

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**Before Sh. Satbeer Singh Godara, Judicial Member
&**

Sh. S. Rifaur Rahman, Accountant Member

ITA No. 1031/Del/2013 : Asstt. Year : 2007-08

Metro Tyres Ltd., 101, Jyoti Bhawan, Dr. Mukherjee Nagar, Commercial Complex, New Delhi-110009	Vs	Addl. CIT, Range-6, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACM3394A		

ITA No. 2266/Del/2013 : Asstt. Year : 2008-09

ITA No. 5767/Del/2013 : Asstt. Year : 2009-10

Metro Tyres Ltd., 101, Jyoti Bhawan, Dr. Mukherjee Nagar, Commercial Complex, New Delhi-110009	Vs	DCIT, Circle-6(1) New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACM3394A		

ITA No. 5039/Del/2015 : Asstt. Year : 2009-10

ITA No. 5041/Del/2015 : Asstt. Year : 2010-11

ITA No. 378/Del/2016 : Asstt. Year : 2011-12

ITA No. 379/Del/2016 : Asstt. Year : 2012-13

ITA No. 5966/Del/2016 : Asstt. Year : 2013-14

ITA No. 4734/Del/2017 : Asstt. Year : 2014-15

Metro Tyres Ltd., 101, Jyoti Bhawan, Dr. Mukherjee Nagar, Commercial Complex, New Delhi-110009	Vs	DCIT, Central Circle-5, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACM3394A		

ITA No. 5354/Del/2015 : Asstt. Year : 2010-11
ITA No. 418/Del/2016 : Asstt. Year : 2011-12

DCIT, Central Circle-5, New Delhi	Vs	Metro Tyres Ltd., 101, Jyoti Bhawan, Dr. Mukherjee Nagar, Commercial Complex, New Delhi-110009
(APPELLANT)		(RESPONDENT)
PAN No. AAACM3394A		

**Assessee by : Sh. Salil Kapoor, Adv.,
Sh. Tarun Chanana, Sh. Shivam Yadav &
Ms. Ananya Kapoor, Advs.
Revenue by : Ms. Jaya Chaudhary, CIT-DR**

Date of Hearing: 12.12.2024	Date of Pronouncement: 20.12.2024
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ORDER

Per Bench:

The instant batch of eleven appeals pertains to the single assessee herein namely, M/s Metro Tyres Ltd. All other relevant details thereof stand tabulated as under:

Sl. No.	ITA Nos.	A.Y.	Appellant	Respondent	Order passed against	Proceedings u/s
1.	1031/Del/2013	2007-08	Metro Tyres Ltd.	Addl. CIT	CIT(A)-IX, New Delhi Appeal No. 86/09-10 Dated 31.12.2012	143(3)
2.	2266/Del/2013	2008-09	Metro Tyres Ltd.	DCIT	CIT(A)-IX, New Delhi Appeal No. 24/2010-11 Dated 29.01.2013	143(3)
3.	5767/Del/2013	2009-10	Metro Tyres Ltd.	DCIT	CIT(A)-IX, New Delhi Appeal No. 206/2010-11 Dated 30.01.2013	143(3)
4.	5039/Del/2015	2009-10	Metro Tyres Ltd.	DCIT	CIT(A)-24, New Delhi Appeal No. 231/2014-15 Dated 08.06.2015	153A r.w.s. 143(3)
5.	5041/Del/2015	2010-11	Metro Tyres Ltd.	DCIT	CIT(A)-24, New Delhi Appeal No. 230/2014-15 Dated 08.06.2015	153A r.w.s. 143(3)
6.	378/Del/2016	2011-12	Metro Tyres Ltd.	DCIT	CIT(A)-24, New Delhi Appeal No. 229/2014-15 Dated 24.11.2015	153A r.w.s. 143(3)
7.	379/Del/2016	2012-13	Metro	DCIT	CIT(A)-24, New	143(3)

