आयकर अपीलीय अधिकरण,'डी' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./**ITA No.: 585/Chny/2017**

निर्धारणवर्ष / Assessment Year: 2012-13

LS Automotive India Private Limited (Formerly known as Daesung Electric India Pvt Ltd) No. 118, Padur Village, Thiruvelangadu Post, Kunnavalam V.O. Thiruvallur – 631 210. **[PAN: AAKCS-1901-R]**	v.	Assistant Commissioner of Income Tax (OSD), Corporate Range 1, Room No. 603, 6th Floor, Wanaparthy Block, No. 121, AayakarBhavan, Mahatma Gandhi Road, Nungamabakkam, Chennai – 600 034.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./**ITA No.: 2159/Chny/2017**

निर्धारणवर्ष / Assessment Year: 2013-14

Komos Automotive India Pvt Limited, B-10/1, SIPCOT Industrial Development Centre, Oragadam, Vaippur-A Vilalge, SriperumbudurTaluk, KanchipuramDist – 602 105. **[PAN: AACCK-8859-N]**	v.	Deputy Commissioner of Income Tax, Corporate Circle 4(2), 4th Floor, Main Building, No. 121, Mahatma Gandhi Road, Nungamabakkam, Chennai – 600 034.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./**IT(TP)A No.: 40/Chny/2019 &**
ITA No: 360/Chny/2018

निर्धारणवर्ष / Assessment Years: 2008-09 & 2013-14

Dong-A India Automotive Pvt Ltd, Old No. 101 (New no. 55), ThandalamVillage, SriperumbudurTaluk,	v.	Assistant Commissioner of Income Tax, Company Circle -1(4), 4th Floor, Main Building,

KanchipuramDist, Tamilnadu- 602 105. **[PAN:AABCD-4973-B]**		Nungamabakkam High Road,Chennai – 600 034.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./**ITA No.: 1365/Chny/2019**

निर्धारणवर्ष / Assessment Year: 2008-09

Assistant Commissioner of Income Tax (OSD), Corporate Range 1, Chennai – 600 034.	v.	Dong-A India Automotive Pvt Ltd, Old No. 101 (New no. 55), Thandalam Village, SriperumbudurTaluk, KanchipuramDist, Tamilnadu-602 105. **[PAN: AABCD-4973-B]**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./**IT(TP)A No.: 45/Chny/2019**

निर्धारणवर्ष / Assessment Year: 2014-15

Myunghwa Automotive India Pvt Ltd., No. 112, Singadivakkam Village, Kanchipuram, Tamilnadu – 631 560. **[PAN: AAFCM-2148-H]**	v.	Deputy Commissioner of Income Tax, Corporate Circle 4(1), No. 121, Mahatma Gandhi Road, Nungamabakkam, Chennai – 600 034.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./**IT(TP)A No.: 44/Chny/2019**

निर्धारणवर्ष / Assessment Year: 2014-15

Assistant Commissioner of Income Tax, Corporate Circle 4(1), Chennai – 600 034.	v.	Myunghwa Automotive India Pvt Ltd., No. 112, Singadivakkam Village, Kanchipuram, Tamilnadu – 631 560. **[PAN: AAFCM-2148-H]**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by : Shri. Raghunathan Sampath, Advocate and
Shri. S. Sankara Narayanan, Advocate
Department by : Shri. A. Sasikumar, CIT

सुनवाई की तारीख/Date of Hearing : 07.12.2023
घोषणा की तारीख/Date of Pronouncement : 19.01.2024

आदेश /O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This bunch of three appeals filed by three different assessee's in ITA Nos. 585/Chny/2017, 360/Chny/2018 and IT(TP)A No. 2159/Chny/2017 are directed against, separate orders passed by the learned Assessing Officer dated 11.01.2017, 29.11.2017 & 27.06.2017, in pursuant to the directions of the Dispute Resolution Panel- Bangalore, dated 22.12.2016, 14.09.2017 & 22.05.2017, respectively, and pertains to assessment years 2012-13 & 2013-14. This bunch of four cross appeals filed by the assessee's' and revenue in ITA Nos. 1365/Chny/2019, 40/Chny/2019, IT(TP)A Nos. 44 & 45/Chny/2019 are directed against the order of the learned Commissioner of Income Tax (Appeals)-3 & 8, Chennai dated 01.02.2019 & 13.03.2019 and pertains to assessment years 2008-09 & 2014-15, respectively. Since, facts are identical and

issues are common, for the sake of convenience, the appeals filed by the assessee's and appeals filed by the revenue are being heard and disposed off, by this consolidated order.

2. The assessee's have taken various grounds challenging the issue of forex losses to be treated as non-operating in nature for computing operating margin, working capital adjustment and downward adjustment at entity level. The assessee's had also taken various grounds challenging additions made by the AO towards interest payment u/s. 40(a)(i) of the Act for non-deduction of TDS, re-computation of book profit u/s. 115JB of the Act by making addition towards TP Adjustment as suggested by the TPO and ground relating to set off of brought forward losses. We have identified the issues from various grounds of appeal filed by the assessee's. Therefore, we deem it not necessary to reproduce grounds of appeal filed by the assessee's.

3. The revenue has filed appeal in the case of M/s. Dong A India Automotive Pvt Ltd for assessment year 2008-09 and M/s. Myunghwa Automotive India Pvt Ltd for assessment year

2014-15. From the grounds filed by the revenue, the solitary issue challenged in the case of M/s. Dong A India Automotive Pvt Ltd in ITA No. 1365/Chny/2019, is treatment of forex loss for the purpose of computation of operating margin and also in the case of M/s. Myunghwa Automotive India Pvt Ltd, the revenue challenged exclusion of comparable M/s. Pricol Ltd and working capital adjustment. Therefore, we deem it not necessary to reproduce grounds of appeal filed by the revenue in both cases.

4. The first issue that came up for our consideration from this batch of appeals filed by the assessee's, as well as the revenue is exclusion of forex loss/forex gains as non-operating for the purpose of computation of operating margin. The assessee's had excluded forex loss/forex gain from operating cost and claimed that it is non-operating in nature, when it comes to computing PLI. The TPO and CIT(A) rejected the arguments of the assessee's on the ground that, forex loss/forex gains relating to revenue items is operating in nature because it has direct and inextricable link to business activities of the assessee's. The TPO/CIT(A) also rejected the

arguments of the assessee's for applying Safe Harbor Rules on the ground that said rules should be applied as a whole and not with specific reference to forex loss or gains. The TPO/CIT(A) further observed that, when TNMM is used as most appropriate method, then item by item expenditure exclusion by way of economic adjustment will render the comparable method as irrelevant.

5. The ld. Counsel for the assessee Shri. Raghunathan Sampath, Advocate and Shri. S. Sankara Narayanan, Advocate, submitted that, the ld. TPO/CIT(A) erred in not removing forex loss from the operating expenditure which has arisen due to re-instatement of foreign currency done in accordance with the Accounting Standards. The ld. Counsel for the assesse, referring to Rule 10TA(j)(iv) of IT Rules, 1962 and Safe Harbor Rules, in the context of determining Arms Length Price (ALP) submitted that, Safe Harbor Rules defines operating expenditure and operating income and as per said Rules forex loss/gains has been specifically excluded from operating expenses or operating income. He further submitted that, the Hon'ble Supreme Court in the case of Shah Originals

vs CIT in Civil Appeal No. 2664/2011, has considered the nature of forex loss/gains in light of deduction u/s. 80HHC of the Act and held that gain from foreign exchange fluctuations from the EEFC account does not fall within the meaning of 'derived from' the export of garments by the assessee. Therefore, he submitted that forex loss/gains cannot be considered as operating in nature while computing PLI of an assessee. In this regard, he relied upon the decision of ITAT, Chennai Benches in the case of DCIT vs M/s. Hanil Tube India Pvt Ltd in ITA No. 1037/Mds/2014.

6. The ld. DR, on the other hand supporting the order of the TPO and CIT(A) submitted that, first of all this issue is decided by the Tribunal in assessee's own case for earlier assessment year in ITA No. 796/Mds/2014, where it has been held that forex loss/forex gains is operating in nature. Further, although, Safe Harbor Rules defines operating expenditure and operating income and also it has excluded forex loss, but the assessee has failed to prove that it has applied Safe Harbor Rules for the purpose of Transfer Pricing Study. Unless, the assessee applies Safe Harbor Rules in total, the benefit cannot be given

to the assessee when it comes to forex loss/gains. Therefore, he submitted that the TPO and CIT(A) has rightly treated forex loss/forex gains as operating in nature and their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, the assessee itself has considered forex loss/forex gains as operating in nature while computing operating margin for earlier years. In fact, in assessee's own case, the ITAT Chennai Benches has considered the issue and held that forex loss is operating in nature. To this extent there is no dispute. Further, the ld. Counsel for the assessee is also not disputing this aspect up to assessment year 2008-09. However, the arguments of the ld. Counsel for the assessee in light of certain subsequent decisions of various benches and also Safe Harbor Rules for international transactions as notified by Rule 10TA of Income-tax Rules, 1962, forex loss/gain should be treated as non-operating in nature because as per the definition of operating income or operating expenditure, forex loss/gain has been specifically excluded within the ambit

of operating expenditure or operating income. We find that in order to consider any items of expenditure/income as operating or non-operating in nature, mere treatment of the assessee in its books of accounts is not a sufficient reason for treating a particular item of expenditure/income as operating or non-operating in nature. But what is to be seen is, the nature of income or expenditure. Further, forex loss/gain is derived on account of trading account/revenue account, then such forex loss/gain should be treated as revenue in nature and also operating in nature. Further, loss arisen on account of fluctuation in foreign currency for payment made to suppliers of materials or receipts from buyer of assessee product is also arisen out of main business activity of the assessee and thus, same cannot be considered as non-operating in nature. In so far as Safe Harbor Rules is concerned, Rule 10TA has notified Safe Harbor Rules for international transactions and as per said Rules, operating expenses and operating income has been defined, which excludes loss arising on account of foreign currency fluctuations and said Rules has been notified w.e.f. assessment year 2013-14. In the present case, the assessee could not

furnish any evidences to prove that it has opted for Safe Harbor Rules for determining ALP of international transactions. Unless, the assessee opts for Safe Harbor Rules for international transactions, the cherry picking of definition provided in Safe Harbor Rules cannot be considered to determine forex loss/gain as operating in nature or not. Since, the appellant itself has treated forex loss/gain as operating in nature for earlier years and also the Tribunal has considered in assessee's own case and held that forex loss is operating in nature, in our considered view there is no merit in grounds taken by the assessee challenging exclusion of forex loss/gain from operating expenditure or operating income. Further, same issue has been decided by the coordinate bench of ITAT, Chennai in the case of M/s. Hyundai Motor India Ltd vs ACIT in ITA No. 3192/Chny/2017, where one of us is also signatory and held that forex loss/gains is revenue is nature and operating expenditure/income. Therefore, we are of the considered view, that there is no error in the reasons given by the ld. TPO/CIT(A) to include forex loss/forex gains as operating in nature, for the purpose of computing PLI or operating margin of the assessee. Thus, we are inclined to

uphold the findings of the ld. CIT(A) and reject ground taken by the assessee's in all cases and also we reject ground taken by the revenue on this issue.

8. The next issue that came up for our consideration from assessee's appeal and revenue's appeal is not providing working capital adjustment. The ld. Counsel for the assessee submitted that, the ld. TPO/CIT(A) both are erred in not providing working capital adjustment even though the assessee demonstrate with evidences that the working capital position of the assessee when compared to comparable companies is different and suitable adjustments needs to be provided on par with working capital level of comparable companies. The ld. Counsel for the assessee submitted that, the assessee has filed a computation explaining working capital adjustment, but the TPO and CIT(A) are summarily rejected the claim of the assessee. Therefore, the matter may be set aside to the file of the TPO to verify the claim of the assessee and provide working capital adjustment in accordance with law.

9. The ld. DR, on the other hand supporting the order of the ld. CIT(A) submitted that, in order to provide working capital adjustment, the assessee should first explain that it has not factored working capital impact on pricing of products or services and further the margin of assessee company and margin of comparable companies is having an impact on working capital level and suitable adjustment needs to be provided for working capital adjustments. However, he fairly agreed that the issue may be set aside to the file of the AO/TPO to verify the claim of the assessee and consider in accordance with law.

10. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that working capital adjustment of an entity definitely impacts the pricing pattern and also operating margin. However, it is for the assessee to provide necessary details to prove that its working capital position when compared to comparable companies is either less or more and suitable adjustment is required to be provided in order to bring on par with

comparable companies. Further, the assessee also needs to provide necessary supporting evidence to prove that it has not factored working capital impact on pricing of products or services. In the present case, the assessee claims that it has filed working explaining working capital position of comparable companies vis-a-vis the working capital position of assessee company and suitable adjustment is required to be provided. But, the TPO and CIT(A) rejected the claim of the assessee. The assessee has filed computation explaining working capital adjustment which needs to be considered by the lower authorities. Therefore, we are of the considered view that this issue needs to go back to the file of the AO/TPO to verify the claim of the assessee with reference to computation, if any, along with other supporting evidences to be filed by the assessee for providing working capital adjustments. Thus, we set aside the order of the ld. CIT(A) on this issue and direct the AO/TPO to re-examine the claim of the assessee with regard to working capital adjustments and decide the issue in accordance with law in all cases.

11. The next issue that came up for our consideration from IT(TP)A No. 2159/Chny/2017 and ITA No. 1365/Chny/2019 is entity level adjustments. The TPO/CIT(A) has made an adjustment to entire transaction of the assessee. It was the arguments of the assessee that, as per section 92 of the Act and Rule 10B(1)(e) of IT Rules, 1962, any income arising from international transactions shall be computed having regard to Arm's Length Price, that means, very purpose of said provision is to establish Arm's Length nature of international transactions only.

12. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. From a plain reading of section 92 of the Act and Rule 10B(1) of IT Rules, 1962, it is very clear that any income arising from an international transaction shall be computed having regard to arm's length price alone, which means, very purpose of said provision is to establish arm's length nature of the international transactions only. The transactions with Non-AE have to be presumed to be at arm's length price because, there is no relationship which is likely to influence pricing.

This legal position has been explained by various courts including the Jurisdictional High Court of Madras in the case of M/s. Hyundai Motor India Ltd (Supra). A similar view has been taken by the coordinate bench of ITAT in the case of M/s. Hyundai Motor India Ltd in ITA No. 3192/Chny/2017. Therefore, we are of the considered view that the TPO/CIT(A) erred in making downward adjustment on entity level including transactions with non-AE. Thus, we set aside the order of the ld. CIT(A)/DRP on this issue and direct the AO/TPO to make adjustment to international transactions of the assessee alone in all cases.

13. The next issue that came up for our consideration from ITA No. 585/Chny/2017 is disallowance u/s. 40(a)(i) of the Act for non-deduction of tax at source u/s. 195 of the Act. The fact with regard to the impugned dispute are that the assessee has debited an amount of Rs. 2,30,09,263/- towards interest payable to foreign company on delayed payment of import payables. The AO disallowed interest expenses u/s. 40(a)(i) of the Act, on the ground that the assessee has failed to deduct TDS as per the provisions of section 195 of the Act.

14. The ld. Counsel for the assessee submitted that, as per Article 12 of India and Korea DTAA, interest arising in a contracting state and paid to a resident of the other contracting state may be taxed in that other state. According to the Ld. Counsel for the assessee, interest payment is taxable in the hands of the recipient of other contracting state on receipt basis, but not on accrual basis. In this regard, he relied upon the decision of Hon'ble Bombay High Court in the case of CIT vs M/s. Pramerica ASPF II Cyprus Holding Limited.

15. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Interest payable by the assessee is taxable in the hands of the assessee under the Income-tax Act, 1961. Further, as per Article 12 of DTAA between India and Korea, interest is taxable in the hands of the AE. There is no dispute on this aspect. But, only dispute is whether said interest is taxable on accrual basis or receipt basis. As per the provisions of section 195 of the Act, any person responsible for paying to a non-resident, shall at the time of credit of such income to the account of the payee or at the time of payment thereof,

whichever is earlier, deduct income-tax thereon at the rates in force. Since, the DTAA is silent on taxability of interest income i.e., whether on accrual basis or receipt basis, in our considered view, as per provisions of section 195 of the Act, the payee is responsible for deducting tax at the time of credit or payment, whichever is earlier. In so far as the case law relied upon the ld. Counsel for the assessee in the case of CIT vs M/s. Pramerica ASPF II Cyprus Holding Limited (Supra), the Hon'ble Bombay High Court clearly held that, royalty and fees for technical services should be taxed on receipt basis, but not on accrual basis. Since, the case law relied upon by the assessee is applicability of DTAA between India and Cyprus and also on payment of royalty and fee for technical services, in our considered view, this issue once again needs to be examined by the Assessing Officer, in light of the decision of Hon'ble Bombay High Court and also DTAA between India and Korea. Thus, we set aside the issue to the file of the AO and direct the AO to examine the issue in light of our discussions given herein above.

16. The next issue that came up for our consideration from ITA No. 360/Chny/2018 in the case of Dong A India Automotive Pvt Ltd., is re-computation of book profit with reference to downward TP adjustment. The ld. Counsel for the assessee submitted that, this issue is covered in favour of the assessee by the decision of ITAT Mumbai in the case of GTS e-Services Private Ltd vs ITO, in ITA No. 1231/Mum/2017 dated 03.07.2019, where the tribunal by following certain judicial precedents held that, book profit cannot be recomputed with reference to adjustment made on account of transfer pricing.

17. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The coordinate bench of ITAT Mumbai has considered identical issue and by following the decision of Hon'ble Supreme Court in the case of Apollo Tyres vs CIT 255 ITR 273 held that, no adjustment can be made to book profit with reference to TP adjustment because there is no such provision under law that permits the AO to make adjustment on account of transfer pricing adjustment to the amount of profit shown by the assessee in its profit and loss account for the purpose

of computation of book profit u/s. 115JB of the Act. The relevant findings of the Tribunal are as under:

> *"8.1 In Ground No. 4.1, the assessee is aggrieved by the fact that impugned TP adjustment has also been added back while computing Book Profits u/s 115JB. We find that this ground was not raised by the assessee before Ld. DRP. The assessee seeks adjudication of the same by relying upon the decision of Hon'ble Supreme Court in* ***NTPC V/s CIT [229 ITR 383]*** *in view of the fact that this is purely a legal ground. It has been submitted that this issue stood covered in assessee's favor by the decision of this Tribunal rendered in* ***Owens Corning (India) Pvt. Ltd. V/s DCIT [ITA No. 8522/Mum/2011] &Cash Edge (India) Pvt. Ltd. V/s ITO [IT A No.64/Del/2015]*** *coupled with the decisions of Hon'ble Supreme Court rendered in* ***Apollo Tyres 255 ITR 273, Malayalam Manorama 300 ITR 152*** *&* ***HCL Comnet Systems and Services Ltd. 305 ITR 409.***
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> *8.2 After careful perusal of cited judicial decisions, we concur with the submissions made by Ld. AR. The relevant observations of co-oridnate bench of Mumbai Tribunal in* ***Owens Corning (India} Pvt. Ltd. V/s DCIT [supra],*** *for ease of reference, could be extracted in the following manner:*
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> > *4.1. The additional ground being purely legal and not requiring any investigation of fresh facts, the same was admitted in view of the judgment of Hon'ble Supreme Court in the case of NTPC 229 ITR 383. It is noted that section 115JB is selfcontained code. Only those adjustments are permissible to the book profit as have been prescribed u/s 115JB. The adjustment/additions made under the transfer pricing regulations are governed by altogether different sets of provision as contained in Chapter X of the Act. There is no such provision under the law that permits the AO to make adjustment on account of transfer pricing addition to the amount of profit shown by the assessee in its profit and loss account, for the purpose of computing book profit u/s 115JB. The law in this regard is clear. Reference is made to the judgment of Hon'ble Supreme Court in the case of Apollo Tyres Ltd. vs CIT 255 ITR 273. It is noted*

> *from the perusal of the assessment order that the AO has simply made addition by an amount of Rs.1,30, 72,762/- to the amount of net profit as per profit and loss account for the purpose of computation of income u/s 115JB without even mentioning that under what provisions this addition was being made. Such an approach is highly unfair and brings undue and avoidable hardship to the tax payers and we recommend that such a casual approach should be avoided by the revenue officers, as it may tarnish image of the income tax department, which may in turn discourage voluntarily compliance by the taxpayers. Thus, we delete the addition made by the AO. As a result, additional ground filed by the assessee is allowed."*

18. In this view of the matter and by respectfully following the decision of coordinate bench in the case of GTS e-Services Private Ltd vs ITO, in ITA No. 1231/Mum/2017, we direct the AO to delete additions made towards book profit on account of downward adjustment made under TP Provisions.

19. The next issue that came up for our consideration from grounds of appeal filed in ITA No. 2159/Chny/2017, is exclusion of creditors write off for the purpose of computation of operating margin. The ld. Assessing Officer, has excluded creditors write off from other income for the purpose of computing operating margin on the ground that writing back of creditors depends upon the wisdom of the businessman with

regard to timing of its identification and showing it as income. It was the argument of the assessee that write off of creditors is operating in nature, because the expenses/purchases relates to said creditors has been treated as operating in nature in very same year or earlier year and consequent write off of creditors should be treated as operating in nature.

20. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to facts that creditors arises out of purchase of material or receipt of service and in such cases, write off of creditors due to various reasons including price revision in payment etc should be treated as income and partakes the nature of operating income. At the same time, write off of creditors should relates to operating activity of the assessee or any creditor if any, on account of capital account cannot be considered as operating in nature. Further writing back of creditors depends upon wisdom of business enterprises with regard to timing of its identification etc. The very nature of credits written back is such that it is not peculiar to all the business transactions and so it cannot be

considered as normal and direct income. Therefore, in our considered view while working out operating margin, only items of receipts and expenditure, which have direct relation for determining the operating profit have to be taken into account. Since, the assessee could not provide any details with regard to nature of credits write off, in our considered view merely because the assessee has treated it as other income, said write off of creditors cannot be treated as operating in nature, for the purpose of computing operating margin. Therefore, we are of the considered view that there is no error in the reasons given by the Ld. TPO/DRP to exclude creditors write off for the purpose of computation of operating margin and thus, we are inclined to uphold the findings of the Ld. DRP and reject ground taken by the assessee.

21. The next issue that came up for our consideration from ITA No. 585/Chny/2017 is not allowing set off of brought forward losses. The Ld. Counsel for the assessee submitted that, the AO and CIT(A) are erred in not allowing set off of brought forward losses of earlier years, even though the assessee has filed necessary evidences to prove that it has

satisfied conditions prescribed for set off of brought forward losses. It was the argument of the ld. DR that, the matter may be set aside to the file of the AO to verify the claim of the assessee with reference to necessary evidences and to decide the issue in accordance with law.

22. We have heard both the sides and considered relevant grounds of the assessee with regard to not allowing set off of earlier year carried forward losses. If the assessee is having brought forward business loss or unobserved depreciation, then said business loss or unabsorbed depreciation should be allowed to set off against subsequent year's income, if the assessee has satisfied the conditions prescribed for set off of brought forward losses. It was the argument of the ld. Counsel for the assessee that, the assessee has satisfied all the conditions and the AO may verify necessary records and allow the brought forward losses of earlier years. Therefore, we set aside the issue to the file of the AO and direct the AO to verify the claim of the assessee with reference to necessary evidence, if any that may be filed by the assessee and decide the issue in accordance with law.

23. In the result, appeals filed by the assessee's in ITA No. ITA Nos. 585/Chny/2017, 360/Chny/2018, 40/Chny/2019 and IT(TP)A No. 2159/Chny/2017, IT(TP)A No. 45/Chny/2019 are partly allowed and appeals filed by the revenue in ITA Nos. 1365/Chny/2019 and IT(TP)A Nos. 44/Chny/2019 are also partly allowed.

Order pronounced in the court on 19th January, 2024 at Chennai.

Sd/-	**Sd/-**
(महावीर सिंह)	**(मंजुनाथ. जी)**
(MAHAVIR SINGH)	**(MANJUNATHA. G)**
उपाध्यक्ष**/Vice President**	लेखासदस्य**/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated, the 19th January, 2024
JPV
आदेशकीप्रतिलिपिअग्रेषित/Copy to:
1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3.आयकरआयुक्त/CIT
4.. विभागीयप्रतिनिधि/DR 5. गार्डफाईल/GF