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

BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM

ITA No.2463/Mum/2013
(Assessment Year: 2009-10)

Tech Mahindra Limited (Earlier known as Mahindra Engineering Services Limited) Gateway Building, Apollo Bunder, Mumbai-400 001	Vs.	Dy. CIT, Range 2(2) Mumbai
PAN/GIR No. AAACM 3484 F		
(**Assessee**)	:	(**Revenue**)

&

ITA No.2282/Mum/2013
(Assessment Year: 2009-10)

Asst. CIT-2(3)(1) Mumbai	Vs.	Tech Mahindra Ltd. (Earlier known as Mahindra Engineering Services Ltd.) Mahindra Tower, 1st Floor, B Wing, Dr. G M Bhosale Marg, P K Kurne Chowk, Worli, Mumbai-400 018
PAN/GIR No. AAACM 3484 F		
(**Revenue**)	:	(**Assessee**)

Assessee by	:	Shri Viral Shah
Respondent by	:	Shri Ashok Kumar Ambastha

Date of Hearing	:	04.09.2023
Date of Pronouncement	:	01.12.2023

O R D E R

Per Kavitha Rajagopal, J M:

These are cross appeals filed by the assessee and the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals)-5, Mumbai ('ld.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2009-10 on various grounds.

2. The brief facts are that the assessee company is engaged in the IT enabled Engineering Consultancy Services and had filed its return of income dated 30.09.2009, declaring total income at Rs.9,49,68,844/- and the same was processed u/s. 143(1) of the Act. The assessee's case was then selected for scrutiny and notice u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee. The ld. Assessing Officer ('A.O.' for short) then passed the assessment order dated 26.12.2011 u/s. 143(3) of the Act determining the total income at Rs.44,39,86,127/- after making various additions/disallowances to the total income of the assessee.

3. Aggrieved the assessee was in appeal before the first appellate authority and the ld. CIT(A) had partly allowed the appeal filed by the assessee.

4. Both the assessee as well as the Revenue are in appeal before us, challenging the order of the ld. CIT(A) on various grounds.

ITA No. 2463/Mum/2013

5. Ground no. 1 - This ground of appeal filed by the assessee challenges the disallowance of interest and other expenditure u/s. 14A of the Act amounting to Rs.26,78,962/-. It is observed that the assessee has made an investment of Rs.50,81,36,412/- as on 31.03.2009 as per the balance sheet and had received dividend from mutual funds amounting to Rs.25,15,876/- which was claimed as exempt u/s. 10(35) of the Act. The assessee stated that the investment in mutual fund was Rs.4.25 crores at the beginning of the year and Rs.9.52 crores at the end of the year and that its own funds by way of share capital and reserves and surplus were at Rs.63.23 crores. The assessee

contended that the whole investments in mutual funds which had earned exempt income was out of the own funds of the assessee and not borrowed funds. Further, the assessee submitted that the borrowings made by the assessee are utilized for 'working capital' purpose and was not utilized for 'investments' which earned exempt income. The ld. A.O. not convinced with the assessee contention held that the assessee has not bifurcated the expenses incurred for earning exempt income and made disallowance u/s. 14A read with Rule 8D of the I T Rules amounting to Rs.1,29,48,818/- which is an aggregate of Rs.1,15,12,097/- as interest expenses and Rs.14,36,721/- as other expenses by relying on the decision of the Hon'ble Jurisdictional High Court in the case of *Godrej Boyce and Manufacturing Co.Ltd. vs. DCIT* [2010] 328 ITR 81 (Bom)

6. The ld. CIT(A), on the other hand, restricted the disallowance to Rs.26,78,962/- on the ground that the assessee's investments made in foreign subsidiaries, the income out of which is taxable was excluded and the gross current assets were considered instead of the net current assets which are out of the current liabilities. The ld. CIT(A) worked out the disallowance as under after considering the *suo moto* disallowance of Rs.3,44,409/- made by the assessee:

Disallowance u/s. 14A as per Rule 8D				
				(amount in Rs.)
				AY 2009-10
(A)	*Interest Expenses (Less : Interest disallowed being capital expenditure as per Ground No. 3)*			*33,251,421* *(-) 51,22,192*
				2,81,29,229
	Tax free investments			
		Book value	*Book value*	
	(note 1)	*31/3/08*	*31/3/09*	
	Total investments	*66,552,077*	*508,136,412*	
	Less: investments in foreign subsidiaries			

	Income from which is taxable	*24,052,077*	*412,872,902*	
	Investments in mutual funds	*42,500,000*	*95,263,510*	
(B)	*Average value of tax free investments*			*68,881,755*
(C)	*Average of Total Assets (note 2)*	*60,00,67,066*	*1,05,98,57,098*	*82,99,62,082*
I	*Disallowance of interest*	*(A X B/C)*		*23,34,553*
II	*Other expenditure ½% of average tax free investment*			*26,78,962*

7. From the above factual matrix, it is observed that the ld. CIT(A) has excluded the investments made by the assessee in its foreign subsidiaries for the purpose of computing disallowance u/s. 14A as the income out of the said investments which are taxable income. The ld. CIT(A) has also considered the gross current assets instead of the net current assets for the reason that the current assets are financed by the current liabilities and the ld. CIT(A) restricted the disallowance to Rs.26,78,968/- being 0.5% of the average tax free investment after considering the *suo moto* disallowance of Rs.3,44,409/- made by the assessee. The assessee contended that the share capital and free reserves amounted to Rs.52.21 crores as on 01.04.2008 and Rs.63.14 crores as on 31.03.2009. The assessee further contended that the interest free income earned by the assessee was with regard to an investment of Rs.4.25 crores as on 01.04.2008 and Rs.9.52 crores as on 31.03.2009. The assessee relied on the decision of the Hon'ble Jurisdictional High Court in the case of *Reliance Utilities and Power Ltd.* (2009) 313 ITR 340 (Bom) and *HDFC Bank Ltd.* (in ITA No. 330 of 2012), wherein it was held that when the interest free funds are more than the investment there can be a presumption that such investments were made out of the own funds and not borrowed funds. The assessee has also relied on the decision of the Tribunal for the said proposition in the case of *ACIT vs. Raman & Weil Pvt. Ltd.* (in ITA No. 1953 to 1955/Mum/201). It is a settled proposition of law that when

the assessee is able to establish the fact that the investments are made out of the own funds or in case where there are mixed funds consisting of interest free funds and borrowed funds then the presumption would be that the assessee had made investment in earning the exempt income out of the own funds or the interest free funds held by the assessee and not out of the borrowed funds. In such scenario, it is trite to hold the presumption that the assessee has made the investments yielding tax free income out of the own funds and not from the borrowed funds. We, therefore, direct the ld. A.O. to delete the disallowance made u/s. 14A read with Rule 8D(2)(ii) of the Rules as the assessee has made a *suo moto* disallowance on the other expenditure amounting to Rs.3,44,409/- u/s. 14A read with Rule 8D(2)(iii) of the Rules and hence there is no further requirement of disallowance warranted in the assessee's case.

8. The assessee has also raised the contention that the ld. A.O. has not recorded his dissatisfaction for invoking Rule 8D. This contention of the assessee does not hold merit as it is evident from the assessment order that the ld. A.O. has rightly recorded his dissatisfaction in the assessee's claim for invoking Rule 8D of the I. T. Rules. We, therefore, allow ground no. 1 raised by the assessee on the above observation.

9. Ground no. 2 pertains to the disallowance of interest expenses u/s. 36(1)(iii) of the Act amounting to Rs.51,22,192/- which as per the assessee's contentions was incurred for the purpose of the assessee's business. The assessee is said to have availed short term loan from HDFC amounting to Rs.40 crores for the purpose of acquiring 70% stake in Engines Engineering SRL (EE), a company incorporated in Italy as a strategic investment for the purpose of utilizing the said business for global market by the assessee company.

The assessee has availed an interest of Rs.51,22,192/- for the said loan which was disallowed as per the proviso to section 36(1)(iii) of the Act by the ld. A.O. for the reason that the said expenditure was for capital acquisition and not for the purpose of business as the assessee has failed to furnish the documentary evidences to substantiate that the said acquisition of capital asset was put to use for the assessee's business during the year under consideration.

10. The first appellate authority dismissed this ground of appeal raised by the assessee for the reason that the loan was utilized for acquiring the long term investment, the nature of 70% stake in Engines Engineering SRL (EE), which is categorized as a capital expenditure not allowable u/s. 36(1)(iii) of the Act.

11. The ld. AR contended that the loan sanctioned letter furnished by the HDFC states that it was to meet the ongoing business requirement and not for acquisition of capital asset. The ld. AR further contended that the said investment was made during August, 2008 as per the financial statements of the assessee and the short term loan was availed from HDFC on 30.03.2009 which establishes the fact that the said loan was utilized for the business purpose and not for acquisition of capital assets. The ld. AR further reiterated that the investments made in Engines Engineering SRL (EE), which is an Italian entity which is into design and development of motor cycles and scooters was also related to the assessee's business, which in turn has resulted in the growth of the assessee's business. The ld. AR contended that the board resolution specifically states that it was a strategic acquisition. The assessee relied on the decision of the Tribunal in *CIT, Panaji Goa vs. Phil Corpn. Ltd.* [2011] 14 taxmann.com 58 (Bom), *ITO vs. First*

American Securities Pvt. Ltd. (in ITA No. 4768/Del/2012 vide order dated 11.1.2016), *Metro Institute of Medical Sciences Pvt. Ltd. vs. DCIT* (in ITA No. 113/Del/2012).

12. The learned Departmental Representative ('ld.DR' for short), on the other hand, controverted the said facts and stated that the loan availed from HDFC was for acquisition of capital asset and not for the purpose of business of the assessee. The ld. DR relied on the orders of the lower authorities.

13. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has acquired 70% stake in Engines Engineering SRL (EE), which is also engaged in the business of engineering consultancy as that of the assessee. Neither the ld. A.O. nor the ld. CIT(A) has brought on record what was the capital asset acquired by the assessee out of the loan availed from HDFC. Further the decision relied upon by the assessee in the case of *First American Securities Pvt. Ltd.* (supra) is squarely covered in the assessee's case which was on identical facts. That being so, we deem it fit to allow the interest expenditure amounting to Rs.51,22,192/- claimed by the assessee u/s. 36(1)(iii) of the Act for the reason that the interest paid for the loan availed from HDFC was utilized for the business of the assessee and not for acquisition of capital assets. We, therefore, allow ground no. 2 raised by the assessee.

14. Ground no. 3 relates to the disallowance of Rs.7,51,184/- towards corporate social responsibility. The facts are that the assessee has incurred the impugned expenditure towards corporate social responsibility as per M & M Group policy which according to the assessee was allowable u/s. 37(1) of the Act. The assessee contended that the said

expenditure were allowed in the earlier years and no disallowance have been made towards the sundry expenses incurred in CSR. The ld. AR relied on the decision of the Hyderabad Tribunal in the case of *National Mineral Development Corporation vs. DCIT* (in ITA No. 1593/Hyd/2014 vide order dated 20.03.2015), wherein it was held that the expenditure allowable u/s. 37(1) of the Act. The assessee also relied on the decision of the Tribunal in the case of *Orissa Forest Development Corporation Ltd.* [2002] 80 ITD 300 (Cuttack) and *Hindustan Petroleum Corporation Ltd.* [2004] 92 TTJ 168 (Mum). The ld. A.O. and the ld. CIT(A) has disallowed the said expenditure for the reason that the social welfare expenses are not an allowable deduction u/s. 37(1) of the Act and the ld. CIT(A) relied on the decision of the Hon'ble Jurisdictional High Court in the case of *Voltas Ltd.* 114 CTR 274 (Bom) and *Standard Oil Mills Co. Ltd.* 209 ITR 85 (Bom).

15. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has incurred expenditure towards corporate social responsibility which are tabulated as under:

Document No.	*Doc. Date*	*Amount in Rs.*	*Text*
5000491	*25.03.2009*	*3,094*	*Amount transfer from Training expenses*
101160	*26.03.2009*	*14,150*	*R Menon – SR Activity*
101161	*26.03.2009*	*11,190*	*M Goythale – CSR Activity*
5000457	*28.02.2009*	*5,000*	*Ganpati Donation transfer to Social expenses account*
3500760	*28.02.2009*	*1,00,000*	*Midnight marathon in blore*
1203373	*24.03.2009*	*5,64,630*	*Mahindra Foundation Companies cont. towards bihar*
5500406	*14.02.2009*	*12,000*	*CSR Activities Expenditure*
100001126	*14.11.2008*	*870*	*Wrongly booked in Staffwelfare Exp.*
3001068	*31.03.2009*	*5,450*	*Car rental chares CSR Activity*
3001068	*31.03.2009*	*2,500*	*Car rental chares CSR Activity*
3001043	*31.03.2009*	*12,300*	*Medical camp at Apala Ghar Donje*
5100151	*28.02.2009*	*5,000*	*Donation of bed sheet*
5100151	*28.02.2009*	*15,000*	*First aid training expenses*
		7,51,184	

16. The above expenditure aggregating to Rs.7,51,184/- was disallowed by the lower authorities as not being an allowable claim u/s. 37(1) of the Act as the same was not expended wholly and exclusively for the business of the assessee. It is pertinent to point out that the CSR expenses has to be incurred by the companies as per the provision of section 135 of the Companies Act (2013) having a net worth of Rs.500 crores or more or a turnover of Rs.1000 crores or more or a net profit of Rs.5 crores where the assessee company ought to have spent 2% out of the profits earned during the immediately preceding financial year towards the CSR activities. There has been numerous judicial precedence which has held that the CSR expenses incurred by the assessee are an allowable deduction u/s. 37(1) of the Act. Though there has been a specific bar in allowing the CSR expenses u/s. 37(1) of the Act as per the insertion of *Explanation 2* to section 37(1) of the Act which is with effect from 01.4.2014 and the same applies prospectively. In assessee's case, this would not be applicable as the year under consideration is A.Y. 2009-10. Therefore, we find no impediment in allowing the claim of the assessee. Hence, ground no. 3 raised by the assessee is allowed.

17. Ground no. 4 pertains to the disallowance of provision for mark to market loss on forward contracts amounting to Rs.1,07,70,000/-. The facts are that both the lower authorities have made a disallowance of the impugned amount on account of notional loss on mark to market basis (MTM) on forward contracts by relying on the CBDT Instruction No. 3/2010 issued vide F. No. 225/143/2009 dated 23.03.2010 which stated that where no sale or settlement has actually taken place and the mark to market basis has resulted in reduction of book profits, notional loss, being contingent in nature cannot be

allowed to be set off against the taxable income and should be added back to the taxable income of the assessee.

18. The ld. AR relied on the decision of the Tribunal in assessee's case for A.Y. 2008-09 in ITA No. 2604/Mum/2012 vide order dated 20.03.2018 which held in favour of the assessee. The ld. AR also relied on the decision of the Special bench of the Tribunal in the case of DCIT vs. Bank of Bahrain & Kuwait (41 SOT 290 (Mum)) and the Hon'ble Jurisdictional High Court decision in the case of Inventurus Knowledge Services Pvt. Ltd. vs. ITO (in ITA No. 5922/Mum/2013).

19. On perusal of the order of the Tribunal in assessee's case for A.Y. 2008-09, it is observed that on identical facts, the tribunal has decided this issue in favour of the assessee by allowing the same to be an allowable deduction u/s. 37(1) of the Act. The relevant extract of the said decision is cited hereunder for ease of reference:

> *17. The first ground pertains to disallowance of foreign exchange fluctuation of to the tune of Rs.15,82,113/- on the ground that it was notional loss. The ld. Counsel for the assessee submitted that the observations of the ld. CIT(A) that it is a loss of contingent nature cannot be accepted as, under the mercantile system of accounting, provisions for all known losses have to be accounted for to arrive at actual profit. Moreover, the loss in respect of such outstanding bills is revenue neutral as in the year of settlement only additional loss would be claimed or reversal of loss would be offered to tax. The ld. Counsel further submitted that this issue is covered in favour of the assessee by the judgment of the Hon'ble Supreme Court in Woodward Governor 312 ITR 0254. Hence, the impugned order is liable to be set aside. On the other hand, the ld. DR relied on the order passed by the ld. CIT(A).*
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> *18. In the light of the rival submissions of the parties, we have perused the material on record. In Woodward Governor India P. Ltd. (supra), the Hon'ble Supreme Court has held that the loss suffered by the assessee in respect of a revenue liability on account of exchange difference as on the date of the balance sheet is an item of expenditure allowable u/s. 37(1) in the year of accrual. Since, this issue is coverd by the judgment of the Hon'ble Supreme Court, the CIT(A) has wrongly confirmed the disallowance made by the A.O. on account of foreign exchange fluctuation loss. We, therefore, allow this ground of appeal of the assessee.*

20. From the above observation, it is pertinent to note that this issue being recurring in nature has been covered by the earlier decision of the Tribunal and we find no reason to

deviate from the same. We, therefore, allow ground no. 4 raised by the assessee on this note.

21. Ground no. 5 relates to the set off of business loss and unabsorbed deprecation amounting to Rs.2,33,50,059/- related to the amalgamated company which was carry forward as per the provision of section 72A of the Act. It is observed that the assessee had taken over the assets of Plexion Technologies India Pvt. Ltd. during amalgamation which had unabsorbed depreciation as on the date of the amalgamation. The assessee had claimed depreciation on the higher written down value on the assets taken over during amalgamation. The lower authorities have denied the claim of set off unabsorbed depreciation for the reason that the assessee has not satisfied the condition specified u/s. 72A read with Rule 9(c) of the Rules.

22. The ld. AR contended that the written down value of the assets at the hands of the amalgamated company will be the written down value of the amalgamated company for the immediate preceding previous year arrived at after reducing the depreciation actually allowed in the said proceeding years. The ld. AR further said that if unabsorbed depreciation not allowed in the hands of the amalgamating company then the same should be allowed in the amalgamated company. The ld. AR had relied on the decision of the Hon'ble Jurisdictional High Court in the case of *CIT vs. Hindustan Petroleum Corporation Ltd.* [1991] 187 ITR 1 (Bom), *CIT vs. Silical Metallurgical Ltd.* [2010] 324 ITR 29 (Mad) and *EID Parry Ltd. vs. DCIT* [2012] 23 taxmann.com 348 (Madras).

23. We have heard the rival submissions and perused the materials available on record. It is observed that the amalgamating company had unabsorbed depreciation which was actually not allowed in the erstwhile company and that post amalgamation the assessee is said to have claimed that the said unabsorbed depreciation has to be added to the written down value of the amalgamated assets. The ld. AR has placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of *CIT vs. Hindustan Petroleum Corporation Ltd.* (supra), *CIT vs. Silical Metallurgical Ltd.* (supra) and *EID Parry Ltd.* (supra), wherein it was held that the written down value of the amalgamated company would be the written down value as arrived by the actual cost of assets reduced by depreciation which was actually allowed by the amalgamating company. The Hon'ble Madras High Court in the case of *Silical Metallurgical Ltd.* (supra) has considered the decision of the Hon'ble Jurisdictional High Court in the case of *Hindustan Petroleum Corporation Ltd.* (supra). The relevant extract of the said decision is cited hereunder for ease of reference:

> *10. From the reading of the Explanation 2A extracted above, it is patently clear that the written down value with the transferred capital asset to the amalgamated company would be the same as it would have been if the amalgamating company continues to hold the capital as asset for the purpose of its business. The statutory provision makes it clear that the written down value of the asset would be the actual cost of the assets of the assessee less depreciation allowed to the company. Any unabsorbed depreciation which was not set off for carry forward could not be taken into account. A similar view was taken by the Bombay High Court in the case of CIT v. Hindustan Petroleum Corporation Ltd. (1991) 187 ITR 1 which has been applied by this Court in the CIT v. Kothari Industrial Corporation Ltd., (2005) 274 ITR 600.*

24. By respectfully following the above said decision, we hold that the assessee company is entitled to the unabsorbed depreciation where the written down value of the assets would be the actual cost of the assets of the assessee less depreciation allowed to the company and only to that extent. We remand this issue to the file of the ld. A.O. for

verification of the claim of the assessee and to allow the same as per the above observation. Therefore, ground no. 5 is allowed for statistical purpose.

26. Ground no. 6 of the assessee's appeal and ground no. 2 of the Revenue's appeal pertain to the disallowance made u/s. 10A of the Act pertaining to the business done in the new STPI unit at Bangalore. It is observed that the assessee has claimed deduction u/s. 10A of the Act amounting to Rs.22,26,44,568/- for its STPI unit. The ld. A.O. observed that the assessee's claim of deduction u/s. 10A was disallowed for A.Ys. 2007-08 and 2008-09 by following the observation given by the ld. A.O. in the assessee's case for A.Y. 2007-08.

27. On a perusal of the order of the A.O. in A.Y. 2007-08, it is evident that the assessee's claim has been denied for the reason that the assessee's new undertaking was formed by splitting up/reconstruction of the business which was already in existence and that the new undertaking in STPI unit has not fulfilled the second condition laid down in section 10A(2)(ii) of the Act. It is also pertinent to point out that the assessee's claim in the first year in A.Y. 2006-07 was allowed. The ld. CIT(A), on the other hand, has allowed the said claim by relying on the order of the ld. CIT(A) in A.Ys. 2007-08 and 2008-09.

28. The assessee is in appeal before us challenging the order of the ld. CIT(A) in not allowing the claim u/s. 10A with regard to the STPI Bangalore Unit amounting to Rs.1,13,25,930/- and the Revenue is in appeal challenging the order of the ld. CIT(A) in

deleting the disallowance made u/s. 10A amounting to Rs.22,26,44,568/- pertaining to STPI Unit.

29. The ld. AR has not pressed ground no. 6 of the assessee's appeal and, we are therefore restricted to deciding the ground raised by the Revenue in ITA No. 2282/Mum/2013 being the solitary ground of appeal.

30. On hearing both the sides, it is observed that this issue has already been covered by the decision of the Tribunal in assessee's case for A.Ys. 2007-08 and 2008-09 and the relevant extract of the said decision has been cited hereunder:

> *We have heard the rival submissions and also gone through the orders passed by the authorities below and the cases relied upon by the AO and the Ld, CIT(A). The first ground of appeal of the revenue is general in nature, therefore, we do not consider it necessary to adjudicate this ground separately. Second ground of appeal pertains to disallowance u/s 10A of the Act. The Ld. CIT (A) has decided this issue in favour of the assessee holding as under:-*
>
> > *"4.3.1 The Assessing Officer and the Appellant have both relied on several decisions to support their mutual propositions. In this context, I find that most of these decisions basically lay down tests which define splitting up and reconstruction of units. Amongst these decisions, very significantly, I find that both the Assessing Officer and the Appellant have relied on the decision of the Hon. Supreme Court in the case Textile Machinery Corpn. Ltd. V/s CIT. Some key tests viZ., investment of fresh capital in the new undertaking' 'employment of requisite labour', 'earning of profits clearly attributable to the new undertaking' and 'a separate and distinct identity of the industrial unit set up, have been laid out in this decision to define splitting up/reconstruction. Tested on these, I find that the STPI Unit does emerge as a new venture. Further, the Appellant's case is also different from the decisions quoted by the Assessing Officer on facts. As may be noted, whereas, with diverse work on large scale, fresh investments, new personnel, the STPI Unit in the Appellant's case passes the essential tests laid out in these various decisions, the Units in the cases relied upon by the Assessing Officer do not qualify these tests. For example, in the case Naya Sahitya, the assessee was carrying on the same business of publishing book from new premises. As against this, in the Appellant's case, as already discussed, jobs of a totally different kind, scale and magnitude was being executeed pursuant to the Engineering Service Agreement. Similar is the case with most of the other cases relied upon bu the Assessing Officer. In the Appellant Case, it is clear, different job on a different scale is being done by different persons at all levels and accordingly, in terms of the tests tata out in these cases, splitting up/ reconstruction has not taken place in the Appellant's case.*
> >
> > *4.3.2 In line with the foregoing, I do not find justification in the denial of the exemption. Accordinglu, the Assessing Officer is directed to restore the exemption. The around of appeal is accordingly, allowed".*
>
> *12. The Ld. CIT(A) has pointed out that the AO has denied the deduction mainly on the ground that by setting up the STPI Unit, the appellant had not started a new business. The Ld. CIT(A) has further observed that findings of the AO are based on an inadequate premise as the AO has based his findings on the purchase order dated 15.10.2004 and the nature of services in*

the pre existing non STPI unit and the comparable rates of pre STPI and STPI jobs. We find that the observations of the Ld. CIT(A) are based on the evidence on record. As observed by the Ld. CIT(A) the purchase order dated 15.10.2004 was in connection with only a Pilot Project mounted to test the ability of the appellant company to do business on a magnitude and level compatible to the expectations of ITEC. The work given for the Pilot Project was initially for a sum of Rs. 9.3 crores, however, after signing the contract with International Truck and Engine Corporation (ITEC), the STPI unit earned revenue of Rs. 42.74 crore. As per para 2.3 of the Agreement, with the commencement of joint Venture, the purchase order dated stood terminated. Hence, in our considered opinion, the findings of the Ld. CIT (A) are based on the evidence on record and in accordance with the settled principles of law. We, therefore, do not find any reason to interfere with the findings of the Ld. CIT (A). Accordingly, we uphold the findings of the Ld. CIT(A) and dismiss both the grounds of the revenue's appeal.

31. From the above observation, it is seen that the facts on this ground for this year is identical to that of the earlier years. Hence, we deem it fit to dismiss the ground raised by the Revenue by respectfully following the observation of the Tribunal in assessee's case for earlier years. Ground no. 2 raised by the Revenue is dismissed.

32. Ground nos. 1 & 3 being general in nature requires no further adjudication.

33. In the result, the appeal filed by the assessee is partly allowed and the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 01.12.2023.

Sd/-	Sd/-
(Prashant Maharishi)	(Kavitha Rajagopal)
Accountant Member	Judicial Member

Mumbai; Dated : 01.12.2023
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai