

आयकर अपीलिय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM "DIVN" BENCH, VISAKHAPATNAM
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER
&
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./ I.T(SS)A. No.5, 6, 7, 8 & 9/Viz/2025
(निर्धारण वर्ष/ Assessment Years. 2008-09 to 2012-13)

DCIT,
Central Circle-1,
Visakhapatnam.
(अपीलार्थी/ Appellant)

Vs. Maa Mahamaya Industries Limited,
Chattisgarh.
PAN: AADCM5858Q
(प्रत्यर्थी/ Respondent)

आयकर अपीलसं./ I.T.A. Nos. 140, 141, 142, 143 & 144/Viz/2024
(निर्धारणवर्ष/ Assessment Years:2008-09 to 2012-13)

Maa Mahamaya Industries Limited,
Chattisgarh.
PAN: AADCM5858Q
(अपीलार्थी/ Appellant)

Vs. DCIT,
Central Circle-1,
Visakhapatnam.
(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by
प्रत्यर्थी की ओर से/ Revenue by

: Shri MV Prasad, CA
: Dr Satyasai Rath, CIT(DR)

सुनवाई की तारीख/ Date of Hearing

: 08/04/2025

घोषणा की तारीख/Date of Pronouncement

: 13/05/2025

ORDER**PER BENCH:**

The captioned appeals in IT(SS)A No. 05 to 09/Viz/2025 are filed by the Revenue for the AYs 2008-09 to 2012-13 and the assessee has filed cross appeals in ITA No. 140 to 144/Viz/2025 for the AYs 2008-09 to 2012-13. Since all these appeals pertain to the same assessee and the issue involved in these appeals is identical, for the sake of convenience, these appeals are clubbed, heard together and disposed of in this consolidated order. Firstly, we shall take up the Revenue's appeal in **IT(SS)A No.09/Viz/2025, for the AY 2012-13 as lead appeal** and the facts are extracted below.

2. This appeal (IT(SS)A No.09/Viz/2025) filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-3, Visakhapatnam in DIN & Order No. ITBA/APL/S/250/2024-25/107246767821(1), dated 23/01/2025 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 ("the Act"), dated 25/04/2019.

3. Briefly stated the facts of the case are that the assessee is a company engaged in the business of manufacturing of Steel and TMT Bars, filed its return of income for the AY 2012-13 on 30/09/2012 declaring a total income of Rs. 3,59,80,030/- under MAT provisions. The return of income was summarily processed U/s. 143(1) of the Act.

A search and seizure operation was conducted in the Maa Mahamaya Group on 19/08/2011 in the business premises of M/s. Maa Mahamaya Industries Limited ("MMIL") located at Industrial Ward, Dhamtart, Chhattisgarh. Notice U/s. 153A of the Act was issued on 05.06.2012 by the Central Circle -1, Visakhapatnam as the case of the assessee was centralized vide order F.NO.CIT/RPR/Tech./127/2011-12 dated 02.04.2012 passed by the CIT, Raipur, u/s. 127 of the Act. Subsequently, notice U/s. 143(2) of the Act was served on the assessee on 27/09/2013. The assessee group filed Writ Petition in High Court of Chhattisgarh for stay of assessment proceedings which was not granted by the Hon'ble High Court. The assessee has also filed Special Leave Petition ("SLP") before the Hon'ble Supreme Court which was dismissed. Thereafter, the assessee filed an application U/s. 245C(1) of the Act before the Income Tax Settlement Commission, Chennai which was rejected by the Income Tax Settlement Commission U/s. 245D(2C) of the Act vide order dated 21/07/2016. The assessee subsequently filed Writ Petition before the Hon'ble High Court of Andhra Pradesh and Telangana against the order of the Income Tax Settlement Commission. The Hon'ble High Court of Andhra Pradesh and Telangana dismissed the Writ Petitions. Subsequently, the assessee filed an SLP before the Hon'ble Supreme Court which was also dismissed. Thereafter, by continuing the

assessment proceedings, it was observed that during the course of search the assessee has inflated the capital expenditure to claim depreciation and interest on Term Loans. It was noticed that the assessee has paid an amount of Rs. 81,99,73,000/- towards procurement of capital goods such as machinery / equipment / consumables during the construction of the factory. The assessee could not furnish the complete details connected to the supply of machinery / equipment / consumables. On the basis of the enquiry conducted by the Revenue, it was observed that the supplier companies are paper companies which are raising bogus bills for purchase of machinery. After sending many reminders to the notices of the Revenue, the assessee furnished the reply in response to notice U/s. 142(1) of the Act dated 28/02/2014. The assessee was once again asked to furnish the explanation to show cause notice, for which the assessee has not responded. The assessee finally responded vide his reply dated 14/03/2019 and submitted the total payments made to Kolkata companies in the guise of purchase of plant and machinery was Rs.85,34,11,142/- and not Rs. 81,99,73,000/-. The assessee submitted that it has *suo-motto* disallowed the claim of depreciation to the extent of Rs.51,04,13,074/- from the AY 2006-07 to AY 2012-13 and accordingly paid the taxes. The Ld. AO observed that during the FY 2005-06, the

assessee has shown an amount of Rs. 2,59,09,473/- as 'interest accrued and due on term loan' which pertains to the interest paid on the loan amount used for purchase of bogus plant and machinery and the same was capitalized in the latter years and depreciation was claimed accordingly. The Ld. AO further observed that since the plant and machinery is purchased by the assessee were bogus and hence, interest paid on term loan utilized for the purpose also calls for disallowance and therefore, issued a show cause notice dated 06/12/2012 requiring the assessee to show cause as to why the corresponding expenditure should not be disallowed. The assessee vide its reply submitted that even though the funds towards purchase of bogus plant and machinery was utilized but the same has been reintroduced into the business of the assessee company and hence the funds are utilized for the purpose of business and therefore, the interest payment cannot be disallowed. The Ld. AO did not accept the submissions of the assessee and thereafter proceeded to disallow the sum of Rs. 13,98,37,651/- being the proportionate finance charges relevant to the value of bogus plant and machinery as detailed below:-

| A.Y. | Term Loan at the end of the year (A) | Total Finance charges debited to the P&L account (B) | Value of non-existing P&M towards which Term Loan was availed (C) | Proportionate finance charges relevant to the value of P&M to be disallowed C * B/A |
|---------|---|---|--|--|
| 2012-13 | 176,78,14,304 | 28,96,69,291 | 85,34,11,142 | 13,98,37,651 |

4. The Ld. AO also disallowed depreciation amounting to Rs.6,36,87,756/- on the bogus plant and machinery claimed by the assessee. Further, the Ld. AO also observed differences in stock wherein the excess stock was valued at Rs. 1,83,46,348/- and deficit stock was valued at Rs. 1,05,77,853/-. The assessee set off the excess stock with the deficit stock and offered the balance of Rs. 77,68,495/- as additional income. The Ld. AO did not accept these submissions of the assessee and concluded that the excess stock is taxable U/s. 69B of the Act and deficit stock as unexplained investment U/s. 69 of the Act and hence, added an amount of Rs. 2,11,55,707/- being the difference between the excess stock and deficit stock computed and admitted by the assessee. The Ld. AO has also made an addition of Rs. 1,60,00,000/- as unexplained credit based on the submission of the assessee before the Income Tax Settlement Commission. Further, the Ld. AO has also made the following additions viz., (i) ROC Charges / Fees – Rs. 70,000/-; (ii) loss on sale of bogus fixed assets – Rs. 52,583/-; and (iii) Donations –

Rs.52,583/-. On being aggrieved by the above additions, the assessee preferred an appeal before the Ld. CIT(A).

5. The Ld. CIT(A), after considering the submissions made by the assessee, partly allowed the appeal of the assessee. On being aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us by raising the following grounds of appeal:

- “1. The order of the Ld. CIT(A) is erroneous both on facts and in law.*
- 2. The Ld. CIT(A) is not correct in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/- when the assessee-company had not utilized the term loans for the purpose it was borrowed.*
- 3. The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/- when the assessee-company had not purchased the capital asset i.e., Plant and Machinery, but raised bogus bills through pre-arranged as well as sham transactions.*
- 4. The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/- by ignoring the fact that the assessee company had siphoned off the funds out of the Term loans availed by it and it had not purchased any Plant & Machinery. The Ld. CIT(A) ought to have appreciated the fact that there was no existence of Plant & Machinery and accordingly, no interest on such Term loans is an allowable expenditure, keeping in view of the Proviso to section 36(1)(iii).*
- 5. The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/- keeping in view of the Hon'ble Supreme Court decision in the case of DCIT Vs Core Health Care Ltd (2008) 167 Taxman 206 (SC), wherein it was held that the Proviso to sec 36(1)(iii) shall operate prospectively from 01.04.2004 and thus the proviso shall be applicable to the facts of the present case.*
- 6. The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/- keeping in view of the decision of Hon'ble High Court of Punjab*

& Haryana in the case of Thukral Regal Shoes Vs CIT (2016) 72 Taxmann.com 192 P& H), wherein it was held that deduction on interest expenditure on borrowed funds is not allowable in view of the proviso to section u/s 36(1)(iii), when the corresponding assets were not put to use.

7. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/-by ignoring the Sworn statements recorded u/s 132(4) from the Main promoter Sri Ashok Kumar Agarwal on 23.09.20211 and Sri Amit Kumar Lahoti on 14.10.2011 and the decision of Hon'ble Apex Court in the case of Sri B Kumar Vs DCIT (2015) 62 taxmann.com 215/234 Taxmann 771, wherein it was held that even a Sworn statement shall also constitute incriminating material to dislodge any earlier finding for the purpose of making an assessment u/s 153A.*

8. *The Ld. CIT(A) ought to have considered the decision of Hon'ble Supreme Court in the case of Bannalal Jat Constructions P Ltd Vs ACIT (2019) 106 Taxmann.com 128(SC)/264 Taxmann 5(SC), wherein it was held that "where High Court upheld the addition made by authorities below relying upon statement made in course of search proceedings by Director of assessee company, since assessee failed to discharge its burden that admission made by Director in his statement was wrong and said statement was recorded under duress and coercion, SLP filed against decision of High Court was to be dismissed."*

9. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/-by ignoring the fact that the assessee company had siphoned off funds from the Term loan account by layering funds through several shell companies located at Kolkata and the same was undoubtedly proved in the enquiries conducted by the Department.*

10. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/-by ignoring the fact that the assessee company had failed to produce Original documents/invoices in relation to alleged purchase of Plant & Machinery and the same was categorically admitted by the Managing Director in his sworn statement recorded u/s 132(4) dt. 23.09.2011.*

11. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/-by ignoring the fact that Tax consultant & Internal Auditor of the assessee company, Sri Amit Kumar Lahoti categorically stated in his Sworn statement u/s 132(4) dt. 14.10.2011 that no Plant & Machinery was supplied by the Kolkata companies and they had just provided accommodation entries.*

12. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/-by ignoring the result of the filed enquiries conducted by the*

Department in respect of 24 suppliers based at Kolkata and 11 suppliers based at New Delhi and it was found that those companies are not physically in existence. The Ld. CIT(A) ought to have considered these findings and in the absence of physical existence of these alleged suppliers, there would be no supply of Plant & Machinery to the assessee company by these alleged suppliers.

13. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/-by ignoring the enquiries conducted by the Department to verify the movement of Plant & Machinery, which undoubtedly proved that no Plant & Machinery was transported as claimed. The Ld. CIT(A) ought to have considered these findings before allowing relief to the assessee company.*

14. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/-by accepting the submissions of the assessee company that diverted/siphoned off funds from the term loan account was ultimately re introduced and used in the business may it be in the form of share capital not in the form of Plant & Machinery. The Ld. CIT(A) ought to have considered that the assessee had availed Term loans for acquiring Capital assets and any claim of interest u/s 36(1)(iii) on such borrowed funds for acquisition of capital assets strictly governs by the Proviso to sec 36(1)(iii), but not otherwise.*

15. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/-holding that the diverted borrowed funds were brought back to business in the form of Share capital, Share application money etc., by ignoring the fact that contribution in share capital and share application money, otherwise does not carry any interest and thus treating the same as interest free borrowals by the assessee company is not correct. The Ld. CIT(A) ought to have appreciated the fact that contribution in the share capital and share application money is the investment made by the Promoters and thus borrowed funds were siphoned off by the promoters for their personal purpose and such capital contribution can't be equated with any interest free loan availed by the assessee company for its business.*

16. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/-it was mentioned "...the assessee did not produce any evidence in order to prove that same money entered in the books that went out for machinery purchase, apart from 4 trails established by the Department. It is up to the assessee to establish whole amount entered in the books rather than just few transactions."*

17. *The Ld. CIT(A) is not justified in allowing relief to the assessee company without applying the ratio laid down by the Hon'ble Apex Court in the case of SEBI Vs Kishore R.Ajmera (2016) 66 taxmann.com 288, wherein it was held that*

"it is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled".

18. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/-keeping in view of the fact that the assessee company had failed to prove that the diverted funds were brought back to the Business, keeping in view of the decision of Hon'ble Madras High Court in the case of Mir Mohd Ali Vs CIT (1960) 38 ITR 413 (Mad), wherein it was held that it is for the assessee to prove that each of the loans on which he paid interest was utilized for his business. The Ld. CIT(A) ought to have appreciated the fact that the assessee-company never proved that all the term loans, which were siphoned off, were brought back and deployed in its business.*

19. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/-when the Ld. CIT(A), simultaneously, upheld the addition made by the Assessing Officer towards disallowance of depreciation on the same set of facts and circumstances of the case. On one hand the Ld. CIT(A) upheld the disallowance of proportionate depreciation and allowed relief towards disallowance of proportionate interest on the same set of facts.*

20. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting Rs 13,98,37,651/-when the Ld. CIT(A) had not contradicted the fact of non-existence of Plant & Machinery.*

21. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961 amounting to Rs 13,98,37,651/-by holding that borrowed funds were not diverted out of business, by ignoring the fact that the borrowed funds were certainly not utilized for the purpose it was borrowed and the assessee company had siphoned off the funds in the guise of purchase of Plant & Machinery.*

22. *The Ld, CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/-when the assessee-company had inflated its capital assets by coloring the transactions related to purchase of plant and machinery through accommodation entries from shell companies, without there being actual purchase of capital asset.*

23. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) of the Income-tax Act, 1961, amounting to Rs 13,98,37,651/-keeping in view of the fact that borrowed funds that were*

diverted by creating bogus invoices for Plant & Machinery through pre-arranged as well as sham transactions and were never utilized for the purpose of business. The Ld.CIT(A) ought to have considered that the Term loan funds were siphoned off by the Promoters, which is nothing but a money laundering activity and the same is a serious Economic Offence punishable under Prevention of Money Laundering Act.

24. *Reliance is placed on the recent decision of Hon'ble High Court of Bombay in the case of PCIT Vs Buniyad Chemicals Ltd (Income tax Appeal no. 1796/2018) dt. 17.03.2025, wherein it was held that providing accommodation entries is nothing but money laundering activity, which is a punishable offence under PMLA.*

25. *The Ld. CIT(A) ought to have considered the fact that had the Department not conducted Search action u/s 132, the fact of availing accommodation entries in the guise of bogus purchase of Plant & Machinery would not have come to light and the modus operandi of the assessee company would not have unearthed. The Ld.CIT(A) ought to have appreciated the fact that it was only after detection by the Department, the bogus claim made by the assessee company was disallowed and brought to tax.*

26. *The Ld. CIT(A), before allowing relief to the assessee company, ought to have considered the decision of Hon'ble Supreme Court in the case of McDowell and Co Ltd Vs Commercial Tax Office 154 ITR 148 (SC), wherein it was held that "Tax planning may be legitimate provided it is within the frame works of Law. Colourable devices can't be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay taxes honestly without resorting to subterfuges."*

27. *The Ld. CIT(A) is not justified in accepting the claim of the assessee company to take telescoping benefit between the value of the excess stock found at Rs 1,83,46,348/- and deficit stock found at Rs 1,05,7,853/- at the time of physical inventory, without appreciating the basic fact that the excess stock items and deficit stock items are completely different and independent as mentioned in the Assessment Order.*

28. *The Ld. CIT(A) is not justified in allowing part relief towards stock discrepancy, by ignoring the fact that the assessee company had admitted the entire stock discrepancy of Rs 2,89,24,202/- in its original return of income filed for the subject assessment year and later changed its stand. The Ld. CIT(A) ought*

to have appreciated the fact that allowing part relief to the assessee company would leads to reduction of returned income.

29. *The Ld. CIT(A) is not justified in allowing purported sale proceeds cash sale of deficit stock with gross profit margin against the investment in excess stock found, by ignoring the fact that the assessee company had never made such a claim during the course of search proceedings and in fact admitted entire stock discrepancy of Rs 2,89,24,202/- in its original return of income.*

30. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) amounting to Rs 13,98,37,651/-and without applying the decision of Hon'ble Apex Court in the case of Sumati Dayal v CIT (1995) 214 ITR 801 (SC), wherein it was held that Surrounding circumstances and test of applying human probabilities "Though an apparent must be considered real until it was shown that there were reasons to believe that the apparent was not real in the case where a party relied on self-serving recitals in document, it was for that party to establish the truth of those recitals. Taxing authorities were entitled to look into the surrounding circumstances to find out the reality of the recitals".*

31. *The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) amounting to Rs 13,98,37,651/- and without applying the decision of Hon'ble Apex Court in the case of CIT v. Durga Prasad More (1971) 82 ITR 540 (SC) (546,547), wherein it was held that "Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or a Tribunal. Therefore, the Courts and the Tribunals have to judge the evidence before them by applying the test of Human Probabilities. Human minds may differ as to reliability of a piece of evidence, but that sphere decision of the final fact-finding authority is made conclusive by law".*

32. *Any other ground that may be urged at the time of hearing."*

6. Grounds No. 1 and 32 are general in nature and need no adjudication.

7. The Learned Departmental Representative ("Ld. DR") submitted that Grounds No. 3, 9, 12, 13, 21 and 22 are similar in nature with

regard to 'non-purchase of capital asset'. The Ld. DR submitted that the Ld. AO has rightly disallowed the proportionate share of interest U/s.36(1)(iii) of the Act amounting to Rs. 13,98,37,651/- wherein the assessee itself has admitted that it has not purchased the capital asset ie., plant and machinery but has raised only bogus bills through sham transactions. He therefore submitted that the Ld. CIT(A) has erroneously allowed the relief towards proportionate disallowance of interest wherein the suppliers based at Kolkata and New Delhi are not physically in existence. Further, the Ld. DR also argued that the Tax Consultant & the Internal Auditor Sri Amit Kumar Lahoti has stated in his sworn statement U/s. 132(4) of the Act that no plant and machinery was supplied by the Kolkata companies but just provided accommodation entries. The Ld. DR further submitted that the Term Loan funds were siphoned off by the promoters which is a serious economic offence punishable under the Money Laundering Act. He therefore submitted that the Ld. CIT(A) has erred in not considering all the above facts while allowing the relief towards proportionate disallowance of interest.

8. Similarly, with respect to Grounds No. 4, 5, 6 and 14, the Ld. DR referred to proviso to section 36(1)(iii) of the Act which states that the amount of interest paid in respect of capital borrowed for acquisition of asset till the date on which the asset shall put to use shall not be allowed

as deduction. He argued that since the asset is itself bogus in nature, interest paid on the Term Loan for purchase of such bogus asset shall not be allowed as deduction.

9. Further, with respect to Ground No.7, the Ld. DR submitted that the sworn statement recorded U/s. 132(4) of the Act from the main promoter Sri Ashok Kumar Agarwal on 23/09/2011 and Sri Amit Kumar Lahoti on 14/10/2011 shall constitute incriminating material. The Ld.DR further referred to Grounds No. 8 and 11 wherein the ratio laid down in the case of Bannalal Jat Constructions P Ltd vs. ACIT (2019) 106 Taxmann.com 128 (SC) by the Hon'ble Supreme Court was mentioned. The Ld. DR further submitted that since the assessee itself has admitted its bogus purchases and the funds are re-routed as share capital in the assessee-company, no interest can be allowed on the investment as share capital in the assessee company.

10. Similarly, with respect to Ground No. 15, diverted borrowed funds were brought in the form of share capital, share application money wherein the assessee Ld. CIT(A) erred to appreciate the fact that the contribution towards share capital and share application money, investment made by the promoters which proves that the borrowed funds were siphoned off by the promoters for their personal purpose.

11. Further, with respect to Ground No.16, the Ld. DR argued that the assessee has not established any link to the flow of funds brought back as share capital and share application money in the assessee company. The Ld. DR also submitted that Grounds No.19 and 20 wherein the Ld.CIT(A) has erred in allowing the interest but has not allowed the depreciation claimed by the assessee on the bogus assets on the same set of facts and circumstances of the case. The Ld. DR also relied on the decision of the Hon'ble Supreme Court in the case of McDowell and Co Ltd vs. Commercial Tax Office 154 ITR 148 (SC). He therefore pleaded that the order of the Ld. CIT(A) be set-aside.

12. Per contra, the Learned Authorized Representative ("Ld. AR") referred to page 16 of the paper book-1 wherein in the balance sheet as at 31/03/2006 the assessee has a gross block of fixed assets amounting to Rs. 228,39,62,408/- whereas the share capital was Rs. 60 Crs and Secured loans were Rs. 176.76 Crs. He also referred to page 38 of the paper book-1 where in the balance sheet as on 31/03/2007 the gross value of fixed assets is shown at Rs. 279.59 Crs whereas the share capital stood at Rs. 61 Crs and secured loan funds at Rs. 234.94 Crs. The Ld. AR vehemently argued that out of the gross value of fixed assets of Rs. 279.59 Crs, the bogus purchases of plant and machinery amounting to Rs. 85 Crs is deleted and the net value of block of fixed

assets is Rs. 195.59 Crs wherein the term loan availed by the assessee is disclosed in Schedule-3 at Rs. 190.39 Crs. The Ld.AR also further submitted that as per the audited balance sheet as at 31.03.2012 the net block of assets after reducing the WDV of the inflated plant and machinery stood at 181.05 Crs whereas secured loan outstanding was at 176.78 Crs. The Ld. AR therefore vehemently argued that the entire term loan was utilized for the purpose of acquiring fixed assets and only the share capital including the share application money was inflated corresponding to the bogus purchases of fixed assets. He therefore pleaded that since the entire Term Loan has been utilized for the purpose of acquiring existing fixed assets as at the balance sheet date and therefore no interest can be disallowed U/s. 36(1)(iii) of the Act.

13. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. With respect to the various grounds on the proportionate disallowance of interest u/s 36(1)(iii), it is observed that the assessee has admitted purchase of bogus plant and machinery to the extent of Rs.85,34,11,142/- and has agreed for the disallowance of depreciation claimed by the assessee on the bogus plant and machinery. The only contention of the Ld. AR is that the proportionate disallowance of interest amounting to Rs. 13,98,37,651/- U/s. 36(1)(iii) of the Act cannot be

made as the assessee has utilized the entire Term Loan for the purpose of acquiring the gross value of fixed assets which is evidenced in the Paper Book-1, Page No. 38 as disclosed in the balance sheet as on 31/03/2007. This fact was not disputed by the Revenue. The only contention of the Revenue is that the assessee has utilized borrowed funds for the purpose of inflating the fixed assets which is not a fact according to the material available on record. The Term Loan outstanding as per the audited balance sheet for the impugned assessment year is less than the value of gross block of plant and machinery. There is merit in the argument of the Ld. AR that the entire borrowed funds shall be considered to have been utilized for the purpose of purchase of fixed assets of the assessee company and hence the interest payments are fully incurred for the purpose of business. We therefore find that the Ld. CIT(A) in Para 6.7.7 of his order has observed and allowed the ground raised by the assessee, which is reproduced below: -

“6.7.7 It was also submitted that according to the Audited Balance Sheet as on 31.03.2012 the net block of the assets is Rs.217.13 crores. The correct value of the net Block (including machinery) as per the Assessing officer even after reducing the WDV of the inflated plant and machinery is Rs.181.05 crores. (Net block of Rs.217.13 crores minus inflated Machinery WDV of Rs.36.08 crores). As per the Audited Balance Sheet as on 31.03.2012, the Secured loan outstanding is 176.78 crores. It is submitted that Term Loan is obtained for the purpose of acquisition of plant and machinery. In the present case, the term loan outstanding is

Rs.176.78 crores whereas the net Block is Rs. 181.05 crores. Since the term loan outstanding is less than the net block of plant and machinery (after reducing the inflated depreciation), it can be inferred that the money borrowed for the purpose was utilized and applied for the same purpose as seen from the balance sheet entries. The inflated value of the plant and machinery was compensated with the bogus share capital and unsecured loan entries. The decision of the Hon'ble High court of Madras in the case of CIT Vs Hotel Savera(1999) (102 taxmann 247) which is relied upon by the assessee is gone through. Even though the said decision is rendered in a different context, the Hon'ble Court noted that the borrowed funds were in fact not diverted for non business purpose to attract disallowance u/s 36(1)(ii) of the Act. In the present case there is no finding to show that the borrowed funds were diverted out of business as seen from the sworn statements recorded from the search proceedings and from the assessment order. In fact, in the assessment order, finding has been given that the borrowed funds were reintroduced into the business. This is particularly a case of claim of excess depreciation by inflating the plant and machinery. Since the depreciation was already disallowed, there is no requirement to disallow the interest on the bogus Plant and Machinery on the specific set of facts. Hence, disallowance of Rs. 13,98,37,651/- an account of interest charges claimed is not justified and accordingly the AO is directed to delete the said addition. Accordingly, the ground No. 5 is allowed.”

14. Since the Revenue could not controvert the fact that existing value of fixed assets in the instant case is more than the Term Loan availed by the assessee, we are of the considered view that no interference is required on the decision of the Ld. CIT(A) and hence, we are inclined to dismiss the grounds raised on the issue of proportionate disallowance of interest.

15. Further, with respect to Grounds No. 27, 28 and 29 raised by the Revenue regarding the discrepancy of the stock, the Ld. DR submitted that there was an excess stock and deficit stock as detailed below:

Excess Stock:

| Produce Name | Difference (MT) | Rate per MT | Amount in Rs. |
|----------------------|------------------------|--------------------|----------------------|
| Billet | 16.737 | 30,500 | 5,10,479 |
| Iron Ore | 551.600 | 6,700 | 36,95,720 |
| Iron Ore Fines | 389.830 | 6,700 | 26,11,861 |
| Coal | 677.08. | 4,400 | 29,79,152 |
| Coal fines | 1941.770 | 4,400 | 85,43,788 |
| Dolomite / limestone | 3.820 | 1,400 | 5,348 |
| Total | | | 1,83,46,348 |

Deficit Stock:

| Produce Name | Difference (MT) | Rate per MT | Amount in Rs. |
|---------------------|------------------------|--------------------|----------------------|
| Sponge Iron | 98.550 | 20,000 | 19,71,000 |
| TMT Bars | 35.882 | 36,000 | 12,91,752 |
| Scrap | 41.986 | 23,000 | 9,65,678 |
| Pig Iron | 3.467 | 23,000 | 79,741 |
| Low Grade Sponge | 220.042 | 20,000 | 44,00,840 |
| Slag | 26.697.75 | 70 | 18,68,842 |
| Total | | | 1,05,77,853 |

16. The Ld. DR argued that the assessee is not entitled to net off of the excess stock with deficit stock. The Ld. DR argued that the Ld.CIT(A) has erred in directing the Ld.AO to tax the gross profit @ 30% of the total deficit stock. Further, with respect to excess stock, the Ld. DR submitted that the assessee itself has admitted at the time of filing of settlement application and hence, the entire stock difference shall be treated as unexplained income of the assessee. He therefore submitted that the Ld. AO has rightly included the amount of Rs. 2.11 Crs (Rs. 2.89 Crs – Rs. 77 Lakhs) to the total income of the assessee.

17. Per contra, the Ld. AR submitted that the assessee has inadvertently offered the sum of Rs. 2.89 Crs being the difference in stock and later on revised it to net difference of stock of Rs. 77.68 lakhs. The Ld. AR argued that since the excess stock and the deficit stock belong to the same assessee, the netting off shall be admitted and is admissible. He therefore pleaded that the order of the Ld. CIT(A) be set-aside.

18. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. It is an admitted fact that the assessee has accepted discrepancy in the physical stock which stood at Rs.1,83,46,348/- as excess stock and Rs.1,05,77,853/- as deficit stock. We find merit in the argument of the Ld. AR that the excess stock found amounting to Rs. 1,83,46,348/- and deficit stock of Rs. 1,05,77,853/- belong to the same assessee and hence, netting off shall be permissible. Further, we also find merit in the argument of the Ld. AR that the quantity of stock lying in the stock yards of 100 Acres such minor variation in quantity of stock cannot call for any addition. In this scenario the Ld.CIT(A) based on the acceptance by the assessee in the written submissions regarding the telescoping of availability of cash with respect to shortage of stock including the gross

profit has considered while computing the addition with respect to excess stock. The Ld.CIT(A) in Para No. 6.9.11 held as follows: -

“6.9.11 On careful consideration of the legal arguments filed by the Ld.AR, it can be seen that the appellant had inadvertently offered the sum of Rs.2,89,24,202/-, instead of offering net income of Rs. 77,68,495/-. Even otherwise, in a survey conducted at simultaneous places and period, when at a particular place excess stock is noted and other place deficit stock is noted, netting off can be permitted in order to have proper reconciliation of books of accounts. This netting off is admissible considering the stock found in the appellant's premises belongs to a single concern. Hence, the AO is hereby directed to tax the sum of Rs. 31,73,356/- as business income and an amount of Rs. 45,95,139/- as unexplained investment u/s 69B totaling to Rs. 77,68,495/- instead of Rs.2,11,55,707/-. Accordingly, the ground no. 7 and additional legal ground raised vide petition dated 02.01.2025 is hereby allowed.”

19. We are therefore of the considered view that various judicial pronouncements have held that only the profit element involved in the shortage of stock can be added to the total income of the assessee and not the entire difference. In the instant case, the Ld.CIT(A) has rightly held and made an addition of gross profit @30% on the shortage of stock which was telescoped for arriving at the sources for the excess stock and amount of Rs. 45,95,139/- which was considered as unexplained investment. We therefore do not wish to interfere in the order of the Ld.CIT(A) on this issue. We therefore find no merit in the argument of the Ld. DR that the excess stock and deficit stock aggregating to Rs. 2,89,24,202/- shall be added to the income of the assessee and thereby dismissing the grounds raised by the Revenue on this issue.

20. In the result, appeal of the Revenue is dismissed.

IT(SS)A No. 05 &06/Viz/2025
AYs 2008-09 & AY. 2009-10
(Revenue's Appeals)

21. These appeals filed by the Revenue are against the order of the ITBA/APL/S/250/2024-25/1072433882(1) dated 22/01/2025 for the A.Y. 2008-09 & DIN & Order No. ITBA/APL/S/250/2024-25/1072433965(1), dated 22/01/2025 arising out of the different orders passed U/s. 153A r.w.s 143(3) of the Act, dated 25/04/2019. The facts are extracted from the cross appeal filed by the assessee in ITA 140 & 141/VIZ/2025. While adjudicating the cross appeals filed by the assessee, this bench has taken a view in paragraph no. 35 as follows.

“35. Accordingly, in respect of completed assessment / unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132 or requisition under section 132A of the Act. We are of the considered view that there is no merit in the argument of the Ld. DR and the assessment order passed U/s. 143(3) r.w.s 153A of the Act cannot be justified without incriminating material being the basis for reopening of such assessment U/s.153A of the Act. Respectfully following the above referred judicial precedents, we are inclined to quash the assessment order which is bad in law. Accordingly, Ground No.3 raised by the assessee is allowed.”

22. Since the legal issue raised by the assessee in ITA No. Nos. 140 & 141/VIZ/2025 on the validity of the assessment order under section 143(3) r.w.s. 153A of the Act is allowed in favor of the assessee, the grounds raised by the Revenue does not have legs to stand and hence dismissed.

23. In the result, appeals of the Revenue are dismissed.

IT(SS)A No. 07 & 08/Viz/2025
AYs 2010-11 to 2011-12
(Revenue's Appeals)

24. In these appeals (IT(SS)A No. 07 & 08/Viz/2025) the Revenue has raised the identical grounds which revolve around the decision of the Ld.CIT(A) in granting relief to the assessee with respect to proportionate disallowance of interest U/s. 36(1)(iii) of the Act. This issue is identical to that of the Revenue's appeal in IT(SS)A No. 09/Viz/2025, AY 2012-13, which is adjudicated in the foregoing paragraphs of this order. Therefore, considering the similarity of the issue involved in all these appeals, our decision rendered in the Revenue's appeal in IT(SS)A No.09/Viz/2025, AY 2012-13 (supra) *mutatis mutandis* applies to the Revenue's appeals in IT(SS)A No. 07 & 08/Viz/2025 also. Accordingly, by following the same analogy, we dismiss all the grounds raised by the Revenue in IT(SS)A No. 07 & 08/Viz/2025.

25. In the result, all the appeals filed by the Revenue are dismissed.

ITA No.140 /VIZ/2025 (AY: 2008-09) - (Assessee's appeal)

26. This appeal filed by the assessee is against the order of the Ld.CIT(A), Visakhapatnam-3 in DIN & Order No. ITBA/APL/S/250/2024-25/1072433882(1) dated 22/01/2025 for the A.Y. 2008-09 arising out of the order passed U/s. 153A r.w.s 143(3) of the Act, dated 25/04/2019.

27. Briefly stated the facts of the case are that the assessee is a company engaged in the business of manufacturing of Steel and TMT Bars, filed its return of income for the AY 2008-09 on 29.09.2008 declaring a total income of Rs. 10,28,74,270/- under MAT provisions. The case was taken up for scrutiny, the assessment was completed u/s.143(3) of the Act by making an addition of Rs. 15 lakhs vide order dated 30.12.2010. A search and seizure operation was conducted in the Maa Mahamaya Group on 19/08/2011 in the business premises of M/s.Maa Mahamaya Industries Limited (“MMIL”) located at Industrial Ward, Dhamtart, Chhattisgarh. Notice U/s. 153A of the Act was issued on 05.06.2012 by the Central Circle -1, Visakhapatnam as the case of the assessee was centralized vide order F.NO.CIT/RPR/Tech./127/2011-12 dated 02.04.2012 passed by the CIT, Raipur, u/s. 127 of the Act. Subsequently, notice U/s. 143(2) of the Act was served on the assessee on 27/09/2013. The assessee group filed Writ Petition in High Court of Chhattisgarh for stay of assessment proceedings which was not granted by the Hon’ble High Court. The assessee has also filed Special Leave Petition (“SLP”) before the Hon’ble Supreme Court which was dismissed. Thereafter, the assessee filed an application U/s. 245C(1) of the Act before the Income Tax Settlement Commission, Chennai which was rejected by the Income Tax Settlement Commission U/s. 245D(2C) of the

Act vide order dated 21/07/2016. The assessee subsequently filed Writ Petition before the Hon'ble High Court of Andhra Pradesh and Telangana against the order of the Income Tax Settlement Commission. The Hon'ble High Court of Andhra Pradesh and Telangana dismissed the Writ Petitions. Subsequently, the assessee filed an SLP before the Hon'ble Supreme Court which was also dismissed. Thereafter, by continuing the assessment proceedings, it was observed that during the course of search the assessee has inflated the capital expenditure to claim depreciation and interest on Term Loans. It was noticed that the assessee has paid an amount of Rs. 81,99,73,000/- towards procurement of capital goods such as machinery / equipment/ consumables during the construction of the factory. The assessee could not furnish the complete details connected to the supply of machinery / equipment / consumables. On the basis of the enquiry conducted by the Revenue, it was observed that the supplier companies are paper companies which are raising bogus bills for purchase of machinery. After sending many reminders to the notices of the Revenue, the assessee furnished the reply in response to notice U/s. 142(1) of the Act dated 28/02/2014. The assessee was once again asked to furnish the explanation to show cause notice where the assessee has not responded. The assessee finally responded vide his reply dated 14/03/2019 and

submitted the total payments made to Kolkata companies in the guise of purchase of plant and machinery was Rs. 85,34,11,142/- and not Rs.81,99,73,000/-. The assessee submitted that it has *suo-motto* disallowed the claim of depreciation to the extent of Rs.51,04,13,074/- from the AY 2006-07 to AY 2012-13 and accordingly paid the taxes. The Ld. AO observed that during the FY 2005-06, the assessee has shown an amount of Rs. 2,59,09,473/- as 'interest accrued and due on term loan' which pertains to the interest paid on the loan amount used for purchase of bogus plant and machinery and the same was capitalized in the latter years and depreciation was claimed accordingly. The Ld. AO further observed that since the plant and machinery is purchased by the assessee were bogus and hence, interest paid on term loan utilized for the purpose also calls for disallowance and therefore, issued a show cause notice dated 06/12/2012 requiring the assessee to show cause as to why the corresponding expenditure should not be disallowed. The assessee vide its reply submitted that even though the funds towards purchase of bogus plant and machinery was utilized but the same has been reintroduced into the business of the assessee company and hence the funds are utilized for the purpose of business and therefore, the interest payment cannot be disallowed. The Ld. AO did not accept the submissions of the assessee and thereafter proceeded to disallow the

sum of Rs. 10,12,58,832/- being the proportionate finance charges relevant to the value of bogus plant and machinery as detailed below:

| A.Y. | Term Loan at the end of the year (A) | Total Finance charges debited to the P&L account (B) | Value of non-existing P&M towards which Term Loan was availed © | Proportionate finance charges relevant to the value of P&M to be disallowed C * B/A |
|---------|--------------------------------------|--|---|---|
| 2008-09 | 178,33,11,916 | 21,15,93,303 | 85,34,11,142 | 10,12,58,832 |

28. The Ld. AO also disallowed depreciation amounting to Rs.12,20,05,735/- on the bogus plant and machinery claimed by the assessee. Further, the Ld. AO has also made addition on account of loss on sale of fixed assets for Rs. 2,50,000/-. On being aggrieved by the above additions, the assessee preferred an appeal before the Ld. CIT(A).

29. The Ld. CIT(A), after considering the submissions made by the assessee, partly allowed the appeal of the assessee. On being aggrieved by the order of the Ld. CIT(A), the Assessee is in appeal before us by raising the following grounds of appeal:

“1. On the facts and circumstances of the case, the Ld. CIT(A) erred in both law and facts while passing the order.

2. On the facts and circumstances of the case, the Ld. CIT(a) is not justified in dismissing the ground with regard to the claim that the assessment order dated 24/04/2019 for the AY 2008-09 is barred by limitation as per the provisions of section 153B of the Act.

3. *On the facts and circumstances of the case, the AO is not justified in making additions without incriminating material as the current assessment year is unabated assessment. Accordingly, the additions made is without jurisdiction and is unsustainable in law.*

4. *Any other ground or grounds that may be urged at the time of hearing of the appeal.”*

30. Grounds No. 1 & 4 are general in nature and need no adjudication.

31. With respect to Ground No.2, the Ld. AR submitted that this ground is not pressed and hence, Ground No.2 is dismissed as not pressed.

32. With respect to Ground No.3, the Ld. AR submitted that the additions were made without any incriminating material and hence, it is without jurisdiction and hence not tenable. He also submitted that the current Assessment Year is an unabated assessment. The Ld. AR therefore pleaded that no addition can be made in the case of the unabated assessment without any incriminating material seized during the search and seizure operations. He therefore pleaded that the order of the Ld. AO be treated as void-ab-initio. The Ld. AR placed heavy reliance on the ratio laid down by the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax vs. Abhisar Buildwell (P.) Ltd [2023] 149 taxmann.com 399 (SC) wherein it was held that no addition can be made by the Assessing Officer with respect to

assessment U/s. 153A of the Act without any incriminating material found during the course of search U/s. 132 of the Act in respect of completed / unabated assessment. The Ld.AR also placed reliance on the ratio laid down by the Hon'ble Delhi High court in the case of Pr. CIT (Central) -2 *v.* Index Securities Pvt Ltd., (2017) 86 taxmann.com 84 (Delhi). He therefore pleaded that the assessment order passed by the Ld. AO U/s. 143(3) r.w.s 153A of the Act is void-ab-initio as the Ld. AO has not brought on record any incriminating material.

33. Per contra, the Ld. DR submitted that the assessee has voluntarily accepted about the purchase of bogus assets and has wrongly claimed depreciation on such bogus assets. Since the assessee has voluntarily accepted, it is incriminating in nature and hence, the assessment order passed by the Ld. AO U/s.143(3) r.w.s 153A of the Act is valid in law.

34. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is an undisputed fact that the case was taken up for scrutiny and income of the assessee was assessed U/s. 143(3) of the Act vide order dated 30/12/2010. The search was initiated

in Maa Mahamaya Group on 19/08/2011 and completed on 09/12/2011. It is very clear that the assessment for the impugned assessment year is unabated / completed before the search and seizure operations. We also find that the purchase of capital goods and the depreciation claimed by the assessee was very much available before the Ld. AO while framing the assessment U/s. 143(3) of the Act. The relevant financials including the P & L Account, Balance Sheet and Schedules, Tax Audit Report were available before the Ld. AO which was considered by the Ld. AO while passing the assessment for the A.Y.2008-09 on 30/12/2010. However, the Ld. AO has not raised any objections with respect to the bogus purchases and capitalization of the same while framing the scrutiny assessment. However, while framing the assessment U/s. 143(3) r.w.s 153A of the Act, the Ld. AO observed that the assessee has resorted to inflation of capital expenditure to claim depreciation and interest on the Term Loan. It is a settled law that when section 153A of the Act is invoked, the reopening of an unabated assessment can be made only on the basis of incriminating material for that assessment year. In the instant case, there is no dispute that the assessment is unabated and the Ld. AO has merely relied

upon the details already available before him in the form of financial statements to make an addition while framing the assessment U/s. 153A of the Act. The Hon'ble Supreme Court in the case of Pr. CIT vs. Abhisar Buildwell (P.) Ltd (supra) held as follows:

"14. In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns;

and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved."

35. Further, in the case of Pr.CIT *v.* Index Securities Pvt. Ltd. (supra) relied on by the Ld.AR it was held that the seized document must be incriminating and must relate to the respective assessment year which is

sought to be reopened. It was also held that the financial statements would not be said to be incriminating. Accordingly, in respect of completed assessment / unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132 or requisition under section 132A of the Act. We are of the considered view that there is no merit in the argument of the Ld. DR and the assessment order passed U/s. 143(3) r.w.s 153A of the Act cannot be justified without incriminating material being the basis for reopening of such assessment U/s. 153A of the Act. Respectfully following the above referred judicial precedents, we are inclined to quash the assessment order which is bad in law. Accordingly, Ground No.3 raised by the assessee is allowed.

36. In the result, appeal of the assessee is allowed.

ITA No.141/VIZ/2025 (AY: 2009-10) - (Assessee's appeal)

37. This appeal filed by the assessee is against the order of the Ld.CIT(A), Visakhapatnam-3 in DIN & Order No. ITBA/APL/S/250/2024-25/1072433965(1), dated 22/01/2025 arising out of the order passed U/s. 153A r.w.s 143(3) of the Act, dated 25/04/2019.

38. The assessee has raised the following grounds of appeal:

“1. On the facts and circumstances of the case, the Ld. CIT(A) erred in both law and facts while passing the order.

2. On the facts and circumstances of the case, the Ld. CIT(A) is not justified in dismissing the ground with regard to the claim that the assessment order dated 24/04/2019 for the AY 2009-10 is barred by limitation as per the provisions of section 153B of the Act.

3. On the facts and circumstances of the case, the AO is not justified in making additions without incriminating material as the current assessment year is unabated assessment. Accordingly, the addition made is without jurisdiction and is unsustainable in law.

4. Any other ground or grounds that may be urged at the time of hearing of the appeal.”

39. The assessee has raised the above grounds of appeal which are identical to that of the grounds of appeal for the AY 2008-09 in ITA.No.140/Viz/2025 which is adjudicated in the above paragraphs of this order. Considering the similarity of the issues involved in these appeals and since no proceedings under the Act are pending before any authority for the impugned assessment year, our decision rendered in ITA No.140/Viz/2025 (AY 2008-09) *mutatis mutandis* applies to the assessee’s appeal in ITA No. 141/Viz/2025 (AY 2009-10) also. Accordingly, the appeal filed by the assessee is allowed.

27. In the result, appeal filed by the assessee is allowed.

ITA No.142/Viz/2025 (AY: 2010-11) - (Assessee's appeal)

40. This appeal filed by the assessee is against the order of the Ld.CIT(A), Visakhapatnam-3 in DIN & Order No. ITBA/APL/S/250/2024-25/1072433478(1), dated 22/01/2025 arising out of the order passed U/s. 153A r.w.s 143(3) of the Act, dated 25/04/2019.

41. The Ld. AO has made various additions as detailed in the assessment order dated 25/04/2019. On being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A). The Ld. CIT(A), partly allowed the appeal of the assessee. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us by raising the following grounds:

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in both law and facts while passing the order.

2. On the facts and in the circumstance of the case, the Ld. CIT(A) is not justified in dismissing the ground with regard to the claim that the assessment order dated 25/04/2019 for the AY 2010-11 is barred by limitation as per the provisions of section 153B of the Act.

3. On the facts and circumstance of the case, the Ld. CIT(a) is not justified in confirming the addition of Rs. 5.61 Crs made by the Assessing officer.

4. The addition of Rs. 5.61 Crs made assessment order passed U/s. 153A is without jurisdiction and unsustainable in law, as the said order has been passed based on the material seized during the search in the case of persons other than the assessee and since the scope of assessment U/s. 153A does not extend to such material which is not seized in the case of the assessee.

5. Any other ground or grounds that may be urged at the time of hearing of the appeal.”

42. Grounds No. 1 and 5 are general in nature and need no adjudication.

43. Ground No.2 is not pressed by the Ld. AR and therefore, this ground is dismissed as not pressed.

44. Grounds No. 3 and 4 related to the addition of Rs. 5.61 Crs made by the Ld. AO in the assessment order passed U/s. 153A of the Act. The Ld. AR submitted that the Ld. AO by relying on the search operations in the case of M/s. Maheswari Group in the F.Y. 2010-11, certain data relating to the transactions of Maa Mahamaya Industries Private Limited were found along with the papers belonging to M/s. Maheswari Group. According to the data, there were two accounts in the name of Maa Mahamaya Industries Limited and Maa Mahamaya Industries Private Limited-2. The second account contained various receipts, payments made to Maa Mahamaya Industries Private Limited. On analyzing the accounts, the Ld. AO found that there are certain cheque payments made by Maa Mahamaya Industries Private Limited to M/s. Maheswari Brothers and cash was received back by Maa Mahamaya Industries Private Limited. These cash entries were not available in the books of Maa Mahamaya Industries

Private Limited. The Ld. AO therefore issued a notice U/s. 153A of the Act, dated 5/6/2012 calling for the return of income which was served on the assessee on 14/06/2012. The Ld. AO thereafter issued a show cause notice dated 6/12/2012 requiring the assessee to show cause as to why the inflated expenditure should not be disallowed. After considering carefully the reply by the assessee, the Ld. AO did not accept the reason stated by the assessee and proceeded to add Rs. 5,61,00,000/- as bogus expenditure to the returned income of the assessee. On being aggrieved by the addition made by the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) partly allowed the appeal of the assessee. On being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising the above-mentioned grounds of appeal.

45. The main submission of the Ld. AR is that the documents were seized in the premises of Maheswari Group during the survey operations and hence, the Ld. AO should have framed the assessment after following the due procedure laid down under section 153C of the Act and after recording satisfaction. The Ld. AR also submitted that the Ld. AO cannot frame the assessment U/s. 153A of the Act for an assessee with respect to

the documents seized from the premises of other party. He therefore pleaded that since the AO has not followed the procedure prescribed under section 153C of the Act, the order of the Ld. AO is void-ab-initio and hence the addition of Rs.5.61 Crores is not sustainable.

46. Per contra, the Ld. DR relied on the orders of the Ld.Revenue Authorities.

47. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is an undisputed fact that certain incriminating material relating to the transactions with the assessee were found during the search operation in the Maheswari Group. The Ld. AO by relying on the data seized during the search in the case of Maheswari Group proceed to make an addition of Rs. 5.61 Crs. The Ld. AO has observed cash receipts on various dates by the assessee in return to the cheques paid for purchase of raw material from the ledger accounts seized from the premises of Maheswari Group. However, we noticed that the Ld.AO has not issued any notice U/s. 153C of the Act by recording satisfaction which he ought to have issued for the

reasons that the incriminating material were seized from the third-party premises other than the assessee. In the absence of any satisfaction not recorded as mandated by the provisions of section 153C of the Act, the assessment made U/s.153A of the Act is incorrect. The coordinate Bench of this Tribunal in the case of Asst. CIT vs. L.V. Beach City Property Promoters in ITA No.254/Viz/2024 (AY 2018-19), dated 25/09/2024 vide para 16 of the order has held as follows:

“16. The Ld. AO has also not brought on record to prove the nexus between the assessee and the incriminating documents seized to invoke section 153A of the Act. Consistently following the decision of the Bench, in the case of NavyaHasini and Harshitha Constructions and Developers vs. ACIT (supra) and GoluguriNagi Reddy vs. ACIT (supra), we are of the considered view that the Assessing Officer has erred in framing the assessment based on seized material from third party premises under section 153C of the Act. Further, the admission of SLP as pointed by the Ld. DR is of no help to the revenue as Hon’ble Supreme Court of India has not stayed the decision of the Hon’ble High Court. We are therefore of the considered view that the assessment order framed under section 153A of the Act based on the material seized from the search operation from third party premises is not valid in law and therefore we find that the Ld. CIT(A) has rightly adjudicated the issue while setting aside the assessment U/s. 153A of the Act, and hence, we find no infirmity in the order of the Ld. CIT(A).”

48. By respectfully following the view taken by this Bench, we are inclined to dismiss the addition made by the Ld. AO for Rs. 5.61 Crs based on the incriminating material available in the third-party premises

without following the procedure prescribed U/s. 153C of the Act. Therefore, Grounds No. 3 and 4 raised by the assessee are allowed.

49. In the result, appeal of the assessee is allowed.

ITA No.143 & 144/Viz/2025

(AY: 2011-12 & 2012-13)

(Assessee's appeals)

50. At the outset, the Ld. AR submitted that the assessee's appeals for the AYs 2011-12 and 2012-13 may be permitted to be withdrawn. The Ld. DR did not raise any objection to the prayer of the Ld. AR for withdrawal of the assessee's appeals for the AYs 2011-12 and 2012-13. Therefore, the assessee's appeals in ITA Nos. 143 & 144/Viz/2025 are dismissed as withdrawn.

51. In the result, both the assessee's appeals for the AY 2011-12 and 2012-13 are dismissed.

Pronounced in the open Court on 13th May, 2025.

Sd/-

(श्री वीरवल्ली दुर्गा राव)

(VEERAVALLI DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 13/05/2025

OKK - SPS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-(i) Maa mahamaya Industries Ltd, C/o. CA MV Prasad, D.No. 60-7-13, Ground Floor, Siddhartha Nagar, 4th Lane, Vijayawada, Andhra Pradesh-520010. (ii) Maa mahamaya Industries Ltd, Industrial Ward, Dhamtari, Chattisgarh-493773.
2. राजस्व/The Revenue –DCIT, Central Circle-1, 5th Floor, Direct Taxes Building, MVP Colony, Visakhapatnam, Andhra Pradesh-530017.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam