आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' 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.361/Chny/2024** निर्धारण वर्ष**/Assessment Year: 2010-11**		
M/s. Ashok Leyland Ltd., No.1, Sardar Patel Road, Guindy, Chennai-600 032.	**v.**	The DCIT, Non Corporate Circle-8(1), LTU-II, Chennai.
[**PAN: AAACA 4651 L**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
आयकर अपील सं./**ITA No.482 /Chny/2024** निर्धारण वर्ष**/Assessment Year: 2010-11**		
The DCIT, Non Corporate Circle-8(1), LTU-II, Chennai.	**v.**	M/s. Ashok Leyland Ltd., No.1, Sardar Patel Road, Guindy, Chennai-600 032.
		[**PAN: AAACA 4651 L**]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
Assessee by	:	Mr. Vikram Vijayaraghavan, Advocate
Department by	:	Mr. Nilay Baran Som, CIT
सुनवाईकीतारीख/Date of Hearing	:	05.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	25.09.2024

आदेश **/ O R D E R**

PER ABY T. VARKEY, JM:

These are cross appeals preferred by the assessee as well as the Revenue against the order of the Learned Commissioner of Income Tax

(Appeals)-16, (hereinafter in short 'the Ld.CIT(A)'), Chennai, dated 15.12.2023 for the Assessment Year (hereinafter in short 'AY') 2010-11.

ITA No.361/Chny/2024 (assessee's appeal)

2. **Ground No.1** is general in nature, so dismissed.

3. **Ground No.2** is regarding disallowance of weighted deduction on R & D expenses to the tune of Rs.34,92,94,618/-, since expenditure not approved by the DSIR in Form 3 CL.

3.1 The AO has disallowed the claim by holding as under:

> "The assessee furnished copies of Form 3CM dated 11.06.2009 and copy of Form 3CL Report dt.21.05.2013, issued by the Department of Scientific & Industrial Research, (prescribed authority) granting their approval. However as per the 3CL. Report of the DSIR the scientific research capital expenditure is approved only to the tune of Rs.4306.28 lakhs and revenue expenditure was approved only to the tune of Rs. 11901.80 lakhs (net of income). Hence assessee's claim of weighted deduction w/s 352AB is to be restricted accordingly"

3.2 Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who has upheld the action of the AO by holding as under:

> "I have considered the submissions of the Appellant and do not agree, since it is not in line with the provisions of section 35(2AB) which grants a weighted deduction for R&D expenditure only on approval by the DSIR. The Form 3CL issued by the DSIR is the basis on which the AO can grant the weighted deduction and AO does not have any powers in deciding the quantum of weighted deduction on his own. Hence, the ground of the Appellant to grant allowance of weighted deduction over and above what is approved by the DSIR is rejected"

3.3 Aggrieved, the assessee is before us.

3.4 We have heard both the parties and perused the material available on record. We note that the assessee has three (3) in-house R&D facilities for undertaking scientific research duly approved by DSIR as an in-house R&D centre as per the requirement of section 35(2AB) of the Income Tax Act, 1961 (hereinafter in short 'the Act'). It is noted that the deduction claimed for these approved R&D centers was duly audited and certified by statutory auditors in annual report. It is noted that DSIR is an authority for approval of R&D facility. And once facility is approved, expenditure incurred by it qualifies for deduction u/s.35(2AB), irrespective of DSIR approval as per the law in force. As noted, the R & D Facility has been approved as required by the authority i.e. DSIR. The settled position as per the law in force is that once facility is approved, expenditure incurred in this regard qualifies for deduction u/s.35(2AB) of the Act until amendment was brought in Rule 6(7A) of the of the Income Tax Rules, 1962 (hereinafter in short 'the Rules') w.e.f. 01.07.2016 (relevant to AY 2017-18). Therefore, the AO/Ld.CIT(A) erred in disallowing the weighted deduction u/s.32(2AB) of the Act on the expenditure incurred in an approved in-house R & D facility. In other words, deduction can't be restricted to the amount of expenditure quantified by the DSIR before the AY 2017-18. Similar issue had come up before this Tribunal in the case of M/s.Sundaram Fasteners Ltd., in ITA

No.3236/Chny/2017, wherein, at Para No.4.3 at Page No.12, it has been observed as under:

> **4.3** We note that the assessee has claimed deduction of Rs.14,20,60,668/- and the AO allowed deduction of only Rs.13,52,44,00/- as approved by the DSIR. It is noted that prior to the amendment brought in Rule 6(7A) of the Income Tax Rules, 1962 (hereinafter in short 'the Rules') w.e.f. 01.07.2016 i.e. from AY 2016-17, the prescribed authority had to submit its report in relation to the approval of in-house facility and development facility in Form 3CL to DG (Income Tax Exemption) within sixty days of its granting approval unlike after the amendment, the quantum of expenditure incurred for in-house research & development facility by assessee was required to be given by the authority; and since, the year under consideration (i.e. AY 2013-14) and the amendment was not applicable as noted (supra) in the case of Crompton Greaves Ltd., the assessee has rightly contended that amendment was not applicable, and the prescribed authority was not required to quantify the expenditure and had to only give report in relation to the approval of in-house facility and development facility, and therefore, in the absence of any requirement of law, the AO erred in curtailing the expenditure and consequent weighted deduction claimed by assessee. Therefore, the non-approval of the expenditure by the DSIR doesn't disentitle the assessee to make the claim of Rs.14,20,60,668/- in the relevant year under consideration and hence, the AO couldn't have disallowed Rs.68,16,668/-. Therefore, respectfully following the ratio of the decision of the Tribunal in the case of Crompton Greaves Ltd. (supra), we allow grounds of appeal of the assessee and direct deletion of Rs.68,16,668/-.

3.5 In the light of the foresaid discussion, we allow this ground of appeal of the assessee and direct the AO to grant/deduction on R & D expenditure to the tune of Rs.35,92,94,618/-.

4. Ground No.3 is regarding disallowance of software expenditure u/s.40(a)(i) of the Act for non-deduction of tax at source to the tune of Rs.1,03,21,040/-.

4.1 The AO has disallowed the claim of expenditure on account of purchase of software to the tune of Rs.1,03,21,040/- by holding as under:

> "The assessee's submissions are considered but these are no longer valid in view of the explanation Inserted to sec 9(1)(vl) of the Act by Finance Act, 2012, with retrospective effect from 1.4.1976, By the said explanation, it is clarified that payments towards purchase of software would be regarded as payment towards "Royalty. The relevant explanation (4) to sec.9(1)(vi) of the Act is reproduced below. Since the above explanation takes retrospective effect from 1.4.1976, the same is applicable for the year under consideration and accordingly expenditure in foreign currency to the tune of Rs 1,03,21,040/- for purchase of software from abroad comes under the ambit of TDS. For failure to deduct tax at source, the said expense of Rs,1,03,21,040/- is to be disallowed u/s 40(a)(0) of the Act."

4.2 Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who upheld the action of the AO by holding as under:

> "…. I do not agree that TDS is not applicable on software, since the provisions of the Act itself has been amended to include software under the ambit of 'royalty As per the amended provisions, explanation (4) was inserted to section 9(1)(vi) of the IT Act by the Finance Act, 2012 with retrospective effect from 01-04-1976 to clarify that transfer of rights in respect of any right, property or information includes transfer of right to use a computer software (including granting of a license) irrespective of the medium through which such right is transferred. In the instant case, the Appellant has purchased software licenses which squarely fall under the definition of 'royalty' u/s.9(1)(vi) of the IT Act based on this amendment. This amendment is only clarificatory in nature and hence, the principle applies to years prior to the amendment as well."