			Tyres Ltd.		Delhi Appeal No. 228/2014-15 Dated 24.11.2015	
8.	5966/Del/2016	2013-14	Metro Tyres Ltd.	DCIT	CIT(A)-24, New Delhi Appeal No. 318/2015-16 Dated 28.09.2016	143(3)
9.	4734/Del/2017	2014-15	Metro Tyres Ltd.	DCIT	CIT(A)-24, New Delhi Appeal No. 159/2016-17 Dated 30.05.2017	143(3)
10	5354/Del/2015	2010-11	DCIT	Metro Tyres Ltd.	CIT(A)-24, New Delhi Appeal No. 230/2014-15 Dated 08.06.2015	153A r.w.s. 143(3)
11	418/Del/2016	2011-12	DCIT	Metro Tyres Ltd.	CIT(A)-24, New Delhi Appeal No. 229/2014-15 Dated 24.11.2015	153A r.w.s. 143(3)

2. Heard both the parties at length. Case files perused.

3. Both the parties submit at the outset that the assessee's five appeals ITA Nos. 1031, 2266, 5767/Del/2013, ITA No. 5966/Del/2016 and 4734/Del/2017 for assessment years 2007-08 to 2009-10 and 2013-14 to 2014-15, raise identical substantive ground(s) of its depreciation claim on non-compete fee paid in the preceding assessment years, taxability of its income from house property treated as business income and section 14A disallowance, involving varying sums, respectively. We thus treat the assessee's first and foremost appeal ITA No. 1031/Del/2013 for A.Y. 2007-08 as the "lead" case raising the following twin substantive grounds:

"1. That the Learned CIT(A) was not justified in sustaining the addition made by the Learned Assessing officer in respect of depreciation amounting to Rs.1,00,00,000/- I which was subsequently revised to Rs. 1,64,06,250/- on non-compete fees of Rs.7,50,00,000/- on the alleged contention that non-compete fees does not fall under the purview of an intangible asset as defined under section 32(1)(ii) of the Act.

2. That the Learned CIT(A) has erred in sustaining the disallowance of Rs. 39,600/- being the deduction allowable under section 24(a) of the Act on the contention that the income from rent of Rs. 1,32,000/-

received by letting out of property at Ludhiana has been treated as business income by the appellant himself in the earlier years and therefore, for consistency sake the amount of Rs 1,32,000/- is to be treated as business income. Every assessment year being an independent assessment year, the income from rent should have been held to be taxable under the head income from house property."

4. Both the parties take us to the CIT(A)'s lower appellate discussion affirming the Assessing Officer's action disallowing the assessee's depreciation claim on non-compete fee, amounting to Rs.1,00,00,000/- u/s 32(1)(ii) of the Act as under:

5. Ground No. 3: "That the learned Assessing officer has erred in law in not allowing depreciation of Rs.1,00,00,000/- on non-complete fees under section 32(1) of the Act on the alleged contention that non-complete fees does not fall under the purview of on Intangible asset as defined under section 32(ii) of the Act."

5.1 The facts of the case are that the appellant entered into a non-compete agreement on 24th October 2005 with Mr. Navneet Chabra whereby it was agreed that Mr. Navnet Chabra would not set up any business activity which would give competition to the appellant for a period of 7.5 years. In other words, a payment of Rs 7.5 crore was made for refraining him from competing with the appellant for a specified period of time and, thus, gave the appellant the right to operate the business without concern over competition. In consideration to such agreement, the appellant paid Rs.7.5 crores as a on-compete fees to Mr. Navneet Chabra.

5.2 Further the appellant claimed depreciation amounting to Rs. 1 crore under section 32 of the Act considering the non-compete right as a business or commercial right and therefore, an intangible asset. However, the Assessing Officer did not consider it to be an intangible asset and disallowed the depreciation so claimed.

5.3 In a recent judgment of the jurisdictional High Court, in the case of Sharp Business System vs. CIT III [2012] 27 taxmann.com 50 (Delhi) IT APPEAL NO. 492 OF 2012 C.M. APPL. NO. 14836 of2012 NOVEMBER 5, 2012, the Court has held as under:

"The question here, however, is whether a non-complete right of kind acquired by the assessee against L&T for seven years amounts to a depreciable intangible asset. As discussed earlier, each of the species of rights spelt-out in Section 32(1)(ii), i.e. know-how, patent, copyright, trademark, licence or franchise as or any other right of a similar kind which confers a business or commercial or any other business or commercial right of similar nature has to be "intangible asset". The nature of these rights mentioned clearly spelt-out an element of exclusivity which ensures to the assessee as a sequel to the ownership. In other words, but for the ownership of the intellectual property or know-how or license or franchise, it would be enable to either access the advantage or assert the right and the nature of the right mentioned or spelt-out in the provision as against the world at large or in legal parlance "in rem". However, in the case of a non-competition agreement or covenant, the advantage is a restricted one, in point of time. It does not necessarily - and not in the facts of the case, confer any exclusive right to carry-on the primary business activity. The right can be asserted in the present instance only against L&T and in a sense, the right "in personam". Indeed, the 7 years period spelt-out by the non-competing covenant brings the advantage within the public policy embedded in Section 27 of the Contract Act, which enjoins a contract in restraint of trade would otherwise be void. Another way of looking at the issue is whether such right and other advantages such as know-how, franchise, license etc. and even those considered by the Courts, such as goodwill can be said to be alienable. Such is not the case with an agreement not to compete which is purely personal. As a consequence, it is held that the contentions of the assessee are without merit; this question too is answered against the appellant and in favour of the Revenue."

5.4 The assessee had placed reliance on the following judgment:

- a) ACIT v. GE Plastic India Ltd. [2012] 137 ITD 309 (Ahmedabad ITAT).*
- b) Serum Institute of India Ltd. v. ACIT [2011] 135 ITD 69 (Pune ITAT).*
- c) Income Tax Officer v. Medicorp Technologies India Ltd. [2009] 122 TTJ 394 (Chennai ITAT).*
- d) Assistant Commissioner of Income Tax v. Real Image Tech. (P) Ltd. (2009) 120 TTJ 983 (Chennai ITAT).*
- e) CIT v. Smifs Securities Ltd. [2012] 24 taxmann.com 222, this judgment deals with the issue of goodwill being an intangible asset, and not with the issue of non compete being an intangible, depreciable asset.*

This case therefore has no direct applicability in the matter at hand.

5.5 In the case under consideration too, the assessee has accrued a right that is "in personam" as explained in the judgment above. No right "in rem" as explained above has been created. Even after applying the principle of "sui generis" to section 32(i)(ii) non compete fees does not emerge eligible for depreciation.

5.6 The recent judgment in the case of Sharp Business System v CIT III [2012] is a directly applicable one and overrides all the judgments relied upon by the assessee. Being a jurisdictional High Court decision it is to be followed, in this directly applicable case. The ground no. 3 is .therefore, dismissed."

5. It is in this factual backdrop that the instant issue of the assessee's claim raised *qua* its non-compete fees arises for our apt adjudication. It is evident to us during the course of hearing that this is not the first year of the assessee having claimed the impugned depreciation on non-compete fees as our attention is invited to the relevant non-compete agreement dated 24.10.2005 followed by the assessment records for the corresponding A.Y. 2006-07 comprising of the Assessing Officer's notice dated 10.09.2008 asking for the relevant non-compete fees details (pages 103 to 104 of the paper book), the taxpayer reply to this effect dated 24.09.2008 (pages 105 to 106) followed by the Assessing Officer's section 143(3) assessment dated 30.12.2008 not making any such disallowance in the said preceding assessment year.

6. Mr. Kapoor vehemently submits in light of these facts that once the assessee's impugned depreciation claim stood accepted in the immediate preceding assessment year, the learned lower authorities could not have ignored the settled legal proposition that the corresponding "block of assets" u/s 2(1) r.w.s 32(1)(ii) of the Act is not to be disturbed in the subsequent assessment years as per CIT Vs. Oswal Agro Mills

Ltd. in ITA 161/2006 & others connected cases, decided on 24.12.2010 as under:

"24. We now proceed on the basis that particular assets, viz., assets of Bhopal Unit were not „used for the purpose of business“ in the concerned Assessment Years. Whether the assessee would still be entitled to depreciation as it has been claiming depreciation on entire „block of assets“. Counsel for the Revenue had argued that conditions laid down in Section 32 of the Act are to be necessarily satisfied and it has to be shown that asset is used for business. Insofar as concept of „block of assets“ is concerned, it is only a mode of calculation. On the other hand, the learned counsel for the assessee had argued that after the introduction of „block of assets“ concept in Section 2(11) by amendment made with effect from 01.04.1988, the assessee was entitled to claim depreciation on the entire block of assets and it was no more open to the Revenue as to whether particular asset is put to use or not.

25. We have considered these submissions of the learned counsel for the parties and are of the opinion that the arguments of the learned counsel for the assessee have to prevail. Mr. Aggarwal, learned Senior counsel for the assessee is right in his submission that the position concerning the manner in which the depreciation is to be allowed, has gone a sea change after the amendment of Section 32 by the Taxation Laws (Amendment) Act, 1986. Section 32(1) of the Act allows the depreciation on the written down value of the assets.

26. Section 2 (11) of the Act defines the term „block of assets“ as under:

"2(11) "Block of assets" means a group of assets falling within a class of assets comprising - (a) Tangible assets, being buildings, machinery, plant or furniture;

(b) Intangible assets, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, in respect of which the same percentage of depreciation is prescribed;"

27. Along with the aforesaid amendment, definition of written down value as contained in Section 43(6) has also been amended and the amended provisions read as under:

"43(6) - "Written down value" means -

*(a) ** ***

*(b) ** ** ** ** ***

(c) In the case of any block of assets,

(i) In respect of any previous year relevant to the assessment year commencing on the 1st day of April, 1988, the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year and adjusted,-

(A) by the increase by the actual cost of any asset falling within that block, acquired during the previous year; and

(B) by the reduction of the moneys payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year together with the amount of the scrap value, if any, so, however, that the amount of such reduction does not exceed the written down value as so increased; and

(ii) in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1989, the written down value of that block of asses in the immediately preceding previous year as reduced by the depreciation actually allowed in respect of that block of assets in relation to the said preceding previous year and as further adjusted by the increase or the reduction referred to in item (i)."

28. Thus, for the assessment year 1998-99, the W.D.V. of any block of assets shall be the aggregate of the W.D.V. of all the assets falling within that block of assets at the beginning of the previous year. From this, the adjustment has to be made for the increase or reduction in the block of assets during the year under consideration. The deduction from the block of assets has to be made in respect of any asset, sold discarded or demolished or destroyed during the previous year.

29. As per amended Section 32, deduction is to be allowed - "In the case of any block of assets, such percentage on the written down value thereof as may be prescribed". Thus, the depreciation is allowed on block of assets, and the Revenue cannot segregate a particular asset therefrom on the ground that it was not put to use.

30. *With the aforesaid amendment, the depreciation is now to be allowed on the written down value of the „block of assets“ at such percentage as may be prescribed. With this amendment, individual assets have lost their identity and concept of „block of assets“ has been introduced, which is relevant for calculating the depreciation. It would be of benefit to take note of the Circular issued by the Revenue itself explaining the purpose behind the amended provision. The same is contained in CBDT Circular No.469 dated 23.09.1986, wherein the rationale behind the aforesaid amendment is described as under:*

"6.3 As mentioned by the Economic Administration Reforms Commission (Report No. 12, para 20), the existing system in this regard requires the calculation of depreciation in respect of each capital asset separately and not in respect of block of assets. This requires elaborate book-keeping and the process of checking by the Assessing Officer is time consuming. The greater differentiation in rates, according to the date of purchase, the type of asset, the intensity of use, etc., the more disaggregated has to be the recordkeeping. Moreover, the practice of granting the terminal allowance as per section 32(1)(iii) or taxing the balancing charge as per section 41(2) of the Income-tax Act necessitate the keeping of records of depreciation already availed of by each asset eligible for depreciation. In order to simplify the existing cumbersome provisions, the Amending Act has introduced a system of allowing depreciation on block of assets. This will mean the calculation lump sum amount of depreciation for the entire block of depreciable assets in each of the four classes of assets, namely, buildings, machinery, plant and furniture."

31. *It becomes manifest from the reading of the aforesaid Circular that the Legislature felt that keeping the details with regard to each and every depreciable assets was time consuming both for the assessee and the Assessing Officer. Therefore, they amended the law to provide for allowing of the depreciation on the entire block of assets instead of each individual asset. The block of assets has also been defined to include the group of asset falling within the same class of assets.*

32. *Another significant and contemporaneous development, which needs to be noticed is that the Legislature has also deleted the provision for allowing terminal depreciation in respect of each asset, which*

was previously allowable under section 32(1)(iii) and also taxing of balancing charge under section 41(2) in the year of sale. Instead of these two provisions, now whatever is the saleproceed of sale of any depreciable asset, it has to be reduced from the block of assets. This amendment was made because now the assesseees are not required to maintain particulars of each asset separately and in the absence of such particular, it cannot be ascertained whether on sale of any asset, there was any profit liable to be taxed under section 41(2) or terminal loss allowable under section 32(1)(iii). This amendment also strengthen the claim that now only detail for "block of assets" has to be maintained and not separately for each asset.

33. Having regard to this legislative intent contained in the aforesaid amendment, it is difficult to accept the submission of the learned counsel for the Revenue that for allowing the depreciation, user of each and every asset is essential even when a particular asset forms part of „block of assets“. Acceptance of this contention would mean that the assessee is to be directed to maintain the details of each asset separately and that would frustrate the very purpose for which the amendment was brought about. It is also essential to point out that the Revenue is not put to any loss by adopting such method and allowing depreciation on a particular asset, forming part of the „block of assets“ even when that particular asset is not used in the relevant assessment year. Whenever such an asset is sold, it would result in short term capital gain, which would be exigible to tax and for this reason, we say that there is no loss to Revenue either.

34. The upshot of the aforesaid discussion is that though we are not entirely agreeing with the reasoning of the Tribunal contained in the impugned judgment, we are upholding the conclusion of the Tribunal based on the „block of assets“ as discussed above. The consequence would be to dismiss these appeals. However, there will be no order as to costs.“

7. Faced with this situation, learned CIT-DR quotes hon'ble jurisdictional high court's decision in Sharp Business System Vs. CIT (2012) 211 taxmann.com 576 (Del) holding that such a depreciation claim is not admissible since a non-compete clause does not form an intangible asset. Ms. Chaudhary vehemently contends therefore, that once the issues stand

settled in the preceding terms, we ought to confirm the learned lower authorities action rejecting the assessee's depreciation claim.

8. We find no merit in the Revenue's submissions as their lordships subsequent decision in PCIT Vs. Pepsico India Holding Pvt. Ltd. order in ITA 166/2023 dated 16.04.2024; pronounced after "Sharp Business System" has reiterated the fact that the impugned disallowance could not be made once corresponding depreciation stood accepted in the preceding assessment years as under:

4. That only leaves us to deal with the question of depreciation on non-compete fee. We note that the issue of deprecation on non-compete fee is an issue which is no longer res integra and stands answered by our Court in Sharp Business System v. Income Tax-III, [2012 SCC OnLine Del 5639] in favour of the appellant.

5. However, insofar the present case is concerned, the ITAT has taken into consideration the following facts as would be evident from paragraph no.26, which is reproduced as under:

"26. We have gone through the details of the non-compete fees incorporated at page No. 70 of the paper book which clearly reveals that for the earlier years, namely, 2005-06 to 2007-08 the Revenue accepted the depreciation claimed at Rs. 63,54,176/-, Rs. 47,65,632/-, and Rs.35,74,224/-, but in respect of the assessment year 2008-09 the depreciation on the capitalized non-compete fee claimed that Rs.26,80,668/-was disallowed. Reasoning given by the Assessing Officer to disallow this claim is that the issue hinges around the interpretation of the phrase "business or commercial rights of similar nature" used in clause (ii) of section 32, and a careful reference to the language of the provisions in section 32 makes it clear that all the specific awards that a preceding general words "business or commercial rights of similar nature" are related to a class of rights which are intellectual property rights whereas the alleged payment is for non-compete fee. Further, according to the learned Assessing Officer the right to non-compete acquired by the assessee is only a right in personam and therefore the assessee is not entitled to claim

depreciation on the non-compete fee. Learned Assessing Officer does not refer to any change of circumstances from the earlier years so as to deviate from the view that was taken for earlier years. We therefore do not find anything illegality or irregularity in the Ld. CIT(A) following the view taken for the earlier years under identical circumstances. Ground No. 6 is accordingly devoid of merits and is dismissed.”

6. The ITAT has essentially followed the principle of consistency insofar as the case of the respondent – assessee is concerned.

7. We consequently find no justification to interfere with or disturb the ultimate conclusions rendered by the ITAT, notwithstanding it having failed to notice or consider the judgment rendered in Sharp Business System.

8. We find sufficient merit in the path that we propose to take since although the issue which arises inter parties and for the year in question would be rendered a quietus consequent to the disposal of the present appeal, the question of law already stands settled by Sharp Business System and would govern the issue if it arise in any subsequent adjudication.

9. The appeal consequently fails and shall stand dismissed.”

9. It is thus clear that their lordship's above latter decision has settled the issue in assessee's favour that even inspite of the case law "Sharp Business System", once the assessee's corresponding depreciation stood duly accepted in the preceding assessment year, it's relevant "block of assets" could not have been interfered with by the learned departmental authorities. We accordingly find merit in the assessee's instant first and foremost substantive ground and accept its impugned depreciation claim on non-compete fees. The assessee's succeeds in its instant first and foremost substantive ground in the "lead" appeal (supra) and its latter twin cases ITA No. 5966/Del/2016 and 4734/Del/2017 for A.Y. 2013-14 and 2014-

15, respectively, raising this sole substantive issue succeed in very terms.

10. We now advert to the assessee's second substantive ground that both the learned lower authorities have erred in law and on fact in rejecting its rental income claim of Rs.1,32,000/-; after claiming section 24(1) deduction, for the sole reason that the corresponding house property was earlier used for business purposes and therefore, the rental income ought to be treated as business income only.

11. It is evident in this factual backdrop that the instant issue has arisen for the first time in the impugned assessment year once the assessee has started letting out the corresponding house property. And this clinching factual aspect has nowhere been rebutted by the learned departmental authorities. We thus find no merit in the Revenue's vehement contentions in forcibly imposing business income assessment on the assessee and direct the learned Assessing Officer to frame his consequential computation after treating the income herein of Rs.1,32,000/- under the "head" house property followed by his consequential computation. Ordered accordingly. This assessee's instant lead appeal ITA No. 1031/Del/2013 is allowed in above terms.

12. The assessee's next twin appeals ITA No. 2266 & 5767/Del/2013 A.Ys. 2008-09 and 2009-10 also raises the identical first and foremost issue of depreciation on non-compete fees which is accepted in the preceding terms. So is the outcome of its second identical substantive ground claiming assessment of its income from very house property than business income (supra), is also accepted in very terms. Ordered accordingly.

13. This leaves us with the assessee's third and last issue of section 14A r.w. Rule 8D disallowance; in assessment years 2008-09 and 2009-10's cases wherein learned counsel argues that both the lower authorities had nowhere accorded any satisfaction *qua* the assessee's books of account as stipulated u/s 14A(ii) of the Act. Faced with this situation, learned counsel placed strong reliance on (2017) 399 ITR 576 (Del) HT Media Ltd. Vs. PCIT.

14. Learned CIT-DR draws strong support from both lower authorities respective findings making section 14A r.w. Rule 8D disallowance in assessee's hands. The fact however remains the foregoing statutory satisfaction u/s 14A(2) of the Act is nowhere emanating from the instant case file. That being the case, we place heavy reliance on hon'ble jurisdictional high court foregoing decision to delete the impugned disallowance in very terms.

15. The assessee's identical third substantive ground in assessment year 2008-09 and 2009-10's appeals ITA No. 2266 & 5767/Del/2013 is accepted. These twin cases stand allowed in very terms.

16. This leaves us with the remaining appeal between the parties i.e. assessee's case ITA No. 5039/Del/2015 for A.Y. 2009-10, assessee's and Revenue's cross appeals ITA Nos. 5041 & 5344/Del/2015 for A.Y. 2010-11, as many cases ITA No. 368 & 418/Del/2016 for A.Y. 2011-12 and taxpayer's appeal ITA No. 379/Del/2016 for A.Y. 2012-13, involving section 143(3) r.w.s. 153A proceedings arising from the department's search action dated 14.07.2012, conducted in M/s Metro Ortem group of cases.

17. It is at this stage that the learned counsel invites our attention to the assessee's identical petitions in all these four assessment years seeking to raise an additional ground that the learned Assessing Officer had not framed his assessment after obtaining a valid approval(s) u/s 153D of the Act.

18. Learned CIT-DR vehemently objects to the assessee's instant petitions that such a hyper-technical ground could not be allowed to be raised at this belated stage. We find no merit in the Revenue's instant technical objection as per National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383 that the tribunal is indeed empowered to entertain such an additional ground going to root of the matter provided all the relevant facts form part of the records.

19. We keep in mind this fine distinction and note very a perusal of the corresponding section 153D records that the assessee's Assessing Officer had sought for the prescribed authority's approval on 16.12.2019 which stood granted on 28.03.2014 in group of 56 connected cases. Learned CIT-DR would hardly dispute the clinching fact that this combined approval appears to be a non-speaking one not indicating any due application of mind by the competent authority. We thus quote ACIT Vs. Sirzuddin Company (2023) 454 ITR 312 (Odisha) as upheld in SLP Civil No. 44989/2023 dated 28.11.2023, PCIT Vs. Shiv Kumar Nyar (2024) 163 taxmann.com 9 (Del), PCIT Vs. Sapna Gupta (2023) 147 Taxmann.com 288(All) that such a mechanical approval u/s 153D of the Act vitiates the assessment in entirety. We accordingly conclude that the assessee's instant additional ground (supra) going to root of the matter deserves to be accepted. Ordered accordingly. All these four assessments in as many corresponding A.Ys. 2009-

10, 2010-11, 2012-13 and 2014-15 stand quashed therefore. It's four appeals ITA No. 5039 (A.Y. 2009-10), 5041 (A.Y. 2010-11) and ITA 378 & 379/Del/2016 for A.Ys. 2011-12 and 2012-13 succeed and Revenue's cross appeals ITA Nos. 5354/Del/2015 (A.Y. 2010-11) and 418/Del/2016 (A.Y. 2011-12) fail in very terms.

20. All other pleadings on merits in the instant latter six appeals involving section 153A r.w.s. 143(3) proceedings (supra) stand rendered academic.

21. To sum up, the assessee's instant nine appeals ITA Nos. 1031, 2266 & 5767/Del/2013, ITA Nos. 5039 & 5041/Del/2015, ITA Nos. 378, 379 & 5966/Del/2016 and ITA No. 4734/Del/2017 are allowed and the Revenue's twin cross appeals ITA No. 5354/Del/2015 & ITA No. 418/Del/2016 are dismissed in the foregoing terms. A copy of this common order be placed in the respective case files.

Order Pronounced in the Open Court on 20/12/2024.

Sd/-

(S. Rifaur Rahman)
Accountant Member

Dated: 20/12/2024

Sd/-

(Satbeer Singh Godara)
Judicial Member

Subodh Kumar, Sr. PS

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4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR