आयकर अपीलीय अधिकरण, **'बी'** न्यायपीठ**,** चेन्नई। **IN THE INCOME TAX APPELLATE TRIBUNAL** **'B' BENCH: CHENNAI** **श्री एबी टी. वर्की, न्यायिक सदस्य एवं** श्री **एस. आर. रघुनाथा,** लेखा सदस्य **के समक्ष** **BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND** **SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**		
आयकर अपील सं./**ITA No.2799/Chny/2019** निर्धारण वर्ष**/Assessment Year: 2011-12**		
The DCIT, Corporate Circle-1(2), Chennai.	**v.**	M/s. Consolidated Construction Consortium Ltd., No.3, II Link Street, Mylapore, Chennai-600 004.
		[**PAN: AAACC 4214 B**]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
Department by	:	Shri S. Sridhar, Advocate
Assessee by	:	Shri A. Sasikumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	20.06.2024
घोषणाकीतारीख /Date of Pronouncement	:	10.07.2024

आदेश **/ O R D E R**

PER ABY T. VARKEY, JM:

This is an appeal preferred by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-5, (hereinafter in short "the Ld.CIT(A)"), Chennai, dated 25.07.2019 for the Assessment Year (hereinafter in short "AY") 2011-12.

2. At the outset, it is noted that the appeal of the Department came up for consideration of this Tribunal and vide order dated 30.08.2023, the Tribunal disposed off this appeal. However, the Department moved a Miscellaneous Application No.10/Chny/2024 for AY 2011-12 pointing out

that two grounds of appeal has not been adjudicated [on two issues] i.e. Ground No.4 relating to disallowance made by the AO in respect of expenses relating to brand name u/s.40A(2)(b) of the Income Tax Act, 1961 (hereinafter in short 'the Act') and Ground Nos.5 & 6 which relates to additional depreciation. It is noted that the Tribunal was pleased to recall the Tribunal orders qua the aforesaid two issues by order dated 26.04.2024. Pursuant to which, this appeal is placed before us for the limited purpose of adjudicating the two issues as noted (supra); Having heard both the parties, we proceed to adjudicate firstly Ground No.4, which reads as under:

> 4. The learned CIT(A) has failed to appreciate that the expenditure incurred for obtaining the rights for usage of brand name was excessive in terms of Section 40A(2)(b).

3. At the outset, the Ld.AR pointed out that this issue is no longer res integra; and drew our attention to the order of this Tribunal in assessee's own case [ITA No.1824/Mds/2011] for AY 2006-07 & Ors. decided on 06.01.2016, wherein, identical issue/ground was raised by the Revenue; and this Tribunal has decided in favour of assessee by holding as under:

> 16. The second issue in Revenues appeal is with regard to deleting the disallowance of Rs.2 crores u/s 37(1) of the Act towards payment of trade licence fee.
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> 17. The facts of the issue are that dduring the year, an amount of Rs.2 crores had been paid to M/s. Samruddhi Holdings, a closely related partnership firm which according to the assessee was paid for usage of name and logo that belonged to that firm. The Assessing Officer has observed that the transaction involving the payment of Rs.2 crores would be covered by the provisions of Section 40A(2)(b) of the Act wherein the cost of obtaining the rights for usage of brand name and

logo namely, 'CCC', Triple C' and 'UGA' by the appellant company from their associate concern M/s. Samruddhi Holdings was found to be unreasonably high. It was observed further that the said logo had not attained any significant or appreciable brand image as well as the basis for arriving for quantum usage fee was also unscientific. Further, the Assessing Officer in tracing the history of both the partnership firm and the assessee company, observed that the partnership firm was formed on 31.5.1997 and the assessee company was incorporated on 11.7.1997 and within the span of 41 days M/s. Samruddhi Holdings could not have created a brand image. It is CCl which performed in the market to earn a brand image for itself and not M/s. Samruddhi Holdings. The Assessing Officer further held that this transaction is a device to shift the profits of the company to the Directors indirectly, since the share of profits from the firm is exempt u/s 10(2A). The Assessing Officer has also put forth another reasoning to show that the amount paid is excessive and attracts the provisions of sec.40A(2)(b) stating that the assessee would not have paid so much amount as licence fee to outsider for such logo and trademark. Accordingly, the claim of deduction of Rs. 2 crores being the amount relatable to the trade licence fee for use of trade name and logo as per the agreement between the assessee company and M/s. Samruddhi Holdings was disallowed by the Assessing Officer within the scope of Section 37(1) of the Act in the computation of taxable total income holding that it is a tailor-made arrangement. Accordingly, he made the disallowance. On appeal, the ld. CIT(A) has observed as under:

> 6.2 I have gone through the facts and circumstances of the case and submissions made by the Id. AR . From the facts of the case, it is noticed that M/s.Samruddhi Holdings, a partnership firm floated by four individuals on 31.5.1997 has created the appellant company on 11.7.1997. Even though the time gap is only 41 days and the Samruddhi Holdings has not earned any image which should earn licence fee, but the fact remains that the logo and the brand name of Triple C is the brain child of the partners of the Samruddhi Holdings. It is fully supported by LOU between the company and the partnership firm and the approval from Company Law Board vide its order dated 8.4.2008. From the point of view of the Company , it is clear that it is obligatory on its part to remit the amount to Samruddhi Holdings as per the terms and conditions agreed upon. When there is legal sanctity in the form of entering into an understanding and approval by the Company Law Board, there is no scope to suspect the payments attracting provisions holding that the appellant could not have paid that much amount to an outsider, that too when the whole amount paid by the company was subjected to TDS. The company has subjected the amount to TDS and remitted the same as per the provisions of the Act.
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> 6.2.1 From the point of view of Samruddhi Holdings, the Id. AR has submitted that the same have been subjected to taxation at Maximum Marginal Rate on the entire sums received from the company. The AO even though made an effort to see the receipt side in the hands of Samruddhi Holdings to avoid double taxation, he has not made any comment whether the same was offered for taxation in the hands of Samruddhi Holdings. The same were examined by me in the course of appellate proceedings. It is noticed that the amounts paid by the company were not accounted regularly in the books of Samruddhi Holdings, even though it is maintaining its account on cash basis. Only from AY 2012-13,

> it started maintaining its account on mercantile basis. It is noticed that all the amounts received were offered for taxation over a period of time up to and including A.Y 2012-13. Therefore, there is no revenue loss from the point of view of recipient also. The observations of the AO that the incomes of the partners in the firm are exempt u/s.10(2A) should not become an issue, since it is an exemption available to any partners of the firm.
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> 6.2.2 In view of the above discussions that there is an obligation on the part of the company to make the payment and in view of the fact that the amount paid by the appellant company after TDS has been entirely offered to taxation by the recipients at Maximum Marginal Rate , we cannot simply brush it aside as a tailor-made arrangement. The addition made by the AO cannot survive for the simple reason that it will attract the wrath of double taxation. Therefore, the AO is directed to delete the addition. The ground is allowed.

Against the above finding of the CIT(A), the Revenue is in appeal before us.

18. We have heard both the parties and perused the material available on record. This issue came up for consideration before the Tribunal in assessees own case for assessment year 2006-07 in I.T.A.No. 2146/Mds/2010 and the Tribunal vide order dated 24.5.2011 decided the issue in favour of the assessee by observing that the payment made to M/s Samruddhi Holdings is an allowable expenditure u/s 37 of the Act and thereby annulled the revisional order of the CIT dated 27.10.2010 passed u/s 263 of the Act. Being so, in our opinion, the expenditure incurred by the assessee is a revenue expenditure and to be allowed accordingly. This ground is dismissed.

4. The Ld.AR of the assessee pointed out that the assessee is a Public Limited Company and since, the transaction in question was related party transaction, as per the Companies Act, the assessee had to take the approval of the Company Law Board (hereinafter in short "CLB") for making such payments to the related parties; and consequently, the assessee had applied for the approval from the CLB; and the CLB vide its order dated 08.04.2008, had approved the same, and therefore, assessee pleaded that when there is an approval from the CLB for making such payment to related party i.e. M/s.Samruthi Holdings, there is no scope to suspect the payment in question as unreasonable. It was also brought to

our notice that the amount paid on this account by the assessee company was after duly deducting TDS and the same has been entirely offered to taxation by M/s.Samruthi Holdings at maximum marginal rates. Considering these facts also, we respectfully following the decision of the Tribunal on this issue which is permeating from the earlier years, we dismiss this ground of the Revenue.

5. Coming to the next ground Nos.5 & 6, which reads as under:

> 5. The learned CIT(A) failed to note that the additional depreciation is available for those engaged in the manufacture or production of article or thing and the instant assessee company is engaged in the business of civil construction.
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> 6. The learned CIT(A) failed to appreciate the Apex Court's decision in the case of N.C. Budharaja & Company reported in 204 ITR 412 (SC) the facts of which are squarely applicable to the facts of the assessee company wherein it was held that production of ready mix concrete does not amount to 'manufacture' as defined u/s.32(1)(iia).

6. At the outset, the Ld.AR of the assessee pointed out that this issue is also covered by the order of this Tribunal for earlier AYs 2006-07, 2007-08, 2009-10 as well as 2010-11 and also drew our attention to the latest decision for AYs 2012-13 to 2014-15 in [ITA No.473/Chny/2017, 2676 757/Chny/2018] which is found placed at Page Nos.39-49 of the paper book, the relevant portion of the Tribunal order is as under:

> 7. The next common ground raised relates to disallowance of additional depreciation claimed towards ready-mix concrete. The assessee has claimed additional depreciation on plant & machinery. According to the Assessing Officer, as per section 32(2)(a) of the Act, the additional depreciation is available for the assessee which is engaged in manufacture or production. Since the assessee is engaged in the business of construction contract, the claim of additional depreciation towards ready-mix concrete was disallowed and brought to tax. On appeal, by following the decision of the Tribunal in assessee's own case for earlier

assessment years, the ld. CIT(A) directed the Assessing Officer to delete the addition against which the Revenue is in appeal before the Tribunal.

7.1 We have heard the rival contentions. While adjudicating similar issue raised in earlier assessment years vide order dated 06.01.2016, the Tribunal has observed and held as under:

> "21. We have heard both the parties and perused the material on record. The assessee is engaged in the business of ready-mix concrete and shown the income from ready-mix concrete sales separately and claimed that the assessee is engaged in the business of manufacture and production of new article and for that purpose it has acquired new machinery and plant. Accordingly, additional depreciation u/s 32(1)(ii) of the Act was claimed. The Assessing Officer was of the opinion that the assessee was in the activity of civil construction and it is not in the field of manufacturing. However, the CIT(A) considering the ready-mix concrete plant as a separate undertaking which is engaged in the manufacture of article or thing, granted additional depreciation u/s 32(1)(ii) of the Act. In our opinion, the findings of the CIT(A) is justified and the contention of the Revenue is not sustainable in view of the judgment of the jurisdictional High Court in the case of CIT vs VTM Ltd, 319 ITR 336, wherein held that the assessee which was a manufacturer of textile goods when set up a windmill was entitled to additional depreciation. Same view was taken by the co-ordinate Bench in the case of Sheela Clinic in I.T.A. No. 481/Mds/2011 dated 30.5.2011, by observing that generation of electricity is an independent activity though originally the assessee is engaged in the business of running a hospital. Considering the facts and circumstances of the present case, we are of the opinion that the CIT(A) has rightly allowed the claim of the assessee. This ground of the Revenue is dismissed."

7.2 Further, we have perused the case law relied on by the ld. Counsel for the assessee in the case of Chettinad Builders P. Ltd. v. DCIT in T.C.A. No. 261 of 2017 dated 08.08.2017, wherein, the substantial question of law arises as to whether the additional depreciation of 20% on plant and machinery used for production of ready mix concrete under section 32(1)(iia) of the Act could have been disallowed when the assessee was manufacturing ready mix concrete for the purpose of sale apart from use in construction of buildings and was being levied Central Excise Duty on such manufacture? After considering various case law, provisions of section 32 of the Act as well as section 2(29BA) of the Act, the Hon'ble Jurisdictional High Court has observed and held as under:

> "23. There can be no doubt that preparation of ready mix concrete results in transformation of stone chips, sand, cement, flyash and other articles into a new and distinct object having a different name, character and use. Once the ready mix concrete is prepared, the ingredients used lose their original character and can never be restored to their original character. It is not in dispute that the appellant-assessee is registered under the Central Excise Act and has been paying inter alia excise duty for manufacture of concrete ready mix, which is sold by the appellant-assessee to other civil contractors.

> 24. The judgment and order of the learned Tribunal cannot be sustained to the extent that the additional depreciation claimed by the appellant-assessee on the machinery used for manufacture of ready mix concrete has been disallowed, and the same is set aside. We restore the order of the Commissioner of Income Tax (Appeals) - 1 in this regard.
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> 25. The appeal is accordingly allowed, and the question formulated is answered against the Revenue, in favour of the appellant-assessee. No costs."

7. No change in facts or law could be pointed out by the Revenue. The Ld.DR couldn't point out that the judgment of the Hon'ble Jurisdictional High Court Chettinad Builders P. Ltd. (supra) was not applicable to the facts of the case. Thus, we are of the considered opinion that the Ld. CIT(A) has rightly followed the decision of the Tribunal in assessee's own case for earlier assessment years while adjudicating the claim and deleted the addition and thereby allowed the additional depreciation claimed by the assessee. In view of the above, we find no infirmity in the order passed by the Ld. CIT(A) on this issue and accordingly, the ground raised by the Revenue for the assessment year under consideration stands dismissed.

8. In the result, aforesaid grounds of appeal filed by the Revenue stands dismissed.

Order pronounced on the 10th day of July, 2024, in Chennai.

Sd/-	**Sd/-**
(एस. आर. रघुनाथा)	**(एबी टी. वर्की)**
(S.R.RAGHUNATHA)	**(ABY T. VARKEY)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 10th July, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.

4. विभागीयप्रतिनिधि/DR

5. गार्डफाईल/GF