4.3 Aggrieved, the assessee is before us.

4.4 We have heard both the parties and perused the material available on record. We note that the assessee purchased software (off-the-Shelf application software) for R & D centers and capitalized the same in its books of account on which admittedly TDS wasn't deducted. According to the assessee, provisions of Sec.40(a)(ia) of the Act are not applicable to capital expenditure as held in the assessee's own case for AYs 2007-08 to 2008-09 and referred to the decision of this Tribunal in assessee's own

case in ITA Nos.2825 to 2827, 2834 to 2839/Mds./2014 order dated 23.09.2016 wherein, the Tribunal observed asunder:

> 24.5 We heard the rival submissions, perused the material on record and judicial decision cited. In our opinion this is purchase of software which is in a nature of capital asset. Hence, the assessee is entitled for deprecation at prescribed rates, the issue is remitted to Assessing Officer for fresh consideration.

4.5 The Ld.AR also submitted that anyway the amendment which AO refers to disallow the claim of the assessee was brought in by Finance Act, 2012 (*i.e. applicable from AY 2012-13 retrospectively from 01.04.1976*). According to the Ld.AR, the assessee can't be presumed to be a *clairvoyant* to know about the future (amendment brought in by Finance Act, 2012) in the relevant AY 2010-11 itself. Therefore, relying on the legal maxim *"lex non cogit ad impossiblia",* he submitted that the assessee can't be directed to do an impossible task and therefore, non-deduction of TDS ought not be used against the assessee for disallowing the claim. Moreover, according to the Ld.AR payments for purchase of software is not "royalty" under DTAA, since royalty covers only "use of copyright" and not "use of copyrighted article" and pointed out that retrospective amendment made in the Income Tax Act, 1961 can't be read into the DTAA. We find force in the submissions of the Ld.AR and note that the claim of the assessee for allowing expenditure on account of purchase of software license couldn't have been denied by the AO. It is noted that the AO erred in relying on the amendment brought in by

Finance Act, 2012 (*albeit* retrospectively from 01.04.1976), because assessee couldn't have contemplated such a requirement (tax to be deducted at source) when it made payment in the relevant year that it requires deduction of Tax at source due to future amendments with retrospective effect. And since assessee can't be expected to perform an impossible task which came into effect undisputedly by Finance Act, 2012, therefore applying the legal maxim *"lex non cogit ad impossiblia,"* we are of the considered view that retrospective operation of explanation u/s.9(1)(vi) of the Act can't be used to deny the claim of the assessee as held by the Hon'ble Bombay High Court in the case of CIT v. M/s. NGC Networks (India) Pvt. Ltd., (ITA No. 397 of 2015 order dated 29.01.2018) where in at Para 3(e) to 3(g) in page 3 & 4 of the order, it was observed as under:

> (e) In the present facts, the amendment by introduction of Explanation-6 to Section 9(1)(vi) of the Act took place in the year 2012 with retrospective effect from 1976. This could not be have been contemplated by the Respondent when he made the payment which was subject to tax deduction at source under Section 194C of the Act during the subject Assessment Year, would require deduction under Section 194J of the Act due to some future amendment with retrospective effect.
>
> (f) Further, we also notice that under Section 40(a) (i) of the Act, under which the expenditure has been disallowed by the Revenue, meaning of royalty as defined therein, is that as provided in Explanation 2 to Section 9(1)(vi) of the Act and not Explanation 6 to Section 9(1)(vi) of the Act. Thus, the disallowance of expenditure under Section 40(a)(i) of the Act can only be if the payment is 'Royalty' in terms of Explanation 2 to Section 9 (1) (vi) of the Act. Undisputedly, the payment made for channel placement as a fee, is not royalty in terms of Explanation 2 to Section 9(1)(vi) of the Act. Therefore, no disallowance of expenditure under Section 40(a) (vi) of the Act, can be made in the present facts.

> (g) In the above view, as it is a self evident position from the reading Section 40(a) (i) of the Act, no substantial question of law. Thus, question (a) not entertained.

4.6 On this issue, without going into the other grounds raised by the assessee, based on the of the discussion (supra), we allow this ground of appeal of the assessee and direct the AO to allow the expenses incurred for purchase of software to the tune of Rs.1,03,21,040/- and other alternate grounds on this issue are left open.

5. Ground No.4 is regarding disallowance of Rs.11,64,109/- u/s.14A r.w.r.8D while computing book profit u/s.115JB of the Act.

5.1 In this regard, it is noted that there is no discussion by the AO on applicability of disallowance u/s.14A read with Rule 8D of the Income Tax Rules, 1962 (hereinafter in short 'the Rules') while computing book profit u/s.115JB of the Act. The AO has merely computed disallowance made under Rule 8D for normal provisions while computing book profit u/s.115JB of the Act as well.

5.2 Aggrieved, the assessee preferred an appeal before the Ld.CIT(A), who upheld the action of the AO by holding as under:

> The provisions of section 115JB of the IT Act are indeed a separate code by itself, but there is no prohibition on the AO to make the necessary additions laid down in Explanation I of section 115JB(2). which in clause (f) includes "the amount or amounts of expenditure relatable to any income to which section 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply. Hence, any expenditure incurred by the Appellant to earn an exempt income can be considered as an addition to book profits u/s.115JB as well"**.**

5.3 Aggrieved, the assessee is in appeal before this Tribunal.

5.4 We have heard both the parties and perused the material available on record. We note that assessee *suo-moto* disallowed expenditure u/s.14A of the Act an amount of Rs.16,06,664/- while computing of book profit u/s.115JB of the Act. According to the Ld.AR, provisions relating to normal tax computation can't be imported into sec.115JB of the Act which is a separate code by itself. In other words, Rule 8D computation for disallowance u/s.14A can't be used for making adjustment for computation of book profit u/s.115JB of the Act and relied on the decision of Special Bench of Tribunal in the case of ACIT v. Vireet Investment (P) Ltd., reported in [2017] 58 ITR(T) 313 (Delhi-Trib.) which decision has been upheld by the Hon'ble Bombay High Court. He also pointed out that the Ld.CIT(A)/NFAC in the assessee's own case for AY 2018-19 appreciated the aforesaid submissions of the assessee and allowed the claim of the assessee.

5.5 In the light of the aforesaid settled position of law, we allow the claim of the assessee and direct the AO to delete the addition of Rs.11,64,109/-.

6. In the result, appeal filed by the assessee in ITA No.361/Chny/2024 is partly allowed.

ITA No.482/Chny/2024 – Department appeal

7. **Ground No.1** is general in nature and so dismissed.

8. **Ground No.2** is regarding disallowance of depreciation and maintenance cost of aircrafts. The assessee had purchased aircraft in AY 2007-08 considering its increasing international business. The assessee had leased the aircraft to third parties for usage on which fees was earned by the assessee and which was offered to tax as business income and claimed depreciation & aircraft operating expenditure which was denied to the assessee by holding as under:

> "4) In order to prove that the said aircraft has been used, wholly and exclusively for the purpose of business, the assessee has to establish the usage of aircraft with the relevant Log Book Entries vis-a-vis the specific business activities carried out based on the above journey In the absence of details regarding specific business activities carried out based on the journey(s), the business exigency for owning and maintaining an aircraft is not convincingly proved 6) Also, the assessee has not furnished the requisite Log Books that are required to be maintained as per Rule 67 of the Aircraft Rule 1937."

8.1 Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who allowed the claim by taking note of the decision of this Tribunal in the assessee's own case for AY 2007-08 & 2008-09 by holding as under:

> "I have perused the order of the Hon'ble ITAT in Appellant's own case in AY 2007-08 and 2008-09 (supra) in which the ITAT directed the AO to verify the licensing requirements for claim of aircraft. Based on the direction, the AO passed a speaking order allowing the claim in favour of the Appellant, after duly verifying the licensing requirements and confirming all the facts involved. This decision of the Hon'ble ITAT for AY 2007-08 & 2008-09 (ITA No. 2838, 2839/Mds/2014) has been relied upon by my predecessor in the order for the Appellant in AY 2009-10 as well (ITA No. 21/CIT(A)-5/13- 14). Following the decision of the ITAT as well as the CIT(A) in Appellant's own case, this ground is allowed in favour of the Appellant.

8.2 Aggrieved, the assessee is in appeal before this Tribunal.

8.3 We have heard both the parties and perused the material available on record. We note that the assessee had purchased an aircraft in AY 2007-08 due to it increased business in international circuit. It is noted that at times the assessee has leased the said aircraft to third parties for use on which fees was earned and the same was offered to tax as business income. The AO called for the relevant log entries. According to the AO, the assessee couldn't give the details regarding specific business activities carried out based on the logbook entries, which could prove the business exigency for owning & maintaining aircraft. According to the AO, the assessee failed to furnish the requisite logbooks which are required to be maintained as per Rule 6 of Aircraft Rules, 1937. The Ld.AR countered the observations made by the AO and submitted that details regarding aircraft movement was duly submitted before the AO and referred to Page No.3 of the Paper Book. It was pointed out by the Ld.AR that the cost of Aircraft in 2006 was allowed as part of the opening WDV as on 01.04.2009 and depreciation allowance on opening WDV therefore is automatically available. It was pointed out by the Ld.AR that in the assessee's own case, this Tribunal for AYs 2007-08 & 2008-09 directed the AO to grant deduction for depreciation on aircraft operating expenditure after examining leasing requirements and the AO pursuant to

the order of the Tribunal after verification of the relevant facts vide impugned order dated 17.04.2017 being convinced allowed the claim for operating expenditure & depreciation on aircraft for AY 2007-08 [refer to Page Nos.21-37 of the PB]. The Ld.AR also brought to our notice that the Ld.CIT(A) for AY 2009-10 has already allowed the claim of the assessee. We note that in earlier year, similar issue had come up before this Tribunal and the Tribunal for AY 2007-08 & 2008-09 held as under:

> 17. The fourth ground raised by the assessee is that the Commissioner of Income Tax (Appeals) erred in confirming the disallowance of depreciation on Aircraft of ₹21,70,15,709/-.
>
> 17.1 The ld. Assessing Officer observed that during the current Year, the assessee had claimed depreciation to the tune of ₹.21,70,15,709/- towards the capitalization of Aircraft. In order to ascertain its usage wholly and exclusively for the purpose of assessee's business activity, the assessee was asked to substantiate its claim of depreciation by way of proving that the above aircraft has been used wholly and exclusively for the purpose of its business activity. In response to the same, the assessee replied that it has business in various states of India as well as its business activities has been expanded in the international arena. Further, it has stated that during the current year the sale by way of domestic and international marketing has increased substantially. Since the business activities are being located at the various places of the country and also to promote its business activities outside India, possession of an aircraft is essential for the assessee. In the assessment order, the ld. Assessing Officer has incorporated the relevant submissions of the assessee vide letter dated 13.12.2010 which is as under:-
>
> > "The purchase of aircraft has been made for the purpose of following reasons:-
> >
> > To improve its business
> > To increase its volume
> > To increase its global presence
> > To increase its exports
> > To increase its customer base and
> > To increase its customer service.
> > The above are evidenced by the
> >
> > i. Steep increase in export sales volume from year in year
> > ii. Acquisitions and investments in Joint Ventures abroad etc.

Accordingly, the appellant had stated before the AO that the question of disallowance of deprecation presuming that this is not expenditure incurred wholly and exclusively for the purpose of business, is entirely against the law and business prudence.

The assessee further stated before the AO that in view of generation of revenue by hiring chartering the aircraft to other corporate I users, it has applied to the DGGA, for obtaining "No-Objection Certificate (NOG)" for operating non-scheduled air services and it has obtained the NOG and 'Non-Schedule Operator Passenger License (NSOP) and carrying out the air service business from 2008-09 and started earning revenue from the aircraft as well: The AO rejected the reply of the assessee for the following reasons:-

1) It has been observed from the official website of Director General of Civil Aviation that the assessee has received the licence as NOli-Schedule Aircraft Operator with effect from 02.04.2009.

The type of aircraft passed by the assessee is Falcon 2000 with the seat capacity of ten (10) and the said aircraft has been registered under the passenger category.

2) As per the Aircraft Rule 1937, Part-IV Rule 30, the assessee has to register its aircraft in India even though the same has been used for the purpose of its personal or sole corporate purpose.

3) As per the Aircraft Rule 1937, Part-IX Rule 67, the assessee has to maintain the following Log Books. For better clarity, the Rule 67 of the Aircraft Rule 1937 is reproduced as under:-

> a) a journey log book;
> (b) an aircraft log book;
> (c) an engine log book for each engine installed in the aircraft;
> (d) a propeller log book for every variable pitch propeller installed in the aircraft;
> (e) a radio apparatus log book for aircraft fitted with radio apparatus;
> (f) any other log book that may be required by the Director-General.

(2) The Director-General may require that a technical log or flight log be provided in respect of an aircraft and be maintained in such manner as may be specified by him

(3) Log books shall be of such type and shall contain such information, entries and certification as may be specified by the Director-General. Log books and logs shall be preserved until such time as may be specified.

Explanation- For the purpose of this rule, the expression 'Journey log book" includes any other form or manner of re cording (he requisite information and acceptable to the Director General".

(4) Based on the 'above facts, it has been clear that, the assessee has got licence for the purpose of Non-Schedule Aircraft Operator only from the Financial Year 2009-10. It is further notable that the assessee cannot operate as Non-Schedule Operator without the permission of specific licence issued by the Director General of Civil Aviation for that purpose

(5) In order to prove that the said aircraft has been used wholly and exclusively for the purpose of business, the assessee has to establish the usage of aircraft with the relevant Log Book Entries vis-a-vis the specific business activities carried out based on the above journey

(6) Since the assessee has not furnished he requisite Log Books maintained as per Rule 67 of the Aircraft Rule, 1937, the assessee has failed to establish that the above aircraft has been used wholly and exclusively for the purpose of assessee's business.

The ld. Assessing Officer stated the depreciation claimed on the above said aircraft, which has been purchase for the personal use instead of the business activity of the assessee cannot be allowed as deduction. Hence, the ld. Assessing Officer added to the total income of the current year. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals).

17.2 In the appellant proceedings, the ld. Commissioner of Income Tax (Appeals) considered the facts of the case and the submissions of the ld. Authorised Representative. He was of opinion that no one can operate as non-schedule operator without the permission and specific licence issued by the Director General of Civil Aviation (DGCA). In the instant case, the AO has observed that the assessee who has owned the aircraft Falcon 2000 with the seating capacity of 10, has received the licence from the DGCA as non-schedule aircraft operator w.e.f. 2.4.2009 relevant to F.Y. 09- 10. Since the assessee is not having valid licence to operate the aircraft in the financial year relevant to A.Y. 07-08, it cannot claim depreciation on such aircraft. There is no comment from the assessee side to deny this fact. In view of this, the ld. Commissioner of Income Tax (Appeals) confirmed the disallowance made by the Assessing Officer and dismissed the ground of the assessee. Aggrieved by the order, the assessee filed an appeal before Tribunal.

17.3 Before us, the ld. Authorised Representative submitted that during the assessment year, the assessee company has procured an aircraft and put to use wholly and exclusively for the purpose of its business. The aircraft is being used by the assessee's senior management personnel for making the trips relating to its business and the assessee's customers (including prospective customers). The assessee has made the depreciation claim u/s 32 on the aircraft to the extent of ₹.21,70,15,709/-. The assessee company had furnished the reasons to the ld. Assessing Officer why it is necessitated for it to buy an aircraft on its own. But the assessing officer has disallowed the depreciation claim of the assessee stating that the assessee has not furnished the log books to establish that the aircraft is being used wholly and exclusively for the purpose of assessee's business. The ld. AR submitted that the log book details were never been called by the assessing officer. Therefore, the assessing officer is not a tall justified in making a disallowance based on a detail which has

not been called by him. The ld. Authorised Representative explained the details of trips made during the assessment year 2007-08 and prayed for allowing the ground.

27.4 On the other hand, the ld. Departmental Representative relied on the orders of the Commissioner of Income Tax (Appeals) and vehemently opposed to the grounds.

17.5 We heard the rival submissions and perused the material on record. In our opinion if the Aircraft is kept ready for use for the business purpose, the assessee is entitled for depreciation. Before us, the ld. Authorised Representative submitted that Aircraft was kept ready for usage and permission from Director General of Civil Aviation is not necessary for assessee's own use but giving the Aircraft on hire to others it requires permission. In our opinion whether specific licence to use the Aircraft for assessee's own business purpose is required or not to be required to be examined by Assessing Officer to so as to grant depreciation. Accordingly, the ld. Assessing Officer is directed to examine the issue afresh and decide accordingly. This ground of the assessee is partly allowed for statistical purpose.

8.4 As noted (supra) after verification as ordered by this Tribunal, the AO has allowed the claims of the assessee, i.e., both claims of depreciation on aircraft as well as the claim of operating expenditure as directed by the Tribunal in AY 2007-08 & 2008-09. In the light of the order of the Tribunal (supra), we set aside the impugned order back to the file of the JAO to examine this issue as directed in the order of the Tribunal dated 23.09.2016 in the assessee's own case and pass order in accordance to law after hearing the assessee.

9. Ground No.3 of the Revenue's appeal is regarding depreciation on UPS @60% granted by the Ld.CIT(A) instead of 15% granted by the AO. The assessee claimed depreciation @80% on the UPS. The AO was of the opinion that the UPS regulate the supply of electricity and doesn't save electricity/energy. Therefore, according to the AO, it can't be treated as

energy saving device and therefore, it is not eligible for depreciation @80% and allowed the depreciation @15%.

9.1 Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who noted that the decision of this Tribunal in AY 2005-06 to 2007-08 & AY 2009-10, wherein, depreciation was granted @ 60% since it was part of the computer accessories. Therefore, the Ld.CIT(A) directed the AO to grant depreciation @ 60% and also directed him to recalculate WDV as on 31.03.2010 in respect of the differential depreciation of 20% not granted to the assessee and rework the depreciation eligible for the subsequent years.

9.2 We have heard both the parties and perused the material available on record. We note that the assessee claimed depreciation @ 80% on UPS, stabilizers, etc., as part of block of Energy saving equipment, since Automatic power cut-off devices mounted on motors/ Automatic voltage controllers were eligible for depreciation @ 80%. Reliance was placed on decisions of Harita Finance Ltd, in ITA No.193/Mds/91 and Godfrey Philips India Ltd. v. ACIT in ITA Nos 7682/Mum/2010. However, we note that in the assessee's own case, when similar claim came up before this Tribunal in AY 2005-06 & 2009-10 (supra), this Tribunal allowed depreciation @ 60% since it is part of the computer accessories and which has been granted by the Ld.CIT(A). Therefore, we don't find infirmity in the action

of the Ld.CIT(A) and uphold his action and **dismissed** the Ground of the Revenue.

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

Order pronounced on the 25th day of September, 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: 25th September, 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