not accounted for in the books of accounts as the addition to the shed. For such comment, the assessee has already submitted vide his submission made in the first week of June 2023 on Page No.4 of para-No. 10 stating that "the expenditures may be wrongly debited to partners drawings account instead of industrial shed account. " I draw your attention to Para No. 10 of Page No.4 of the assessee's submission made in June 2023.*

8. *Regarding the comments in Para 5.10, the Assessing Officer stated that merely a furnishing bank statement showing some payments does not establish that there were incurred for land at survey No.6/2 Whitefield, Mahadevapura. And also, the A.O. further stated that nothing has been placed on record to prove the identity of the parties. For the above comments, the assessee replies as under:*

Along with the bank statement, the assessee has made the statement of payments with the party's names, cheque numbers, dates of the payment, amount and details about the transactions. If such information is provided, asking for the identity of the parties for the expenditures incurred before 15 years is nothing but putting the assessee on the rack, as held in the case of Hon'ble Madras High Court the case of S. Hastimal Vs Commissioner of Income Tax 49 ITR 273 judgement dated 18th December 1962 "it was held that after the lapse of 10 years, the assessee should not be placed on rack called upon to explain the origin and source of all investment and expenditures " Hence the Assessing Officer comment in this regard explained above.

9. *At Para 6, the Assessing Officer state the claim of the assessee regarding Annexure-2, 3, 9, 10 and 11 of the additional evidence. For such a claim of the assessee, the Assessing Officer commented at Para 6.2, 6.3 and 6.4 for each of the Paras of the comments of the Assessing Officer, the assessee submits his reply as under:*

The Assessing Officer wrongly mentioned the payment made to the advocate on 14-01-2001 but the actual date was 14-01-2004. But unfortunately, that was a typographical error in our submission but the actual date was 14-01-2004 as per the bank statement enclosed herewith. Hence, the comment in Para 6.2 has no relevance to the said claim of the assessee.

10. *At Para 6.3, the Assessing Officer commented that Rs.4,00,000/- was paid to high-value clearing and also further commented that the payment of Rs.4,00, does not proper, indeed a commission paid on the purchase of the land. In this regard, the assessee submits that the positive averments of the assessee cannot be simply brushed aside unless it is proven beyond doubt that the said averment of the assessee is false, bringing the evidence on record. Hence the claim of the assessee is genuine and at the same time, the Assessing Officer has made the said statement on his suspicion.*

In the same said Para, the Assessing Officer further stated that the "identity of receipts has not been furnished. " For such comments, the assessee relied on the above-said Madras High Court judgment in the case of S. Hastimal Vs Commissioner of Income Tax 49 ITR 273.

11. *In the last Para of 6.3, the Assessing Officer stated that "in one place it was reported that Rs.8,00, 000/- is paid for a consultation fee in another place the assessee is stating it was towards the construction of industrial work. " For such remark of the Assessing Officer, the assessee submits as under:*

The consultation fees were paid for the drawings and survey report of the industrial shed. The Assessing Officer wrongly assumed the fact by bisecting the claim of the assessee.

12. *At Para 6.4, the Assessing Officer stated that "Concerning the payment made or Kailash Roofing Solutions in FY 2010-11 and FY 2011-12, the assessee has shed some invoices amounting to Rs.3,94,892/-. However, these expenditures can be*

considered as minor repairs and fall within the scope of deduction u/s 24(a) of the Act. These can 't be termed as major capital expenditure.,,

The assessee fails to understand which are the expenditures treated as capital expenditures or revenue expenditures. For the expenditures which ensure endurance benefits can be termed as capital expenditures. Further, the said expenditures were incurred prior to leasing the property. Hence, it was capitalised not claimed u/s 24(1) as a revenue expenditure.

13. *At Para 7, the Assessing Officer stated the claim of the expenditure related to BESCO.*

In the remark submitted by the Assessing Officer at Para 7.2 stated that "500 KVA supply the expenditure in respect Of 40⁰% shall be borne by the Lessor and 60% by the Lessee. " For such a comment the assessee submits his reply as under:

The lease agreement was entered into with M/S Conergy Energy System (I) Pvt Ltd on 29-07-2011. But expenditures claimed as per bank statement amounting to Rs.10,455/-, Rs.7,77,410/- and Rs.14,00,000/- were incurred before the agreement entered into as per the claim of the assessee. Hence, the comment of the Assessing Officer does not relate to the expenditure claimed by the assessee.

14. *Regarding the comments made by the Assessing Officer at Para 8.1, 8.2, the assessee already submitted his reply at Para 10 of Page No.4 of his submission in the first week of June 2023 which is reproduced hereunder for your perusal.*

"The above expenditures might have been wrongly debited to the partner 's drawings account instead of the industrial shed account during the respective financial year which is before the financial year 2010-11. Since the issues were more than 15 years old, no cash book or financial statements were available with the Appellant firm as stated in the statement recorded u/s 133A. It means the said expenditures were genuinely incurred for the construction of the industrial shed as claimed by the Appellant firm as an improvement cost in the income tax return filed."

15. *At Para 8.3, the Assessing Officer expressed that "any reasonable explanation for not reporting the expenditures incurred for the property at Mahadevapura in the books of accounts. Further commented that how the assessee has computed the cost of improvement when no such account is not maintained in books of accounts of the assessee.,,*

For such comments the assessee has already submitted his submission at Para .2 is the same applicable to this comment also.

16. *At Para 9.1 and 9.2, the Assessing Officer stated the revised claim of the assessee regarding the index cost of the improvement. The assessee already submitted his reply at Para 5 of his submission made in the first week of June 2023. For such a claim the Assessing Officer remark at Para 9.2 as under:*

At the time of filing the return of income either u/s 139(1) or u/s 139(5), there was a misconception of fact about the year in which the expenditures were incurred as there were no vouchers fare available at the time of filing the return of income u/s 139(1) or u/s 139(5) for the assessment year 2019-20. But at the time of analysing the bank statement, the assessee came to know that the said expenditures were incurred in the years 2006-07 and 2007-08, not the in the year 2004-05 as claimed earlier. When the assessee came to know about the claim in the wrong financial year, the assessee of his own volition submitted such mistakes in the submission, which means that the assessee is honest enough and genuine in claiming the said improvement cost.

17. *At Para 10, no reply is required as the Assessing Officer himself admitted the fact that the conversion fees paid to BDA of Rs.9,31,822/-.*

18. *At Para 11, the Assessing Officer summarized the claim of the assessee as per Annexure — 1 to 12 which is a remark. For the said summarization the assessee submitted each of the Annexures as above in the said rejoinder to the remand report. And also as per the direction, we are separately enclosing the statement with our remarks on each of the expenditures claimed for improvement cost as per the revised return filed u/s 139(5) of the Income Tax Act, 1961*

19. *Regarding the Assessing Officer's admission of the fact of the last Para of the remand report the assessee filed his reply in Para 1 to 19 of this submission. We hereby request Your Honour's satisfaction or in agreement with the claim of the assessee that in some of the expenditures direct evidence may not be available but the assessee provided beyond doubt incurring of such expenditures for bringing into existence to the industrial shed of 19,500 square feet which was rented and 8,500 square feet which was not rented and 8,500 square fee which was not rented.*

5. Finally, the Id. CIT(A) examined every issue i.e. the submissions, including additional evidence and rejoinders filed by the assessee on various dates, and remand reports submitted by the AO and observed that Assessee firm purchased land with industrial shed at Sy. No. 60/1, Mahadevapura Village, Bangalore, during the FY 2003-04. During the FY 2018-19, the assessee firm M/S Power Point had sold the property being vacant land, for a consideration of Rs. 69.39 crores to M/S. Regulus Developers Pvt. Ltd vide agreement for sale dated 08/07/2018 and Sale Deed dated 04/09/2018.

Pursuant to the survey u/s 133A carried out on 12/02/2020, the Assessee Firm revised the Return of Income u/s 139(5) of the Act on 03/03/2020 wherein, it had claimed the cost of the purchase of the said land along with shed on 30/12/2003 for a cost of Rs.2,20,23,255/-, the index cost thereon of Rs.5,65,73,499/- and claimed the indexed cost of improvement at Rs.7,37,19,400/-. In the revised return of income Assessee offered the net capital gain of Rs. 56,36,17,901/- as against the capital gain offered in the original Return of Income Rs.54,24,63,034/-. The AO during the assessment proceedings noted that the Assessee had sold land and in the computation of capital gains had claimed indexed cost of improvement in respect of constructions of industrial sheds and roads amounting to Rs.7,37,19,400 and sought details. The same was disallowed as the Assessee did not substantiate the claim.

5.1 He observed from the Deed of Absolute Sale dated 30-12-2003 that the assessee had purchased the said land on 30-12-2003 for consideration of Rs. 2,00,00,000/and sheds on the said land were constructed in the year 1970 with bricks and has cement sheet roofing and cement flooring, with steel doors and windows. Moreover, it has the amenities of electricity, water supply and sewerage. The assessee during the appellate proceedings vide its submissions dated 11-05-023 contended that at the time of purchase of land during the financial year 2003-04, the shed on the said land was a very old industrial shed which was not in a rentable condition. Subsequently, to make it in a rentable condition the firm had incurred some expenditure. The assessee has submitted the year-wise and nature-wise cost of improvement incurred by it. The same is reproduced as under; -

Sr. No.	Year	Particulars of expenditure	Amount	Index Cost
1	2003-04	Commission paid on purchase of industrial shed	4,00,000	10,27,523
2	2003-04	Advocate fees	1,00,000	2,56,881
3	2004-05	Construction of shed	1,99,50,000	4,94,33,628
		Construction of the compound wall	29,00,000	71,85,841
		Construction of roofing	6,04,196	14,97,123
		Fabrication of compound wall	2,00,000	4,95,575
		Construction of road, gate, footpath, street lights & fittings	19,58,304	48,52,435
		Borewell	6,00,000	14,86,726
4	2006-07	Conversion fee of land	9,31,882	21,38,746
5	2010-11	Change of power tariff	10,455	17,529
		Power sanction deposit	7,77,410	13,03,442
		Infrastructure work for power	14,00,000	23,47,305
		Consultation for industrial work	8,00,000	13,41,317
		Consultancy for land development paid	2,00,000	3,35,329
		Total		

The expenditure as claimed to be incurred by the Assessee for the above FYs was examined in the subsequent paragraphs by the Id. CIT(A).

Expenditure incurred in the FY 2003-04

5.2 The Id. CIT(A) observed that as per the Id. AR of the assessee, the assessee firm during the financial year 200304 had incurred an amount of Rs. 4,00,000/- towards commission paid dated 21-01-2004 on purchase of industrial shed and an amount of Rs. 1,00,000/- on advocate fees dated 14-01-2004. The AO's report has

rejected the claim of the assessee with regard to Advocate fees, on the ground that,

- a) Assessee has not furnished any documents to prove the nexus between the payments claimed to be made as advocate fees (on 14.01.2001) of Rs 1,00,000/-3 years prior to conclusion of sale deed in December 2003
- b) Further the payment is claimed to be made in cash withdrawn using cheque which does not establish the end use.

5.3 The claim of payment of Commission paid on purchase of industrial shed was also rejected by the Id. CIT(A) on the ground that,

- a) cheque payment of Rs 4, 00, 000/- through I-IV CLG (High value clearing) on 21.01.2004 does not prove that it is indeed the commission payment for the purchase of land.
- b) Moreover, identity of the recipients have not been furnished.

5.4 Before the Id. CIT(A), the assessee during the appellate proceedings in support of its claim has submitted the bank statement. The Id. CIT(A) observed that the assessee through cheque no. 10618 dated 21-01-2004 had made the payment of Rs. 4,00,000/- and through cheque no. 352998 dated 14-01-2004 had made the payment of Rs. 1,00,000/- in cash withdrawn from bank. However, submission of bank statement alone does not substantiate the assessee's claim since it has not submitted any invoices in respect of which payment made. Further, the assessee has not submitted the beneficiary details to whom payment has been made. Moreover, the assessee has not furnished ledger details of the parties to whom Commission and advocate fees were paid whether such transaction has been recorded in the books of account of the assessee firm. Since the assessee failed to substantiate the genuineness of the transaction in absence of the supporting documents, claim of the assessee cannot be accepted.

5.5 Expenditure incurred in the FY 2004-05

FY	Particulars of expenditure	Amount	Index cost
2004-05	Construction of shed	1,99,50,000	4,94,33,628
	Construction of the compound wall	29,00,000	71,85,841
	Construction of roofing	6,04,196	14,97,123
	Fabrication of compound wall	2,00,000	4,95,575
	Construction of road, gate, footpath, streetlights & fittings	19,58,304	48,52,435
	Borewell	6,00,000	14,86,726

a) Construction of shed:-

5.6 The Id. CIT(A) observed that the Assessee in the submission dated 27-02-2023 at page 5 and also in the statement recorded during survey on 12-02-2020, stated that the industrial shed was constructed during the FY 2005-06 at a cost of Rs. 3,41,50,000/-, whereas in the submission dated 11-05-2023 it is stated that the shed was constructed during the financial year 2004-05, at cost of Rs. 1,99,50,000/- and further in the submission dated 19-05-2023, at para 10, it states that the claim of such expenditure incurred for FY 2004-05 is incorrect and the same was actually incurred during FYs 2006-07 and 2007-08. The AO has pointed out in the remand report that the Assessee is making conflicting and vague claims which are not backed by evidence.

5.7 It was also observed by the Id. CIT(A) that that the expenses claimed to have incurred on construction of shed the assessee was by way of cheques and duly debited in the books of the Assessee firm during the financial year 2006-07 & 2007-08. The assessee in

support of its claim has submitted the bank statement. On perusal of the same it is seen that the assessee during the financial year 2006-07 & 2007-08 had made the payments of Rs. 1.99 crores through cheques and most of the payments have been made for the purchase of steel/electric items from some listed vendors such as Steel Sun, S K Steel Enterprises, Mina Electricals. The assessee during the appellate proceedings has not furnished any invoices against which payment has been made. Further, details/identity of beneficiaries' have not been brought on record and Assessee also failed to produce the ledger extracts in the books of accounts of the firm which substantiate the genuineness of the transactions. Mere furnishing of bank statement showing payment through cheques to the parties do not establish the genuineness of transaction. Further it is noted that the assessee firm M/S Power Point is a leading firm of class I Electrical Contractors and Engineers with more than 20 years of experience in Electrical installations & Engineering Services, had made payment through cheques for the purchase of electric and steel items, but has not brought anything on record to substantiate that such expenses were incurred only for the construction of industrial shed and were not related to its business as Electrical contractors.

5.8 He further observed that the Assessee as per its return of income for AY 2007-08 and 2008-09 has earned rental income of Rs. 19,60,000/- and Rs. 4,33,104/- respectively. However, the Assessee has not explained how it has been able to earn rental income from the same premise when it was undergoing major construction activity during the relevant FYs. Further in the break-up of expenditure for construction of industrial shed furnished, the Assessee has not reported any labour or sub-contract cost towards the construction of the shed.

5.9 He also observed from the Lease Agreement dated 30-11-2010 that the Lessor i.e the Assessee has to replace the roofing sheets of the industrial sheds and the tenant has to construct additional sheds, sump, septic tank as per its requirement. During the appellate proceedings, it is claimed that expenditure of Rs. 1.99 crores were incurred for the construction of industrial sheds during the financial years 2006-07 & 2007-08. Therefore, if the construction of industrial sheds would have actually taken place in the period between April 2006 to March 2008, then the reason for replacement of the same in FY 2010-11, as per the requirement of tenant would not have arisen. Further, the assessee firm has not submitted any satisfactory explanation for furnishing wrong claims in the return of income for FY 2004-05.

5.10 In view of the above facts and circumstances of the case, the claim of expenses incurred by the assessee towards construction of industrial sheds was not accepted by the Id. CIT(A) in the absence of relevant documentary evidence.

b) Construction of the compound wall

5.11 The Id. CIT(A) further observed that the assessee has claimed an amount of Rs. 29,00,000 towards construction of compound wall. In the remand report AO stated that the cost claimed by the appellant is disproportionate and no invoices were furnished, consequently rejected the claim of the assessee. The assessee, during the appellate proceedings in support of its claim made, has submitted the bank statement. On perusal of the same it is seen that the assessee firm during the period of 02-04-2004 to 13-09-2004 has made various payments totaling Rs. 29,00,353/- through cheques to the vendors such as Steel Sun, S K Steel Enterprises for the purchase of electric/steel items. However, mere submission of bank statements showing payment through cheques to the parties does not substantiate the assessee's claim. The assessee has not furnished invoices in respect of the payment made. Moreover, the assessee has

also not furnished ledger extracts in the books of account of the assessee firm. Non-submission of invoices and ledger extracts in respect of such transaction shows that the assessee had not reported such transaction in the books of account of the assessee firm and bank statement submitted in support of such transaction also do not substantiate that such expenses have been incurred towards construction of compound wall. It is also observed that Assessee has claimed sub-contract expenses of 1.5 Lakhs only, which appears to be meagre when compared to the total cost of Rs 29 Lakhs incurred for construction of the compound wall.

Hence, in the absence of documentary evidence and supporting documents an amount of Rs. 29,00,000/- as claimed by the assessee towards construction of the compound wall cannot be accepted.

c) Construction of roofing

5.12 The Id. CIT(A) observed that the assessee in the submission dated 11-05-2013 has claimed an expenditure of Rs. 6,04,196/- towards construction of roofing in FY 2004-05. In the submission dated 19-05-2023 at para 10 on page 4, Annexure -11, which is purported to be the ledger extract of M/s Kailash Roofing Solutions, an amount of Rs.6,04,196/- was claimed to be paid for construction of roofing, Rs. 5,03,018 during FY 2010-11 and Rs.1,01,178 during FY 2011-12. The Assessee is making contradictory claims regarding the year of expenditure and therefore the genuineness of the claim of expenditure is in doubt. Further the bank statement showing details of payments made has not been submitted by the Assessee.

5.13 In the remand report, AO on examination of invoices amounting to Rs. 3,94,892 with respect to payment made to Kailash Roofing Solutions during the FY 2010II & 2011-12, held that these expenses were minor repairs allowable u/s 24 of the Act for the relevant FYs and not capital in nature. Hence, based on the above discussion the claim of Rs. 6,04,196/- towards construction of roofing, was not accepted by the Id. CIT(A).

d) Fabrication of compound wall

5.14 The Id. CIT(A) observed that the assessee has claimed an amount of Rs. 2,00,000/- towards fabrication of compound wall. In the remand report, AO has rejected the claim of the assessee on the ground that no documentary evidence such as invoices, ledger extracts, submitted. The assessee, during the appellate proceedings, in support of its claim has submitted only a bank statement which shows the payment made to the parties by cheque during FY 2004-05. Further, no invoices in respect of the payment made have been furnished and also, no beneficiaries details have been produced. Since the assessee failed to substantiate its claim by furnishing the relevant documentary evidence and supporting material, the claim made by the assessee in respect of fabrication of compound wall was not accepted by the Id. CIT(A).

e) Construction of road, gate, footpath, street lights & fittings

5.15 The Id. CIT(A) observed that the assessee has claimed an amount of Rs. 19,58,304/- towards construction of road, gate, footpath, streetlights & fittings. The AO, in the remand report, stated that the cost claimed by the assessee is disproportionate and not supported by any relevant documentary evidence. The assessee, during the appellate proceedings in support of its claim, has submitted a bank statement. On perusal of the same he observed that payment has been made through cheques during FY 2004-05 for the purchase of Steel, Cement, and Bricks to the various parties whose details have not been submitted. Further, in respect of the payment made, no invoices have been submitted. Moreover, ledger extracts in the book of account of the assessee firm also, have not been filed. Mere submission of a bank statement showing payment to the parties does not substantiate the genuineness of the transaction. Since the assessee failed to substantiate its claim with the help of documentary evidence, the claim of the assessee was not accepted by the Id. CIT(A).

f) Borewell

5.16 The Id. CIT(A) observed that the assessee has claimed an amount of Rs. 6,00,000/- towards Borewell. In the remand report, the AO has rejected the claim of the assessee stating that the cost for the borewell claimed by the assessee is excessive. Further, no invoices, beneficiaries' details submitted. The assessee during the appellate proceedings has submitted that payment has been made in cash during FY 2004-05. The assessee has not submitted any documentary evidence, in support of its claims. Invoices, ledger details in the books of the assessee firm, party details have not been submitted and therefore the claim of the assessee was not accepted by the Id. CIT(A).

Expenditure incurred in the FY 2006-07

Conversion fee of land

5.17 The Id. CIT(A) observed that the Assessee has claimed an amount of Rs. 9,31,882/- towards conversion fee of land. The AO, in the remand report stated that the assessee has submitted the BDA certificate dt. 21.07.2006 which is for conversion of land use and the same may be admitted. The assessee, during the appellate proceedings, vide its submissions stated that it had paid an amount of Rs.9,31 ,882/- to the government for converting the land from Industrial to Commercial purpose. In support of its claim, assessee has furnished BDA certificate evidencing the payment of Rs.9,31,882/-. On perusal of the same, the Id. CIT(A) observed that the assessee had paid the said amount in Canara Bank vide challan no. 117036 dt. 15-06-2006. Since the claim assessee is duly substantiated by documentary evidence i.e., BDA Certificate evidencing the payment of Rs. 9,31,882/- the claim of the assessee in respect of the conversion of land is hereby accepted.

Expenditure incurred in the FY 2010-11

	Particulars of expenditure	Amount	Index Cost
2010-11	Change of power tariff	10,455	17,529
	Power sanction deposit	7,77,410	13,03,442
	Infrastructure work for power	14,00,000	23,47,305
	Consultation for industrial work	8,00,000	13,41,317
	Consultancy for land development paid	2,00,000	3,35,329

a) Change of power tariff and power sanction deposit

5.18 The Id. CIT(A) observed that the assessee has claimed an amount of Rs.10,455/- towards change of power tariff and an amount of Rs.7,77,410/- towards power sanction deposit. In the remand report, AO rejected the claim of the assessee on the ground that an amount of Rs. 7.6 lakh was two months deposit and the same was shared with the tenant also as per the lease deed and therefore the said deposit cannot be claimed as expenditure. The assessee during the appellate proceedings, in support of its claim, has submitted the BESCOM letter dated 28-10-2011 granting approval for change of tariff from HT2 (B) to HT2 (A) in respect of RR. No. E4HT 434 of M/s Power Point, No. 112, sy no. 60/1, White Field Road, Mahadevapura, Bangalore. Further, the assessee has also submitted invoice of BESCOM dated 27.12.2010. On perusal of the same, the Id. CIT(A) observed that the assessee has made a security deposit of Rs.7,77,410/- dt. 27.12.2010, as the AO is correct in holding that the same cannot be claimed as an expenditure.

5.19 He further observed that from the Lease deed dt. 30.11.2010 with the M/S. Sun Technics Energy Systems Private Limited wherein it is stated that the cost of 500 KVA supply (including the equipment) will be borne by the lessor & lessee in the ratio of 40% by lessor & 60% by lessee. The assessee has also submitted BESCOM estimation for conversion of RR No. DP55 by 500KVA HT installation of M/S.

Power Point at No. 112, Sy. No. 60/1, Whitefield Road, Mahadevapura dated 08.12.2010 in which estimated cost for conversion of power supply from industrial to commercial is reported as 1,74,023/-. The AO in the remand report has stated such expenditure are covered under the deduction claimed u/s 24 of the Act by the Assessee for the relevant financial year. The view taken by the AO was accepted and the claim of the Assessee was therefore rejected by the Id. CIT(A).

b) Infrastructure work for power

5.20 The Assessee has claimed an amount of Rs. 14,00,065/- towards infrastructure work for power. The assessee during the appellate proceedings has not submitted the details/nature of infrastructure work for power, that has been carried out at the property. Further, supporting documents, such as invoices, party details to whom payment made, ledger extracts in the books of the assessee firm, have not been furnished. Since, the claim of the assessee firm is not backed by supporting documents substantiating its claim of expenditure, the same cannot be accepted.

c) Consultation fee for industrial work and land development paid

5.21 The Id. CIT(A) observed that the Assessee has claimed an amount of Rs. 8,00,000/- towards consultation for industrial work and an amount of Rs.2,00,000/- towards consultancy for land development paid. In the remand report dt. 14.02.2023 has rejected the claim of the assessee on the ground that no invoices, and other supporting documents has been furnished. The assessee, during the appellate proceedings vide its submissions stated that the said amount has been paid for planning and designing industrial work and supervision of construction of shed. The assessee further stated that the said payment was made through cheque and recorded in the bank statement. On perusal of the same it is seen that assessee has paid an amount of Rs. 8 lakhs through cheque to a person named

MG Sathish on 14-01-2011 and an amount of 2 lakhs through cheque to a personal named Murali on 17-05-2010. However, mere submission of bank statement showing some payments through cheque to some individuals does not prove that the assessee has actually paid the said amount for the purpose of consultancy of industrial work and land development. In absence of the relevant supporting documents such as invoices, beneficiaries' details, ledger extracts in the books of account of the assessee firm, it is difficult to accept the contention of the Assessee contention. Since, the assessee during the appellate proceedings has not submitted any other supporting documents except bank statement, the claim of the assessee firm was not accepted by the Id. CIT(A).

5.22 In view of the discussions in the preceding paragraphs, the Id. CIT(A) observed that the Assessee has not been able to justify the cost of improvement with regard to the construction/reconstruction of industrial shed that is said to have been incurred for the various FYs. Assessee has not established how it has arrived at the cost of improvement when no such account has been maintained in its books of account. He also observed that the Assessee has been making contradictory claims regarding the FY during which the industrial shed was constructed.

5.23 He further observed that the Assessee has not furnished any reasons for making wrong claims in the return of income despite having sufficient time and opportunities to reconcile the expenditure incurred for the land sold in September 2018. The inordinate delay in furnishing the evidence for cost of improvement from September 2018 to February 2023 proves that the claim of the Assessee in its return of income is without any basis. He observed that the Assessee did not submit any reasonable explanation for not reporting the expenditure incurred for the property at Mahadevapura in its books of account. He noted that the claim of expenditure is without any supporting documents, such as invoices, ledger extracts in the books

of accounts of Assessee etc. He observed that the returns of income filed by Assessee for earlier years shows it has been reporting WDV of fixed assets at around Rs. 2.5 crores from AY 2007-08 to AY 2017-18, which is almost equal to purchase price paid for the property by the Assessee in FY 2003-04. This is surprising, when the Assessee claims to have incurred significant cost of improvement to the extent of Rs. 3 crores during this period. It is only supporting the view taken by the AO that the Assessee has not been able to prove the claim of expenditure towards improvement cost of industrial shed. The rental income shown by the Assessee for the earlier years only proves that the Assessee was receiving rent from the existing shed that was purchased along with the land 30/12/2003, but nowhere it proves the cost of improvement as claimed by the Assessee to have been incurred during the FYs 2004-05 to 2010-11.

5.24 Further, the Id. AR of the assessee during the appellate proceedings has filed additional evidence before the Id. CIT(A) dated 13.07.2023 comprising of:

- a) Memorandum of Understanding (MOU) dated 01-12-2017.
- b) Copy of Agreement for sale dt. 08-07-2018,
- c) Copy of BBMP authorisation letter.

The contention of the Assessee in the submission dated 13th July 2023, is that the documents prove that there was an existing structure prior to the sale of property and that such property was demolished based on the MOU between the Assessee and the buyer M/S Regulus Developers Pvt Ltd. The above-mentioned documents were forwarded to the AO calling for remand report. The relevant part of the remand report dated 20-07-2023, is reproduced as under; -

4.1 *The capital asset sold by the assessee is a vacant land. Only expenses which can be attributed to the vacant land may be allowed as cost of improvement. Therefore, cost of construction of shed can't be allowed as cost of improvement. Further the assessee failed so far to substantiate the claim that it has spent almost 4 crores during FY 2006-07 and FY 2007-08 to construct new industrial sheds in the sold land.*

4.2 *Further MOU furnished is not a registered document. There is no reference to MoU in the sale deed and sale agreement. It is also not clear whether demolition was carried out or cost of demolition was reimbursed by the purchaser.*

4.3 *In the letter furnished to BBMP, the assessee has mentioned that the buildings are old and that the assessee wanted to construct new buildings in its place. This is contradictory to the claims of the assessee.*

4.4 *The additional evidence may be admitted; however, it does not support the claims made by the assessee, rather it substantiates that the capital asset transferred is a vacant land, therefore the disallowance of cost of improvement made by AO in the assessment order is correct.*

5.25 The remand report submitted by the AO vide her letter dt. 17-07-2023 was provided to the assessee for rejoinder. The Assessee submitted the rejoinder on 24-07-2023, the relevant parts of which is reproduced below for reference:

For such additional documents submitted by us, Your Honour forwarded the remand report of the Jurisdictional Assessing Officer dated 17/07/2023 for our reply/explanation/rebuttal for the said remand report.

In the said remand report, the following are the observations of Assessing officer which were stated at Para No. 4.1, 4.2, 4.3 & 4.4.

At para No.4.1, in the said observation, the Assessing Officer stated that

The Assessing Officer reiterated the same fact that the sold property is the vacant land and only expenses which can be attributed to the vacant land may be allowed as the cost of improvement. Therefore, the cost of construction of shed cannot be allowed as cost of improvement. Further the Assessing Officer stated that the Assessee Firm failed to substantiate the claim that it has spent almost Rs. 4,00,00,000/- during the F. Y 2006-07 & 2007-08 to construct new industrial shed in the sold land.

For the above observation of the Assessing Officer, the Appellant hereby submits by vivisectioning the observation as under:

a. *The Assessing Office stated that the expenses attributed to the vacant land may be allowed as cost of improvement. It means that the Assessing Officer admits that the expenses incurred for demolishing the existing building may be allowed as cost of improvement. Such cost renders the land as vacant land. When the cost of demolition is to be allowed then why not the cost of construction?*

b. *The Assessing Officer states that the cost of construction of shed cannot be allowed as cost of improvement. Such statement of the Assessing Officer is directly opposite to the above observation. Unless there was a constructed*

building/shed, there cannot be any demolition. The demolition of the said shed was made at the request of the prospective buyer for their requirement of future plans. For the demolition of the shed, the prospective buyer advanced the payment on 2nd, 7th & 18th November, 2017 and 17th April, 2018 amounting to Rs. 36,30, 00, 000/- which has been paid by the buyer to the Appellant Firm prior to the Agreement to Sale entered into, so as to guarantee the Vendor (Appellant) and as assurance for the performance/execution of the Absolute Sale Deed. These chronological events indicate by circumstantial evidences that

i. *There was an existing shed which was constructed by the Appellant Firm, worth more than Rs.30 Crores.*

ii. *There was a request from the buyer for demolishing the shed with necessary approvals from the authority by advancing Rs.36,30,00,000/- prior to Agreement to Sell which was put into terms and agreed upon by both the parties vide Memorandum of Understanding dated 01/12/2017.*

iii. *In view of the above narrative facts, there was an existing shed which was constructed during the F.Y 2006-07 & 2007-08. For such construction of shed, details of expenditure in the bank statement and schedules of expenditure were already submitted vide our earlier submission and also we have provided exhaustive and detailed explanation vide our rejoinder for the earlier remand report of the Assessing Officer which were filed on 11/05/2013, 23/06/2023 and 13/07/2023.*

II. *The Assessing Officer at Para 4.2 Stated that the Memorandum of Understanding is not a registered document. There is no reference of the Memorandum of Understanding in the Sale Deed and Agreement to Sale and it is also not clear whether demolition is carried out or cost of demolition was reimbursed by the purchaser.*

For such observation, the Appellant replies as under:

The sale consideration for which the property was sold, was inclusive of the value of land, the value of the constructed shed and the cost of demolition. That is the reason, the land was sold at such high price of Rs. 69,39, 10,800/-. Before the Sale Agreement was entered into, there was a formal understanding between the parties which was reduced into writing wherein the demolition of the existing shed was agreed between the parties. Under the Contract Act, 1872, the agreement may be in writing or oral, may be registered or unregistered. It does not mean that unregistered agreements cannot be enforceable under the law. In practice, the agreed terms may not be incorporated in the sale agreement or sale deed. If the agreed terms of the Memorandum of Understanding are not incorporated in the Sale Deed, it does not mean that the Memorandum of Understanding has no evidentiary value. The findings of the Assessing Officer is hyper-technical which may not be followed in regular practice

III. At Para 4.3, the Assessing Officer stated that in the letter furnished to the B. B. M. P, the Assessee has mentioned the building are old and the Assessee wanted to construct new building in its place. This is contradictory to the claim of the Assessee.

For such observation, the Appellant replies that if any permission is sought for demolition of a building, the general reason to be assigned is that the existing building is old and new building is to be constructed. It does not mean that the Appellant himself intends to construct a new building. The prospective buyer also may construct a new building.

Such observation of the Assessing Officer is due to the lack of prudent businessman's approach.

IV. At Para 4.4, the Assessing Officer agreed for the admission of the additional evidences but reiterated her earlier version that sold land is vacant land. Therefore, disallowance of cost of improvement made by the Assessing Officer in the assessment order is correct.

The Appellant Firm since from the beginning of the proceedings us 250 of the Income Tax Act, 1961 and during the course of survey, prior to the issue of notice u/s 143(2) of the Income Tax Act, 1961, again and again reiterated the fact that though the sold land was vacant land but there was a constructed shed of 19,500 Sq. Ft. which earned substantial rental income during the period 2010 to 2015 for which the Appellant firm offered the rental income for taxation.

5.26 On perusal of the remand report of the AO and the submissions and rejoinders filed by the Appellant, the Id. CIT(A) observed that the Assessee had furnished additional evidence on many occasions earlier but never made any attempt to submit the so-called MOU on those dates and he observed that there was no reference at all to the MOU in the earlier submissions filed on various dates. The partner of the Assessee firm, Mr. Mohammed Yousuff, whose statement was recorded during the survey carried out on 12/02/2020, did not make reference to the so-called MoU. The MOU referred to by the Assessee was not notarized, hence there is no sanctity of such document. The MoU furnished by the assessee is only a photocopy and it is also not executed on stamp paper and has not been registered.

5.27 He further observed that the so-called MOU is not signed by any person/Director on behalf of the M/S Regulus Developers Private

Limited (Purchaser Company) and contains only the seal of the Purchaser company. The sale agreement dated 08-07-2018 at page 7 para 3 refers to the payment made by the Purchaser Company by way of RTGS on 2nd, 7th and 18th November 2017, 17th April 2018, aggregating to Rs.36,30,00,000/-. However, the so-called MOU dated 1-12-2017 does not make any reference at all to the payments made by the Purchaser Company by way of RTGS on 2nd, 7th and 18th November 2017, which are much before the date of execution of the said MoU.

5.28 The above facts establish beyond doubt that the purported MOU, be an afterthought and unreliable. The Assessee is also silent on why such MOU was not submitted earlier. As seen from the MOU dated 01.12.2017 at page no. 6, para no. 10, the Id. CIT(A) observed that it is mentioned that the Vendors shall demolish the structure situated in the Schedule Property with the suitable statutory prior approval. However, whether the Vendor or the purchaser will bear the cost of demolition of the structure has not been mentioned. Assessee for the first time relying upon the purported MOU stated that it was agreed with Purchaser that the existing structure would be demolished, when not a whisper regarding this critical fact was made in the earlier submissions. This only strengthens the fact that the MOU is an afterthought.

5.29 He observed that the most important point is that the MoU is not referred to in the sale agreement which was entered within 7 months of the MoU. There is no mention of the MOU in the sale deed dated 08-07-2018, though it contains a reference to the sale agreement. Moreover, the BBMP authorization letter submitted by the assessee only proves the view of the AO that the land was vacant at the time of sale. In the letter dated 18-12-2017 requesting permission to demolish the existing structure, the assessee has stated the existing buildings are old and in order to construct new building in the same location, permission is sought. The Id. CIT(A)

observed that the reasons stated in the above application are contradictory to the claim by the Assessee in the purported MOU dated 1-12-2017 regarding the reason for demolition.

5.30 Therefore, the Id. CIT(A) observed that the AO was correct in disregarding the indexed cost of improvement, since as per the sale deed dated 04/09/2018, only vacant land was sold by the Assessee. In short, the claim of the assessee regarding the cost of improvement and is factually and legally not tenable. Therefore, the Id. CIT(A) concluded that in absence of proof the claim of the assessee regarding index cost of improvement in respect of industrial shed is hereby rejected except, for the expenses incurred towards cost of improvement of the vacant land being payment made for conversion of land use from industrial to commercial. Against this assessee is in appeal before us.

6. The Id. A.R. in his written submissions has submitted as follows:

Denial of index cost of improvement amounting to Rs.7,37,19,400/-:

6.1 The Commissioner of Income Tax (Appeals) erred in disallowing the claim of index cost of improvement amounting to Rs. 7,16,41,769/- even though the Assessee proved beyond doubt with circumstantial evidences such as payment made through bank, rental income declared by the Assessee Firm from the industrial shed/commercial shed which were constructed after incurring huge expenditure of Rs. 3,41,50,000/- and also, the Memorandum of Understanding entered between the prospective buyer and the Assessee regarding the demolition of existing building/shed, as the building/shed came into existence by incurring such huge expenditure which has earned rental income of Rs. 1,00,00,000/- per annum.

6.2 The Assessee originally claimed index cost of improvement amounting to Rs.54,24,63,034/-. But, due to the survey, the partner

of the assessee firm agreed to disallow 25% of the improvement cost by filing a revised return of income u/s 139(5) of the Act with the concurrence of the survey authorities. Accordingly, the Assessee firm has filed the revised return of income on 03-03-2020 by reducing the indexed cost of improvement of Rs.13,02,92,899/-. Thus, declared income from capital gain amounting to Rs.56,36,17,901/- as against the capital gain declared in the original return filed u/s 139(1) Rs.53,71,44,504/-.

6.3 The improvement cost was in the form of construction of industrial shed and approach road to the industrial shed, which was incurred during the financial year 2005-06 & 2006-07 amounting to Rs.3,41,50,000/-.

6.4 At the time of purchase, in the schedule of property, it was stated that there was an industrial shed constructed with brick and cement sheet roofing and cement flooring with steel doors and windows, but after the purchase was made the Assessee constructed the permanent structure of industrial shed measuring around 48,000 square feet. The same industrial shed was constructed on the schedule property bearing survey no. 60/1 of Mahadevapura village, KR Puram Hobli, Bangalore South taluk. It was the admitted fact the Assessee purchased the industrial shed on 31-12-2003 for Rs.2,00,00,000/- and incurred transfer charges of Rs.20,23,255/-, which was paid through proper banking channel.

6.5 At the time of purchase, there was an Industrial Shed of 3,300 square feet and it was in dilapidated condition, which was constructed in the year 1970 with bricks and cement roofing, cement flooring with steel windows.

6.6 Though in the said sale deed the plinth area is mentioned as 20,000 square feet. But the plinth area shed of 20,000 square feet is nothing to do with the area of the shed, which is 3,300 square feet only. The plinth area is mentioned as the punadi or foundation, not the area of the building.

6.7 Since the said building was constructed in the year 1970 was in dilapidated condition and was not fit for either commercial purposes or industrial use. To earn income out of the shed by renting it out, it was essential for the partners of the firm to demolish and construct a new shed of 19,500 square feet by incurring the expenditure on the construction of the shed and converting the industrial shed to a commercial shed by increasing the load capacity of electricity up to 500 KVA with high tension power line and equipment along with Borewell, canteen, warehouse with the septic tank, with this, the Assessee constructed the industrial shed of 19,500 square feet in the land area of 48,220 square feet. With these narrative facts, the construction of the commercial shed from 2005-06 to 2010-11, cannot be brushed aside only because vouchers were not available. But the said payments were made through proper banking channels, which were recorded in the bank account and also a ledger extract of each of the expenditures submitted for your perusal along with bank statements.

6.8 Now, the Id. A.R. submitted the proof of payment of the said expenditures which were recorded in the bank statement of Union Bank of India.

6.9 The Id. A.R. submitted that the Industrial Shed bearing Mahadevapura Municipal Council Khata No.112 in the survey No.60/1, K R Puram Hobli, Bangalore South Taluk purchased for a consideration of Rs.2,20,23,255/- including the stamp duty incurred thereon. In the said sale deed, it was mentioned that there was a shed constructed in the year 1970 with bricks, cement sheet roofing, cement flooring and steel doors and windows. The Approval of the factory layout plan of General Engineering Industries, wherein the factory shed's measurement was 3,300 square feet. But, wherein, in the lease agreement dated 30-11-2020, it was mentioned that the construction area in the shed premises was 19,500 square feet. With this documentary evidence, it is proved beyond doubt that there was

an improvement in the construction of said factory premises/shed of 19,500 square feet from earlier old dilapidated factory premises of 3,300 square feet, which was renovated and addition of 16,000 square feet building was constructed. With this fact of the case, we are submitting herewith the direct evidence and circumstantial evidence in support of incurring improvement expenditure for the construction of the shed year-wise as under:

Nature of expenditures and with supporting documents thereon:

6.10 The commission paid on the purchase of the industrial shed, the Assessee firm paid Rs.4,00,000/- commission through cheque bearing No.10618 on 21-01-2004. Advocate fee paid Rs.1,00,000/- through cheque No.352998 dated 14-01-2001. In the revised return of income, the Assessee firm claimed the expenditure for the construction of the shed of Rs.1,99,50,000/- during the year 2004-05. But in fact, the construction of the shed took place during the following years:

Financial Year	Incurring expenditure for the construction of the shed
2006-07	1,07,09,524
2007-08	<u>92,40,491</u>
Total	1,99,50,015

6.11 The above-said expenditure was incurred through cheques and duly debited in the books of the Assessee firm during the financial year 2006-07 and 2007-08. The said bank statement along with the list of expenditures incurred date-wise and party-wise along with cheque numbers and amount paid with explanation thereon was produced before the Commissioner of Income Tax (Appeals).

S. No	Expenditure details	Amount incurred
1	Construction of the compound wall	29,00,000

2	Fabrication of the compound wall	2,00,000
3	Construction of road, gate, footpath, street lights and fittings	19,58,304
4	Borewell paid in cash	6,00,000

6.12 The above-said expenditures were incurred through cheque and debited in the bank account for all such expenditures, the bank statement along with the list of the said expenditures for the above said expenditures with the nature of expenditure incurred was produced before the Commissioner of Income Tax (Appeals). Conversion fee paid to the government for converting the land from industrial purpose to commercial purpose BDA certificate dated 21-07-2006 amounting to Rs.9,31,882/-. Power sanction deposit, BESCOM certificate, challan dated 27-12-2010 of Rs.7,77,410/- is enclosed in the paper book, wherein the extra power has been sanctioned. Also enclosed certificate, challan and sanction letter. Infrastructure work for power sanction amounting to Rs.14,00,000/- was incurred through cheque. The list of expenditures date-wise, party-wise the amount paid along with the bank statement, incurred during the financial year 2010-11 was produced before the Commissioner of Income Tax (Appeals). Construction of industrial work paid to Mr M G Satish Rs.8,00,000/- on 14-01-2011 through banking channel. Consultancy fee paid for land development of Rs.2,00,000/- through cheque No.815130, the same was reflected in the Bank statement. Construction of roofing Rs.6,04,196/- paid to M/s Kailash Roofing Solutions, the ledger extract of M/s Kailash Roofing Solutions along with respective invoices was produced before the Commissioner Income Tax (Appeals). All the above expenditures are claimed as improvement costs and paid through the cheque except a few expenditures paid in cash. The above expenditures might have been wrongly debited to the partner's drawings account instead of the industrial shed account during the respective financial

year which is prior to the financial year 2010-11. Since the issues were more than 15 years old, no cash book or financial statements were available with the Assessee firm as stated in the statement recorded u/s 133A of the Income Tax Act, 1961. It means the said expenditures were genuinely incurred for the construction of the industrial shed as claimed by the Assessee firm as an improvement cost in the income tax return filed. There are some changes in the claim for the construction of the shed. The earlier claim was made during the year 2004-05 Rs.1,99,50,000/-. But the said expenditures were incurred during the year 2006-07 and 2007-08.

Financial Year	Incurring expenditure for the construction of the shed
2006-07	1,07,09,524
2007-08	92,40,491
Total	1,99,50,015

Hence the index cost claimed amounting to Rs. 4,94,33,628/- on account of said expenditures will get reduced accordingly.

DIFFERENCE IN INDEX COST			
2006-07	272X10709524/122	2,38,76,971.54	
2007-08	272X9240491/129	1,94,83,825.98	
		4,33,60,797.53	
2004-05	index cost as claimed by the assessee		4,94,33,628.00
2006-07 and 2007-08	Original index cost to be claimed		4,33,60,798.00
			60,72,830.00

6.13 Hence disallowed the indexed improvement cost to the extent Rs.60,72,830/- out of the index cost claimed by the assessee Rs.7,37,19,400/-. Only after incurring the said expenditure of Rs.

2,56,12,500/-, the shed became a rentable condition, then given on rent from the Financial Year 2010-11 to 2013-14, after that, the shed become vacant and not yielding any rent. Hence the Assessee firm sold the property in the Financial Year 2017-18 for a consideration of Rs.69,39,10,800/-. The circumstantial evidence is that after the purchase of the property in the year 2003-04, the Assessee firm not generated any income from the said industrial land, though there was an old shed (not in a rentable condition) in the said land. Subsequently, the Assessee Firm thought of reconstructing the shed to generate income from the shed. Hence, they have incurred expenditures for reconstructing the shed during the Financial Year 2006-07 for the construction by incurring an expenditure of Rs. 2,14,92,752/-. Further, during the Financial Year 2007-08 incurred an expenditure of Rs. 9,31,882/- and during the Financial Year 2010-11 in the month of April incurred an expenditure of Rs. 31,87,865/- for power sanction and erection of infrastructure in the said land. After incurring the said expenditure, the Assessee firm was able to generate a rental income approximately of Rs.1,00,00,000/- during the financial year 2011-12, 2012-13 and 2013-14. The Assessee has declared rental income from the industrial shed during the assessment year 2012-13, 2013-14 as business income, accordingly the department has accepted the said income u/s 143(1). The Assessee had entered into a lease agreement on 12-05-2010 for the rent of Rs.3,00,000/- per month with M/s Sun Techniques Energies Systems Pvt Ltd. Subsequently, the said lease agreement was renewed on 30-11-2010 for the monthly rent of Rs.8,00,000/-. For the earlier lease agreement dated 12-05-2010 leased area was 11,000 square feet. Subsequently, the lease agreement was for 48,222 square feet. The said lease agreement dated 30-11-2010 was renewed on 29-072011 as the lessee has changed his trade name as M/s Conergy Energy Systems India Pvt Ltd. Thus, the Assessee firm was getting Rs.96,00,000/- lease rental income per annum for the

said industrial shed. The negotiation for selling the property started in the month October/November 2017. In consequence of the negotiation, there was a Memorandum of Understanding entered into between the Assessee Firm M/s Power Point represented by its Partner Mr. A. Iqbal Khan and Mr. Mohammed Yousuff with the prospective buyer M/s Regulus Developers Pvt. Ltd. having PAN No. AAICR 5891 D represented by the Director Mr. Yenepoya Moideen Rizwan on 01/12/2017

6.14 The Id. A.R. submitted that in the said Memorandum of Understanding at Serial No. 10 at Page No. 6, it was agreed between the parties that ***“The Vendor shall demolish the structure situated in the schedule property with the suitable statutory prior approval”***. Accordingly, the Assessee Firm made an application on 18/12/2017 before the Assistant Executive Engineer, Hoodi Sub-division, B. B. M. P, Mahadevapura Division, Bangalore – 560 048 for permission to demolish the existing structure. On 20/12/2017, The B. B. M. P, Mahadevapura Division, Hoodi Sub-division granted permission vide their letter No.B.B.M.P/S.K.A /HSD /67/17-18 to demolish the building subject to condition stated in the said letter. Subsequent to the demolition of the existing structure being permitted by the B. B. M. P, agreement to sale was entered on 08/07/2018. In the said agreement to sale dated 08/07/2018, reference to the Memorandum of Understanding dated 01/12/2017 is not made, but there are payments made through RTGS on 2nd, 7th, and 18th November 2017 by the Purchaser to the Vendor M/s PowerPoint as mentioned in the agreement to sale dated 08/07/2018. The said payments were made to assure the Vendor M/s PowerPoint to enter into a Memorandum of Understanding with the condition of demolition of the existing structure in the schedule property. By conjoint reference and reading of all the above-mentioned documents, it is evident that the negotiation for purchase and sale of the property between the Vendor and Purchaser started

in October/November 2017. Hence, as per the Memorandum of Understanding and request of the purchaser, the existing structure i.e., 19,500 Sq. Ft. Commercial Shed was demolished. The said land was sold to M/s Regulus Developers Pvt Ltd on 04-09-2018 for consideration of Rs.69,39,10,800/-. The sale of scheduled property was materialised, on the condition that the industrial shed should be demolished, accordingly the Assessee firm sold the property to the buyer after demolishing the shed. The consideration fixed for the sale of industrial land was inclusive of the cost of the sheds. Hence, the Assessee firm claimed that:

- (a) *Indexed cost of the land amounting to Rs.5,65,73,499/- for which the Assessing Officer has agreed in the assessment order.*
- (b) *In the absence of substantiation by the assessee firm towards the cost of the improvement (as the order u/s 144) by the assessee firm. The Assessing Officer denied the index cost of improvement amounting to Rs.7,37,19,400/- which is against the fact of the case and statement recorded during the course of the survey with the concurrence of the survey authorities.*

The Assessee firm is having the following evidences towards the cost of improvement was produced before the Income Tax Authorities:

- (1) *Lease rental agreement*
- (2) *Letter of handing over the property to the tenant.*
- (3) *BDA conversion letter*
- (4) *Invoices for purchase of sheets for construction of the shed*
- (5) *BESCOM power sanction letter*

6.15 The ld. A.R. submitted that the Commissioner of Income Tax (Appeals) erred in sustaining the addition of Rs. 32,82,212/- which is ad-hoc at the rate of 30% of Rs. 1,09,40,705/- though during the course of appeal proceedings, the Assessee has produced the statement of salary paid to 54 employees along with ledger extract of

salary account but sustained the addition only on the reason that PAN details of the employees have not been submitted. Such action of the Commissioner of Income Tax (Appeals) is against the fact and against the judicial precedence, even though the ad-hoc addition is not permissible in framing the assessment.

6.16 The Assessee firm has debited Rs.1,11,10,405/- towards the salary expenses. Out of that salary expenses, only Rs.1,69,700/- was subjected to TDS, remaining amount was not subjected to TDS. As the payment made to the individual employees were less than the taxable limit. Hence, TDS for the remaining amount of Rs.1,09,40,705/- was not made. The Assessing Officer added 30% u/s 40(a)(ia) of the Income Tax Act, 1961 (wrongly u/s 37 claimed by the Assessing Officer) which is against the fact of the case. The statement of individual salary of all the employees was submitted during the course of appeal proceedings.

6.17 The Commissioner of Income Tax (Appeals) erred in sustaining the addition of bad debt claim of Rs. 1,02,374/- only on the reason that the Assessee has failed to prove that such bad debt written off has been taken into account in computing the income of the Assessee firm in previous years. In the profit and loss account the Assessee has claimed Rs.1,02,374/- as bad debt. The law does not mandate that the Assessee has to prove the debt has become bad. But, only by debiting the bad debt a/c and crediting the debt A/c and recording in the books of accounts is sufficient to claim the bad debt, which, the Assessee has truly complied and passed the effective entry in the books of accounts. Hence, Assessing Officer's action of disallowing Rs.1,02,234/- u/s 37 of the Income Tax Act, 1961 is bad in law. The Assessee wants to bring to your kind notice that the bad debt is claimed u/s 36(vii) of the Income Tax Act, 1961. Not under the general clause of section 37 of the Income Tax Act, 1961. Hence, the Assessing Officer's action of disallowance of the bad debt u/s 37 of the Income Tax Act, 1961 is also bad in law. In view of the above

submission on the question of law and as well as on the merit of the case, the addition made by the Assessing Officer and which in turn sustained by the Commissioner of Income Tax (Appeals) is liable for deletion. Further the claim of the Assessee on account of index cost of improvement is allowable. Therefore, the Id. A.R. requested to pass a suitable order to uphold the justice and law considering the facts narrated supra.

7. The Id. D.R. relied on the order of lower authorities.

8. We have heard the rival submissions and perused the materials available on record. We have carefully gone through the copy of sale deed furnished by assessee dated 4.9.2018 between the assessee and Regulus Developers Pvt. Ltd. For a consideration of Rs.69,39,10,800/-. The assessee has sold the property being vacant land bearing No.111(new Khata No.60/1, Old khata no.112) formerly bearing survey no.60/1 of Mahadevpura village, Krishna Rajapuram Hobli, Bangalore South Taluk, Bangalore measuring 1,28,502 sq.ft. Now the contention of the assessee is that there was a building in the said land. The index cost of said building was Rs.7,37,19,400/- and this indexed cost of building to be allowed as a deduction while computing capital gain on receipt of sale consideration on transfer of the property mentioned above. As seen from the sale deed, the sale consideration received by the assessee is only with regard to sale of vacant land and there was no mentioning of any building/shed. The building cost of acquisition claim by assessee was not at all existing at the time of executing the sale deed and also not at all transferred vide sale deed dated 4.9.2018. The assessee all along claimed the cost of building, which is not at all the subject matter of cited sale deed so as to allow such indexed cost of improvement out of sale consideration received by the assessee. The claim of assessee that there was industrial shed existing in the said land and assessee has been receiving the rental income through various lease/rental agreements entered by

assessee and the said income has been offered for taxation. However, we find that as on the date of transfer of the impugned land, there was no existence of such industrial shed so as to transfer it to the purchaser and the schedule of property transferred by the assessee to Regulus Developers Pvt. Ltd. is only land and nowhere mentioned about the industrial shed existing in the said land so as to transfer to M/s. Regulus Developers Pvt. Ltd. vide sale deed dated 4.9.2018. The assessee could claim indexed cost of building out of sale consideration if there is existing building and transfer of said industrial shed to the purchaser vide the sale deed cited (supra). Had it been no building existing at the time of entering the sale deed on 4.9.2018, the assessee cannot claim such indexed cost of industrial shed existing thereon which is only imaginary in nature. In other words, in the absence of existing of such industrial shed along with the amenities and there was no transfer of such industrial shed or building with amenities to M/s. Regulus Developers Pvt. Ltd. (RDPL). No deduction could be allowed on this count. U/s 17 of the Registration Act, 1908, a transaction that involved the sale of an immovable property for a value exceeding Rs.100/- should be registered. Admittedly, in this case, there was no instrument of any registration of said industrial shed with amenities in favour of purchaser i.e. RDPL. Thus, there was no transfer of building vide sale deed dated 4.9.2018 so as to grant deduction towards indexed cost of improvement. Being so, having no mentioning about any super structure in the sale deed cited (supra), or transfer of said industrial shed or building to the purchaser, we are not in a position to appreciate the argument of assessee's counsel as there was no existing of building on said land to transfer of the same to the purchaser. Even otherwise, had it been there was a building existing on the impugned land, the same ought to have been reflected in the assessee's balance sheet in earlier years in the block of assets. The assessee being, a

partnership firm, it has been filing the return of income with the Income Tax department and it must have filed the balance sheet with the Department and had it been the building in the block of assets in the balance sheet, the assessee very well could have placed the same before the Tribunal so as to prove the existence of such building in the impugned land. The assessee neither before the lower authorities nor before the Tribunal placed any balance sheet to establish the existence of building in the block of assets shown in the balance sheet. Hence, we do not find any merit in the argument of assessee's counsel, which is not based on any evidence. Accordingly, the ground Nos.3, 4 & 5 of appeal are rejected.

8.1 Next ground is adhoc disallowance of expenses at Rs.32,82,212/- which is 30% of Rs.1,09,40,705/- claimed as salary expenses u/s 37 of the Act on the ground that genuineness and applicability of TDS.

8.2 In the Assessment order, it is stated that, the assessee has debited salary expenses for amounting to Rs.1,11,10,405/- whereas assessee has not submitted any evidence to substantiate that the assessee has actually incurred those expenses amounting to Rs.1,11,10,405/-. Further, Assessing Officer opined that only salary expenses to the extent of Rs.1,69,700/- was subjected to TDS. Thus, in the absence of any substantiation of genuineness and applicability of provisions of TDS, 30% of Rs.1,09,40,705/- i.e. Rs.32,82,212/- was disallowed u/s 37 of the Act.

9. We have heard the rival submissions and perused the materials available on record. The assessee has claimed an expenditure of Rs.1,11,10,405/- out of which assessee deducted TDS at Rs.1,69,700/-. The ld. AO considered a net of TDS at Rs.1,09,40,705/- and made disallowance of 30% of it on the reason of non-deduction of TDS doubting the genuineness of the payment. In our opinion, the adhoc disallowance by AO is not justified. The order of AO is ex-parte. The ld. CIT(A) called for remand report. The

assessee filed the breakup details of the payment of salary. However, no ledger account has been furnished with details of payment made. In our opinion, this issue requires fresh examination at the end of AO. Hence, this issue is remitted to the file of Id. AO for fresh consideration with a direction to assessee to place all the details of payment of salary for his consideration. The issue is remitted to the file of AO for fresh consideration.

10. Next ground No.7 is with regard to disallowance of bad debt of Rs.1,02,374/-.

10.1 In this case, the allegation of the department is that assessee has not proved whether it has been considered while computing income of the assessee in any previous year in accordance with section 36(1)(vii) r.w.s. 36(2) of the Act. In our opinion, since the assessment order is ex-parte, it is appropriate to remit the issue to the file of AO to examine the issue afresh. If it is satisfied the provisions of section 36(1)(vii) r.w.s. 36(2) of the Act, the claim of assessee towards bad debts to be allowed. With these observations, we remit this issue to the file of Id. AO for fresh consideration.

11. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 14th Nov, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 14th Nov, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore