आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

1. आयकरअपील सं. ITA No.960/Chny/2022
(निर्धारणवर्ष / Assessment Year: 2015-16)
&
2. आयकरअपील सं. ITA No.958/Chny/2022
(निर्धारणवर्ष / Assessment Year: 2016-17)

DCIT Central Circle-2 Coimbatore.	बनाम/ Vs.	**M/s. Pooja Marketing** #181/1450, Ground floor, Motilal Nagara No.1, Goregaon West, Mumbai-400 104.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AAOFP-2090-F**		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी कीओरसे/ **Appellant by**	:	Shri Sridharan (Sr. Advocate), Shri Ravi Sawana & Ms. Krishna Laasya (Advocates)-Ld. ARs
प्रत्यर्थीकीओरसे/**Respondent by**	:	Shri R. Clement Ramesh Kumar (CIT) & Shri P. Sajit Kumar (JCIT)-Ld. DRs

सुनवाई की तारीख/**Date of final hearing**	:	12-09-2024
घोषणा की तारीख /**Date of Pronouncement**	:	09-10-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by revenue for Assessment Years (AY) 2015-16 & 2016-17 arises out of common order passed by learned first appellate authority. The facts as well as issues are stated to be identical in both the years. First, we take up appeal for AY 2015-16 which arises out of an

order passed by learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] on 29-08-2022 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) on 29-12-2017. The registry has noted delay of 7 days in both the appeals which stand condoned. The primary issue that fall for our consideration is to determine the head of income under which prize winning from unsold lottery tickets would be assessable to tax. The revenue's grounds of appeal read as under: -

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.
2. The Ld.CIT(A) erred in holding that the prize winning from the unsold lottery tickets amounting to Rs.46,83,67,965/- is part of business income and directing the Assessing officer to allow the assessee to debit the expenditure of Rs.51,18,57,848/- towards purchase of unsold lottery tickets and credit the prize winnings from the unsold lottery tickets in P&L account considering this as business activity.
2.1 The CIT(A) erred in holding that the prize winnings from unsold lottery tickets is a part of business income, though it falls under the head "Income from other sources". An item of income coming under an exclusive head cannot in any circumstances be charged under another head. Reliance is placed on the Hon'ble Supreme Court's decision in the case of Bihar State Cooperative Bank Ltd Vs CIT(l 960) 39 ITR l 14(SC) and United Commercial Bank Ltd Vs CIT, 32 ITR 688.
2.2 The CIT(A) erred in failing to appreciate that winning from Lotteries is classified as income u/s.2(24)(ix) of the Act. The same has to be assessed as "Income from other sources" as per the provisions of Sec.56(2)(ib). As per the Sec. 58(4), the assessee is not entitled for any item of expenditure against winning from lotteries. The assessee is required to pay tax @30% on Winnings from Lottery as per Sec.1l5BB of the Act.
2.3 The Ld. CIT(A) failed to appreciate that the assessee' had purchased lottery tickets from M/s. Future and M/s. Teesta. The assessee has also returned tickets in substantial number. Therefore, prize winning retrieved from unsold lottery tickets cannot be considered as retrieval of the cost of tickets. By holding such tickets, the assessee has participated in the draw.
2.4 The Ld.CIT(A) erred in failing to appreciate that the prize winnings arose from the remaining unsold lottery tickets which were available with the assessee at the time of draw, on which TDS @30% u/s. 194B has been deducted. This would itself prove that the assessee was holder of ticket and accordingly participated in the draw.
2.5 The Ld.CIT(A) erred in holding that the prize winning from unsold lottery tickets to be considered as business income and not under the head "Income from other sources without appreciating the decision of Hon'ble Supreme Court in the case of United Commercial Bank Ltd Vs CIT, 32 ITR 688 in which it was held as follows:
"The view that a certain item of income is capable of falling under more than one head, in which case there would arise and option for the assessee to choose whichever head is advantageous to him, is not warranted by provisions or the Scheme of the Act"
In the instant case, the assessee has no option to offer the prize winning from unsold lottery tickets as business income when the Act provides for the assessment of income from winning of lotteries u.s.56(2)(ib) as "Income from other sources".

3. The Ld.CIT(A) erred in relying on the decision of the Hon'ble ITAT Mumbai in IT A No.2596/Mum/2019 dated 24/05/2021 in the assessee's own case for the AY 2014-15 against the Revision order u/s.263, without appreciating the fact that the above order is contested by the department by filing appeal before the Hon'ble High Court of Madras and the matter has not attained finality.

3.1 The ld. CIT(A) erred in relying on the ITAT's decision in which it was held that even if the winnings from the unsold lottery tickets is treated as "Income from other sources" then the set off of losses under the head "Business income" against the Income under the head "Income from other source" under section 71 of the Act would be allowed and tax effect thereof will be revenue neutral. The CIT(A) erred in failing to appreciate that both the business income (after excluding the cost of tickets debited and Prize winnings credited) as well as "Income from other source" (i.e) Prize winning from unsold lottery tickets would be positive for A Y 2015-16 and there would be no question of set off of loss after applying the provisions of Sec.58(4) in the computation of income under the head "Income from other Sources. Hence there would be no revenue neutral for asst. year 2015-16.

3.2 The Ld.CIT(A) erred in failing to appreciate that 'the Assessing officer relied on the decision of the Hon'ble Kerala High Court in the case of CIT Vs Manjoo & Co, in which it was held that the income from winning of lotteries from unsold tickets by a whole sale distributor did not involve business activity. The ITAT distinguished the facts of the above case stating that the said decision was not concerned with set off of loss u/s.71 of the Act. In the assessee's case also, both the business income (after excluding the cost of tickets debited and Prize winnings credited) as well as "Income from other source" (i.e) Prize winning from unsold lottery tickets would be positive for A Y 2015-16 after applying the provisions of Sec.58(4) in the computation of income under the head "Income from other Sources and there would be no question of set off of loss. The Kerala High Court held that participation in draw which alone can win lottery prize does not involve any business. Hence, the assessing officer in the instant case rightly assessed prize winning from unsold lotteries under the head "Income from other sources" and not allowed deduction of expenditure towards cost of unsold tickets u/s.58(4).

3 .3 The Ld.CIT erred in relying on the decision of ITAT in the assessee' s own case without appreciating that the ITAT has relied on the decision of Hon'ble Apex Court in the case of State of Andhra Pradesh Vs. H Abdul Bakshi and Bros, 15 STC 644 (SC) rendered in the context of sales tax proceedings to distinguish the decision of Manjoo & Co. Unlike sale tax provisions, the Income tax act has specific provisions governing winnings from lottery (ie) 56(2)(ib) r.w.s.2(24)(ix) r.w.s 58(4). Hence, the facts of the case of Manjoo & Co is applicable in respect of the proceedings under Income tax Act.

3.4 The clauses 12 & 13 of the agreement with Mis. Future gaming solutions with the assessee (in the assessment order 2015-16) reads as follows:

"12 That the second party fully settle claims of prize-winning tickets upto Rs.10,000/- and/or such limits as may be prescribed under the Income tax Act, 1961 from time to time as not being subject to TDS. This amount paid for settlement of the Prize Claim as mentioned above by the second party will be adjusted against its dues to the First Party. The Prize-winning tickets in respect of which the prizes are settled by the Second party shall be forwarded to first party along with the statement of adjustment.

13. All prize money above Rs.10,000/- or such other limits as may be specified by the Income tax Act, 1961 from time to time which are subject to TDS shall be paid by the Director of respective State Lotteries of the respective State Government to the prize winners on production of original prizewinning tickets"

From the above it is clear that there is no difference between winning from lotteries sold and tickets remaining unsold with the assessee. Hence, the winning from Lotteries from unsold tickets would not partake the character of business receipts.
4. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

2. The Ld. CIT-DR as well as Ld. Sr. DR advanced arguments qua the head under which income from winning from lotteries would be assessable to tax. The revenue assailed the impugned order and filed various written submissions from time to time to support the assessment order. Per Contra, Ld. Sr. Counsel, Shri V. Sridharan, assailed the arguments of revenue and relied on various judicial pronouncements and in particular, the favorable decision of Mumbai Tribunal in assessee's own case in ITA No.2596/Mum/2019 dated 24-05-2021. The copy of the same has been placed on record. The Ld. Sr. Counsel submitted that all the aspects as argued by revenue have duly been considered in the aforesaid decision. It has further been submitted that apparently the order of Mumbai Tribunal has attained finality since the assessee has not received any memo of the appeal filed by the revenue-appellant before the Hon'ble High Court challenging the said decision. The written submissions have also been filed on behalf of the assessee. The same has duly been considered by us while adjudicating the appeals. Though the impugned issue has vehemently been argued by revenue, however, it is undisputed position that the impugned issue is squarely covered in assessee's favor by the aforesaid decision of Mumbai Tribunal. The case was put up for clarification which was duly responded to by both the sides. In the above background, having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee being a resident partnership firm is stated to act as reseller of government paper lottery tickets. It transpired that the assessee credited sum of Rs.46.83 Crores under the head 'prize money from unsold lottery tickets' in the Profit & Loss Account and the assessee reflected net profit of Rs.1.68 Crores which was offered as business income. The assessee claimed credit of TDS as deducted by the Director of Lotteries of Sikkim and Director of Lotteries of Mizoram u/s 194B of the Act. In other words, the assessee considered winning from unsold lottery tickets as business income and claimed set-off of various expenses inclusive of cost of tickets against the said winning.

3.2 The Ld. AO formed an opinion that the aforesaid winning would be separately chargeable to tax under the head 'income from other sources'. The same was on the reasoning that the provisions of Sec.14 prescribe different head of income for which separate mode of computations has been provided in the tax statute. These heads are mutually exclusive as judicially settled. The Ld. AO observed that the income as defined in Sec.2(24)(ix) include winning from lotteries, cross word puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever. The above income was classified u/s 56(2)(ib) and thus for all purposes of taxation, winning from lotteries would be considered under this head only. The relevant provisions of Sec.56(2) read as under: -

(1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items *A* to *E*.
(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely -
(*i*) dividends;

(*ia*) income referred to in sub-clause (*viii*) of clause (*24*) of section 2;
(*ib*) income referred to in sub-clause (*ix*) of clause (*24*) of section 2

Thus for the purpose of taxation, the legislature included winning from lotteries u/s 56(2)(ib) of the Act and the same, therefore, would fall under residuary head of income as contemplated u/s 56.

3.3 The Ld. AO further noted that the provisions of Sec.57 provide that expenditure could be allowed in earning the income as referred to in Sec.56. However, the provisions of Sec. 58(4) prohibit claim of any such expenditure against the same. The provisions of Sec.58(4) provide that in case the assessee has any such income as chargeable under the head income from other sources, no deduction in respect of expenditure or allowance in connection with such income shall be allowed under any provisions of this act in computing the income from such winnings. The relevant provisions read as under: -

"In the case of an assessee having income chargeable under the head "Income from other sources" no deduction in respect of any expenditure or allowance in connection with such income shall be allowed under any provisions of this Act in computing the income by way of any winnings form lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever:

Thus, as per the provisions of Sec. 58(4), the assessee would not be entitled to claim any expenditure against such winnings. Further, as per Sec.115BB, the assessee is required to pay tax @30% on winning from lotteries.

3.4 Proceeding further, Ld. AO observed that the provisions of Sec.194B put an obligation on person responsible for payment of any income by way of winning from lotteries to deduct tax at specified rates at the time of payment thereof. The same was done in the present case.

3.5 The Ld. AO finally concluded that the legislature has stipulated that winnings from lottery cannot be computed except within the meaning of the provisions of Section 56(2) r.w.s 2(24)(ix) of the Act. Further no deduction of any kind within the meaning of the provisions of Sec. 58(4) could be allowed to the assessee. As per the provisions of Section 115BB of the Act, tax liability on such income is to be computed at the rate of 30%. Therefore, Ld. AO proceeded to disturb the computations made by the assessee.

3.6 The assessee vehemently opposed the proposed action of Ld. AO and inter-alia, submitted that the prize money was nothing but part of the income generated from the business of distributing lottery tickets. The assessee drew attention to the respective agreements to submit that the unsold tickets which could not be returned to the organizers, contained the prize money which is paid by the assessee-firm as cost of the lottery tickets i.e., unsold lottery tickets remained with the assessee and hence the said prize money in respect of the said unsold tickets lying with the assessee-firm would be the refund of the cost incurred by the assessee-firm or a part of the sale proceeds on sale of tickets. By no stretch of imagination, such prize money from unsold tickets lying with the assessee-firm could be said to be winning from lotteries because the assessee-firm had not purchased the said lotteries for winning prize and the assessee firm had not taken part in the lottery draws. The prize money from unsold tickets lying with the assessee firm has reduced the cost of the lottery tickets which were distributed by the assessee. Reliance was placed on various judicial decisions to support the submissions.

3.7 However, not convinced, Ld. AO rejected the submissions of the assessee on the ground that the assessee had entered into Agreement with M/s Future Gaming Solutions India Pvt. Ltd. ('future' in short) in respect of lottery tickets of State of Sikkim lottery. Similar agreement was entered with M/s Teesta Distributors for sale of lottery tickets of State of Mizoram. Both the agreements were almost similar / identical. As per the agreement with 'future', the assessee was the sole purchaser of the tickets of State of Sikkim from 'future' at rates decided by them. The assessee had purchased the tickets at much lower rate than the Maximum Retail Price (MRP) of the tickets. As per the agreement, the Government had sold out entire lottery tickets to both these entities, who, in turn, sold the same to the assessee for subsequent sale. In executing the same, the assessee had appointed stockist for sale and distribution thereof. At each level, the selling price was determined by seller with a profit motive. In other words, each seller became a separate entity for determining the sale price with a condition that the price should not exceed the MRP as fixed by the state governments. Therefore, the argument that the purchaser stepped into the shoes of the seller could not be accepted. The respective agreements were for sale and purchase of tickets. The agreement did not distinguish winning from tickets sold by the assessee and the tickets remaining unsold with it.

3.8 The Ld. AO, upon analysis of financial statements, noted that tickets remaining unsold with the assessee during the year were 40.22% of purchased tickets. The tickets remaining unsold were 4,61,11,046 out of which the assessee reflected winning of Rs.46.83 Crores from 33,51,897 tickets. The entire purchases were debited to Profit & Loss

Account. The same clearly established that the assessee had purchased the tickets from the sellers thereof.

3.9 The assessee made another argument that the prize winning from unsold tickets was nothing but refund of the price which the assessee had paid for distributing the tickets. However, Ld. AO held that by purchasing the tickets, the assessee became the absolute owner / holder of the tickets. As per the terms and conditions of relevant agreements, the assessee was to sell the aforesaid tickets. Accordingly, the sale consideration thereof compensated for the cost of the tickets. As a matter of fact, the assessee's activities were two-fold. Firstly, earning of profit on account of sale of tickets at a higher price than the cost borne out by it which would adjust the cost price of the tickets as explained by it and the same would certainly constitute business income. The second activity of the assessee was the winning from the unsold lottery tickets. This activity, by no stretch of imagination, could be termed as business activity. The word ‘lottery’ itself points chance for prize. There must be some consideration to be paid for taking the chance. Thus, as the assessee had purchased the tickets by paying certain amount as discussed at length in the preceding paras, the prize from such lottery by chance would not take colour of retrieval of the cost of tickets as explained by the assessee. Accordingly, by holding the tickets, the assessee had participated in the draw. The Ld. AO distinguished the case laws being relied upon by the assessee.

3.10 It was finally held by Ld. AO that winning from lotteries from unsold lottery tickets would be chargeable to tax as ‘income from other sources’ as per Sec.56(2)(ib) r.w.s. 2(24)(ix) which would be subject to tax at rates specified u/s 115BB. The assessee is not permissible to claim any

expenditure against the same. The value of unsold tickets constitutes expenditure incurred by the assessee for such winnings. Accordingly, the purchases were reduced to that extent and the assessment was framed.

Appellate Proceedings

4. The Ld. CIT(A), upon perusal of case records and assessee's submissions, concurred that the impugned issue stood covered in assessee's favor by the decision of Mumbai Tribunal in assessee's own case for AY 2014-15, ITA No.2596/Mum/2019. The Ld. CIT(A) discussed the ratio of aforesaid decision of Tribunal in impugned order from para 5.2 onwards. The Tribunal held that such prize winnings would be Business Income for the assessee. Alternatively, if the winnings from unsold lottery tickets are treated as 'Income from other sources', even then the set-off of Business Loss against such income would be allowed in terms of Sec.71 and therefore, the ultimate effect would be tax neutral. The Tribunal also held that the since the assessee was carrying on the business of distribution of lottery tickets, it does not take part in draw like an individual purchasing lottery tickets for taking a chance of winning prizes and therefore, the winning from unsold lottery ticket is not winning from lottery tickets which would be taxable u/s. 2(24)(ix) r.w.s. 56(2) of the Act. It was further held that pre-amendments by the Finance Act, 1972 and the post amendments, the position of the person carrying on business of distributing lottery tickets, had not changed and it is business income for the assessee and not winning from lottery tickets which is chargeable to tax u/s. 2(24)(ix) r.w.s. 56(2) of the Act and consequently the provisions of section 58(4) of the Act would have no application. The decision of Hon'ble Karnataka High Court in the case of **Mysore Sales International Ltd. vs. CIT (117 ITR 64)** still hold the field and this

decision had become final as no further appeal was preferred to the Hon'ble Supreme Court by the appellant. The facts in that case were held to be identical. The decision of Kerala High Court in the case of **CIT vs. Manjoo & Co. (335 ITR 527)** was held to be factually distinguishable and would not apply. The decision of Hon'ble Allahabad High Court in the case of **J. N. Sharma vs. ACIT (270 CTR 594)** has not categorically decided that the heads of income but it has been held that irrespective of the head of income, the winnings shall be taxed at a special rate u/s 115BB of the Act. There was absolutely no quarrel regarding the applicability of tax rate u/s 115BB of the Act.

5. Having quoted the substantive portion of aforesaid decision of Mumbai Tribunal, Ld. CIT(A) finally held that the prize winnings would be part of business income and the assessee was eligible to set-off its losses against this income. The Ld. AO was accordingly directed to allow the assessee to debit the expenditure towards purchase of unsold lottery tickers and credit the prize winning in Profit & Loss Account by considering the same as business activity only. Aggrieved, the revenue is in further appeal before us.

Our findings and Adjudication

6. The Ld. CIT-DR, in its written submissions has stated that the assessee has not treated the tickets as stock-in-trade since the assessee has not reflected any opening or closing stock in its financial statements. The same would mean that the assessee's intention was not to treat the winning as business receipts but as prize money from tickets which have remained unsold in the relevant lottery scheme. Therefore, such winning would be classified u/s 2(24)(ix) r.w.s. 56(2)(ib). It has also been submitted that Ld. CIT(A) as well as Mumbai Tribunal has not

looked into all these aspects / facts. Accordingly, Ld. CIT(A) has prayed for restoring this issue back to the file of Ld. CIT(A).

7. The Ld. Sr. DR, in its written submissions, has stated that the assessee has returned back certain percent of unsold tickets and held back some unsold tickets. The same would show that the assessee intentionally held the tickets with it to participate in the lottery scheme on its own. It is also evident that TDS has been deducted u/s 194B at higher rates of 30%. If the prize money was out of trading stock that remained unsold, then TDS should have been deducted u/s 194G at lower rate of 5%. Having reported the winnings separately by the assessee in its financial statements, AO was right is taxing the same u/s 2(24)(ix) and apply consequential provisions. It has also been urged by the revenue that the aforesaid decision of Mumbai Tribunal was in the context of challenge to revisionary jurisdiction u/s 263 and therefore, Ld. CIT(A) should have adjudicated the issue with independent application of mind. The Ld. Sr. DR also submitted that the decision of Hon'ble Supreme Court in the case of State of Andhra Pradesh vs. H Abdul Bakshi as relied upon by Mumbai tribunal was a sales tax issue whereas in the Income Tax Act, there are separate provisions governing taxation of lottery winnings. The Ld. Sr. DR also submitted that if the winnings are computed under the head income from other sources, the same would not be tax neutral.

8. The Ld. Sr. Counsel, on the other hand, referred to various findings of Mumbai Tribunal in assessee's own case and submitted that facts in AY 2014-15 are quite identical to the facts in AY 2015-16 and therefore the aforesaid decision would have an equal application in this year.

At the same time, Ld. Sr. Counsel stated that the decision of Hon'ble High Court of Madras in the case of **CIT vs. Dr. M.A.M. Ramaswamy (53 Taxmann.com 231)** is distinguishable since the issue therein was whether the loss sustained in the business of owning and maintaining of race horses could be set-off against the income from betting of horse races. Thus, the issue was related to allowability of set-off of business loss against the income from betting and gambling. The assessee, in that case, had suffered loss on account of owning and maintaining horse races but had earned income from betting and gambling. The loss incurred on account of owning and maintaining of race horse is specifically prohibited to be set-off from any other source / head u/s 74A(3) of the Act. However, in the present case there is no such restriction of set-off of business loss against income from lottery either u/s 70 / 71 / 74A or u/s 115BB of the Act. Prior to Finance Act, 1986, sub-section (1) and (2) to Sec.74A provided that the loss from lotteries etc. shall be set-off against income from lotteries only. By the Finance Act, 1986, these two sub-sections were omitted and thus, the bar on set-off of losses was removed. Second distinction is the fact that, in that case, the assessee did not contend that betting income would be income from owning and maintaining of the horse races. However, in the present case, the winnings realized on unsold tickets are realization of closing stock of unsold lottery tickets. This prize money so earned by the assessee was business income which was realized during the course of business of distribution of lottery tickets.

Regarding revenue's written submissions on stock-in-hand, it has been submitted that this contention has already been dealt with by Mumbai Tribunal in its order. The factual position, in this regard, has already

been noted in para 4.1.1 and para 4.1.2 in the order of Mumbai Tribunal. It has been noted that in respect of draws to be held in the next year, there would be no opening and closing stock since the purchase and sale invoices would be raised in the next year only. For the draws that were to be held in the same financial year, the value of unsold tickets would become zero. The assessee, would, therefore, have no stock in its financial statements.

Referring to various finding of Mumbai Tribunal, it has finally been submitted that the purchase price paid for lottery tickers was for onwards distribution of tickets to the stockiest. The purchase price could not be bifurcated between those tickets which have been sold to the stockiest and the unsold lottery tickets which have fetched prized money. The prize winnings are nothing but realization of unsold lottery tickets during the course of business. The Ld. Sr. Counsel thus opposed any interference in the impugned order.

9. After going through the order of Mumbai Tribunal in assessee's own case for AY 2014-15, ITA No.2596/Mum/2019 order dated 24-05-2021, we concur that all the aspects / facts of the matter as well as applicable case laws have elaborately been dealt with by the co-ordinate bench in its order. The bench has not only considered the validity of revisionary jurisdiction u/s 263 but also decided the issue on merits. After much deliberation, the impugned issue has ultimately been decided in assessee's favor. The case law of Hon'ble High Court of Madras in the case of **CIT vs. Dr. M.A.M. Ramaswamy (53 Taxmann.com 231)** has elaborately been distinguished by Ld. Sr. Counsel in its written submissions. The same has already been deliberated upon by us in preceding paragraphs. The same found our concurrence. Further,

nothing has been shown to us that the aforesaid decision of Mumbai Tribunal has been reversed by higher judicial authorities in any manner or the same is not applicable to the facts of this year. No distinguishing feature has been shown to us. The issue, on merits, has elaborately been dealt with by the Tribunal in its order. Under these circumstances, respectfully following the aforesaid decision of Mumbai Tribunal in assessee's own case, we dismiss the appeal of the revenue.

10. Facts in AY 2016-17 are quite identical. The order of Ld. AO is on similar line. The impugned order is a common order for both the years. Therefore, our adjudication as above, shall *mutatis-mutandis* apply to this year also.

11. In the result, both the appeals stand dismissed.

Order pronounced on 9th October, 2024

Sd/-	**Sd/-**
(MANU KUMAR GIRI)	**(MANOJ KUMAR AGGARWAL)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 09-10-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF