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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T. A. No. 5559/Mum/2017
(**निर्धारण वर्ष** / Assessment Year: 2008-09)
&
आयकर अपील सं/ I.T. A. No. 5576/Mum/2017
(**निर्धारण वर्ष** / Assessment Year: 2009-10)
&
आयकर अपील सं/ I.T. A. No. 5560/Mum/2017
(**निर्धारण वर्ष** / Assessment Year: 2010-11)

Hindalco Industries Ltd. 3rd Floor, Century Bhawan, Dr. A.B Road, Worli, Mumbai-400030.	**बनाम** / Vs.	DCIT, Central Circle-1(4) 9th Floor, Room No.902, Old CGO Building, M. K. Road, Mumbai-400020.

आयकर अपील सं/ I.T. A. No. 5796/Mum/2017
(**निर्धारण वर्ष** / Assessment Year: 2008-09)
&
आयकर अपील सं/ I.T. A. No. 5769/Mum/2017
(**निर्धारण वर्ष** / Assessment Year: 2009-10)
&
आयकर अपील सं/ I.T. A. No. 5770/Mum/2017
(**निर्धारण वर्ष** / Assessment Year: 2010-11)

DCIT, Central Circle-1(4) 9th Floor, Room No.902, Old CGO Building, M. K. Road, Mumbai-400020.	**बनाम** / Vs.	Hindalco Industries Ltd. 3rd Floor, Century Bhawan, Dr. A.B Road, Worli, Mumbai-400030.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACH1201R		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri P. J. Pardiwala a/w S. M Bandi
Revenue by:	Shri K. C. Selvamani (DR)

सुनवाई की तारीख / Date of Hearing: 06/11/2023
घोषणा की तारीख /Date of Pronouncement: 29/11/2023

आदेश / O R D E R

PER BENCH:

These are appeals preferred by the assessee and the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-56, Mumbai [hereinafter referred to as the "CIT(A)"] dated 30.06.2017 for AY. 2008-09 to AY. 2010-11.

2. The assessee has raised the additional grounds of appeal which reads as under: -

> "1. The Ld. CIT (A) erred in law and on facts in upholding the action of the AO making additions/disallowances to the income returned under section 153C r.w.s. 153A of the IT Act without appreciating that the assessment for the year under consideration had attained finality and did not abate as per the provisions of section 153C r.w.s. 153A of the IT Act and thus the order under section 153C r.w.s. 153A of the IT Act is Bad-in law and void-ab-initio.
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> 2. The Ld. CIT (A) erred in law and on facts in upholding the assumption of jurisdiction by the Assessing Officer u/s. 153C for the block period for Assessment Year 2008-09 without appreciating that no incriminating material for the year under consideration belonging to the Appellant was found during the search on a group company and thus the order under section 153C r.w.s. 153A of the IT Act is bad-in law and void-ab-initio.
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> 3. The Ld. CIT (A) erred in law and on facts in upholding the action of the AO in respect of the additions made, which inter-alia can solely be made on the basis of only incriminating materials which admittedly, in the case of the appellant, is not

available for the year under consideration and thus the order under section 153C r.w.s. 153A of the IT Act is Bad-in law and void-ab-initio."

3. From a perusal of the aforesaid grounds, we note that it is purely legal issue and since it does not require any examination of any new facts, we are inclined to admit the same by relying on the decision of the Hon'ble Supreme Court in the case of NTPC Vs. CIT (229 ITR 383) (SC).

4. Since both sides agree that facts relating to the legal issue are similar for all the three (3) assessment years, we take up the facts relevant for AY. 2008-09 [*and discuss the relevant additions/disallowances made for other assessment years i.e. AY. 2008-09 to AY. 2010-11*].

5. Facts related to the legal issue in respect of AY. 2008-09 as noted by the Ld. CIT(A) are that the assessee, M/s. Hindalco Industries Limited, is the flagship company of the Aditya Birla group and is engaged in business of Manufacture & sale of Alumina, Alumina Hydrate including specials Aluminium & Aluminium Products, Aluminium Foils Continuous Cast Copper Rods, Copper Cathode, DAP/NPK, & related by products and Generation of Power.

6. For the period relevant to AY 2008-09, the return of income was filed on 29.09.2008 declaring total income at Rs. 1440,14,68,845/-.

This return was taken up for scrutiny and also referred to the TPO for examination of the international transactions of the assessee. The AO passed the draft assessment order on 27.12.2011 making various disallowances and additions to the returned income. The assessee filed objection before Ld. Disputed Resolution Panel - 1, Mumbai (hereinafter referred as DRP) against the draft assessment order dated 27.12.2011 and the Ld. DRP passed the directions u/s 144C(5) of the Income Tax Act, 1961 (hereinafter "the Act") vide its order dated 04/09/2012 and the final assessment order was passed by AO u/s 143(3) r.w.s. 144C(13) of the Act on 21st November 2012, determining total income at Rs.2535,05,98,680/-.

7. Thereafter, a Search u/s 132 of the Act was conducted at the office of Aditya Birla Management Corporation Private Limited (ABMCPL) on 16th October 2013 at New Delhi. Pursuant to the search, the case of Assessee Company along with other connected cases were centralized by order u/s. 127(2) of the Act dated 14.10.2014 and the AO initiated assessment proceedings by issue of notice u/s 153C r.w.s. 153A of the Act on 26th November 2014 requiring the assessee Company to file return of Income for AYs 2008-09 to 2013-14.

8. Pursuant to notice u/s 153C of the Act, the assessee company filed Return of income declaring total income of Rs.1440,14,68,845/-. Thereafter notice u/s 143(2) of the Act dated 8th January 2015 was issued. The assessee pointed out to the AO that assessment for AY.

2008-09 was not pending before him on the date of search i.e. on 16.10.2013 or on 14.10.2014 [*which was the date of centralizing of assessee's case, because scrutiny assessment was completed on 21.11.2012 (supra*)]; and therefore it was contented that the assessment for AY. 2008-09 was un-abated assessment in term of 2nd proviso to section 153A of the Act and therefore no addition should be made in the assessment years without the aid of un-earthed/seized incriminating materials (*qua assessee qua assessment year);* and since there was no incriminating material qua assessee qua AY, assessee contended that the concluded non-pending assessment years/un-abated assessment years, should not be disturbed.

9. The AO rejected the contention of the assessee; and first of all he reiterated the additions/income as assessed earlier by his predecessor as per assessment framed on 21/11/2012 (supra); and secondly [*the only addition/disallowance made u/s 153C of the Act*] disallowance of spill over additional depreciation (Rs.62,73,43,996/-) and determined the total Income of the assessee at Rs. 2597,81,55,318 vide order dated 29.03.2016 (*AO has made similar disallowance for AY. 2009-10 to the tune of Rs.92,68,36,561/- and for AY. 2010-11 of Rs.22,85,07,070/-).*

10. Aggrieved by the aforesaid action of the AO, the assessee preferred an appeal before the Ld. CIT(A) and raised *inter-alia* ground no. 2.5 (infra), wherein assessee pointed out that there was no incriminating material seized during search qua assessee qua

assessment years to upset the action of predecessor AO allowing the same (*spill-over additional depreciation*) in the completed assessment and ground no 2.5 reads as under: -

> "2.5 Addition on account of spill-over additional depreciation The Ld. AO grossly erred on facts and in the circumstances of the case and in law going beyond its jurisdiction in making disallowance of spill-over additional depreciation of Rs. 62,73,43,996/- as certified by Chartered Accountant on qualifying assets put to use in the second half of the immediately preceding previous year, ignoring the fact that the such claim of appellant has been allowed by his predecessor in all earlier assessment years, even though no incriminating material in this regard was found during the course of search and in original assessment order no addition in this regard was made."

11. Relevant facts as noted by the Ld. CIT(A) in respect of the only addition/disallowance made by AO under section 153C of the Act for AY. 2008-09 i.e. *regarding disallowance of spill-over additional depreciation*, which reads as under: -

> *"*17. The relevant facts are that the appellant claimed additional depreciation of Rs 62,73,43,996/- u/s 32(iia) on assets put to use for less than 180 days in FY 2006-07 since restricted to 10% of the cost of assets in view of the second proviso to section 32, has been claimed in FY 2007-08 as allowable depreciation u/s 32(iia).
>
> 18. The AO has disallowed the claim of the appellant stating that, on a literal reading of section 32(1)(iia) and second proviso to section 32(1)(ii) restrict he additional depreciation to half the

> amount otherwise allowable. There is no explicit provision entitling the assessee to claim the balance of the additional depreciation in the succeeding year. In the absence of an explicit provision, the balance of 50% of additional depreciation would lapse. Further, as per new third proviso of section 32(1) inserted vide Finance Act, 2015 w.e.f. 01.04.2016 makes it clear that spill over additional depreciation will be available prospectively."

12. Thereafter, the Ld. CIT(A) has decided ground no. 2.5 of appeal (supra) by finding that on this issue there was no incriminating/seized material in the hands of incumbent AO to reverse the action of his predecessor AO's (i.e. allowing additional depreciation of spill-over depreciation) and also Ld CIT(A) found that the action of predecessor AO on the issue was legally sustainable in the light of Hon'ble Karnataka High Court decision in CIT Vs. Rital India (380 ITR 423); and the Ld. CIT(A) has decided ground no. 2.5 (supra) by observing as under: -

> "20. I have carefully considered the order of the AO and the submission of the appellant. In the original assessment order passed on the 21.11.2012 the AO allowed additional depreciation as claimed by the appellant. Appellant also submitted that in earlier years similar claim has been allowed by AO. While completing assessment u/s 153C on 29.03.2016 the AO withdrew the claim of spill over additional depreciation. There is no connection of the claim of spill over additional depreciation allowance and seized material. In this case, while completing assessment u/s 153C, the AO has re-examined the

> claim allowed in completed assessment u/s 143(3) without anything on the record unearthed during the search which will show the claim was allowed erroneously. Further on merit also Hon'ble High Court of Karnataka in case of CIT v. Rittal India Pvt Ltd ITA NO.268/2014 has allowed the claim of the spill-over depreciation. Further the similar claim is also allowed by Hon'ble high Court of Madras in case of CIT v. Shri T P Textiles Pvt Ltd [2017-TIOL-527-HC-MAD-IT] pronounced on 06.03.2017. Considering above the appeal filed by appellant on this ground is allowed."

13. Aggrieved by the aforesaid action of the Ld. CIT(A), the revenue is in appeal and wants us to reverse the action of Ld. CIT(A) and uphold the action of the AO. As earlier stated, we will deal with the legal issue raised by assessee, wherein according to assessee, the additions/disallowance made by AO u/s 153C of the Act in respect of un-abated assessments was made without the aid of any incriminating/seized material qua assessee qua relevant assessment year, which action of AO is bad in law.

14. In this case, undisputedly before search on 16.10.2013 and centralizing of the case of assessee on 14.10.2014, the assessee's original assessment was passed on 21.11.2012 u/s 143(3)/144C(13) of the Act. Therefore assessment for AY. 2008-09 was not pending before AO on the date of search/centralization of assessee's case. Therefore, it (AY 2008-09) is an un-abated assessment. In such a scenario, it is trite law that the AO could not have made any new addition/disallowance without the aid of incriminating materials

found/unearthed during search. It is a fact that in assessee's case, AO had allowed the spill over depreciation in the original/completed assessment dated 21.11.2012; and pursuant to search on 16.10.2013, assessee's case was centralized on 14.10.2014, and the present AO has framed the assessment u/s 153C of the Act, withdrawing/disallowing the same (Rs.62,73,43,996/-), without any seized material to suggest that assessee's claim was bogus or assessee had played fraud on this issue while making the claim in the first round (original/completed assessment). If that is not the case of the revenue, no new additions/disallowance, AO could have made in the un-abated assessment. Keeping this legal position in mind, when we examine the facts of the case, we note that Ld CIT(A) has noted that the AO in the original assessment order [*passed u/s 143(3)/144C(13) of the Act by order dated 21.11.2012*] had allowed the spill-over additional depreciation (Rs.62,73,43,996/-) as claimed by assessee, in respect of the assets put to use for less than 180 day's in the immediate preceding AY. 2007-08. And in that year i.e. AY. 2007-08, assessee had claimed only 10% depreciation u/s 32(iia) of the Act because those assets were put to use only for less than 180 days. And therefore, in the relevant assessment year (AY. 2008-09), the assessee claimed the balance/additional depreciation of Rs.62,73,43,996/-. And as noted, the AO had allowed the claim of spill-over additional depreciation to the tune of Rs.62,73,43,996/- in the original assessment dated 21.11.2012 for AY 2008-09, which has been withdrawn by the present AO vide order u/s 153C of the Act on 29.03.2016 without the support of any

incriminating/seized material. We note that the Ld. CIT(A) has made a finding of the fact that there is no connection of the claim of spill over additional depreciation allowance and seized material. These finding of facts of Ld. CIT(A) could not be controverted by the revenue before us. Thus, we find from perusal of AO's order u/s 153C of the Act as well as the impugned order of Ld. CIT(A) that the action of AO disallowing spill-over additional depreciation to the tune of Rs.62,73,43,996/- was without the aid of any incriminating materials and therefore the Ld. CIT(A) has rightly observed that there was no incriminating materials in AO's possession to reverse his own action of allowing such a claim in the original assessment order passed u/s 143(3)/144C(13) of the Act dated 21.11.2012. Therefore, we find that in the un-abated proceeding u/s 153C of the Act, AO erred in reversing the action of his predecessor AO allowing spill-over depreciation of Rs.62,73,43,996/- without having in his possession any incriminating/seized material qua assessee AY. 2008-09. On merits also (viz *the AO's action of allowing the additional depreciation on spill-over additional depreciation of Rs.62,73,43,996/- for AY. 2008-09 by original assessment order dated 21.11.2012),* the Ld. CIT(A) has found the claim to be legally tenable and has rightly cited the decision of the Hon'ble High Court of Karnataka in the case of CIT Vs. Rittal India Pvt. Ltd.[380 ITR 423] wherein the Hon'ble High Court upheld the action of the Tribunal allowing such a claim i.e. spill over additional depreciation u/s 32(1)(iia) of the Act, as well as the decision of the Hon'ble Madras High Court in the case of CIT Vs. Shri

T. P Textiles Pvt. Ltd. (2017) 394 ITR 483 wherein the Hon'ble High Court had also taken into consideration the insertion of third proviso to clause (ii) sub-section (1) of section 32 of the Act w.e.f. 1st April, 2016 and reiterated the view taken by Hon'ble Karnataka High Court in the case of Rittal India Pvt. Ltd. (supra). The Hon'ble Bombay High Court has endorsed the same view in the decision rendered in the case of PCIT Vs. Godrej Industries Ltd (ITA. No. 511 of 2016 dated 24th Nov, 2018) wherein the Hon'ble Bombay High Court in similar case answered the question of law framed as under: -

> "Whether, on the facts and circumstances of the case and in law, the Tribunal is right in law in holding that the assessee is entitled to 50% of the additional depreciation under section 32(1)(iia) of the IT Act, 1961?"

15. And the Hon'ble High Court has answered the question of law as under: -

> "9. It could be thus, seen that the Karnataka High Court in Rittal India Pvt. Ltd, (supra) even without the aid of the statutory amendment held that remaining 50% unclaimed depreciation would be available to the assessee in the succeeding Assessment Year. Now the legislation has amended the provision by adding a proviso which, specifically recognizes the said right. The Madras High Court in Shri T. P. Textiles Pvt. Ltd, (supra) ruled that such proviso being clarificatory in nature, would apply to pending cases, covering past period also."

16. The Ld. AR of the assessee also has cited the decision of the Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell (P.) Ltd. (2023) 454 ITR 212 (SC) wherein the Hon'ble Supreme Court was pleased to uphold the view taken by Hon'ble Delhi High Court in the case of Kabul Chawla (380 ITR 573) (Del) and *inter-alia* held that completed assessment can be interfered with by the Assessing Officer while making assessment under section 153A only on the basis of incriminating material unearthed during the course of search that was not produced or not already disclosed or made known in the course of original assessment.

17. In the case of CIT vs. Murli Agro Products reported as 49 taxmann.com 172(Bom) the Hon'ble High Court held:

> "9. What Section 153A contemplates is that, notwithstanding the regular provisions for assessment/reassessment contained in the IT Act, where search is conducted under Section 132 or requisition is made under Section 132A on or after 31/5/2003 in the case of any person, the Assessing Officer shall issue notice to such person requiring him to furnish return of income within the time stipulated therein, in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made and thereafter assess or reassess the total income for those assessment years. The second proviso to Section 153A provides for abatement of assessment/reassessment proceedings which are pending on the date of search/requisition. Section 153A(2) provides that when the assessment made under Section

153(A)(1) is annulled, the assessment or reassessment that stood abated shall stand revived.

10. Thus on a plain reading of Section 153A of the Income-tax Act, it becomes clear that on initiation of proceedings under Section 153A, it is only the assessment/reassessment proceedings that are pending on the date of conducting search under Section 132 or making requisition under Section 132A of the Act stand abated and not the assessments/reassessments already finalised for those assessment years covered under Section 153A of the Act. By a circular No. 8 of 2003 dated 18-9-2003 (See 263 ITR (St) 61 at 107) the CBDT has clarified that on initiation of proceedings under Section 153A, the proceedings pending in appeal, revision or rectification proceedings against finalised assessment/reassessment shall not abate. It is only because, the finalised assessments/reassessments do not abate, the appeal, revision or rectification pending against finalised assessments/reassessments would not abate. Therefore, the argument of the revenue, that on initiation of proceedings under Section 153A, the assessments/reassessments finalised for the assessment years covered under Section 153A of the Income-tax Act stand abated cannot be accepted. Similarly on annulment of assessment made under Section 153A (1) what stands revived is the pending assessment/reassessment proceedings which stood abated as per section 153A(1).

11. In the present case, as contended by Shri Mani, learned counsel for the assessee, the assessment for the assessment year 1998-99 was finalised on 29-12-2000 and search was conducted thereafter on 3-12-2003. Therefore, in the facts of the present

case, initiation of proceedings under Section 153A would not affect the assessment finalised on 29-12-2000.

12. Once it is held that the assessment finalized on 29.12.2000 has attained finality, then the deduction allowed under section 80 HHC of the Income-tax Act as well as the loss computed under the assessment dated 29-12-2000 would attain finality. In such a case, the A.O. while passing the independent assessment order under Section 153A read with Section 143(3) of the IT. Act could not have disturbed the assessment/ reassessment order which has attained finality, unless the materials gathered in the course of the proceedings under Section 153A of the Income-tax Act establish that the reliefs granted under the finalised assessment/reassessment were contrary to the facts unearthed during the course of 153A proceedings.

13. In the present case, there is nothing on record to suggest that any material was unearthed during the search or during the 153A proceedings which would show that the relief under Section 80HHC was erroneous. In such a case, the A.O. while passing the assessment order under Section 153A read with Section 143(3) could not have disturbed the assessment order finalised on 29.12.2000 relating to Section 80HHC deduction and consequently the C.I.T. could not have invoked jurisdiction under Section 263 of the Act."

18. The Hon'ble Jurisdictional High Court in the case of CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. 374 ITR 645 (Bom) following the decision rendered in the case of Murli Agro Products (supra) held that no addition can be made in respect of

assessment that has become final, if no incriminating material is found during search.

19. Apart from the judgments cited above, there are several other judgments by Hon'ble High Courts and decisions of the Tribunal supporting similar view

20. In the light of the discussion and as noted (supra) the Ld. Departmental Representative has failed to show from records any incriminating material found during the search that could have resulted in addition/disallowance in the hands of assessee in the relevant assessment year. It is an undisputed fact that on the date of search/centralization of the case of assessee, assessment for assessment year 2008-09 was not pending before AO, so it is an un-abated assessment. In such a scenario, the un-abated assessment could not have been disturbed without the aid of incriminating/seized material. Since the finding of fact returned by the Ld. CIT(A) that AY. 2008-09 was an un-abated assessment, and there was no incriminating material to withdraw the claim of assessee, we find the action of Ld. CIT(A) correct in law and therefore, we concur with his findings that in the absence of any incriminating material, no addition or disallowance could have been made in the assessment order passed under section 153C/153A of the Act, in the case of non-abated assessments.

21. We sum up the aforesaid discussion and find that AY. 2008-09 was un-abated assessment and AO framed assessment u/s 153C/153A of the Act wherein (*apart from the reiterated addition made in the*

original assessment dated 21.11.2012) the AO has made an addition/disallowances for AY. 2008-09 only by disallowing spill-over additional depreciation of Rs.62,73,43,996/- u/s 32(1)(iia) of the Act. We note that the aforesaid claim was considered and allowed by the AO in the original assessment order u/s 143(3)/144C(13) of the Act dated 21.11.2012. In such a scenario, the AO ought not to have reversed the decision of his predecessor, without the aid of any incriminating material found/unearthed during the course of search to suggest that the action of AO in the first round was vitiated/obtained by fraud/bogus claim. That is not the case of AO/Ld. DR, therefore, having found that for AY. 2008-09, the original assessment was passed u/s 143(3)/144C(13) of the Act on 21.11.2012, it has become final and not pending before AO (*on date of search/centralization of assessee's case)*, therefore, for the purpose of assessment u/s 153C/153A of the Act, AY. 2008-09 is an un-abated assessment and therefore the action of AO reversing/withdrawing the claim allowed in the original assessment on same set-off facts without any incriminating/seized materials qua assessee qua assessment year is not legally sustainable and therefore we uphold the action of Ld. CIT(A) on the legal issue and hold that the AO's action of making disallowance of spill over depreciation of Rs.62,73,43,996/- is legally unsustainable. And for that we rely on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Singhad Technical Education Society 397 ITR 344 (SC) and ratio of the decision of Hon'ble Supreme Court in Abhisar Buildwell (P.) Ltd. (supra).

22. Therefore, the additional legal ground raised by assessee is answered in favour of assessee and thus the action of the Ld. CIT(A) deleting the addition is sustained.

23. Coming to the AY. 2009-10, we note that the assessee had filed return of income showing total income of Rs.11,11,56,43,541/-. The AO determined the total income of Rs.30,41,99,94,417/- by framing assessment order dated 30.04.2013 u/s 143(3)/144C(13) of the Act. Thereafter, pursuant to search on 16.10.2013, the AO has framed re-assessment u/s 153C of the Act dated 29.03.2016 by determining the income of Rs.31,35,76,32,978/- wherein the AO has (i) reiterated the additions made in the original assessment dated 30.04.2013 and as in the case for AY. 2008-09 has made (ii) similar disallowance of spill over additional depreciation of Rs.92,68,36,561/- u/s 32(1)(iia) of the Act and (iii) also disallowed excess negative realization on sale of Sulphuric Acid to BGH Exim to the tune of Rs.1,08,02,000/-. In respect of both the additions of Rs.92,68,36,561/- as well as Rs.1,08,02,000/-, we find that AO in his re-assessment order u/s 153C of the Act has not mentioned about any incriminating material to make such disallowance. Since this year i.e. AY. 2009-10 is also an un-abated assessment, AO ought not to have made any disallowance without the aid of any incriminating materials found/unearthed during search qua assessee qua AY. 2009-10. Therefore, both additions cannot be legally sustained. And on the same reasoning and judicial precedent cited (supra) for AY. 2008-09, we confirm the impugned action of the Ld. CIT(A) who held at para no. 20 as well as para no. 23

of the impugned order that the disallowance made by AO of Rs.92,68,36,561/- as well as Rs.1,08,02,000/- cannot be legally sustained in the absence of any incriminating material qua assessee qua AY. 2009-10; and thus we uphold the action of Ld CIT(A) allowing the legal issue in favour of assessee. Therefore, the impugned action of the Ld. CIT(A) deleting both the additions for A. 2009-10 is upheld.

24. Coming to the appeal for AY. 2010-11, it is noted that the assessee had filed return of income showing total income of Rs.8,76,89,72,019/-. And the AO framed the original assessment u/s 143(3)/144C(13) of the Act dated 25.03.2014 determining the income at Rs.22,20,94,06,841/-.Thereafter, pursuant to search on 16.10.2013 and centralization of the case of assessee on 14.10.2014, the AO framed the re-assessment order u/s 153C of the Act dated 29.03.2016 determining the total income of Rs.22,43,79,13,911/- making only addition/disallowance in respect of spill over additional depreciation u/s 32(1)(iia) of the Act to the tune of Rs.22,85,07,070/-. Since there was no incriminating material found during search to support the action of the AO to reverse his predecessor decision and disallow, the spill-over/additional depreciation cannot be sustained for the same reasons given for AY. 2008-09. Thus, we uphold the action of Ld. CIT(A) given at para no. 2 of his impugned order; and hold that he has rightly deleted disallowance of Rs.22,85,07,070/-. Therefore, the grounds of appeal raised by revenue is dismissed. And the additional grounds of appeal of the assessee is answered in favour of assessee.

25. Since assessee succeeds on legal issue, the other grounds raised by assessee as well as revenue are not adjudicated being academic. Before, we part we make it clear that action of ours (supra) allowing the legal ground of assessee, will not affect the additions/disallowance (made by AO in the completed assessments) and which has been reiterated by the present AO in the order framed u/s 153C of the Act. Therefore, in effect only the addition/disallowance made regarding (i) spill-over additional depreciation and (ii) excess negative realization of sale of sulphuric acid will only stand deleted. We were informed during hearing, that the appeal filed by assessee against the additions/disallowance made in the original assessments are pending before Ld. CIT(A), which will be decided by him, in accordance to law.

26. In the result, the appeals of the revenue and assessee are dismissed.

Order pronounced in the open court on this 29/11/2023.

Sd/-	Sd/-
(AMARJIT SINGH)	**(ABY T. VARKEY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 29/11/2023.
Vijay Pal Singh, (Sr. PS)

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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