

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.45/Nag./2016
(Assessment Year : 2011-12)

Avantha Holdings Ltd.
Ballarpur Paper Mills
S.O. Ballarpur 442 901
PAN – AABC6134E

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-4, Nagpur

..... Respondent

ITA no.248/Nag./2016
(Assessment Year : 2011-12)

Dy. Commissioner of Income Tax
Circle-5, Nagpur

..... Appellant

v/s

Avantha Holdings Ltd.
Ballarpur Paper Mills
S.O. Ballarpur 442 901
PAN – AABC6134E

..... Respondent

ITA no.354/Nag./2023
(Assessment Year : 2012-13)

Dy. Commissioner of Income Tax
Circle-4, Nagpur

..... Appellant

v/s

Avantha Holdings Ltd.
Ballarpur Paper Mills
S.O. Ballarpur 442 901
PAN – AABC6134E

..... Respondent

Assessee by : Shri Kishore P. Dewani
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 30/01/2025

Date of Order – 04/04/2025

ORDER

PER V. DURGA RAO, J.M.

Cross Appeals for the assessment year 2011-12 are emanating from the impugned order dated 13/01/2016, passed by the learned CIT(A)-4, Nagpur, and appeal by the Revenue for the assessment year 2012-13 is directed against the impugned order dated 04/09/2023, passed by the learned CIT(A)-13, Pune.

ITA no.248/Nag./2016
Revenue's Appeal – A.Y. 2011-12

ITA no.354/Nag./2023
Revenue's Appeal – A.Y. 2012-13

2. Following are the common grounds, except variation in figures, raised by the Revenue in both the captioned appeals:-

"1.1 Whether on the facts and in the circumstances of the case and in law, the CIT(A) is right in allowing assessee's claim of Brand Development expense of Rs. 17.60 crore without appreciating the fact that the same brings into existence benefit of enduring in nature and hence amounts to capital expenditure.

1.2 Whether on the facts and in the circumstances of the case and in law, the CIT(A) is right in allowing assessee's claim of Brand Development expense of Rs. 17.60 crore without appreciating the fact that the expenditure incurred was not wholly and exclusively for the purpose of assessee's business but, also related to the assessee's group companies.

2.1 Whether on the facts and in the circumstances of the case and in law, the CIT(A) is right in deleting disallowances made by the AO of premium on zero percent fully redeemable non-convertible marketable debentures of Rs. 66.73 crore without appreciating the fact that the same does not amount to the expenditure. Since it is not at all payable by the assessee on ZCNCD. Secondly, since this premium amount was not claimed in return of income as per decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd. Vs. CIT 157 Taxman 1(SC), the same is not allowable for deduction.

2.2 Whether on the facts and in the circumstances of the case and in law, the CIT(A) is right in entertaining the claim of assessee in respect of premium

payable Zero Coupon Non Convertible Debentures for the first time disregarding provision under sec. 251(a) of the IT Act which empowers CIT(A) only to confirm, reduce, enhance or annul the assessment and cannot admit claim of the assessee for the first time. Also the decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. (229 ITR 383) does not vests any power to CIT(A) to entertain claim for the first time.

3. Whether on the facts and in the circumstances of the case and in law, the CIT(A) is right in restricting the Corporate Guarantee Fee to 0.2% as against the arms length charge for the services of Corporate Guarantee provided to the AES determined by the AO at 1.2% per annum. The TPO has assessed Corporate Guarantee Fee of 1.2% after thorough scrutiny of transactions of various comparable companies applying the best International practices.

4. Any other grounds which may be raised during appellate proceedings.”

3. In this appeal, the Revenue has raised three issues and they are as under:-

- i) Brand Development Expenses;*
- ii) Non-convertible Debenture; and*
- iii) Corporate Guarantee.*

4. Insofar as the issue relating to brand development expenses are concerned, having heard the rival contentions and having perused the material on record and the order of the authorities below, we find that the issue relating to Brand Development Expenses is mutatis mutandis identical to the issue decided by a Co-ordinate Bench of this Tribunal in assessee's own case for assessment year 2008-09, in an appeal filed by the Revenue in ACIT v/s Newquest Corporation Ltd. (now known as Avantha Holdings Ltd.), ITA no.328/Nag./2014, vide order dated 28/06/2022, wherein the Tribunal has decided the issue against the Revenue and in favour of the assessee by observing as follows:-

"4.5 We have heard both the parties and perused the materials available on record. From the available records, it is noted that the AO during the course of

assessment proceedings made the addition of Rs.4,33,70,349/- under different heads mentioned hereinabove which has been deleted by the Id. CIT(A) during the course of hearing before him giving detailed findings in his order that the expenses incurred for advertisement, brand building and logo/trade mark and for professional services are related to carrying on the business and they have been regarded as integral part of the profit earning process and not for an acquisition of an asset. Thus such expenditure are in the nature of revenue expenditure and they are allowable expenditure. The Id. CIT(A) further allowed the expenditure of Rs.116.86 lacs in respect of rent by holding that sufficient evidence had been brought on record by the assessee to establish that the said property is being used for the purpose of its business. The Department has not brought on record any adverse evidence that such expenses are bogus and inflated. Thus, the Id. CIT(A) allowed this expenditure in terms of provision of Section 30 of the I.T. Act. Taking into consideration the above facts and circumstances of the case, we find that the Department has not filed any supporting evidence/ rebuttal against the written submission Id. AR of the assessee except arguing that the Id. CIT(A) has erred in deleting the above expenditure. We find on perusal of evidence on record that learned CIT(A) has dealt with the facts and evidence on record extensively while granting relief in the case of appellant. Detailed order passed by the CIT(A) indicating reason for deleting the addition has been reproduced in the paragraphs hereinabove. We are in agreement with the findings and reasoning recorded by CIT(A) deleting the addition in the case of appellant. The nature of expenses clubbed as brand development expenses clearly depict that expenditure incurred is in the nature of allowable revenue expenditure. It has not been disputed by A.O. that expenditure incurred by assessee is in the course of carrying on activity of business. A.O. has differed with appellant by observing that expenditure incurred is in the nature of capital expenditure. Details of expenses on record clearly depict that they are in the nature of revenue expenditure incurred in the course of day to day activity of business. Each of expenditure claimed is allowable business expenditure in terms of various judicial precedents relied upon by the Counsel of appellant and observed hereinabove. Recent decision of Hon'ble Madras High Court in the case of MRF Ltd. vs DCIT, Chennai reported at 280 Taxman 439 dated 29th March 2021 fully supports the case of assessee. Relevant observation of judgment of Hon'ble Madras High Court are reproduced hereunder for ready reference.

16. The said decision was approved by the Hon'ble Supreme Court in Hero Cycles (P.) Ltd. v. CIT[2016] 236 Taxman 447[2015] 63 taxmann.com 308/379 ITR 0347 wherein it was held that once it was established that there was nexus between expenditure and purpose of business, Revenue could not justifiably claim to put itself in the arm-chair of a businessman or in the position of Board of Directors and decide how much was reasonable expenditure.

17. Thus, in the light of the above legal position, it is not for the Assessing Officer to decide what would be good for the assessee in promoting its business and therefore, decision cannot be arrived at by the Assessing Officer based on his own personal perceptions and it should be left to the decision of the assessee, who is the best person, who knows that what would be best for his business activity.

22. Further, the CIT(A) rightly took note of the decision in *Delhi Cloth & General Mills Co. Ltd. (supra)* by observing that the power of the Revenue is confined only to examine the purpose of genuineness of the expenditure and not the expediency or the quantum.

Expenditure incurred on development of brand in respect to existing activity of business is clearly allowable business expenditure and cannot be considered as capital expenditure as concluded by A.O. Conclusion of A.O. is rightly reversed by CIT(A) for detailed reasons indicated in the appellate order. Considering the totality of facts and circumstances and evidence on record we find no merit in appeal of revenue. Thus Ground Nos. 3 & 4 of the Department are dismissed."

5. Since the issue for our adjudication is identical to the issue decided above, consistent with the view taken therein, we dismiss the connected ground(s) raised by the Revenue by upholding the impugned order passed by the learned CIT(A) for both the years under consideration viz. A.Y. 2011-12 and 2012-13.

6. The next issue which relates to non-convertible debentures. This issue is involved in both the years under consideration viz. A.Y. 2011-12 and 2012-13. The issue is common, except variation in figures.

7. Both the parties agree before us that the issue regarding non-convertible debentures is also mutatis mutandis identical to the issue decided by a Co-ordinate Bench of this Tribunal in assessee's own case for assessment year 2010-11, in an appeal filed by the Revenue in ACIT v/s Newquest Corporation Ltd. (now known as Avantha Holdings Ltd.), ITA no.330/Nag./2014, vide order dated 28/06/2022, wherein the Tribunal has decided the issue against the Revenue and in favour of the assessee by observing as follows:-

"15.5 We have heard both the parties and perused the materials available on record. In this case the AO during the course of assessment proceedings noticed that the assessee company has claimed year's premium amounting to Rs.3,63,01,370/- on fully redeemable non-convertible zero coupon debentures which was rejected by the AO holding that the assessee has not deducted tax in this year. The AO further observed that the amount cannot be allowed for the fact that the same was not claimed in the return of income for which the AO relied on the decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd. vs CIT (2006) 157 Taxman 1 (SC). We on perusing the evidence on record find that learned CIT(A) has dealt with the facts and evidence on record extensively while granting relief in the case of appellant. Detailed order passed by the CIT(A) indicating reason for deleting the addition has been reproduced in the paragraphs hereinabove. We are in agreement with the findings and reasoning recorded by CIT(A) deleting the addition in the case of appellant. It is settled proposition of law that claim of expenditure made before A.O. if denied for not having been claimed in the return can be considered and allowed by Learned CIT(A) in the course of appellate proceedings. This proposition is in terms of law laid down by the Hon'ble Jurisdictional High Court in the case of Pruthvi Brokers and Shareholders (P) Ltd. reported at 349 ITR 0336 (Bom.). The Hon'ble Jurisdictional High Court has rendered the judgment after duly considering the judgment of Hon'ble Apex Court in the case of M/s. Goetze (India) Ltd. relied upon by A.O. In view of above considering the claim of assessee and allowing deduction in the appellate proceedings by CIT(A) cannot be faulted. On merits allowability of deduction is covered in favour of assessee in terms of judgment of Hon'ble Apex Court in the case of M/s Madras Industrial Investment Corporation Ltd. reported at 225 ITR 802(SC). The learned departmental representative has not contravened the submission of appellant in the course of hearing before Tribunal. The direction of Hon'bleCIT(A) to allow accrued premium as deduction for computing the income from business on issue of nonconvertible debenture cannot be faulted. The nonconvertible debentures are transferable by delivery and thus payee of debenture remains not identifiable till the date of redemption on 12/09/2012. In the absence of payee being identifiable it is not possible to deduct tax at source under the provisions of Income Tax Act 1961. Payment of premium and payee being not identifiable there is no obligation to deduct tax at source u/s 194A of I.T. Act 1961. In the absence of obligation to deduct tax at source provisions of section 40(a)(ia) of I.T. Act 1961 cannot be invoked. The reasons for disallowance given by A.O. is unjustified and has correctly being held by CIT(A) to be not a valid reason for not allowing the claim of deduction. It is also noted that at the time of date of redemption due compliance of tax deducted at source has been made by appellant. On above undisputed factual position relief granted by CIT(A) in the case of appellant cannot be faulted. Considering the totality of facts and circumstances and evidence on record we find no merit in appeal of revenue. Thus Ground No. 4 and 5 of the Revenue are dismissed."

8. The facts and issue being identical to the issue decided above, consistent with the view taken therein, we dismiss the connected ground(s) raised by the Revenue by upholding the impugned order passed by the

learned CIT(A) for both the years under consideration viz. A.Y. 2011–12 and 2012–13.

9. The next issue for our adjudication relates to corporate guarantee fee. This issue is involved in assessment year 2011–12 and 2012–13.

10. The learned CIT(A) has considered the entire facts and also by following the various decisions restricted the corporate guarantee fee to 0.2%. For the sake of convenience, the relevant portion of the learned CIT(A)'s order is extracted below:–

"6.6. I have gone through the TPO's order dated 29.01.2015, grounds of appeal raised by the appellant, assessment order passed by the AO and detail submissions made by the appellant during the course of appellate proceedings.

6.7. The appellant has mainly relied on the judgment in the case of Bharti Airtel Ltd Vs. Addl.Commissioner of Income tax, Range-2, Delhi in ITAT Delhi Bench (2014) 43 Taxman.com 150 (Del.Trib.). issued a Corporate Guarantee to In this case M/s. Bharti Airtel Ltd has Deutsche Bank on behalf of its associated enterprise Bharti Airtel (Lanka). Assessee claimed that since it had not incurred any cost on account of issue of such guarantee and the guarantee was issued as

However, the TPO held that as the AE had benefited, the ALP had to be computed on CUP method. The Tribunal in this case held that even after the amendment in Sec.928 by amending Explanation to Sec.92B, the corporate guarantee issued for the benefit of the AEs, where it does not involve any cost to the assessee, does not have any bearing on the profits, income, losses or assets of enterprises and therefore it is outside the ambit of International transaction to which ALP adjustments can be made. For this reason, the Hon'ble ITAT held that the issuance of corporate guarantee in question did not constitute International transaction within the meaning thereof u/s.92B. The appellant also relied on the order of ITAT, Mumbai Bench in the case of Videocon Industries Ltd. (2015) 55 Taxmam.com 263 (Mumbai Trib.). In this case also it was held that a corporate guarantee given by assessee company to its AE, if it does not involve any cost to the assessee and therefore if it has no bearing on profits, income, losses or assets of assessee than the same is outside the ambit of International transactions. Thus no transfer pricing adjustment should be made with regard to corporate guarantee issued by the assessee to its AE. In this case also the Tribunal decided the matter in favour of the appellant.

6.8. *The appellant accordingly had submitted that before the TPO a detailed submission had been made stating that the guarantees were given to the AE as part of performing shareholders function and it did not involve any cost to the appellant. The appellant has submitted that neither the TPO nor the AO in their order have stated or brought out this fact that any cost was incurred by the appellant and therefore relying on these judgments the appellant has submitted that no transfer pricing adjustment could be made to the corporate guarantee given by it to its Associated Enterprises as it had not involved any cost to the appellant nor it has any bearing on profits, income, losses or assets of the appellant.*

6.9. *I find that the appellant had made submissions with regard to the tribunal order in case of Bharti Airtel before the Transfer Pricing Officer. The TPO in his order has clearly stated that there are divergent views on this issue and Delhi ITAT was not requested by the contesting parties to decide the issue as to whether provision of guarantee is a service or not. Accordingly, the TPO has considered appellant's submission while framing the Transfer Pricing Order. TPO in his order has also referred to certain judgments given by tribunals where different contrary views have been taken. ITAT Hyderabad "B" bench in case of Prolifics Corporations Ltd. Vs. DCIT 55 Taxman.com 226 (Hyd. Tribunal) 2015 has held that providing corporate guarantee involves services rendered to AE and therefore provisions of Transfer Pricing can be invoked on such transactions.*

6.10. *The appellant has also strongly relied on the order of Mumbai High Court in the case of Everest Kento Cylinders Ltd. reported in 58 Taxman.com 254 (Mumbai) (2015). In this case Hon'ble Mumbai High Court has held that the considerations which apply for issuance of corporate guarantee are distinct and separate from that of bank guarantee and therefore, no transfer pricing adjustment can be made in respect of guarantee commission by making comparison between guarantees issued by commercial banks as against corporate guarantee issued by holding companies for benefit of its AE. The Hon'ble High Court has dealt with the issue in the following manner:*

"The adjustment made by the TPO was based on instances restricted to the commercial banks providing guarantees and did not contemplate the issue of corporate guarantee. No doubt, these are contracts of guarantee, however, when they are commercial banks that issued bank guarantees which are treated as the blood of commerce being easily encashable in the event of default, and if the bank guarantee had to be obtained from commercial banks, the higher commission could have been justified. In the present case, it is assessee-company that is issuing corporate guarantee to the effect that if the subsidiary AE does not repay loan availed of it from ICICI, then in such event, the assessee would make good the amount and repay the loan. The considerations which apply for issuance of a corporate guarantee are distinct and separate from that of bank guarantee and, accordingly, commission charged cannot be called in question, in the manner TPO has done. The comparison is not as between like transactions but the comparisons are between guarantees issued by the commercial banks as against a corporate Guarantee issued by holding company for the benefit of its AE, a subsidiary company. In view of the above discussion, appeal does not raise any substantial question of law and it is dismissed."

6.11. I have considered the judgment delivered by Hon'ble Bombay High Court in the case of Everest Kento Cylinders Ltd. where Hon'ble Court has held that a corporate guarantee issued by holding company, for benefit of its AE is distinct from that of bank guarantee and accordingly transfer pricing adjustment cannot be made on the basis of guarantee issued by banks. Bank guarantee is given on commercial terms and in case of any default it is easily encashable as compared to corporate guarantee given by holding company for benefit of its AE.

6.12. I find that rate of commission that should be charged for giving a corporate guarantee by a holding company to its AE depends on a number of factors. The primary factor being the benefit that AE would derive from implicit/explicit guarantee provided by holding company. The benefit would defer from race to race and therefore in each case considering the judicial precedence and the amount of bene that would transfer from holding company to the AE, the rate of corporate guarantee commission should be determined. I also find that Tribunals in many of the cases have allowed charging corporate guarantee commission from 2% to 0.5% on case to case basis. In the case of Everest Kento Cylinders Ltd for A.Y.2007-08, the company has suo-moto charged a guarantee commission of 0.5% from its AE based on various factors which was confirmed by the ITAT, Mumbai Bench in appellant's case. Similarly, I find that in the case of Asian Paints Ltd., company had charged guarantee commission of 0.2% plus cost from its AE and the same was confirmed by ITAT, Mumbai Bench in ITA 1937/Mum/2010, dt.31/10/2011.

6.13. The benefit that the AE derives by receiving corporate guarantee from Its holding company is on account of lower interest rate at which it is able to raise funds from the banks on the strength of higher credit rating of the holding company. The OECD guidelines relating to corporate guarantee has become the basis for explaining the position with regard to corporate guarantee. The gist of which is that a subsidiary company is able to borrow loan from a third party bank at more beneficial rate of interest on the strength of enhanced credit rating of its holding company. The credit rating of the holding company providing guarantee is better than stand alone credit rating of the AE's and accordingly the AE's get benefit of better credit rating of the holding company, which is giving corporate guarantee to its AE. As per acceptable global best practices such saving in interest in general is split between the parent and the subsidiary company and thus 50% of such saving can be said to be the Arm's Length Guarantee Commission which is payable by the subsidiary company to the parent company. This position of OECD is in line with ruling of Federal Court of Canada in the case of G.E.Capital, Canada.

6.14. However in the instant case, the appellant submissions and fact that comes out from the transfer pricing order of the TPO is the fact that the credit rating of the holding company, AHL and that of the AE are the same. The credit rating as discussed by the TPO is on Page 6 and 7 of the TPO's order and is being reproduced below:

Sr. no.	Name of AE	Financial Year in which guarantee given	Z-score for the relevant F.Y.		Z-score Result	
1	NQC Global (Mauritius) Ltd.	2006-07	-3.13	-0.36	Distress Zone	Distress Zone
2	NQC International (Mauritius) Ltd.	2006-07 2008-09	-3.13	0.07	Distress Zone	Distress Zone
3	MTP new Ocean (Mauritius) Ltd.	2008-09	-2.11	3.69	Distress Zone	Safe Zone
4	Avantha Business Solutions Inc.	2010-11	0.28	0.30	Distress Zone	Distress Zone

Based on above analysis, it can be seen that if one were to derive the equivalent credit rating of the assessee in terms of credit rating parameters of other rating agencies, then the credit rating of the assessee for above mentioned years would be D grade for S & P and Fitch and C grade for Moody's. The equivalent credit ratings of the AE's would be D grade for S & P and Fitch and C grade for Moody's except that the credit rating of MTP New Ocean (Mauritius) Limited would be BBB+ or higher for S&P and Fitch and Baal or higher for Moody's."

6.15. From the credit rating of the appellant company and that of its AE it is apparent that both of them fall under Distress Zone. In fact in the case of MTP New Ocean (Mauritius) Ltd., the credit rating for the AE (in Safe Zone) is better than that of AHL Ltd. This credit rating as submitted by the appellant, during the course of transfer pricing proceedings has not been disputed either by the TPO or by the AO. From this credit rating it is apparent that the AE will not be in a position to derive any economic benefit out of it when it comes to getting the loan at a lower interest rate on the strength of higher credit rating of the holding company which is providing a corporate guarantee.

6.16. However, the appellant can't deny that there is an element of service which has been provided by the appellant company to its AE while providing these corporate guarantee and the appellant company should have charged a guarantee fee from the AE's for providing this service. Considering the facts in totality, the case laws relied upon by the appellant and the submissions made by the appellant, I am of the view that the TPO was not correct in applying guarantee commission rates as charged by various banks for benchmarking the corporate guarantee fee. I also find that the TPO has distinguished the judgment of Bharti Airtel Ltd. relied by the appellant company. Taking into account the OECD guidelines for determination of ALP in case of Corporate Guarantee, the credit rating of the appellant company and its AE's, I am of the view that a fee should be charged by the appellant company from its AE's for providing these guarantee. Considering that the AE's were not in a position to greatly benefit in terms of getting a loan at lower interest rate relying on

appellant's credit rating, I hold that charging of a guarantee commission of 0.2% will be adequate to cover for services that has been provided by the appellant company in providing this guarantee commission to AE's. The AO is accordingly directed to restrict the corporate guarantee fee to 0.2%. This ground is Partly Allowed."

11. We have heard both the parties and gone through the material available on record. We find that the learned CIT(A) by considering the entire factual matrix of the issue and also by considering various judicial precedents restricted the corporate guarantee fee to 0.2% and partly allowed the assessee's appeal on this issue. We find no reason to interfere. Accordingly, the concerned ground is dismissed.

12. For the assessment year 2012-13 along is concerned, two grounds are raised by the Revenue which are extracted herein below:-

"(iv) Whether on the facts and circumstances of the case in law, the Hon'ble CIT(A) was right in holding that on facts in allowing depreciation on aircrafts @ 40% as against the depreciation allowed @ 15%.

(v) Whether on the facts and circumstances of the case in law, the Hon'ble CIT(A) was right in holding transactions of sale of shares as not a business transaction."

13. Ground no.4, raised by the Revenue relates to depreciation.

14. The learned CIT(A) directed the Assessing Officer to delete the addition by observing as under:-

"FINDINGS

5.3 I have considered the submission of appellant and perused the evidence on record. Addition is made by disallowing part claim of depreciation on aircraft. A.O. has discussed the addition at para 4 of assessment order. A.O. has concluded that in respect to purchase of aircraft depreciation is allowed @ 15% as against claimed @ 40% as according to him the rate of 40% is admissible to aero-planes and aero-engines and not aircrafts. A.O. has

proceeded to make addition at Rs.33,82,03,125/-. The issue as to allowability of depreciation on aircraft has been considered by the Hon'ble Delhi High Court in the case of SRC Aviation Pvt. Ltd. reported at 218 Taxman 62(Del) in its order dated 03/9/2012. Relevant extract of judgement has been reproduced in the written submission of appellant hereinabove. The judgement of Hon'ble Delhi High Court has achieved finality in view of dismissal of SLP filed by Revenue by Hon'ble Apex Court vide order dated 15/03/2013 in SLP(Civil) No.5198 of 2013. It has been held in the aforesaid judgement that aircraft is aero-plane and thus depreciation is allowable @ 40%. Ratio laid down by the aforesaid judgement squarely applies to the facts in the case of appellant.

5.4 It is also noted that the jurisdictional ITAT, Nagpur Bench, Nagpur in the case of M/s Ballarpur Industries Ltd. has also considered the similar issue in ITA No.379/Nag/2014 dated 09/05/18 wherein judgement of Hon'ble Delhi High Court as discussed hereinabove is considered to conclude

allowability of depreciation on aircraft @ 40% and issue is decided in favour of appellant. Relevant extract of judgement is reproduced hereunder:

"QUOTE

5. We have heard the rival submissions and also perused the relevant material on the record including the cases relied upon by the authorities below and the cases referred by the Ld. counsel for the assessee. We notice that the Ld. CIT (A) relying upon the decision of Hon'ble Bombay High Court in the case of CIT us. Kirloskar Oil Engine Ltd. 230 ITR 88, decision of the Hon'ble Delhi High Court in the case of SRC Aviation Put. Lid. in ITA No. 487 to 490/2012 dated 03.09.2012, order rendered by ITAT Bench, Delhi in the case of M/s AR Airways Pvt. Ltd. ITA No. 2589/Del/2012 dated 26.04.2013, has allowed the depreciation in respect of aircraft @ 40%.

6 We notice that in the case of M/s AR Airway Pvt. Ltd. (Supra), the only issue raised by the reveue was that whether on the facts in these circumstances of the case. The CIT (A) has erred in law and on facts in allowing depreciation on aircrafts @ 40% as against the depreciation allowed @ 15% by the AO. The ITAT Delhi Bench after hearing the parties dismissed this ground of appeal of the revenue and allowed 40% depreciation and upheld the findings of the Ld. CIT (A) holding that this issue is squarely covered in favour of the assessee by the decision of ITAT. Delhi Bench rendered in the case of SRC Aviation Pvt. Ltd. which was affirmed by the Hon'ble Delhi High Court in further appeal. The Hon'ble High Court has upheld the findings of the Delhi Bench of the Tribunal after going through the order of the ITAT and findings regarding the expression aircraft and aeroplane. The observations of the Hon'ble Court are as under-

"9. This court is conscious of the fact that the generic term aircraft is broader and there can be no doubt that it encompasses the expression aeroplane. However, this court is not called upon to interpret the term "aircraft" in the present appeal. The question is whether the Beechcraft Super King Air B-200C purchased by the assessee fell within the description of aeroplane. Ld counsel for the revenue sought to urge that the "airplain-aeroengin" included only aero engine which can be used for airplane, covered by the Entry III(3)(i) in the

head "Plant and Machinery. We see no warrant for such a restrictive interpretation. Even with regard to the history of the entry all that can be inferred is that "aircraft" is a broader description which includes all manner of craft or means of transport aided by flight such as balloons, planes etc.) within the Depreciation Rules. For the reasons best known, the rule making authority confined and narrowed definition to aeroplane. This conclusion is also supported by the fact that other entries in Rule III(3) of the depreciation table extend to entire vehicles such as commercially pliable buses, cars etc. They do not confine the scope of depreciation only to parts of such vehicles.

10. In view of the above discussion, this court is satisfied that the Tribunal's judgment does not disclose any error as regards interpretation of Entry III(3)(i) of the Depreciation Rules. Its upholding the depreciation allowable in the present case to the tune of 40% cannot be termed as unjustified or unwarranted."

7. Hence, the issue is covered by the decision of Hon'ble Delhi High Court rendered in the case of CIT vs. SRC Aviation Pvt. Ltd. (supra) and decision of the ITAT Bench Delhi rendered in the case of ACIT us. A.R. Airways (supra). Since, the Ld. CIT(A) has decided this issue in favour of the assessee in accordance with the Decision of the Hon'ble High Court and the Tribunal aforesaid, we do not find any reason to interfere with the same. We accordingly uphold the findings of the Ld. CIT(A) and dismiss ground No 3 and 4 of this appeal. We accordingly direct the AO to allow the depreciation claimed by the assessee @ 40%.

UNQUOTE"

5.5 Respectfully following the decision of Hon'ble Jurisdictional Tribunal in the case of associate company and Hon'ble Delhi High Court it is held that appellant is eligible for depreciation @ 40% on the cost of aircraft. Addition made by A.O. at Rs.33.82 crores is held to be unjustified and is directed to be deleted."

15. Since the present issue is covered by the judgment of the Hon'ble Delhi High Court in CIT v/s SRC Aviation Pvt. Ltd., [2013] 37 taxmann.com 308 (Del.) and the Co-ordinate Bench decision of the Tribunal rendered in ACIT v/s M/s. Ballarpur Industries Ltd., ITA no.379/Nag./2014, A.Y. 2008-09, vide order dated 09/05/2018, wherein the addition made by the Assessing Officer was directed to be deleted, respectfully following the aforesaid case laws, we find no reason to interfere with the order passed by the learned CIT(A). Accordingly, upholding the order passed by the learned CIT(A), the ground no.4, raised by the Revenue is dismissed.

16. Ground no.5, relates to sale of shares.

17. The learned CIT(A) has considered the assessment order and also the entire facts of the case and he passed a detailed order. For the sake of convenience, the findings of the learned CIT(A) on the said issue vide Page-64 to 67, are reproduced below for ready reference:-

"6.3 I have considered the submission of appellant and perused the evidence on record. A.O. has discussed the addition at para 5 of the assessment order.

A.O. has concluded that the surplus arising to sale of shares is brought to tax as income from business as against income declared by computing the assessable long term capital gain after indexation at the hands of appellant at Rs. 13,55,259/-. A.O. has concluded that investment made by the appellant in the past assessment years is as business income and hence same is liable to be assessed as business income for the year under consideration. It is seen from the assessment order that investment in shares were partly received by appellant company on amalgamation of M/s Solaries Holdings Ltd. on 01/04/2009. The shares received on amalgamation were held as investment by appellant company. Factual position as to shares sold have been held as investment by appellant is not in dispute. It is only because in earlier Asstt. Years 2009-10 and 2010-11 sale of shares were assessed as business profit, similar stand is taken during the assessment year under consideration. In Asstt. Years 2009-10 and 2010-11 the issue as to assessment of surplus of sale of shares has been decided by Hon'ble ITAT, Nagpur Bench, Nagpur in ITA No.329 & 330/Nag/2014 vide order dated 28/06/2022. The Hon'ble ITAT at para 9.1 has discussed the aforesaid issue and decided the ground in favour of appellant by dismissing the appcal of the department. The relevant extracts of order are reproduced hereunder for ready reference:

"QUOTE

9.1 Apropos Ground No. 1 and 2 of the Department, brief facts of the case are that the AO made an addition of Rs.8,65,68,734/- treating it as business loss. The Id. CITIA) considering all the aspects of the case allowed this ground of the assessee by observing at para 5 to 6 of his order as under-

"It is seen that the said issue already stands covered in favour of the appellant in view of the judgement of Hon'ble ITAT, Nagpur Bench in appellant's own case for AY 2004-05 and the relevant extract of the judgement has already reproduced in Para C above in the appellant submission. The Hon'ble ITAT has held that appellant has been showing the said shares as investment in its books of account and not in stock in trade and that the surplus shares arising on sale of share was a long term capital gain which had been so accepted by the revenue authority in earlier years and that therefore, there was no justification for not accepting the explanation for short term capital gain. It is

important to note that the above judgement was given by the Hon'ble ITAT in the context of multiple transactions wherein lot of shares were held for a very short period of time while in the year under consideration, the appellant has entered into a limited number of transactions and has held the shares for years.

5.1 The Hon'ble ITAT also relied on the case of Gopal Purohitus JCIT 20 DTR 99 (supra) wherein it has been held that the appellant's claim for short term and long term capital gain from the transaction in shares have been allowed on identical facts in earlier assessment years and that therefore the same could not be disallowed in the year under consideration only because the transaction conferred certain benefits of the appellant. It is further stated in the said judgement that modus operandi of appellant is the same and therefore, the appellant's claim deserves to be accepted by the following rule of consistency. Following the said decision of Gopal Purohitus JCIT (supra), the Nagpur Bench of ITAT has given relief to the appellant in AY 2004-05.

5.2 Even during the year under consideration, it is evident that shares which have been sold by the appellant have been consistently shown as investment in its books of accounts over the years. This fact has not been refuted by the Id. AO. As a matter of fact the Id. AO explicitly states that the said shares have been shown as investment in the books of the appellant. It is also a fact that most of these shares have been held by the appellant for the last several years. In any case, each of the shares has been held in a period of more than 1 year as the entire profit/loss is claimed to be long term. It is also un-refuted fact that the appellant took delivery of each and every share and the appellant has not undertaken any transaction in future and optic segment. It is also important to note that the total sales that have recorded during the year under consideration are in 13 scrips only and as stated by the Id. AO, only 15 transactions have been entered into by the appellant in the year under consideration. It is also a fact that in the immediately preceding year similar transactions have been treated by the Id. AO to be assessable under the head capital gains. As stated by the appellant, in AY 2008-09 loss/profit arising on profit of sale of share were determined under the head "Capital Gain". Since the facts during the year under consideration remained identical, there is no reason to assess the profit/loss arising on sale of shares under the head income from business.

6. Considering the above totality of facts and the judgement of the Hon'ble ITAT in the appellant own case, the loss arising on sale of shares ought to be brought to tax under the head capital gains and consequently the action of the Id.AO in treating the loss of Rs. 1,21,49,434/as loss as part of appellant's business income is hereby deleted. Accordingly, the long term capital loss as claimed by the appellant amounting to Rs.8,65,68,734/- is directed to be deleted. This ground is therefore allowed."

9.2 We have heard both the parties and perused the materials available on record. In this case, it is noted that the AO made an addition of Rs.8,65,86,734/- treating the long term capital loss as a business loss. However, the Id. CIT(A) taking into consideration the decision of ITAT Nagpur in assessee's own case for the assessment year 2004-05, held that it is a covered issue. The Id. CIT(A) in his order mentioned that the shares which

have been sold by the assessee have been consistently shown as investment in its books of account over the year and this fact has not been refuted by the AO and it is also a fact that most of these shares have been held by the assessee for the last several years. To this effect, the Id. CIT(A) has relied on the decision in the case of Gopal Purohit v/s JCIT 20 DTR 99 and further observed that ITAT Nagpur Bench has given the relief to the assessee in view of decision of Gopal Purohit v/s JCIT (supra). It is also pertinent to mention that in the immediately preceding year, similar transaction had been treated by the AO to be assessable under the head capital gains. In this view of the matter, we concur with the findings of the Id. CIT(A) on the issue in question. Thus, Ground Nos. 1 and 2 of the Department are dismissed.

UNQUOTE

6.4 Ratio laid down by the aforesaid judgment squarely applies to the facts in the case of appellant and considering the same assessment of surplus arising on sale of shares during the previous year under consideration held as investment are liable to be brought to tax under the capital gain and not income from business. It is worthwhile to note that appellant company has made strategic investment in companies and shares are not acquired to engage itself in any trading activity. A.O. is directed to accept the capital gain as shown in the return and addition made by A.O. at Rs. 65,49,37,331/- is directed to be deleted. Income as shown under the head long term capital gain at Rs.13,55,259/- be assessed to tax. Ground of appeal is disposed as directed hereinabove."

18. The learned CIT(A) by considering all the facts and also by following the decision rendered in assessee's own case for the assessment year 2009-10 and 2010-11, in ITA no.329-330/Nag./2014, vide order dated 20/06/2022, and also by following the Co-ordinate Bench decision of the Tribunal for the assessment year 2004-05, directed the Assessing Officer to take the income under the head "Capital Gain" and not under the head "Business Income". Since the issue is covered by the decision of the Co-ordinate Bench of the Tribunal rendered in assessee's own case cited supra, we find no reason to disturb the order passed by the learned CIT(A). Accordingly, upholding the order of the learned CIT(A), the concerned ground raised by the Revenue is dismissed.

19. In the result, Revenue's appeals for A.Y. 2011-12 and 2012-13 stand dismissed.

ITA no.45/Nag./2016
Assessee's Appeal – A.Y. 2011-12

20. The assessee has raised following grounds:-

"1. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the transaction of corporate guarantee extended by the appellant to its AE as international transaction without appreciating that it does not fall within the definition of "International transaction" u/s.92B prior to amendment by Finance Act, 2012 ignoring the various judicial pronouncements and thereby erred in determining the ALP in respect of such transaction.

2. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in confirming ALP of the corporate guarantees extended by the appellant to banks on behalf of its AEs and thereby erred in making an upward transfer pricing adjustment @ 0.2% u/s.92CA of the L.T. Act, 1961 in respect of Guarantee commission.

3. The Ld. Commissioner of Income Tax (Appeals) erred in confirming the arm's length corporate guarantee fee at 0.2% p.a. on corporate guarantees provided by the appellants on behalf of its AEs without considering the following factors:

a) That the provision of corporate guarantee is not in the nature of service but a shareholder's function and in the absence of corporate guarantee, the appellant being the holding company would have provided the funds to the subsidiary by increasing the share capital, hence provision of corporate guarantee does not lead to any additional risk for the appellant warranting a compensation;

b) misinterpreting the concept of shareholder services contained in the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations released by the Organization for Economic Cooperation and Development (OECD Guidelines);

c) The appellant is contractually restrained by the lenders to charge any guarantee fees to its AEs as per the guarantee agreement.

4. The Ld. Commissioner of Income Tax (Appeals) erred in holding that there is an element of service provided by the appellant company to its AE while providing these corporate guarantee without appreciating the fact that said Guarantees issued by the appellant are in the form of Corporate Guarantees /quasi capital and not in the nature of provision for services as it did not cost anything to the appellant.

5. *That the Appellant Company craves leave to add, amend, alter and withdraw any ground or grounds of appeal before or at the time of hearing of this appeal."*

21. The only issue raised in this appeal relates to corporate guarantee.

22. The learned CIT(A) directed to restrict the corporate guarantee fee to 0.2%. The findings of the learned CIT(A) are as under:-

"6.15. From the credit rating of the appellant company and that of its AE it is apparent that both of them fall under Distress Zone. In fact in the case of MTP New Ocean (Mauritius) Ltd., the credit rating for the AE (in Safe Zone) is better than that of AHL Ltd. This credit rating as submitted by the appellant, during the course of transfer pricing proceedings has not been disputed either by the TPO or by the AO. From this credit rating it is apparent that the AE will not be in a position to derive any economic benefit out of it when it comes to getting the loan at a lower interest rate on the strength of higher credit rating of the holding company which is providing a corporate guarantee.

6.16 Tax Corporate guarantee and the appellant company should have charged a guarantee. However, the appellate can't deny that there is an element of service which has been provided by the appellant company to its AE while providing these from the AE's for providing this service. Considering the facts in totality, these laws relied upon by the appellant and the submissions made by the appellant, I am of the view that the TPO was not correct in applying guarantee commission rates as charged by various banks for benchmarking the corporate guarantee fee. I also find that the TPO has distinguished the judgment of Bharti Airtel Ltd. relied by the appellant company. Taking into account the OECD guidelines for determination of ALP In case of Corporate Guarantee, the credit rating of the appellant company and its AE's, I am of the view that a fee should be charged by the appellant company from its AE's for providing these guarantee. Considering that the AE's were not in a position to greatly benefit in terms of getting a loan at lower interest rate relying on appellant's credit rating, I hold that charging of a guarantee commission of 0.2% will be adequate to cover for services that has been provided by the appellant company in providing this guarantee commission to AE's. The AO is accordingly directed to restrict the corporate guarantee fee to 0.2%. This ground is Partly Allowed."

23. The learned CIT(A) has restricted the guarantee commission @ 0.2% which in our considered opinion is justified. Nothing warrants us to disturb the impugned order passed by the learned CIT(A) which is accordingly upheld by dismissing the grounds raised by the assessee.

24. In the result, appeal filed by the assessee is dismissed.

25. To sum up, all the appeals are dismissed.

Order pronounced in the open Court on 04/04/2025

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 04/04/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur