

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T(SS).A. No.518/Ahd/2019  
(Assessment Year: 2015-16)

Flourish Purefoods Pvt. Ltd., 11-12, ECS House, Garden View, Nr. Global Hospital, Bodakdev, Ahmedabad-380054	Vs.	Deputy Commissioner of Income Tax, Central Circle-2(1), Ahmedabad
[PAN No.AADCV2683B]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

I.T.A. No.30/Ahd/2022  
(Assessment Year: 2016-17)

Flourish Purefoods Pvt. Ltd., 22-23, Claris Corporate Headquarters, Nr. Parimal Crossing, Ellisbridge, Ahmedabad-380006	Vs.	Deputy Commissioner of Income Tax, Central Circle-2(1), Ahmedabad
[PAN No.AADCV2683B]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Tushar Hemani, Sr. Adv. & Shri Parimalsinh B. Parmar, A.R.
<b>Respondent by:</b>	Shri B. P. Srivastava, Sr. D.R.

<b>Date of Hearing</b>	19.09.2024
<b>Date of Pronouncement</b>	16.12.2024

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

Both appeals have been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-12, (in short “Ld. CIT(A)”), Ahmedabad vide orders dated 22.08.2019 & 02.12.2021 passed for A.Ys. 2015-16 & 2016-17.

2. These are two appeals filed by the assessee, first appeal being against the quantum additions relating to addition on account of refund of advances under section 68 of the Act and disallowance of claim of depreciation u/s 32 of the Act and the second appeal is against the penalty confirmed u/s 271(1)(c) of the Act relating to disallowance of claim of depreciation. Since common facts and issues for consideration are involved for both the years under consideration, both the appeals are being taken up together.

3. In the appeal relating to quantum additions in ITA No. 518/Ahd/2019, there are primarily two additions, which are the subject matter of appeal.

**The first addition relates to addition of a sum of ₹ 4, 23, 26, 800/- under section 68 of the Act:**

4. The brief facts relating to this Ground of Appeal are that the assessee is engaged in the business of manufacturing of milk and milk products and trading thereof. A search was conducted on the Claris Group of cases on 04/08/2015 where the assessee company was also covered and various incriminating documents and materials were found and proceedings u/s 153A of the Act. M/s Claris Lifescience Ltd., a flagship company of the assessee Group was also covered which was engaged in business of Pharmaceuticals and specialized in injectable products. It was observed that this company and the other companies of the Group had received large amounts to the tune of several crores in the form of RTGS/ DD (Demand Drafts) /PO (Pay Orders) from M/s Jalaram Finvest Ltd. (JFL), a flagship concern of Shri Dahyalal Thakkar which was engaged in cheque discounting and issue of cheques / DD / PO and / or transfer funds through RTGS against cash and / or post dated

cheques and charged commission for the said activities. Shri Dahyalal Thakkar and his various concerns were engaged in the activities of providing accommodation entries to the beneficiaries. Search and survey operations were conducted in the case of Shri Dahyalal Thakkar on 16/01/2014. In his statement recorded u/s 132(4), Shri Dahyalal stated that he had issued DD/ Pay orders, and transferred funds through RTGS **against receipt of cash and neither he nor any of his concerns was engaged in business of giving advances / loan etc. and that no investment had been made as share capital or share application money in any company through Jalram Finvest Limited or other concerns.** During the F.Y. 2014-15 (related to the A.Y. 2015-16 under consideration) the assessee had received credits amounting to Rs. 4,23,26,800/- from Jalaram Finvest Ltd. and Social Cooperative Bank and Gujarat Mercantile Cooperative Bank Ltd. The evidence in the form of soft data was seized from the premises of M/s Claris Lifesciences Ltd. and it was seen that **the assessee had recorded the amount as “sales” in its books of accounts.** The assessee vide reply dated 15/11/2017 and 19/12/2017 **had submitted that it had made advances to suppliers of capital goods but as the implementation of the project for which the advances were made was deferred (abandoned) the amounts were received back which were appearing as receipts in the books.** The assessee's vide reply dated 26/12/2017 (at Page 6 & 7 of the assessment order) contended that the company was putting up a project for **Ultra Heat Treatment Milk Plant at an estimated cost of Rs.60 crores for which term loans from Vijaya Bank and United Bank of India were availed.** **However, the execution of the project was abandoned and the term loan availed was fully repaid by infusing unsecured interest free deposits**

**made by the directors of Rs.27 crores as well as increasing the share capital by Rs.5 crores.** The assessee had made advances to various suppliers of machinery which were refunded (the amount aggregating to Rs.4,23,26,800/-). However, the AO noted that though the advances were made to M R Traders, Changodar Steel Stores, Rajvir Trading Company, Sheosons India, Excel Enterprises and Batliwala Processing Engineering, **the amounts received back were from different parties namely - Sahyog Corporation, Arihant Organisation, Dhanlaxmi, Shree Ram Enterprise etc - the entities controlled by Jalram Finvest Limited/Dahyalal Thakkar, an accommodation entry operator.** The explanation of the assessee was not found to be acceptable to the AO as the receipts were from Jalram Finvest Limited/Dahyalal Thakkar and other benami concerns which are known entry providers and thus the assessee had failed to prove the genuineness of receipts being actually capital advance received back. The assessee furnished copy of ledger accounts of parties to whom capital advances were given and subsequently received back **but name of the parties to whom advances were given did not match with the name of the parties from whom the amounts were received back in the books of the assessee.** Accordingly, an addition of Rs.4,23,26,800/- was made u/s 68 of the Act.

5. The assessee filed appeal before Ld. CIT(Appeals) against the order of the Assessing Officer. Before CIT(Appeals) it was submitted by the assessee that the amount was refund of the advances made earlier to various suppliers of machineries in relation to installation of UHT which was later abandoned. CIT(Appeals) was of the view that the explanation of the assessee was prima

facie untenable. Ld. CIT(Appeals) did not find any merit in the contention of the assessee that the addition was made by the AO on the basis of statements of Shri Dahyalal Thakkar and that the assessee should have been provided opportunity to cross examine him. During the appeal proceedings vide submission dated 06/05/2019 the assessee furnished the confirmations from MR Traders, Changodar Steel Stores, Rajvir Trading Company, Sheosons India, Excel Enterprises and Batliwala Processing Engineering which being new / additional evidences were forwarded to the AO who submitted his remand report dated 31/05/2019 stated that the additional evidences should not be admitted because the appellant has no sufficient cause which prevented it to produce the evidences before the AO. On merits, the Assessing Officer observed that the confirmations are on plain papers and no copies of ITRs and bank accounts of the parties have been submitted and therefore in absence of complete details of identity and credit worthiness of the parties, the genuineness of transactions were also not established. In the rejoinder to the Remand Report, the assessee contended that it had furnished confirmation from the concerned parties which had categorically stated that they had received the amount as advance from the assessee for purchase of certain capital goods and that on cancellation of the order, the advances had been refunded to the assessee and that the assessee had also filed copy of the ledger accounts of the respective parties reflecting the transactions in question. It was submitted by the assessee that the AO did not make independent enquiries with said parties. Ld. CIT(Appeals) on examination of the additional evidences filed by the assessee (comprising of copies of ledgers in the books of the assessee, the copies of the purchase orders from the assessee to the concerned parties, letter of the assessee to the bank to disburse the

amount to those parties and the copies of the confirmations from those parties) observed that as to the confirmations from the parties it is seen that they are on plain papers (not letter pads of the respective concerns) and the name of the signatories are not mentioned. The layout/formatting of all the confirmations are similar which makes the confirmations doubtful and being generated from same office/computer. No PAN, no ITR, no bank account of the parties have been furnished to support the claim. Ld. CIT(Appeals) noted that the language in the confirmation is almost comparable and the items mentioned are general and vague. Ld. CIT(Appeals) was of the view that the assessee failed to establish the capacity of the parties to supply those items. Most importantly, amounts refunded /returned by those parties / suppliers have actually been received in the bank account of the assessee from the concerns of Jalram Finvest Limited / Dahyalal Thakkar, who are well-known entry providers and the amounts have not been refunded by the parties to whom advances were given for supply of machinery. Ld. CIT(Appeals) was of the view that the assessee has failed to explain why the alleged refund **has not been received from the parties to whom the advances were made and how the amounts were received from the concerns who are well-known entry providers.** Therefore Ld. CIT(Appeals) was of the view that there is no reason to interfere with the addition of Rs. 4,23,26,800/- made by the AO.

6. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) confirming the additions made by the Assessing Officer. Before us, the Counsel for the assessee submitted that the addition made by the Assessing Officer under Section 68 of the Act is not justified, as the amount in question pertains to "money received back" from "funds

advanced to various parties concerned in the past." The facts clearly demonstrate several key points viz. capital advances were made to suppliers in previous years, the project for which these funds were intended was later abandoned, and the orders placed with suppliers were cancelled. As a result, part of the capital advances were refunded in the year under question. Despite the assessee explaining this, the AO treated the capital advances received back as taxable under Section 68 of the Act. The Counsel for the assessee submitted that the capital advances had significantly reduced following the abandonment of the project. The balance as on March 31, 2014, was Rs. 32.71 crores, and by March 31, 2015, this balance had reduced to Rs. 8.65 crores. Similarly, the "term loans" which had been taken for the project were repaid in part. As of March 31, 2014, the balance of term loans was Rs. 66.24 crores, which had been reduced to Rs. 31.39 crores by March 31, 2015. The repayment of these loans was made using an infusion of Rs. 5 crores in share capital and by taking an unsecured loan of more than Rs. 25 crores received from the company's Directors. It was submitted that the AO **did not dispute the fact that capital advances were given to suppliers in previous years, as evidenced by the assessment orders for the earlier assessment years (AY 2013-14 and AY 2014-15).** The assessment orders for these years, dated December 29, 2017, **confirm that the capital advances were recorded, and no issue was raised about them by the Assessing Officer.** This makes it clear that the sums in question represents "capital advances received back." The Counsel for the assessee also submitted that it is well-established that no addition can be made under Section 68 of the Act for money received back from past advances. In support of this proposition, reliance was placed on the case of **JCIT vs. Radhe Developers (India) Ltd. - ITA 1226/Ahd/2018,**"

where it was held that such amounts should not be considered as income under Section 68 of the Act. The Counsel for the assessee submitted that the AO failed to carry out independent inquiries to verify the documentary evidences submitted by the assessee. The AO was at liberty to issue summons under Section 131 or notices under Section 133(6) to the parties involved, but the Assessing Officer chose not to do so. The AO did not provide any concrete evidence to counter the assessee's claim that the funds in question were a refund of capital advances, and instead proceeded on the basis of mere suspicion, which is not an adequate foundation for making additions under Law. In response to the AO's allegation on the involvement of entities managed by Dahyalal Thakkar, the assessee contended that it is entirely plausible that the parties involved may have approached Dahyalal to transfer funds from those entities to the assessee in order to return the capital advances. The Counsel for the assessee submitted that had the AO taken the necessary steps, such as issuing summons or notices, these facts could have been confirmed. However, the AO chose not to investigate the situation thoroughly despite the substantial evidence provided by the assessee. The Counsel for the assessee further disagreed with the observation made by the CIT(A) that the PAN of the concerned parties were not provided. The Counsel for the assessee clarified that the confirmations from four of the parties (except Rajvir Trading Company and Excel Enterprises) included the PAN details, and all parties provided their addresses as well. These confirmations were submitted along with the relevant documentary evidence, and yet, the AO and CIT(A) chose not to investigate the matter further. In light of the substantial documentary evidence that the assessee had advanced capital funds in the past, which were subsequently refunded due to the

abandonment of the project, the Counsel for the assessee submitted that the addition under Section 68 of the Act is not justified. The entire exercise conducted by the AO was based on suspicion, which cannot replace concrete evidence.

7. In response, DR placed reliance on the observations made by the assessing officer and Ld. CIT(Appeals), in their respective orders.

8. We have heard the rival contentions and perused the material on record. On going through the facts of the instant case, we are of the considered view that the present additions have been confirmed by the assessing officer/Ld. CIT(Appeals) only on the basis of the fact that the parties to whom the advances were given firstly, did not have the capacity to supply the machinery to the assessee and secondly, the parties from whom the refund of advance was received back by the assessee, were known entry providers, whose genuineness was under serious doubt. Accordingly, the amount which was received back constituted income of the assessee under section 68 of the Act. However, there are certain noteworthy facts placed before us, which in our view were not appreciated by the Tax Authorities. It has not been doubted by the assessing officer that the advance had been made to the aforesaid parties in the earlier assessment years and this fact has not been disputed by the assessing officer. Further, it has also not been doubted that the amount which was received back by the assessee was through banking channels. The assessee had also furnished details of the parties to whom the advances had been given towards supply of machinery. The primary/only reason why the refund of advances made to the assessee was added in the hands of the assessee under section 68 of the Act was that the parties to whom advance

had been given and party from whom the advance was refunded to the assessee were different (coupled with the fact that the parties from whom the refund was received was a known accommodation entry operator). However, this alone cannot be a ground for making addition in the hands of the assessee under section 68 of the Act, especially in light of the fact that the refund was received back through banking channels, the fact that advance was given to these parties in the earlier years through banking channels has not been disputed. In case the Department had any doubts regarding the details of party submitted by the assessee and/or with respect to the confirmations from the parties provided by the assessee to the Tax Department, the assessing officer could have issued summons and taken statement of these parties on record/carried out further verification/investigation from these parties. In our view, the assessee has discharged the primary onus under section 68 of the Act, and taking into consideration the assessee's set of facts, in our view, it is not a fit case where the addition is liable to be confirmed in the hands of the assessee. It would be useful to refer to the decision of Indore Tribunal in the case of **ACIT v. M/s Sunderdeep Construction Pvt. Ltd in ITA No. 380/Ind/2017**, wherein the ITAT made the following observations:

*“11. From perusal of the finding of Ld. CIT(A) as well as the submission made before us by the Ld. Counsel for the Sunderdeep Construction Pvt. Ltd assessee, we find that assessee who is in the business of real estate and developer gave advance for purchase of land to farmers in the preceding years of which mostly are during assessment year 2007-08 and remaining during Assessment Year 2008-09 to 2001-12. All these advances were given by account payee cheque which is verifiable from the copies of bank statement placed on record. Ledger account of each of the parties to which advances were given have been reflected in the audited balance sheet forming part of Income Tax returns. No such addition regarding unexplained investment or unexplained loans and advances given have been made by the revenue authorities in the preceding years. Thus the genuineness of advances given to farmers for purchase of land appears to be correct.*

12. **Now the assessee is claiming that it has received the refund of the advances given for land purchase.** Copy of cancellation agreement for the advances given to various parties namely Chandansingh Kawarji, Darbad Singh, Mahendra Singh, Kailash Bai, Maahesh Chaganlal, Sunderdeep Construction Pvt. Ltd Sidharth Pandya, Chotelal, Foolkunwarvai and Parinal Pandya. Address of each of these parties are available in these cancellation agreements.

13. **To summarise we find that the assessee claim is that the loans and advances are given to some parties through banking channel in preceding years and the refunds of the loan so given is received in cash during the year under appeal, whereas the revenue's contention is that there is no nexus of the cash received for the advances so given.**

14. **However revenue has not placed any material to support its contention. The fact that advances were given to various parties through account payee cheque in preceding assessment years for purchase of land has not been disputed by the Revenue.** Most of the advances were given in Assessment Year 2007-08 which is almost 5 years old. Copies of bank statement asserts this fact and Names and address of all such parties is available. Cancellation agreements have been entered into. No independent Sunderdeep Construction Pvt. Ltd enquiry was made by the Ld. A.O with the parties from whom the assessee claimed to have received the cash which are mostly farmers. Under these given facts the claim of the assessee that the alleged sum received in cash is refund of loans and advances given in preceding years cannot be doubted. The amounts so received is actually not a credit in the form of loans or credit or in the form of sundry creditors or any other liability, it is actually the refund of amount advanced in preceding years. It is merely a reduction in debit balance of loan and advance and a corresponding increase in debit balance of cash in hand. There is as such no fresh credit.

15. Similar type of issue came up before the Co-ordinate Bench of Delhi in the case of [Decent Foods Private Limited](#) (supra) ITA No.264 of 2011 dated 13.11.2013 wherein the amount advanced by the assessee to the supplier parties was refunded as the supplier failed to supply the goods and the Co-ordinate Bench held that "Once they are not established to be creditors, operation of [section 68](#) of the I.T. Sunderdeep Construction Pvt. Ltd Act does not come into play. No material was brought by the Ld. A.O to prove that the money was the assessee's own undisclosed income" (emphasis supplied).

16. As regards the judgment of Hon'ble Apex Court in the case of [NRA Iron & Steel Pvt. Ltd](#) (supra) relied by Ld. DR, we find that in this judgment the issue was with regard to the share capital and share premium credited in the books and there was an independent enquiry conducted by Ld. A.O. Both these facts are absent in the instant case therefore the judgment relied by Ld. DR is not applicable on the instant appeals.  
17. We therefore in the given facts and circumstances of the case and respectfully following the judgment referred and relied by Ld. CIT(A) as well as the one referred by us are of the considered view that the alleged amount of Rs.2,76,42,000/- is actually the refund of the advances given by the assessee to various parties for purchase of land in preceding years which were given **through banking Sunderdeep Construction Pvt.**

**Ltd channel and duly disclosed in the audited financial statements placed before the revenue authorities in the preceding years and no addition/discrepancy have been noticed. We therefore find no reason to interfere in the finding of Ld. CIT(A) and the same stands confirmed. In the result Ground No.1 raised by the revenue is dismissed.**

9. In the case of **JCIT v. M/s Radhe Developers (India) Ltd. in ITA Number 1226/AHD/2018**, vide order dated 22/02/2021, the ITAT has made the following observations on this issue:

“11. We have heard the rival contentions of both the parties and perused the materials available on record. In the case on hand, the assessee has received a sum of Rs. 3.59 crore from Shri Kanjibhai Desai which was treated as unexplained cash credit under [section 68](#) of the Act by the AO. However, the learned CIT (A) was pleased to delete the addition made by the AO by observing that the assessee has complied with the conditions as specified under [section 68](#) of the Act.

11.1 **First of all, we find that the assessee has shown an advance in the immediate preceding assessment year as on 31 March 2010 in the name of Shri Kanjibhai Desai amounting to Rs. 23.02 crore. This fact has not been disputed by the AO which is evident from the audited financial statement of the assessee placed on pages 57 of the paper book. The relevant extract of the balance sheet is reproduced as under:**

Land Advance Group Summary 2-April-2010 to 31 March 2011  
Opening Transactions  
Closing Balance Debit Credit Balance Kanjibhai 23,02,89,000.00 1,61,00,000.00  
3,69,00,000.00 20,94,89,000.00 Bhemabhai Desai Dr Dr 11.2 It was pointed out by the learned AR before us that the amount received from the land aggregator namely Shri Kanjibhai Desai represents the own money of the assessee which was advanced on the earlier occasion and the same was returned in the year under consideration on account of non-execution of the land ITA no.1226/Ahd/2018 with Asstt. Year 2011-12 deals. The learned DR before us has not brought any iota of evidence suggesting that money received by the assessee does not represent the money which was advanced by it on the earlier occasion. **Thus it can be safely inferred that the amount received by the assessee represents its own money which was advanced in the earlier year and this fact was also accepted by the Revenue. Accordingly, we are of the view that there cannot be any question for attracting the provisions of [section 68](#) of the Act in the hands of the assessee for receiving its own money as discussed above.**

11.3 **Besides the above we also note that the assessee has discharged its onus as provided under [section 68](#) of the Act namely the identity, genuineness and creditworthiness of the parties.** For the identity, the assessee has furnished the PAN/address/bank details/confirmation of Shri Kanjibhai Desai which are placed on pages 78 to 106 of the paper book.

11.4 Admittedly, the entire transaction for receiving the money from the impugned party was carried out through the banking channel and therefore there cannot be any doubt on the genuineness of the transactions. The copy of the bank statement is placed on pages 78-79 and 103 to 106 of the paper book.

11.5 Similarly, the creditworthiness of Shri Kanjibhai Desai is also not in doubt as the amount received by the assessee represents its own money which was advanced in the earlier year as elaborated somewhere in the preceding paragraph.

11.6 Moving further, we also note that the assessee has claimed that there was income escaping assessment in the hands of Shri Kanjibhai Desai under the provisions of [section 147](#) of the Act out on account of cash deposited in his bank account. But, there was no addition made in the hands of the impugned assessee namely Shri Kanjibhai Desai qua the deposit of cash for the reason that the explanation furnished by him was accepted by the Revenue. This fact was also found ITA no.1226/Ahd/2018 with Asstt. Year 2011-12 true by the learned CIT (A) and not disputed by the Revenue before us. The relevant finding of the learned CIT (A) in this regard has already been reproduced in the preceding paragraph.

11.7 In view of the above and after considering the facts in totality, we do not find any infirmity in the order of the learned CIT (A). Hence, we uphold the same.

Thus the ground of appeal of the Revenue is dismissed.

12. In the result the appeal filed by the revenue is dismissed.

10. Accordingly, keeping in view the assessee's set of facts, we are of the considered view that this is not a fit case where the addition is liable to be confirmed under section 68 of the Act. The assessee had made an advances to various parties for supply of machinery in the previous assessment years, through banking channels. In the previous assessment years, the fact that advances had been made by the assessee to these parties was not in dispute and had been accepted by the Tax Department. The only reason why addition was sought to be confirmed by the tax department was only on the ground that the parties who had refunded this advance back to the assessee, were not the same parties to whom advances have been made in the previous assessment years. However, we observe that the assessee had furnished complete details of the parties to whom advances had been given, along with

their confirmations and if the Assessing Officer had doubts regarding the genuineness of the refunds given by these parties, he could have carried out further investigation and taken the statements of these parties on record as well. However, no such exercise was done by the assessing officer. Accordingly, in light of these facts, we are of the view that the additions made by the assessing officer under section 68 of the Act, is liable to be deleted.

11. In the result, the addition of ₹ 4,23,2026,800/- under section 68 of the Act, is directed to be deleted.

**The second ground of appeal of the assessee relates to claim of depreciation of Rs. 18,92,228/- on capital assets:**

12. The brief facts of the case are that the assessee claimed depreciation of Rs. 18,92,228/- on capital assets purchased from J S Enterprise for the assessment year (A.Y.) 2015-16. However, during the assessment proceedings, the Assessing Officer observed that M/s J S Enterprise was not traceable, and there was no valid address for the company. Based on the Inspector's report, the AO observed that the Claris Group, to which M/s Claris Lifesciences Ltd. belongs, had been involved in arranging bogus transactions for capital asset purchases and trading goods. Specifically, Shri Akshat Shah, an assistant vice president (AVP) at Claris, had made a statement during a search operation at his residence on August 4-5, 2015 under Section 132(4), in which he admitted to organizing accommodation entries for Claris with the assistance of various Angadiyas, where cash was paid in exchange for RTGS transfers, and cheques/RTGS were issued against cash payments. The list of firms involved in these bogus transactions, including J S Enterprise and

Jalram Finvest Services, was found on Page 9 of Annexure A-1, as shown in the assessment order. Additionally, M/s Claris Lifesciences Ltd. had acknowledged in its application to the Hon'ble Settlement Commission that it was engaged in non-genuine transactions for capital assets with various parties, including J S Enterprise. Given these findings, the AO disallowed the claim of depreciation of Rs. 18,92,228/- for the year under consideration, as the purchase of the capital assets was from J S Enterprise and the same was held to be non-genuine.

13. In the appellate proceedings before Ld. CIT(Appeals), Ld. CIT(Appeals) was of the view that the assessee did not submit any specific arguments regarding the disallowance of depreciation during the appeal proceedings. Upon review, Ld. CIT(Appeals) found no sufficient basis to interfere with the findings of the Assessing Officer in the assessment order. Accordingly, Ld. CIT(Appeals) rejected the assessee's grounds related to the disallowance of depreciation.

14. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). Before us, the Counsel for the assessee submitted that the Assessing Officer found that the assessee had purchased assets worth Rs. 1,74,60,000/- from J. S. Enterprise during the assessment year (A.Y.) 2013-14. In order to verify the genuineness of this transaction, the AO deputed an Inspector who submitted a report stating that the supplier was not traceable and no address for J. S. Enterprise could be found. Based on this report, the AO issued a show-cause notice to the assessee, questioning the authenticity of the asset purchases and the depreciation claimed on those assets. The notice suggested that the depreciation might have been claimed in excess or

was a non-genuine purchase from J. S. Enterprise, covering the assessment years 2013-14 to 2016-17. In response, the assessee had submitted a reply where the assessee affirmed that the purchase of capital goods from J. S. Enterprise was genuine and that these capital goods had been duly **installed, commissioned, and put to use for the purposes of the business.** The depreciable assets **were recorded in the books of accounts,** and the assets were owned by the assessee, having already been utilized for business activities. The assessee **also submitted that the physical existence of the assets could be verified.** The Counsel for the assessee refuted the allegations of the Assessing Officer that Claris Lifesciences Ltd. had admitted to engaging in non-genuine transactions in their application to the Settlement Commission, and submitted that that this claim had no relevance to their case. The Counsel for the assessee assessee argued before us that the claim of depreciation was entirely in accordance with Section 32 of the Income Tax Act, and that when the assets were purchased, J. S. Enterprise had a valid registration with the VAT Department. Therefore, the Counsel for the assessee submitted that no excess or non-genuine depreciation had been claimed for any of the assessment years under consideration. The Counsel for the assessee submitted that the CIT(A) had made an erroneous statement, stating that the assessee had failed to make specific submissions during the appellate proceedings regarding the disallowance of depreciation. In fact, the assessee had submitted detailed arguments on this issue, which were reproduced in the CIT(A)'s order from pages 18-25. On the merits of the case, the Counsel for the assessee submitted that their claim for depreciation was fully justified. The assets purchased from J. S. Enterprise were genuine, had been installed and commissioned, and were in use for business purposes of

the assessee. The depreciable assets were recorded in the books of accounts, and the underlying assets were owned by the assessee and already in use. **The assessee further argued that the AO had denied their request for a physical verification of the assets.** Given these circumstances, the Counsel for the assessee submitted that the impugned addition was unjustified and was liable to be deleted.

15. In response, the Ld. DR placed reliance on the observations made by Ld. CIT(Appeals) in the appellate order.

16. We have heard the rival contentions and perused the material on record. On going through the facts of the case, we observe that the assessee has throughout maintained that the assets in question have been installed, commissioned and also put to use. The assessee had also invited the assessing officer to carry out the necessary physical verification to ascertain whether the assets had in fact been purchased by the assessee. However, the request for physical verification was denied by the assessing officer. The assessee has all throughout maintained that the assets were duly recorded in the books of accounts, the payments were made through banking channels, the assessee had claimed depreciation on these assets in its audited books of accounts and also the assessing officer could have carried out a physical verification to ascertain the fact that the assessee had installed, commissioned and put the asset to use. Accordingly, in light of the above facts, we are of the considered view that depreciation on the above aspects should not be denied to the assessee.

17. In the result, this ground of appeal of the assessee is allowed.

18. In the combined result, the appeal of the assessee is allowed

19. The next appeal of the assessee in ITA No. 13/Ahd/2022 relates to levy of penalty u/s 271(1)(c) of the Act with respect to addition on account of claim of depreciation amounting to Rs. 18,92,228/- confirmed by Ld. CIT(Appeals) in the hands of the assessee.

20. While dealing with the assessee's appeal in relation to addition of claim of depreciation in the hands of the assessee, we have allowed the appeal of the assessee on merits, in the preceding paragraphs. Accordingly, penalty levied in the hands of the assessee u/s 271(1)(c) of the Act with respect to the aforesaid addition is also directed to be deleted.

21. In the result, the appeal of the assessee is allowed in ITA No. 30/Ahd/2022.

22. In the combined result, both the appeals of the assessee are allowed.

**This Order is pronounced in the Open Court on 16/12/2024**

**Sd/-**

**(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 16/12/2024

TANMAY, Sr. PS

**TRUE COPY**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad