IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.1696/Bang/2024
Assessment Year: 2016-17

Bosch Global Software Technologies Pvt. Ltd., No.123, Hosur Road, Industrial Layout, Koramangala, Bengaluru – 560 095. **PAN – AAACR 7108 R**	Vs.	The Asst. Commissioner of Income Tax, Circle - 2, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Percy Pardiwala, Sr. Advocate and Smt. Pratibha R – Advocate
Revenue by	:	Smt. Nandini Das, CIT

Date of hearing	:	22.01.2025
Date of Pronouncement	:	16.04.2025

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 05/07/2024 in ITA No. ITBA/NFSC/S/250/ 2024-25/1066428364(1) for the assessment year 2016-17.

2. Ground No. 1 of assessee's appeal is general in nature and does not require any separate adjudication. Hence, the same is dismissed.

3. The next issue raised by the assessee, as per grounds 2 & 3 of its appeal, is that the learned CIT(A) erred in confirming the disallowance of the claim for additional depreciation under Section 32(1)(iia) of the Act.

4. The facts in brief are that the assessee company, *Bosch Global Software Technologies Pvt. Ltd.* (formerly known as *Robert Bosch Engineering and Business Solutions Pvt. Ltd.*), is a wholly owned subsidiary of Robert Bosch GmbH, Germany. The company is engaged in the business of developing computer software, providing IT-enabled services, and developing embedded software for automobile components and accessories.

5. The assessee, in its return of income, claimed additional depreciation under section 32(1)(iia) of the Act on computers used for the production of software. The assessee explained that it was in the business of development embedded software, which amounts to the production of an article or thing, and that the computers used for software production qualify as plant and machinery, thus making them eligible for additional depreciation.

6. On the other hand, the AO held that computer software is not an article or thing. The AO noted that while the term "article or thing" is not defined under the Act, an inference can be drawn from the provisions of section 10A of the Act, where the phrase **"articles or things or computer software"** is used meaning thereby the computer software is different from article or things. Likewise, the provision of section 10AA of the Act also mentions **"Manufacture or produce article or things or provide any services"** meaning thereby software development services is different from manufacturing or production of article or things. The AO concluded that computer software is distinct from an article or thing, and additional depreciation is allowable only on plant and machinery installed by an assessee engaged in the manufacture or production of articles or things. Furthermore, the AO observed that computers and computer software are depreciated at higher rates than plant and machinery, which suggests that computers are not considered as

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plant and machinery. Consequently, the AO disallowed the claim of additional depreciation of Rs. 20,28,94,781/- and made an addition to the total income of the assessee.

7. Aggrieved, the assessee, preferred an appeal before the learned CIT(A)/NFAC who concurred with the finding of the AO and confirmed the disallowances made by the AO by observing as under:

> *"2. In the grounds of appeal vide ground number 2, 3 & 4, objects to disallowing assessee's claim of additional depreciation u/s 32(1)(iia) amounting to Rs. 20,28,94,781/-. Additional depreciation is eligible to only assessees engaged in manufacture or production of "thing" or "articles". Since the assessee is engaged only in software development, it is not eligible to claim additional depreciation u/s 32(1)(iia). Further, software is said to be developed as it is only an improvement on something that exists already. A new software is developed based on software and information and technical knowledge that exists and development is distinct from manufacturing. In view of the reasons discussed above, the assessee doesn't fit into the definition of "manufacture of article or thing" as mentioned in Section 32(1)(iia) of the Act and also fails the conditions under Plant and Machinery. Also, as the issue is still under appeal and not settled in the case of assessee, the issue is kept alive and the claim of additional depreciation on Plant and Machinery and Computers amounting to Rs. 20,28,94,781/- is disallowed and added back to the total income. Disallowance of depreciation u/s 32(1)(iia) is confirmed."*

8. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

9. The learned AR before us submitted that the dispute on hand is covered in favour of the assessee by the decision of this Tribunal in the own case of the assessee for 2012-13 in IT(TP)A No. 593/Bang/2020.

10. On the other hand, the learned DR before us vehemently reiterated the findings contained in the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that issue on hand is covered in favour of the assessee by the order of coordinate bench of this Tribunal in the own

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case of the assessee for A.Y. 2012-13. The relevant finding of the Tribunal vide order dated 9-12-2024 reads as under:

> *"21. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly the assessee has claimed additional depreciation under clause (iia) of section 32 of the Act by treating the computers used for development of computer software as plant and machinery installed for manufacture or production of article or things. The claim of the assessee has disallowed by the lower authorities by holding the assessee's business of computer software development & IT enabled services does not tantamount to manufacture or production of article or things. Further, the computers on which additional depreciation was claimed does not qualify as plant and machinery.*
> *21.1 As per far as the question, whether the assessee is in the business of manufacture or production of article or things is concern. We note that same has been answered by the us in the preceding paragraph while dealing the with the ground of appeal in respect of claim of deduction under section 80JJAA of the Act. As previously noted, the assessee is engaged in the business of developing of computer software, and embedded software for automobile components and accessories, which involves the application of intellectual and technical efforts, and meets the criteria for the production of an article or thing. In line with this, the assessee's business activities fall under the broader definition of "production" under the Act, and thus, the development of software constitutes a form of production in a knowledge-based industry.*
> *21.3 The argument that computers used in the development of software are part of plant and machinery is substantiated by the fact that the Income Tax Rules categorize computers and computer software within the block of plant and machinery, eligible for depreciation at a higher rate. This indicates that computers software, despite being intangible in terms of output, play a crucial role as plant and machinery in the production process.*
> *21.4 Given that the assessee is engaged in the production of an article or thing (software), the computers used in the production of such software can be treated as plant and machinery under the provisions of Section 32(1)(iia) of the Act. Therefore, the claim for additional depreciation on the computers used in the production of software is in line with the provisions of the Act.*
> *21.5 In light of the above, we hereby reverse the findings of the learned CIT(A) and allow the assessee's claim for additional depreciation under Section 32(1)(iia) of the Act."*

11.1 Before us, no material has been placed on record by the Revenue demonstrating that the decision of the Tribunal in own case of the assessee discussed above has been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing feature in the facts of the case of earlier AY and the year under consideration.

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11.2 Before parting, we note that identical dispute was there before this Tribunal in the case of Sling Media Pvt Ltd vs. DCIT in ITA No. 197/Bang/2020 reported in 135 taxmann.com 164. In the said case, the coordinate bench of this tribunal held activity of assessee being development of computer software cannot be held as manufacturing activity, therefore additional depreciation under section 32(1)(iia) of the Act cannot be allowed on the block of assets being computer and software. In this context, we find that the facts involved in the case of present assessee and in the case of Sling Media Pvt Ltd (supra) are identical. However, we find that the coordinate bench in the case of Sling Media Pvt Ltd has given finding only after the considering the term manufacture of article or thing. The finding of the coordinate bench is silent regarding the term production of article or thing. As such the provision of section 32(1)(iia) of the Act uses the term *"an assessee engaged in the business of manufacture or production of any article or thing"*. The Tribunal in own case of the assessee for A.Y. 2012-13 as discussed above after considering the term "Production of any article or thing" has decided the issue in favour of the assessee. Hence, the view taken by this Tribunal in the case of Sling Media Pvt Ltd (supra) is distinguishable from the view taken in the own of case of the present assessee for A.Y. 2012-13. Thus, respectfully following the order of the Tribunal in the own case of the assessee as discussed above, we hereby set aside the finding of the learned CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

12. The next issue raised by the assessee through ground Nos. 4 to 6 of its appeal is that the learned CIT(A) erred in confirming the disallowance of the claim of investment allowances under section 32AC of the Act for Rs. 15,88,04,267/- only.

12.1 The relevant facts are that the assessee in the return of income claimed investment allowances as per the provision of section 32AC of the Act for an amount 15,8804,267/- only. The AO found that the investment allowances under section 32AC is allowed to the assessee engaged in business of manufacturing of article or thing whereas the present assessee is in the business of development of computer

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software which does not mean a manufacturing activity. The AO further found that the provision of subsection (4) to section 32AC of the Act has defined the term "New Assets" and as per the definition, computer and computer software are not included under the purview of "new assets". Thus, the assessee did not satisfy the condition to claim the investment allowances. Therefore, the AO disallowed the claim of the assessee and added the same to the total income.

12.2 The aggrieved assessee preferred an appeal before the learned CIT(A) wo confirmed the disallowances made by the AO.

12.3 Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

13. The learned AR us submitted that the additional depreciation was claimed with respect to the computers installed and used for the purpose of the development of computer software. To this effect, the learned AR filed the return submission dated 13-02-2025 in support of his contention. According to the Ld. AR, the assessee has not claimed any the depreciation on the computers used for administrative purposes.

14. On the other hand, the learned DR vehemently supported the order of the authorities below.

15. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the assessee has claimed investment allowance under section 32AC of the Act on account of purchases of computers. The revenue authorities disallowed the assessee claim for 2 reasons. The first reason being the *assessee not engaged in the business of manufacture or production of any article or thing* and the second reason being the computer or computer software not included in the definition of "New Assets" as per the provision of section 32AC(4)(iii) of the Act.

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15.1 As far as, the view of the revenue authority that the assessee is *not engaged in the business of manufacture or production of any article or thing* is concerned, we note that issue is settled in favor of the assessee while deciding the dispute regarding the claim of additional depreciation under section 32(1)(iia) of the Act. The precondition to claim the additional depreciation under section 32(1)(iia) of the Act and investment allowances under section 32AC of the Act same i.e. assessee should be *engaged in the business of manufacture or production of any article or thing*. Hence, following the finding given by us in respect of ground raised in connection to additional deprecation we hold that the assessee is engaged in the business of "*manufacture or production of any article or thing".*

15.2 Now coming to the second reason given by the revenue authorities for disallowances of claim of the assessee, in this regard, we note that the provision of section 32AC(1) of the Act provides that an assessee being engaged in the business of manufacture or production of any article or thing, acquires or install new assets shall be allowed certain percentage of cost of new assets as investment allowances. The term new assets defied under subsection 4 of section 32AC which reads as under:

> *"(4) For the purposes of this section, "new asset" means any new plant or machinery (other than ship or aircraft) but does not include—*
> *(i) any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;*
> *(ii) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;*
> *(iii) any office appliances including computers or computer software;*
> *(iv) any vehicle; or*
> *(v) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year."*

15.3 The relevant clause in present case is clause (iii) according to which any office appliance including the computer or computer software shall not be included in the "New asset" for purpose of this section. On careful perusal of the impugned clause, it transpired that what is excluded from the term "new asset" is office appliance

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which may include computer and computer. In other words, computer or computer software installed as office appliances are excluded and not the computer installed for the purpose of the production of article or things. Hence, the computer installed by the assessee for the purpose of development of software activity which is held by us production of article or things shall be available for investment allowances under the provision of section 32AC of the Act whereas no allowance shall be allowed on the computer installed for administrative purposes.

15.4 We find that there was no detail available on record suggesting that how many computers were installed/ used in the activity of development of computer software. Therefore, we find necessary to set aside the issue to the file of the AO to adjudicate the issue afresh in the light of the above stated discussion. The assessee shall provide the detailed of the computers installed in the activity of software development. Accordingly, the AO after verification shall allow the claim of the assessee if the new computers were installed for the purpose business of the development and not for the purpose of administration or as office appliance. Hence, the ground of appeal of the assessee is hereby partly allowed for statistical purposes.

16. The next issue raised by the assessee through ground Nos. 7 to 9 is that the learned CIT(A) erred in confirming the disallowance made by the AO under section 14A of the Act for Rs. 76.70 lakh.

16.1 During the year, the assessee earned exempt income of ₹9,17,03,820/- and made a suo-moto disallowance of expenses under section 14A of the Act, amounting to ₹22,63,862/- only. The assessee explained that this self-determined disallowance was made after identifying expenses directly related to the exempt income. Therefore, it contended that the provisions of Rule 8D of the Income Tax Rules were not applicable.

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16.2 However, the Assessing Officer (AO) disagreed with the assessee's contention. The AO found that the suo-moto disallowance made by the assessee is not commensurate to the value of the exempted income and disallowance was made in an ad-hoc manner ignoring the manner prescribed under the provision of the Act. Therefore, the AO calculated the disallowance as per Rule 8D of Income Tax Rule and determined the amount to be disallowed at ₹99,33,350/- only. Accordingly, the AO made an additional disallowance of ₹76.70 Lakh over and above the suo-moto amount disallowed by the assessee.

16.3 On appeal by the assessee, the learned CIT(A) confirmed the addition made by the AO.

17. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

18. The learned AR before us submitted that the issue in hand is covered in favour of the assessee by virtue of the order of the ITAT in the own case of the assessee bearing ITA No. 446/Bang/2020. Thus, the learned AR claimed that there cannot be any disallowance under the provisions of section 14A read with rule 8D of the Income Tax Rule.

19. On the other hand, the learned DR before us vehemently supported the order of the authorities below.

20. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that that the issue of disallowance under section 14A of the Act is covered in favour of the assessee by the order of this Tribunal in the own case of the assessee for A.Y. 2010-11 bearing IT(TP)A No. 608/Bang/2016 dated 02-12-2022. The relevant finding of the Tribunal is extracted as under:

> *The Ld.Counsel submitted that assessee had disallowed Rs.2,23,20,919/- against exempt income earned being Rs.3,63,96,471/- u/s. 14A of the Act. He submitted that during the year*

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under consideration, the investments made by assessee were only fixed. He submitted that assessee is not into buying and selling of shares / investments but is carrying on software development businesses. The Ld.Counsel submitted that assessee has computed disallowance at Rs. 36,01,783/- as under:

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12. The Ld.Counsel submitted that the entire investments cannot be taken into consideration for disallowance under Rule 8D(2)(iii) at 0.5%. The Ld.DR on the contrary relied on the orders passed by the authorities below. We note that on identical issue, the Coordinate Bench of this Tribunal in assessee's own case observed for Assessment Year 2008-09(supra) as under:

> *"9.1 We heard the parties on this issue. The Ld A.R invited our attention to page 521 of the paper book, wherein the details of investments are given. He submitted that the assessee has made investments only in units of various mutual funds. The aggregate amount of investments made during this year was Rs.90.59 crores. He further submitted the assessee has also invested a sum of Rs.15.00 crores in growth scheme and a sum of Rs.20.26 crores in dividend reinvestment scheme. The assessee has made investments in six schemes only during the year under consideration and it has encashed investments made in the earlier years in four schemes. He submitted that the assessee has not really incurred any expenditure in earning the dividend income. On the contrary, the Ld D.R supported the order passed by Ld CIT(A). 9.2 We heard the parties on this issue and perused the record. We notice that opening balance of investments stood at Rs.25.59 crores in four schemes of mutual funds. During the year under consideration, the above investments have been realised. The assessee has made fresh investments in six schemes of mutual funds during this year, out of which three schemes fall under Growth/reinvestment schemes. Considering the less number of schemes, in our view, it may not be proper to apply Rule 8D mechanically. Accordingly, we are of the view that the disallowance may be estimated to meet the requirements of sec.14A of the Act. Accordingly, we estimate the disallowance u/s 14A at Rs.2.00 lakhs and in our view, the same would meet the requirements of the provisions of sec.14A of the Act. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to restrict the disallowance u/s 14A to Rs.2.00 lakhs."*

13. In the above observations for Assessment Year 2008-09, there no disallowance was made by assessee this Tribunal deem it appropriate to restrict the disallowance to Rs.2 Lakhs considering the less number of schemes that fall under growth / investment schemes. Going by the above principle and also observing the fact that the Ld.AO has not expressly mentioned any dissatisfaction in the suomoto disallowance computed by assessee we hold that the disallowance computed by the assessee is appropriate.

21. Before us, no material has been placed on record by the Revenue demonstrating that the decision of the Tribunal in the own case of the assessee as discussed above has been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing feature in the facts of the case of earlier AY and the year under consideration. Thus, respectfully following the order of the Tribunal in the own case of the assessee as discussed above, we hereby set aside the finding of the learned CIT(A) and direct the AO to delete the disallowance made by him. Hence, the ground of appeal of the assessee is hereby allowed.

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22. The next issue raised by the assessee through ground 10 of its appeal is that the learned CIT(A) erred in confirming the disallowance of claim of deduction of state tax paid in USA for Rs. 46,42,788/- only.

23. The relevant facts are that the assessee claimed that it has paid "State Taxes" in USA for Rs. 46,42,788/- which as per the US state tax regulation is mandatory for every entity. As per the assessee, such payment of tax is allowed as deduction from income tax liability under US Federal Income Tax Law. The assessee claimed that the impugned tax is prior charges on the income. Accordingly, the impugned payment was claimed as an expenditure in the return of income.

24. However, the AO disallowed the same by holding the taxes paid in foreign territory can be claimed under section 90/91 of the Act following the procedure and condition provided therein and not as a deduction.

25. The aggrieved assessee preferred an appeal before the learned CIT(A) who confirmed the disallowance by observing as under:

> *"8. Ground number 13, the assessee objects to disallowing Rs.46,42,788/- being state taxes paid by the assessee by its branch in USA. With respect to "State Taxes Paid in USA" amounting to Rs.46,42.788/-, the assessee argued that as per US state tax regulations, every entity is mandatorily liable to pay taxes are given as deduction from income tax liability payable under the US Federal Income Tax Laws. In other words State Taxes is prior charge on the income of the assessee that is to say that it is diversion by overriding title at stage of earning profit itself.*
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> *9. However, the foreign tax credit can be claimed u/s 90/91 of the Income Tax Act, 1961. The section specifically mentions the procedure by way of which relief can be claimed for income tax paid in a country or specified territory as the case may be. Hence the amount of Rs.46,42,788/- is disallowed and added back to income. The addition of Rs. 46,42.788/- is confirmed."*

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26. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

27. The learned AR before us contended that the state tax paid in a foreign country is allowable deduction by virtue of the order of Hon'ble Bombay High Court in the case of Reliance Infrastructure Limited Vs. CIT reported in 390 ITR 271 and Bombay Tribunal in the case of Bank of India Vs. ACIT reported in 125 Taxmann.com 155.

28. On the other hand, the learned DR before us vehemently supported the order of the authorities below.

29. We have heard the rival contentions of both the parties and perused the materials available on record. From the material available on record, we note that the assessee has paid certain state tax in the USA and the same was claimed as an expenditure. The Revenue authority disallowed the claim of the assessee by holding that foreign tax credit can be claimed as per the procedure laid down under section 90/91 of the Act. There is no dispute to the fact that the assessee has not claimed any benefit of the impugned tax paid in foreign country under the provisions of section 90/91 of the Act which was also not controverted by the learned DR appearing on behalf of the revenue.

29.1 The Bombay Tribunal in the case of Bank of India Vs. ACIT reported in 125 Taxmann.com 155 involving identical facts and circumstances has held as under:

> *"**80.** To sum up, the assessee is declined the foreign tax credits for Rs. 182,64,22,948, and, accordingly, we hold that the assessee is not entitled to seek a refund of that money from the Indian tax exchequer. As we hold so, we may add that in the present case, our entire focus was on whether these foreign tax credits could be allowed even when such tax credits lead to a situation in which taxes paid abroad could be refunded in India, but that must not be construed to mean that, as a corollary to our decision, these foreign tax credits would have been allowed, even if there is no domestic tax liability in respect of the related income in India if it was not to result in such a refund situation. At the cost of repetition, we may add that, for the detailed reasons set out earlier, we have our reservations on the applicability of the Wipro decision (supra) on this bench, being situated outside of the*

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jurisdiction of Hon'ble Karnataka High Court, and we are of the considered view that full tax credit for source taxation cannot, as such and to that extent, be extended in the residence jurisdiction when a tax treaty sanctions only proportionate credit, and does not, in any case, specifically provide for the full foreign tax credit. A full tax credit, which goes beyond eliminating double taxation of an income, actually ends up subsidizing the foreign exchequer, to the extent that the taxes paid to the foreign exchequer are allowed to discharge exclusive domestic tax liability, rather than eliminating double taxation of an income, and that is the reason that even in the solitary full credit situation visualized in the Indian tax treaties, in the Indo Namibia tax treaty (supra), it's one-way traffic inasmuch as while India, as a relatively developed nation, offers, under article 23(2), full credit for taxes paid in Namibia, whereas, in contrast, Namibia, as a developing nation, offers, under article 23(1), proportionate credit for taxes paid in India. It reinforces our understanding that the full foreign tax credits cannot be inferred to be permissible as a matter of course and normal practice. Just because the coordinate benches have subconsciously taken a stand that seems to be condoning, and in a way legitimizing, a contrary perception, even if that be so, we cannot, particularly after taking a closer look at the situation, follow the same course. When such huge national revenues, involving thousands of crores, are involved in this macro issue, we cannot afford to be superficial, or perfunctory, in our approach. ***On a separate note, nevertheless, we do uphold the claim of the assessee that these taxes paid abroad will be allowed as a deduction in the computation of the business income of the assessee.****"*

29.2 From the above order of Bombay Tribunal, it is transpired that if the assessee is not eligible for the benefit of the provisions specified under section 90/91 of the Act, then the assessee is eligible for deduction representing the amount of tax paid in the foreign country. Accordingly, respectfully following the order of Bombay Tribunal discussed above, we set aside the order of the learned CIT-A and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee, is hereby allowed.

30. The issue raised by the assessee through ground No. 11 of its appeal is that the revenue authority erred in not granting the credit of MAT as per section 1115JAA of the Act.

31. At the outset, we note that the issue of MAT credit was raised first time before us. The lower authorities did not get the opportunity to apply their mind. Therefore, in the interest of justice and fair play, we set aside the issue to the file of the AO. The AO is directed to allow MAT credit, if any, as per law. The assessee is

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directed to furnish the necessary details. Henc the ground of appeal of the assessee is allowed for statistical purposes.

32. The issue raised by the assessee through ground no. 12 and 13 of the its appeal pertain to the levy of interest under section 234B and initiation of penalty proceeding under section 271(1)(c) of the Act.

33. At the outset, we note that the issue raised in impugned grounds of appeal are either consequential or premature to decide. Hence the same are dismissed as infructuous.

34. In the result, the appeal of the assessee is hereby partly allowed for statistical purposes.

Order pronounced in court on 16th day of April, 2025

Sd/-	Sd/-
(KESHAV DUBEY)	**(WASEEM AHMED)**
Judicial Member	Accountant Member

Bangalore
Dated, 16th April, 2025
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore

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