आयकर अपीलीय अधिकरण, **'डी' न्यायपीठ, चेन्नई।**
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री **अमिताभ शुक्ला,** लेखा सदस्य **के समक्ष**

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.2330/Chny/2019**
निर्धारण वर्ष**/Assessment Year: 2015-16**

M/s. Ashok Leyland Ltd., 1, Sardar Patel Road, Guindy, Chennai-600 032.	**v.**	The ACIT, Large Taxpayer Unit-2, Chennai.
[**PAN: AAACA 4651 L**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

आयकर अपील सं./**ITA No.2618/Chny/2019**
निर्धारण वर्ष**/Assessment Year: 2015-16**

The ACIT, Large Taxpayer Unit-2, Chennai.	**v.**	M/s. Ashok Leyland Ltd., 1, Sardar Patel Road, Guindy, Chennai-600 032.
		[**PAN: AAACA 4651 L**]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

Assessee by	:	Mr.R. Vijayaraghavan, Adv. & Mr.Vikram Vijayaraghavan, Adv.
Department by	:	Mr.A. Sasikumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	02.05.2025
घोषणाकीतारीख /Date of Pronouncement	:	07.07.2025

आदेश / O R D E R

PER ABY T. VARKEY, JM:

These appeals by the assessee and Revenue are arising out of the order of the Learned Commissioner of Income Tax (Appeals)-9, Chennai, (hereinafter referred to as 'Ld.CIT(A)'), Chennai, dated 12.06.2019 for the Assessment Year (hereinafter referred to as 'AY') 2015-16 in relation to the assessment order dated 29.12.2017 passed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). Since the issues involved in these cross appeals were inter related, both these appeals were heard together and are accordingly being disposed off by this common order.

2. Ground No. 1 of both the assessee's and Revenue's appeal are general in nature, therefore doesn't require any adjudication.

3. Ground No. 2 of the assessee's appeal and Ground No. 3 of the Revenue's appeal relates to disallowance of Rs.13,81,30,623/- made by the AO u/s 14A of the Act read with Rule 8D both under normal provisions and book profit u/s 115JB.

3.1 The facts as noted are that, during the year, the assessee had derived exempt income of Rs.1,79,26,891/- against which it had voluntarily computed and disallowed sum of Rs.35,36,554/-, whose detailed working is found placed at **Page 40 of Paper Book**. The AO was

not agreeable to the disallowance computed by the assessee and therefore sought to invoke Rule 8D. The AO is noted to have computed disallowance out of interest of Rs.4,00,64,273/- in terms of Rule 8D(2)(ii) and sum of Rs.10,16,02,454/- out of administrative expenses under Rule 8D(2)(iii), aggregate of which was Rs.14,16,67,177/-. Since the assessee had suo moto disallowed sum of Rs.35,36,554/-, the AO is noted to have made further disallowance of Rs.13,81,30,623/- [Rs.14,16,67,177 – Rs.35,36,554]. The AO added the disallowance computed u/s 14A in terms of Rule 8D both to total income under normal provisions and book profit u/s 115JB of the Act. On appeal, the Ld. CIT(A) is noted to have confirmed the impugned disallowance made by the AO to the total income under normal provisions, but he deleted the impugned addition made to book profit u/s 115JB. Being aggrieved by the order of Ld. CIT(A), both the assessee and Revenue are in appeal before us.

3.2 Heard both the parties. From the facts placed before us, it is noted that, the assessee has own funds of Rs.444,788.43 lacs & Rs.511,869.38 lacs as against average investments of Rs.203,204.90 lacs & Rs.219,697.88 lacs as on 31.03.2014 and 31.03.2015 respectively. Though the assessee was in possession of mixed funds, which comprised of both own & borrowed funds, but since its own funds were much higher than the cost of investments held by it, the presumption was to be held in

favour of the assessee that the investments were made out of such own funds and thus no portion of interest paid on borrowed funds could be attributed to it. The Ld. AR brought to our notice that, on identical factual matrix, this Tribunal in their own case for AY 2012-13 in ITA No.2379/Kol/2024 has held that, when there are both interest free funds and interest bearing funds, but the interest free funds are sufficient to cover the cost of investments, then it is to be presumed that such interest free funds were utilized for making such investments and accordingly no interest disallowance can be made in terms of Rule 8D(2)(ii). The relevant findings noted by us is as follows:-

> "3.2 Heard both the parties. It was brought to our notice that, the assessee has own funds of Rs.420817.00 lacs as against investments of Rs.153435.22 lacs as on 31.03.2012. In light of the aforesaid fact, fact the assessee claimed that although it was in possession of mix funds, which included both own & borrowed funds, but since its own funds were much higher than the investment made by it, the question of making disallowance out of interest paid on borrowed funds in terms of Rule 8D(2)(ii) didn't arise. The Ld. AR brought to our notice the decision of the Hon'ble Bombay High Court in the case of HDFC Bank Ltd. v. DCIT (2014) 366 ITR 505 wherein it was held that "where assessee's own funds and other non-interest interest bearing funds were more than investment in tax free securities, impugned order passed by the Assessing Officer disallowing a part of interest payments under section 14A of the Act read with rule 8D(2)(ii) of I.T Rules, 1962 needs to be set aside". We also note that the Hon'ble Bombay High Court in the case of CIT v. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 has laid the proposition of law that, when there are both interest free funds and interest bearing funds, the presumption is that interest free funds were utilized for interest free investment and advances. Such a proposition of law has been upheld by the Hon'ble Supreme Court in the case of CIT v. Reliance Industries Ltd., reported in [2019] 410 ITR 466 (SC) and the Hon'ble Supreme Court in the case of South Indian Bank Ltd. v. CIT reported in [(2021) 130 taxmann.com 178 (SC)] reiterated the position

> of law and also clarified that it is the assessee who has the right to assert from which part of the mixed funds the he investment was made, and the Revenue can't arbitrarily estimate a proportionate figure for disallowance u/s.14A of the Act. Thus, we note from the factual tual matrix discussed supra, that the assessee had total own funds more than Rs 4208 crores and the total investment made only to the tune of Rs. 1534 crores, including the fresh investments of Rs.300 crores made during the year, therefore, the presumption laid down in the case of Reliance Utilities & Power Ltd (supra) is clearly applicable. The Ld. DR could d not demonstrate that this presumption is factually incorrect, therefore, according to us, the disallowance made under Section 14Aread with Rule 8D(2)(ii) of the Rules, was not warranted and is directed to be deleted."

3.3 The Ld. CIT, DR was unable to factually distinguish the above decision rendered in assessee's own case in earlier AY 2012-13. Hence, following the above decision (supra), we hold the interest disallowance of Rs.4,00,64,273/- made by the AO under Rule 8D(2)(ii) to be unwarranted and is directed to be deleted.

3.4 Coming to disallowance under Rule 8D(2)(iii), it is noted that this Tribunal in assessee's own case for AY 2012-13 (supra) has held that, only the dividend yielding investments are to be considered in computation of disallowance under this Rule, by observing as under:-

> "3.3 Coming to disallowance under Rule 8D(2)(iii), it is noted that the Special Bench of this Tribunal in the case of ACIT v. Vireet Investment (P.) Ltd. reported in [2017] 82 taxmann.com 415, has held that only the dividend yielding investments are to be considered in computation of disallowance under this Rule. In this regard, the Ld. AR for the assessee also referred to the computation of disallowance in terms of Rule 8D(2)(iii) with reference to dividend yielding investments, which was placed before us. Having perused the same, it is noted that the exempt income was derived from investments having value of Rs.122,07,95,018/-whose 0.5% works out to Rs.61,03,975/-. Having regard to the suo moto disallowance of Rs.33,15,155/- already offered

> by the assessee, the further disallowance in terms of Rule 8D(2)(iii) comes to Rs.27,88,820/-. Hence, respectfully following the decision of Special Bench (supra), the AO is directed to verify this computation provided by the assessee and re-compute the disallowance under section 14A read with Rule 8D(2)(iii) accordingly."

3.5 The Ld. AR brought to our notice the details of investments which yielded exempt income during the year and computation of disallowance in terms of Rule 8D(2)(iii) with reference to the same. Having perused the same, it is noted that the exempt income was derived from investments having value of Rs.38,23,85,235/- whose 0.5% works out to 19,11,926/-. Since the disallowance of Rs.35,36,334/- suo moto offered by the assessee exceeds the disallowance worked out in terms of Rule 8D(2)(iii), we prima facie find that no further disallowance is warranted in this regard. Hence, following the decision rendered in assessee's own case (supra), the AO is directed to verify this computation provided by the assessee and re-compute the disallowance as per Rule 8D(2)(iii) accordingly. In case the disallowance works out at a figure lower than what has already been disallowed by the assessee, the AO shall restrict the disallowance to the extent as offered by the assessee.

3.6 In so far as the addition of the impugned disallowance for assessing book profit u/s.115JB of the Act is concerned, it is noticed that the AO did not assign any reason for making the impugned addition. The Ld. CIT(A) is noted to have examined this issue and deleted the same, by holding as under:-

> "……. I find lot of force in the argument of the AR as provisions of Section 115JB are deeming provisions and normal provisions of Income-tax Act are not applicable for such deeming provisions. Although as per the provisions of Section 115JB, such expenditure incurred for earning exempt income are to be adjusted, the AO cannot compute the same as per Rule 8D which is not at all applicable for computing the Book Profit u/s 115JB. As the appellant itself has computed the expenditure incurred for earning exempt income of Rs.35,36,544/-, the AO is directed to make only such adjustments for computing the Book Profit u/s 115JB. The expenditure incurred by the appellant is as per the books of account which is as per the audited accounts and as per the prescribed Form NO.29B. The AO is not authorized to tinker with the Book Profit other than that which is specifically stated in the deeming section itself. As per the provisions of Section 115JB, disallowance under Rule 8D cannot be made here. Therefore, the AO is directed to re-compute the deemed income u/s 115JB accordingly by adjusting only Rs.35,36,544/-. Accordingly, this ground of appeal is allowed."

3.7 We find that the above view of the Ld. CIT(A) is supported by the decision of this Tribunal in assessee's own case for AY 2010-11 in ITA No. 361 & 482/Chny/2024 dated 25.09.2024 wherein it was held that the disallowance worked out under Section 14A read with Rule 8D cannot be used for making adjustment for computation of book profit u/s.115JB of the Act. The relevant findings taken note of by us, is as follows:-

> "5.4 We have heard both the parties and perused the material available on record. We note that assessee suo-moto disallowed expenditure u/s.14A of the Act an amount of Rs.16,06,664/- while computing of book profit u/s.115JB of the Act. According to the Ld.AR, provisions relating to normal tax computation can't be imported into sec.115JB of the Act which is a separate code by itself. In other words, Rule 8D computation for disallowance u/s.14A can't be used for making adjustment for computation of book profit u/s.115JB of the Act and relied on the decision of Special Bench of Tribunal in the case of ACIT v. Vireet Investment (P) Ltd., reported in [2017] 58 ITR(T) 313 (Delhi-Trib.) which decision has been upheld by the Hon'ble Bombay High Court. He also pointed out that the Ld.CIT(A)/NFAC in the assessee's own case for AY 2018-19 appreciated the aforesaid submissions of the assessee and allowed the claim of the assessee.

> 5.5 In the light of the aforesaid settled position of law, we allow the claim of the assessee and direct the AO to delete the addition of Rs.11,64,109/-."

3.8 Following the above decision (supra), we see no reason to interfere with the Ld. CIT(A)'s order deleting the addition made u/s 14A r.w. Rule 8D to the book profit u/s.115JB of the Act.

3.9 Overall therefore, Ground No. 2 of the assessee is allowed and Ground No. 3 of the Revenue is dismissed.

4. Ground No. 3 of the assessee's appeal and Ground No. 2 of the Revenue's appeal relates to the disallowance of excess depreciation claimed by the assessee on UPS devices. The facts as noted are that, the assessee had claimed depreciation of Rs.54,320/- on UPS devices attached to computers, computed at the rate of 80%, by treating it to be 'power saving devices'. The AO was of the view that it was only an electrical device meant to regulate supply of electricity and was therefore in the nature of plant & machinery depreciable at 15% and accordingly he quantified and disallowed excess depreciation claimed on such UPS devices amounting to Rs.44,135/-. On appeal, though the Ld. CIT(A) upheld the AO's contention that UPS devices were not in nature of 'power saving devices' and therefore not eligible for depreciation at the rate of 80%, but at the same time the Ld. CIT(A) held that since UPS devices are a part of computer system, he directed the AO to allow depreciation at

the rate of 60%, as prescribed in IT Rules for computer & computer accessories, instead of 15% as allowed by the AO. Aggrieved by the order of Ld. CIT(A), both the assessee and Revenue are in appeal before us.

4.1 Heard both the parties. In the written submissions filed before us, the assessee has not pressed this ground and therefore the ground raised by the assessee stands dismissed. Coming to the ground raised by Revenue, we find that, this Tribunal in assessee's own case in AYs 2005-06 to 2007-08 in ITA Nos. 2825-2827/Chny/2014 dated 23.09.2016 has held that UPS devices were part of computer block and therefore depreciation allowable thereon was at 60%. The aforesaid view is noted to have been followed with approval by coordinate Bench of this Tribunal again in assessee's own case in AYs 2010-11 & 2011-12 in ITA Nos. 482 & 484/Chny/2024 dated 25.09.2024 by observing as under:-

> "9.2 We have heard both the parties and perused the material available on record. We note that the assessee claimed depreciation @ 80% on UPS, stabilizers, etc., as part of block of Energy saving equipment, since Automatic power cut-off devices mounted on motors/ Automatic voltage controllers were eligible for depreciation @ 80%. Reliance was placed on decisions of Harita Finance Ltd, in ITA No.193/Mds/91 and Godfrey Philips India Ltd. v. ACIT in ITA Nos 7682/Mum/2010. However, we note that in the assessee's own case, when similar claim came up before this Tribunal in AY 2005-06 & 2009-10 (supra), this Tribunal allowed depreciation @ 60% since it is part of the computer accessories and which has been granted by the Ld. CIT(A). Therefore, we don't find infirmity in the action of the Ld. CIT(A) and uphold his action and dismissed the Ground of the Revenue."

4.2 Following the above decision (supra), we dismiss this ground raised by the Revenue.

5. Ground No. 4 is noted to be against the disallowance of additional depreciation of Rs.9,65,562/- claimed by the assessee u/s 32(1)(iia) of the Act in relation to energy saving devices falling under the block(s) of 80% and 100%. At the onset, the Ld. AR pointed out that, out of the total claim, sum of Rs.13,996/- relates to additional depreciation claimed in respect of energy saving devices under the 100% block, which the assessee does not wish to press and therefore we confirm the disallowance to the extent of Rs.13,996/-.

5.1 The dispute remaining before us is that, whether the energy saving devices falling under the 80% block, which was installed & put to use at the factory premises of the assessee, is in the nature of 'plant & machinery' and therefore eligible for additional depreciation u/s 32(1)(iia) of the Act. The Ld. AR brought to our notice that, this identical issue has been adjudicated in their favour by this Tribunal in their own case for AY 2018-19 in ITA Nos. 554 & 561/Chny/2023 wherein it was held as under:-

> "8.2 Heard both the parties. The limited issue-in-dispute before us is that, whether the pollution control and energy saving devices are in the nature of 'plant & machinery' and therefore eligible for additional depreciation u/s 32(1)(iia) of the Act. The Ld. AR brought to our notice the relevant New Appendix-I to the Income-tax Rules, 1962 which contains the rates at which the depreciation is admissible. He showed us that Sl. No. III contained the depreciation rates applicable on 'plant &

> machinery'. It was pointed out that, the 'energy saving devices' were specifically mentioned at Sl. No. III(8)(ix), 'renewable energy devices' were mentioned at Sl. No. III (8)(xiii) and 'pollution control devices' were mentioned at Sl. No. III(3)(vii) & (ix). We are therefore in agreement with the Ld. CIT(A) that these fixed assets were in the nature of 'plant & machinery' and hence the assessee had rightly claimed additional depreciation u/s 32(1)(iia) of the Act on the same. The Ld. CIT, DR appearing before us are was unable to controvert the same. We therefore do not see any reason to interfere with the order of Ld. CIT(A) in this regard and accordingly dismiss this ground of the Revenue."

5.2 The Ld. CIT, DR was not able to distinguish the above decision (supra) and therefore following the same, we accordingly direct the AO to delete the disallowance of remaining additional depreciation of Rs.9,51,966/-. This ground is therefore partly allowed.

6. Ground No. 5 is against the action of the lower authorities denying the weighted deduction claimed in respect of research & development expenditure incurred at the approved in-house in house R&D facility under Section 35(2AB) of the Act.

6.1 The facts as discernible from records are that, the assessee had incurred scientific research expenditure, both revenue & capital, at their approved in-house house R&D facility. The assessee had accordingly claimed weighted deduction of Rs.397,38,59,287/- being 200% of the expenditure u/s 35(2AB) of the Act, in terms of Form 3CLA issued by the auditor. The AO however noted that the expenses certified by DSIR in Form 3CL was lower and therefore restricted the weighted deduction @

200% to the extent of expenditure approved by DSIR and disallowed the excess weighted claim of Rs.2,47,62,660/-. On appeal the Ld. CIT(A) confirmed the action of the AO. Now the assessee is in appeal before us.

6.2 We have heard both the parties and perused the records. There is no quarrel that the assessee's R&D facilities for undertaking scientific research is approved by DSIR as an in-house R&D Centre, as mandated in Section 35(2AB) of the Act. It is noted that, the weighted deduction claimed in respect of expenses, both revenue & capital, incurred at the approved R&D facility was audited and certified by statutory auditor in Form 3CLA. According to us, having regard to the provisions of Section 35(2AB) read with Rule 6 of the Income-tax Rules, 1962, as it stood during the relevant AY 2015-16, the conditions prescribed in Section 35(2AB) to claim weighted deduction stood fulfilled. Once the facility is approved and the auditor certifies the expenditure incurred therein, then such amount qualifies for weighted deduction u/s 35(2AB), irrespective whether the same is approved by DSIR or not. It is well settled in the law, as it stood during the year, that the approval from DSIR was not a condition precedent to avail benefit of weighted deduction u/s 35(2AB) of the Act. The Ld. AR brought to our notice that, the amendment mandating approval from DSIR to claim weighted deduction u/s 35(2AB), was brought in Rule 6(7A) of the Income Tax Rules, 1962 w.e.f. 01.07.2016

(relevant to AY 2017-18) and was therefore not applicable in AY 2015-16 in question. In our considered view therefore, the lower authorities erred in restricting the claim of weighted deduction u/s 32(2AB) of the Act to the extent as quantified by DSIR and disallowing the balance sum by way of excess claim.

6.3 We find that similar issue had come up before the coordinate Bench of this Tribunal in assessee's own case in AYs 2010-11 & 2011-12 in ITA Nos. 361 & 362/Chny/2024 wherein the weighted deduction claimed in respect of the expenditure incurred at the approved R&D Facility, as certified by the auditor, was allowed u/s 35(2AB), irrespective of the amount quantified by DSIR in their Form 3CL. The relevant findings recorded at Para 3.4 of the appellate order are taken note of as under:-

> "3.4. We have heard both the parties and perused the material available on record..... It is noted that DSIR is an authority for approval of R&D facility. And once facility is approved, expenditure incurred by it qualifies for deduction u/s.35(2AB), irrespective of DSIR approval as per the law in force. As noted, the R & D Facility has been approved as required by the authority i.e. DSIR. The settled position as per the law in force is that once facility is approved, expenditure incurred in this regard qualifies for deduction u/s.35(2AB) of the Act until amendment was brought in Rule 6(7A) of the of the Income Tax Rules, 1962 (hereinafter in short 'the Rules') w.e.f. 01.07.2016 (relevant to AY 2017-18). Therefore, the AO/Ld.CIT(A) erred in disallowing the weighted deduction u/s.32(2AB) of the Act on the expenditure incurred in an approved in-house in R& D facility. In other words, deduction can't be restricted to the amount of expenditure quantified by the DSIR before the AY 2017-18....
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> - Sundram Fasteners Ltd., v. DCIT (ITA No.3236/Chny/2017) in para no. 4.3 on page 12

- ACIT vs. v. Crompton Greaves Ltd. [2019] 111 taxmann.com 338 (Mumbai - Trib.)

- CIT v. M/s. Wheels India Ltd. [2011] 336 ITR 513 (Madras) (AY 2012-13)

- Brakes India Limited vs. DCIT [2017] 56 ITR(T) 341 (Chennai -Trib.)"

6.4 In light of the above therefore, we hold that the lower authorities were not justified in curtailing the deduction u/s 35(2AB) in the pre-amended pre period and direct deletion of the disallowance of the weighted deduction of Rs.2,47,62,660/-. This ground is therefore allowed.

7. Ground No. 6 of the assessee's appeal is against the AO's action of restricting the depreciation claimed on residential buildings to 5% instead of 10% and thereby disallowing excess claim of depreciation to the extent of Rs.9,571/-. The facts as noted are that, the assessee has claimed depreciation at the rate of 10% on residential premises on the ground that it was being used for employee housing and therefore it should be regarded as building used for business purposes. The AO following the orders passed by his predecessors held that, the depreciation rate allowable on residential buildings as per the Income-tax Rules was 5% and not 10% and that this Tribunal in assessee's own case for AY 2006-07 had also held that, the depreciation allowable on residential premises was 5%. Following the same, the AO accordingly restricted the depreciation to 5% and disallowed excess depreciation of Rs.9,571/- claimed by the

assessee. The action of the AO is noted to have been confirmed by the Ld. CIT(A). Now the assessee is in appeal before us.

7.1 Heard both the parties. It is observed that, this particular issue has been permeating through the years and this Tribunal in assessee's lead case in AY 2006-07 in ITA No.2086/Chny/2010 dated 16.02.2016 has upheld the AO's action of allowing depreciation on residential premises used by the assessee for employee's accommodation at 5% instead of 10%, by holding as under:

> "7.4 We heard the rival submissions and perused the material on record and judicial decisions cited by the ld. Authorised Representative. The assessee has claimed excess depreciation on residential building. As per the Income Tax Rules the depreciation on building shall be allowed at 5% instead of 10% claimed by the assessee. The contention of the assessee that Commissioner of Income Tax (Appeals) in earlier assessment year has allowed higher depreciation cannot be accepted and on reference to the provisions of the Acts buildings used for residential purpose depreciation allowed @5% as per Income Tax Rules. Hence, we uphold the order of the Assessing Officer and dismiss the ground of the assessee."

7.2 In view of the above decision (supra), we see no reason to interfere with the orders of the lower authorities and thus confirm the impugned disallowance. Ground No. 6 of the assessee is accordingly dismissed.

8. Ground No. 7 of the assessee's appeal is against the disallowance of the quality assurance / consultancy fees paid to non-resident individual in Japan u/s.40(a)(ia) of the Act for non-deduction of TDS.

8.1 The AO disallowed the consultancy expenditure claimed by the assessee for non-deduction of TDS by observing that the assessee had not obtained requisite NIL deduction certificate u/s 195 of the Act and therefore it ought to have deducted TDS on the same. On appeal the Ld. CIT(A) confirmed the impugned disallowance on the ground that the assessee was unable to substantiate that the services rendered fell under Article 15 - Independent Personal Services of the Indo-Japan DTAA. Being aggrieved by the order of Ld. CIT(A), the assessee is now in appeal before us.

8.2 Heard both the parties. From the facts available on record, it is noted that the assessee had availed consultancy from Mr. Yukhiro Ando, resident of Japan who held expertise in Total Quality Management ('TQM') in the automobile business. The assessee is noted to have provided the copy of the consultancy agreement along with the summary of invoices raised by the non-resident, which is found placed at Pages 1 to 8 of the Paper Book-II. The Ld. AR also took us through the relevant invoices raised by the non-resident and the Forms 15CA & 15CB issued prior to remittance, which were placed at Pages 148 to 182 of the Paper Book-I to show that, the payments were made to non-resident individual towards consultancy services and that the non-resident had given declarations that neither did he have a permanent establishment in India nor did his

stay in India exceeded 183 days during the year. The Ld. AR particularly invited our attention to the copy of passport of Mr. Yukhiro Ando, which was placed at Pages 172, 173 & 182 of the Paper Book-I and the summary of his stay at Page 9 of Paperbook-II to show that, his stay in India for rendering such consultancy services to the assessee was actually less than 183 days during the year. Having taken note of these facts / details, according to us, the taxability of the impugned payment made to non-resident individual for rendering independent consultancy services was expressly governed by Article 15 of the DTAA between India & Japan, which read as under:-

> "1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State unless he has a fixed base regularly available to him in the Contracting State for the purpose of performing his activities or he is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days during any taxable year or 'previous year' as the case may be. If he has such a fixed base or remains in that other Contracting State for the aforesaid period or periods, the income may be taxed in that Contracting State but only so much of it as is attributable to that fixed base or is derived in that other Contracting State during the aforesaid period or periods."

8.3 From the facts, as discussed above, it is observed that Mr. Yukhiro Ando had rendered his expert consultancy services relating to quality assurance to the assessee in his independent capacity and his stay in India was less than 183 days and therefore in view of the above Article 15 (supra), the impugned payment was not liable to tax in India. We thus note that, as the impugned payment was not chargeable to tax in India,

the assessee had rightly not withheld any TDS u/s 195 of the Act before making such payment. Our view is supported by the decision rendered by this Tribunal in assessee's own case for AY 2011-12 in ITA Nos. 362 & 484/Chny/2024 dated 25.09.2024 wherein on similar facts and circumstances it was held that, the consultancy fees paid to non-resident individuals whose period of stay in India did not exceed 183 days was not liable to tax in India, in terms of Article 15 of DTAA between India & USA and therefore the disallowance made by the AO u/s 40(a)(i) for alleged non-deduction of TDS was deleted.

8.4 The Ld. CIT, DR however argued that, even if the assessee was of the view that no TDS was deductible on the impugned payment as it was not liable to tax India, then the assessee was obligated to first obtain certificate u/s 195(3) of the Act from the income-tax authorities and having not done so, the AO had rightly disallowed the impugned sum for non-deduction of TDS. We however are unable to subscribe to such a view of the Revenue. According to us, Section 195 of the Act gets attracted in respect of tax on chargeable income, if any, paid to a non-resident. Where there is no liability, the question of tax deduction does not arise. Where no part of the income is chargeable in India, obtaining prior clearance under Section 195(2) or 195(3) of the IT Act is not necessary. Our view finds support from the decision of the Hon'ble Supreme Court in

GE India Technology Centre P. Ltd. v. CIT, reported in (2010) 327 ITR 456 (SC) wherein it was held as under:-

> "9. …Similarly, section 195 imposes a statutory obligation on any person responsible for paying to a non-resident any sum "chargeable under the provisions of the Act", which expression, as stated above, do not find place in other sections of Chapter XVII. It is in this sense that we hold that the Income-tax Act constitutes one single integral inseparable Code. Hence, the provisions relating to TDS applies only to those sums which are chargeable to tax under the Income-tax Act. If the contention of the Department that any person making payment to a non-resident is necessarily required to deduct TAS then the consequence would be that the Department would be entitled to appropriate the moneys deposited by the payer even if the sum paid is not chargeable to tax because there is no provision in the Income-tax Act by which a payer can obtain refund. Section 237 read with section 199 implies that only the recipient of the sum, i.e., the payee could seek a refund. It must therefore follow, if the Department is right, that the law requires tax to be deducted on all payments. The payer, therefore, has to deduct and pay tax, even if the so-called deduction comes out of his own pocket and he has no remedy whatsoever, even where the sum paid by him is not a sum chargeable under the Act. The interpretation of the Department, therefore, not only requires the words "chargeable under the provisions of the Act" to be omitted, it also leads to an absurd consequence. The interpretation placed by the Department would result in a situation where even when the income has no territorial nexus with India or is not chargeable in India, the Government would nonetheless collect tax. In our view, section 195(2) provides a remedy by which a person may seek a determination of the "appropriate proportion of such sum so chargeable" where a proportion of the sum so chargeable is liable to tax. The entire basis of the Department's contention is based on administrative convenience in support of its interpretation. According to the Department huge seepage of revenue can take place if persons making payments to non-residents are free to deduct TAS or not to deduct TAS. It is the case of the Department that section 195(2), as interpreted by the High Court, would plug the loophole as the said interpretation requires the payer to make a declaration before the ITO(TDS) of payments made to non-residents. In other words, according to the Department section 195(2) is a provision by which payer is required to inform the Department of the remittances he makes to the non-residents by which the Department is able to keep track of the remittances being made to non-residents outside India. We find no merit in these contentions. As stated hereinabove, section 195(1) uses the

> expression "sum chargeable under the provisions of the Act." We need to give weightage to those words. Further, section 195 uses the word 'payer' and not the word "assessee". The payer is not an assessee. The payer becomes an assessee-in-default only when he fails to fulfil the statutory obligation under section 195(1). If the payment does not contain the element of income the payer cannot be made liable. He cannot be declared to be an assessee-in-default. The abovementioned contention of the Department is based on an apprehension which is ill founded.
>
> 10. ….In our view, section 195(2) is based on the "principle of proportionality". The said sub-section gets attracted only in cases where the payment made is a composite payment in which a certain proportion of payment has an element of "income" chargeable to tax in India. It is in this context that the Supreme Court stated, "If no such application is filed, income-tax on such sum is to be deducted and it is the statutory obligation of the person responsible for paying such 'sum' to deduct tax thereon before making payment. He has to discharge the obligation to TDS". If one reads the observation of the Supreme Court, the words "such sum" clearly indicate that the observation refers to a case of composite payment where the payer has a doubt regarding the inclusion of an amount in such payment which is exigible to tax in India. In our view, the above observations of this Court in Transmission Corpn. of A.P. Ltd.'s case (supra) which is put in italics has been completely, with respect, misunderstood by the Karnataka High Court to mean that it is not open for the payer to contend that if the amount paid by him to the non-resident is not at all "chargeable to tax in India", then no TAS is required to be deducted from such payment. This interpretation of the High Court completely loses sight of the plain words of section 195(1) which in clear terms lays down that tax at source is deductible only from "sums chargeable" under the provisions of the Income-tax Act, i.e., chargeable under sections 4, 5 and 9 of the Income-tax Act."

8.5 In view of the above decision (supra), the contention raised by the Ld. CIT, DR fails. For the reasons as afore-stated, we hold that the assessee was not required to deduct tax at source u/s.195 of the Act on the impugned payment, and therefore, the disallowance made u/s 40(a)(i) in this regard is held to be unjustified and is directed to be deleted. This ground is therefore allowed.

9. Ground No. 8 of the assessee's appeal is against the Ld. CIT(A)'s action of confirming the AO's order re-characterizing the long term capital gain of Rs.90,47,68,333/- declared upon slump sale of windmill undertaking u/s 50B of the Act by way of business income of the assessee.

9.1 Briefly noted the facts are that, the assessee is inter alia engaged in the business of manufacturing and selling of commercial vehicles. The assessee also owns and operates eighty six (86) windmills with an aggregate installed capacity of 25.5 MW of power. During the year, the assessee vide business transfer agreement [in short 'agreement'] effective from 01.02.2015 had sold the entire windmill division on 'slump sale' to its related entity, M/s Ashok Leyland Wind Energy Ltd [in short 'ALWEL' or 'buyer'] which was exclusively engaged in development, maintenance and operation of windmills. The intent of the buyer to acquire the windmill division was to generate synergies as its overall installed power capacity would increase. Taking us through the said agreement, the Ld. AR pointed out that, all the immovable & movable assets connected with the undertaking along with the related liabilities, licenses and intangible assets and all the employees of the said division stood transferred on a going concern basis to the buyer by way of slump sale for a lump sum consideration. It was brought to our notice that, the

assessee had accordingly computed the capital gains arising from such slump sale u/s 50B of the Act, which was supported by certificate obtained in Form 3CEA, and which we find placed at Page 39 of the Paper Book. The assessee is noted to have computed the full value of consideration at Rs.100,86,53,504/- and the net worth of the undertaking was certified by the accountant at Rs.10,38,85,171/- thereby resulting in taxable capital gain of Rs.90,47,68,333/-.

9.2 The AO in the course of assessment is noted to have taken cognizance of the above narrated facts relating to the sale of windmill division by the assessee. According to the AO, in order to qualify as 'slump sale' under section 2(42C) of the Act, one of the conditions to be satisfied was that, the undertaking should be sold for a lump sum consideration without separate values being assigned to individual assets and liabilities. The AO was of the view that, though the purchase price for all assets & liabilities was determined at an aggregate figure of Rs. 93 crores but a separate valuation was assigned for the 'unbilled revenues' which would accrue upto the effective date of transfer and therefore in his view this assignment of a separate value for the 'unbilled revenues' meant that the business undertaking was not sold on lump sum basis, and therefore, the AO held that, the condition prescribed in Section

2(42C) was not fulfilled. For arriving at such a conclusion, the AO referred to Clause (3) of the agreement, which read as under:-

> "3. PURCHASE PRICE:
>
> 3.1. The purchase price/consideration ("Purchase Price") payable by the Buyer to the Seller, for the transfer and sale of the Division as a going concern on slump sale basis is divided into two parts - viz.,
>
> i. Immediate consideration of Rs.93,00,00,000/- (Rupees Ninety-Three Crores only) to be paid for all assets and liabilities except for unbilled revenue.
>
> ii. Deferred consideration for unbilled revenue accrued up to the Effective Date payable by Buyer to the Seller on realization from TANGEDCO…."

9.3 Accordingly, the AO is noted to have re-characterized the 'Capital Gains' declared by the assessee u/s 50B of the Act, as 'Business Income'. Being aggrieved by the order of the AO, the assessee carried the matter in appeal before the Ld. CIT(A).

9.4 Before the Ld. CIT(A), the assessee contended that, the AO had proceeded on mistaken understanding of fact that the windmill division was not sold for a lump sum consideration. The assessee showed that, the entire windmill division was agreed to be sold for a lump sum value of Rs. 93 crores, which was also supported by an independent valuation report, which we find is available at Pages 90 to 101 of the Paper Book. It was only in respect of the amount of revenues which would accrue to the assessee upto the date of transfer towards the wheeling of power by the windmill(s) to the Grid, which would be separately collected by the buyer

from the customer and paid to the assessee. Reason being, the gross revenues for the entire billing cycle would have been declared by the customer, M/s Tamil Nadu Government Electricity Generation and Distribution Company ('TANGEDCO') only at the end of the billing cycle, and therefore it was agreed between the parties that, the revenues pertaining to the period up to the date of transfer would be collected and paid by the buyer to the seller, as understandably such unbilled revenues belong to the assessee-seller who is the legal owner of the business till the date of transfer. The assessee is therefore noted to have explained the reason for incorporating a deferred consideration component, apart from the lumpsum consideration of Rs.93 crores, as it was not possible for the parties to quantify the unbilled revenues for the interim period between the last billing cycle of TANGEDCO up to the date of the transfer of division. Hence, such a deferred consideration component was suitable provided and agreed between the parties. The assessee showed to the Ld. CIT(A) that, the agreed consideration of Rs. 93 crores was towards the total transfer of business including all movable & immovable assets, employees, payables, receivables and other related liabilities, on a going concern basis and that no separate valuation was carried out for any of these assets individually. The assessee accordingly claimed that, in sum & substance, the windmill division was valued as a one single unit and sold on a going concern basis, and the assets were not sold individually, as

alleged by the AO. The assessee thus submitted that, the conditions prescribed in Section 2(42C) were fulfilled and that it had rightly reported the capital gains in terms of Section 50B of the Act.

9.5 The assessee, in the alternate, is noted to have contended before the Ld. CIT(A) that, even if the AO was indeed of the view that it was a case of itemized sale of assets and not a 'slump sale', then the AO ought to have assigned individual value to all the assets & liabilities and should have individually assessed capital gains arising from transfer of each of these species of capital assets, which was not done and this according to the assessee showed that the AO had tacitly acknowledged the slump sale. The assessee further contended that, if according to AO, the condition laid down in Section 2(42C) was not fulfilled, then also it would not alter the nature of income i.e. capital gains but it would only mean that, the special provisions of Section 50B will not operate. In such a circumstance, the AO ought to have computed the capital gains under the regular section 45 read with 48 & 49 of the Act. According to the assessee, under no circumstance, could the capital gains be re-characterized as business income of the assessee. It is noticed that, the Ld. CIT(A) had rejected the arguments of the assessee in the most cryptic manner by observing as under:

> "12.2.2 During the appellate proceedings, the AR argued that one portion of the valuation is for fixed assets and second portion is variable

item based on wheeling charges determined by the TNEB, and hence, the said valuation was done and further reiterated the contention of the appellant as per the ITR. The contention of the AR is not acceptable and the AO has clearly brought out that the appellant has not satisfied the prescribed conditions for slump sale as per Section 2(42C) of the Act. Therefore, the addition of Rs. 90,47,68,333/- is hereby confirmed."

9.6 Being aggrieved by the above order of Ld. CIT(A), the assessee is now in appeal before us.

9.7 Assailing the action of the lower authorities, the Ld. AR for the assessee reiterated the arguments which were raised before the Ld. CIT(A). He submitted that, the assessee had sold the windmill undertaking on a going concern basis whose value was determined by an independent valuer at Rs.90 crores. Based on this independent valuation, the parties had agreed to a consideration of Rs.93 crores which was towards all the assets & liabilities relatable to this windmill division. He pointed out that, while determining this sale price, it was gathered by the parties that, the electricity which was being continuously generated & wheeled to TANGEDCO, up to the date of effective transfer, would in substance belong to the assessee and that, the assessee was obligated to offer such revenues up to the date of transfer as its own income. As the effective date of transfer was agreed at 01.02.2015, which fell between the two billing cycles of TANGEDCO, it was not possible for the parties to exactly quantify the revenues for such interim period which would belong to the assessee. It was therefore agreed between the parties that only the

unbilled revenues which accrued up to the effective date, which would have been accounted by the seller as its income, would be later on paid by the buyer when the entire revenue for that billing cycle is realized from TANGEDCO. Hence, subsequently as and when the buyer received the revenues for the relevant billing cycle from TANGEDCO, it was ascertained that sum of Rs.7,86,53,304/- belonged to the seller being the revenues attributable to the interim period up to the date of transfer, which was accordingly handed over by the buyer to the assessee-seller. The Ld. AR showed that, this deferred consideration did not have any impact on the overall capital gains assessable to tax as the unbilled revenues, for accounting purposes was added to the liabilities as it represented amount due to the assessee towards the undertaking and equivalent value was added to the full value of consideration in terms of Clause 3(ii) of the agreement. As a corollary, the net value of capital gains liable to tax remained unchanged. The Ld.AR thus argued that, the value of the entire undertaking was indeed ascertained on lump sum basis and only because a deferred consideration component was agreed towards the unbilled revenues, which was not ascertainable at that material time, cannot be a valid reason to allege that the assessee had not sold the business undertaking on going concern basis for lump sum value, but had assigned separate values individually for assets, resulting in a violation of Section 2(42C) of the Act. He therefore urged that, the action of the lower

authorities re-characterizing the capital gains declared u/s 50B of the Act as business income was unjustified. Per contra, the Ld. CIT(DR) appearing for the revenues vehemently supported the order of the lower authorities.

9.8 We have heard both the parties and perused the material available on record. The issue which arises for our consideration is whether the transaction involving sale of windmill division to ALWEL during the relevant year fell within the definition of 'slump sale' as defined in Section 2(42C) of the Act. Before proceeding further, let us first have a look at the relevant provisions of Section 2(42C) and Section 50B of the Act, which is extracted as under:-

> "*Section 50B :-*
>
> (1) Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place :
>
> *Section 2(42C) :-*
>
> "slump sale" means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.
>
> Explanation 1.—For the purposes of this clause, "undertaking" shall have the meaning assigned to it in Explanation 1 to clause (19AA).
>
> Explanation 2.—For the removal of doubts, it is hereby declared that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities."

9.9 We find that Section 50B of the Act provides that any profit or gain arising from the 'slump sale' effected in the previous year shall be chargeable to income-tax as capital gain arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place. Further, Section 2(42C) of the Act defines 'slump sale' as a transfer of one or more undertakings for a lumpsum sale consideration without values being assigned to the individual assets and liabilities in such sale. The Explanation (1) to section 2(42C) of the Act further provides that 'undertaking' shall have the meaning assigned to it in the Explanation 1 of clause (19AA) of section 2 of the Act, whereby an undertaking means, in an inclusive sense, any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity. The Explanation (2) to section 2(42C) of the Act further provides that, the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities.

9.10 Having taken note of the above legal provisions, we now revert to the facts of the case before us. In order to understand whether the sale of

the division in question was a slump sale or itemized sale of assets, we have to examine the intention of the parties to the agreement. If the business of the vendor is sold as such as a going concern, it will tantamount to a slump sale. If the sale is a slump sale, then provisions of section 50B of the I.T. Act will have application. Now, the admitted facts of the case are that, the assessee is inter alia engaged in the business of developing, operating and maintaining eighty six (86) windmills, which we find to constitute an identifiable business division of the assessee. It is not in dispute that, this entire business division along with all the related assets and liabilities have been sold on a going concern basis by the assessee to ALWEL. It is not the AO's case that, the windmill division transferred by the assessee does not constitute a 'business undertaking' as defined in Explanation (1) to Section 2(19AA) of the Act. It is also not the case of the AO that, any particular assets or any of the liabilities which though related to this business division was not transferred but retained by the assessee, which would violate the condition laid down in Section 2(42C) of the Act. We further observe that, the transaction involving the sale of windmill undertaking was carried out with a related concern for which an independent valuation report was obtained and the price agreed between the parties at Rs.93 crores was higher than the value determined by the independent valuer. It is noticed that, the AO

has also not disputed the valuation of the business undertaking sold by the assessee to its related concern.

9.11 We have gone through the Business Transfer Agreement placed before us, relevant extracts of which reads as under:-

> "WHEREAS
>
> A. The seller is primarily engaged inter alia in the business of manufacturing and selling commercial vehicles. The seller also owns 86 windmills with an installed capacity of generating 25.5 MW of power.
>
> B. The Buyer owns windmills and the related lands, and focusses on the business of development, operation and maintenance of windmills with such other objectives as prescribed in its Memorandum of Association.
>
> C. Whereas AL Proposes to sell the windmills business (hereinafter called "Division" more fully defined in the clause below) on "slump sale basis" to ALWEL, subject to the terms and conditions of this Agreement.
>
> D. It is to be mentioned that these windmills of the seller continue to be operated and managed by ALWEL under a separate O&M contract dated March 30,2012 and supervisory contract dated April 01, 2012 between AL and ALWEL which shall be terminated on the date of completion of the transfer of the Division.
>
> E. The Buyer has considered it prudent to buy the business of the Division from AL since there is strong synergy between the business undertaken by the Buyer currently and more importantly the installed capacity of the Buyer would increase and Buyer will enjoy the benefits o9f sale of the entire power generated from the Division to AL, the terms of which will be covered under a separate power purchase Agreement.
>
> F. The Parties desire to complement their respective resources, capabilities and know-how and intend to deal with this sale on priority basis and shall give each other preferred consideration, to consummate the sale, while complying with all the regulatory, statutory and other connected issue including those items connected with sale of power from ALWL to AL on captive mode.

G. The seller has agreed to sell and the Buyer has agreed to purchase the Division on "slump sale basis" on the terms and conditions set below.

NOW, THEREFORE, in consideration of the premises and mutual converts, promises, agreements and provisions set forth hereinafter, the parties hereto agree as follows:

1. DEFINITIONS

XXXX

1.3 "**Effective Date"** shall mean 1st February, 2015.

XXXX

1.6 **"Continuing Employees"** shall mean the employees of the seller who are on the rolls of the Division as on the Effective Date who would be taken on the rolls of the Buyers, in the Division and such take over shall be deemed to have come into force on and from the Effective Date.

1.7 **"Current Assets"** mean and include only those inventories (if any), deposits (including security deposits), cash in hand and at Bank, sundry debtors, unbilled revenue and other current assets pertaining to the Division alone as on the Effective Date;

1.8 **"Current Liabilities"** mean and include accounts payable for goods, services and capital assets, creditors for expenses, provision for amount payable to ALWEL contracts with AL and any other encumbrances and current liabilities directly pertaining to the Division alone as on the Effective Date;

XXXX

1.10 **"Division"** means the entire windmill undertaking of the Seller and includes all assets (more fully described in the Schedule annexed hereto) and liabilities relatable to it, whether recorded or not, and constituting such undertaking.

XXXXX

1.14 **"Immovable Assets"** shall have the meaning assigned thereto in clause 2.1.(b);

1.15 **"Inventories"** means all inventory merchandise, goods raw materials, consumables, spare, stock-in-process, value of Certified EMISSION Reduction (CERs) (whether recorded or not in books of

accounts and includes entitlements from other companies) and the Products directly related to the business of the Division, maintained, held or stored by or in transit on Seller's account or held for the seller as on the Effective date;

1.16 **"Licenses and Permission"** shall mean licenses permissions, approvals, clearances, permits, consents and registrations, if any, from the central government, state governments, local bodies, regulatory and statutory authorities for carrying on the operations of the equipment through ALWEL and performance of this Agreement.

1.17 **"Moveable Assets"** shall have the meaning assigned thereto in clause 2.1(a).

1.18 **"Purchase Price"** shall have the meaning assigned there thereto in clause 3;

XXXXX

2. SALE AND PURCHASE

2.1 Subject to the provisions of this Agreement, on and from Effective Date, the Seller is deemed to have sold, transferred, conveyed, assigned and delivered, as the case may be, to the Buyer and the Buyer shall be deemed to have purchased, acquired and accepted, as the case may be, from the Seller, on "slump sale" basis, the entire right, tittle and interest as well as all liabilities of the Seller in the Division, together with all properties, assets, resources, rights, privileges and licenses, all existing contractual rights/entitlements and obligations formatting part thereof which have been functioning as a separate and independent division of the Seller, as at the Effective Date, as a going concern including:

a. all the moveable assets, properties, resources, facilities, utilities, and services including without limitations, all computers, work stations, computer software, plant, equipment, machinery, apparatus, instruments, spare, tools, furniture and fixtures, office equipment, communication facilities and capital work-in-progress and such other tangible movable property, which are engaged, deployed, employed or used in and forming part of this Division / activity alone (the "Moveable Assets).

b. all the immovable assets like land, buildings and structures and improvements erected thereon together with all appurtenances thereto which are treated as immovable assets under law and practice forming part of the Division ("Immovable Assets").

c. all the Current Assets as (as defined in respective clause) as at the Effective Date;

d. all the Current Liabilities (as defined respective clause) as at the Effective Date;

e. benefits of and obligations under all contracts, engagements, insurance contracts, arrangements, lease agreements, tenancy agreements, quota rights, inquiries, sales orders, purchase orders and such other arrangements, including obligations under past contracts which are surviving, relating exclusively to or in connection with or forming part of this division hereinafter called the "Contracts";

f. benefits of and obligations under Licenses and Permissions obtained by the Seller solely connected with the Division to the extent such Licenses and Permissions are divisible or transferable in accordance with applicable law;

Specifically, for this purpose, Licenses and Permissions shall include but not be limited to:

i. Tamil Nadu Electricity Board/Tamil Nadu Electricity Generation and Distribution Company ("TANGEDCO") related Rights, Licenses, service connections and other similar rights to generate and transmit power

ii. License/s from Government of India/ State Government, if any, relating to the Division;

iii. Sales tax exemption (if any) under the Central Sales Tax Act and the Tamil Nadu General Sales Tax Act;

iv. License for industries and factories from the local Authorities/Panchayat (if applicable)

g. All intangible assets related to this division, whether or not recorded in the books of account of the Seller (except trademarks, whether registered or not, of the Seller);

h. Full rights, power and authority to the Buyer for conducting and carrying on the business under the Division in continuation of, and as successor to, the Seller.

2.2. AL shall co-operate with ALWEL for transferring all the required statutory licenses by signing necessary forms/documents etc.

2.3. All records, books, payrolls, ledgers, invoices, marketing and promotion documentation and materials, internal memos and

information relating to customers and suppliers, accounting files, computer programs and all other information (current as well as relating to the earlier periods) on whatever media stored, which are used for running the Division (hereinafter referred to as the "Business Information") shall stand transferred from the Seller to the Buyer.

2.4. All technical information used, until the Closing Date including all know-how, patent, copyright, engineering drawings, sketches and blueprints, designs, patters, formulations, models, masters, maps, computer programs, specifications, data, manuals, processes and procedures, operations sheets, templates, formats and manuals, formulae, quality control and inspection data, instructions and other such information and all business & commercial rights relating to this Division, hereinafter collectively referred to as the "Technical Information" shall stand transferred from the Seller to the Buyer.

This Technical Information shall expressly exclude trademarks, whether registered or not, which are owned, used and applied for by the Seller as on the Effective Date.

3. **PURCHASE PRICE**:

3.1. The purchase price/consideration ("Purchase Price") payable by the Buyer to the Seller, for the transfer and sale of the Division as a going concern on slump sale basis is divided into two parts - viz.,

i. Immediate consideration of Rs.93,00,00,000/- (Rupees Ninety-Three Crores only) to be paid for all assets and liabilities except for unbilled revenue.

ii. Deferred consideration for unbilled revenue accrued up to the Effective Date payable by Buyer to the Seller on realization from TANGEDCO.

3.2 The Purchase Price does not include any tax and duties. Seller is liable to bear any incidence of income tax levied on this transaction.

3.3 Stamp duties, registration charges and other similar items are dealt with in clause 12.1 below.

4. **EMPLOYEES**

The Buyer shall, from the Effective Date be deemed to have taken over the "Continuing Employees on the basis that the services of the Continuing Employees shall be continuous and shall not be interrupted by reason of the sale and transfer of the Division as envisaged in this Agreement and on the same terms as enjoyed with the Seller, as on the

> Effective Date and in line with the provisions of Sec 25 FF of the Industrial Disputes Act 1947. The Parties simultaneously entered into a separate Staff Transfer Agreement governing all aspects relating to the takeover of Continuing Employees; The Staff Transfer Agreement covers the understanding between the Parties regarding protection of the current service conditions, protection of continuity of service for the purpose of retirement benefits, transfer of their accrued retirement/welfare benefits, issuance of letters of cessation/fresh employment by the Seller and the Buyer's responsibility etc."

9.12 On perusal of the agreement, we find that the Clause 2.1 of the agreement specifically provides for sale and purchase of the 'division' of the assessee on slump sale basis along with all rights, title, interest and liabilities in the said division along with all properties, assets, resources, rights, privileges and existing contractual obligations on a going concern basis. Reading of sub-clauses (a) to (h) of Clause 2.1 shows that all the related assets & liabilities pertaining to the business division was sold lock, stock & barrel to the buyer. Clause 4 of the agreement shows that, even all the employees who are working in the business division was transferred to the buyer.

9.13 We further find that Clause (3) of the agreement clearly provides for the transfer and sale of the division as a going concern on slump sale basis for lumpsum consideration of Rs.93 crores to be paid for all the assets & liabilities of the undertaking, except for the 'unbilled revenues'. The impugned dispute is noted to have arisen solely due to the exception of 'unbilled revenues' provided to the total consideration of Rs.93 crores

for which a separate deferred consideration was agreed for in sub-clause (ii) to Clause (3) of the agreement. The said sub-clause is noted to provide that, the value of 'unbilled revenues' which accrued up to the effective date and shall be payable by the buyer to the seller on realization from TANGEDCO.

9.14 From the facts placed on record, we find that, this deferred consideration component did not have any impact on the overall profitability of the assessee from the sale of undertaking. Instead, the same is noted to have been provided for because of the unique nature of business of the assessee and the parties intended to correctly balance the books of both the parties and ensure accurate accounting of the revenues by them. Admittedly, the assessee was generating electricity in their windmill division which was being inter alia fed into the grid of TANGEDCO on a continuous basis. Unlike other businesses, where the quantity of goods supplied, value of such supplies etc. are pre-determined at the time of sale, in this electricity business, where power is supplied to government undertakings, the customer, TANGEDCO is in charge of the billing cycle who intimates the units procured from the windmills at the end of the billing cycle along with the tariff rate/price at which such revenues was to be billed by the assessee. It is noted that, the agreement involving sale of windmill division was made effective from the date

TANGEDCO which fell between the two billing cycles of TANGEDCO. As per the generally accepted accounting policies and also for income-tax purposes, the revenues accruing from the last date of billing cycle to the date of transfer would belong to the assessee and the revenues from the date of transfer to the next billing cycle would belong to the buyer. However, the invoice for the entire billing cycle would be raised by the owner on the end of billing cycle i.e. the buyer, and TANGEDCO would pay the entire revenues to the same. Hence, in order to address this anomaly, the parties are noted to have agreed that, this unbilled revenue component up to the date of effective transfer, which legally belongs to the assessee, would be paid by the buyer as and when it is realized from TANGEDCO. We find that, this was done only to ensure that the correct revenues are accounted for by both the parties, in as much as it did not have any impact on the computation of capital gains arising from the slump sale of the undertaking. For accounting purposes, the unbilled revenues were reflected as liabilities due to the assessee, on the effective date of transfer and the same value was included in the overall consideration as well. The computation of capital gains u/s 50B of the Act is noted to be as under:-

Particulars	Amount (In Rs)		
A). Sale Consideration Immediate (Clause 3.1 (i))		93,00,00,000	
Deferred (Clause 3.1 (ii))		**7,86,53,504**	

			1,00,86,53,504
B). Net worth of the undertaking			
a) IT WDV of Depreciable assets		1,03,68,211	
b) Other assets:			
Land	47,84,126		
Prepaid Expenses	14,35,954		
Banked Units	1,00,67,969		
Unbilled revenue	**7,86,53,504**		
		9,49,41,553	
C) Less: Liabilities:			
Provision for expenses		14,24,593	
Net worth	B = a + b - c		10,38,85,171
C). Capital gains on slum sale u/s 50B of IT Act	C = A - b		90,47,68,333

9.15 The above computation of capital gains is also supported by Form 3CEA issued by Chartered Accountant, which is available at Page 2 of Paper Book-III. It is noticed that the AO has not disputed the above computation, from which we find that, actually the net impact of the deferred consideration on the value of capital gains assessable to tax was NIL. We therefore find merit in the submissions of the Ld. AR that this deferred consideration component was actually meant to ensure correct accounting of the revenues by both the parties and not to assign any separate values to any individual assets. For the reasons as discussed in the foregoing, according to us, this deferred consideration agreed for unbilled revenues cannot be viewed adversely to disregard the 'slump sale'.

9.16 The reliance placed by the assessee on the decision of the Hon'ble Bombay High Court in the case of **Premier Automobiles vs. ITO (264 ITR 193)** is found to be relevant. In the decided case also, the assessee had inter alia sold their Kalyan Business on a going concern basis for an agreed consideration of Rs.210 crores plus an amount to be decided after the execution date corresponding to the net current assets as shall be worked out on the date of transfer. The AO held that there was a sale of itemized assets as a separate consideration was agreed for the net current assets. On appeal, the Hon'ble High Court observed that the analysis of the slump sale agreement revealed that the division was transferred as a whole and that understandably, it was impossible to fix the value of net current assets on the date of sale as that could have been ascertained only later when the divisional accounts on the date of transfer is drawn up. The Hon'ble High Court further observed that the further sum of Rs.37.84 crores paid towards the net current assets did not have any profit element and thus had no impact on the computation of capital gains under the Act. According to the Hon'ble High Court, the terms of the agreement and the intent of the parties showed that the Business unit had been transferred as a going concern on as is where is basis and therefore it was held to be a 'slump sale'. The relevant findings of the Hon'ble High Court are noted to be as under:

"37.(iv) …The abovementioned MOU dated 11-3-1993 and Supplemental MOU dated 17-5-1994 ultimately culminated into Slump Sale Agreement between PAL and KMCL on 6-1-1995. Under the Slump Sale Agreement, KMCL got dealers of PAL, licenses obtained by PAL as also the work-force of PAL. Under the Slump Sale Agreement, the Sale Date was 29-9-1994. Under Clause 2.A.1, the object of Slump Sale Agreement is mentioned. Clause 2.A.1 refers to assignment of Kalyan Business on and from 29-9-1994. It states that PAL agrees to sell to KMCL on and from 29-9-1994, the Kalyan Business as a Going Concern comprising of immovable and movable assets, intellectual property rights and Net Current Assets. Under clause 2.A.4, it is mentioned that incidental to sale of Kalyan Business as a Going Concern, PAL agrees to transfer all licenses, quotas permits, outstanding contracts etc. to KMCL for Rs. 210 crores plus value of the Net Current Assets as on 29-9-1994. In this case, a finding is recorded against PAL and it has been argued on behalf of the Department that under the Slump Sale Agreement, the price to be paid by KMCL to PAL vide Clause 2.B.1 was an aggregate of Rs. 210 crores corresponding to the value of immovable and movable assets plus an amount to be decided after the execution date corresponding to the value of Net Current Assets and, therefore, there was a sale of Itemized Assets. It was submitted on behalf of the Department that even sale of one asset in a Block of Assets for a price would constitute sale of Itemized Assets. We do not find any merit in this finding. Firstly, it may be noted that the Slump Sale Agreement is executed on 6-1-1995 and the figure of Rs. 210 crores under the MOU dated 11-3-1993 has remained unchanged even on 6-1-1995. Secondly, when the MOU was executed on 11-3-1993, it was not possible for the parties to know the value of Net Current Assets on 29-9-1994. Thirdly, the price of Rs. 210 crores fixed under the MOU was not only for fixed assets but it also took into account Business Advantages like licenses, quotas etc. That, merely because the Slump Sale Agreement refers to sale of Net Current Asset for Rs. 37.84 crores (approx.) cannot lead one to the conclusion that there was a sale of Itemized Assets. Further, the value of the Net Current Asset has no Profit element….

38. On the analysis of the above, we are of the view that, in this case, the entire Kalyan Business has been sold by PAL to PPL as a Going Concern. On reading the above documents, the intention of the parties in the commercial sense was to transfer the Kalyan Business, as a whole, for a lump sum consideration of Rs. 247 crores. That, the parties did not intend to make a sale of Itemized Assets. That, mere execution of a Conveyance of immovable property by itself would not constitute sale of Itemized Assets. That, PPL never intended to purchase individual items. That, apart from land, building, plant and machinery, PAL had transferred Business Advantages like licenses, quotas, permission to use

the name "Premier", work-force and other intangibles. Therefore, on facts, we hold that there was a slump sale. That, in this case, there was a sale of all assets and liabilities of Kalyan Business as a whole for a lump sum amount. That, even after the Sale Date 29-9-1994, there was Continuity of Business by PPL of manufacturing 118 NE Cars and Peugeot Cars. That, the Balance Sheet, Profit and Loss Account and the Assessment Order of PPL show that within 6 months' period ending 31-3-1995, PPL has sold cars to the value of Rs. 177.26 crores (approx.). That, the entire Arrangement was to the effect that the French Company AP agreed to make an investment of Rs. 350 crores in the Joint Venture because the other contracting party viz. PAL had infrastructure to manufacture 118 NE Cars at Kalyan, Kurla and Pune. That, PPL did not intend to purchase assets individually/separately and that they intended to buy the entire Kalyan Business for a lump sum price. Therefore, reading the Arrangement in its entirety along with relevant circumstances prevalent on 11-3-1993, we are of the view that, in this case, there was a transfer of the Kalyan Business as a Going Concern to PPL and that the Tribunal erred in holding that there was a sale of Itemized Assets. That, mentioning of value/consideration in respect of land or building will not per se take the transaction out of slump sale - Narkeshari Prakashan Ltd.'s case (supra); Mugneeram Bangur & Co. (Land Department)'s case (supra). That the assets transferred, constituted Running Business and therefore there was a slump sale. That, merely because a Conveyance of land and building came to be executed on 27-5-1996 it cannot be said that there was no slump sale. If that test is applied then there could never be a slump sale. That, the total cost of the Project was Rs. 560 crores of which PAL contributed Rs. 210 crores plus value of Net Current Assets amounting to Rs. 37.84 crores (approx.). That, on 11-3-1993, there was no valuation. There is no evidence of valuation on that date. That, every facility at Kalyan was transferred. That, on 11-3-1993 value of Net Current Assets had not been ascertained. That, on 11-3-1993 the Sale Date was not even fixed and, therefore, it was impossible to fix the value of Net Current Assets on 11-3-1993 as the Sale Date was 29-9-1994. That, in any event, there is no question of any profit arising to the assessee-PAL on transfer of Current Assets. The amount of Rs. 37.84 crores (approx.) was an excess of Current Assets over Current Liabilities transferred at Book Value. Current Assets such as deposits, receivables, debtors etc. cannot fetch more than their Book Value. The Assessing Officer in his original Order calculated short-term capital gains of Rs. 1.84 crores on transfer of Current Assets. However, in the light of above principles, the First Appellate Authority cancelled the addition of Rs. 1.84 crores. In the circumstances, we are of the view that the transaction in question was a slump sale."

9.17 In the present case also, we note that, the impugned agreement which was effective from 01.02.2015, clearly mentions for the sale of windmill division. It is noticed that not only all the moveable & immovable assets along with related liabilities were transferred, but all the intangibles including licenses, permissions, contractual obligations of the undertaking and also the employees pertaining to this division were also transferred by the assessee. Post sale of this business division, the assessee was no longer engaged in business of generation of electricity through windmills and that this business was transferred on lock stock barrel basis to the buyer. It is an admitted fact that the buyer was engaged in the business of developing, operating and maintaining windmills and this acquisition resulted in augmentation of its overall installed capacity of power generation. According to us, it is clear from the sale deed executed that, the intention of the parties was to sell the windmill business as a going concern and the same is nothing but a slump sale. Further, as noted above, the lumpsum price for the undertaking including all the assets & liabilities were agreed at Rs.93 crores and there are no specific value assigned to any of the individual assets or liabilities. We find that the valuation was agreed on a lumpsum price with a two-step approach viz., (a) price to be paid for all the assets & liabilities of the undertaking and (b) collection and disbursal of the unbilled revenues from customers, which otherwise legally belongs to the seller. According to us,

this two-step valuation approach cannot be said to be in violation of Section 2(42C) of the Act or be viewed as itemized sale of assets by the assessee.

9.18 We also note that the action of the lower authorities re-characterizing the capital gains assessable u/s 50B as business income was fraught with fundamental infirmities. We find that, though the AO sought to disregard the slump sale but, while computing the so-called gains from itemized sale of assets, he did not bifurcate the lump-sum consideration nor did he assign value to the specific items of individual assets. If the AO was of the view that, the condition prescribed in Section 2(42C) was violated, then as a consequence the machinery provisions laid down for computation of capital gains in Section 50B of the Act, would not be applicable. The AO, then should have computed the itemized capital gains for individual assets. Instead, the AO is noted to have adopted and assessed the very same value of capital gains computed as per Section 50B of the Act by way of 'business income' of the assessee. We find this action of the AO to be contradictory to his own stand that, there was no 'slump sale'. Moreover, we also agree with the Ld. AR of the assessee that, if Section 2(42C) was being alleged to have been violated, then the AO ought to have computed itemized capital gains for each capital asset under Section 45 of the Act, and under no circumstance could the gains

computed in accordance with Section 50B, be assessed as 'business income' of the assessee. In light of the foregoing, according to us, the lower authorities had acted in an arbitrary manner and without application of mind, in re-characterizing the capital gains arising from slump sale as business income of the assessee.

9.19 Overall therefore, we direct the AO to assess the capital gains arising from the windmill division by way of slump sale u/s 50B of the Act as declared by the assessee in their return of income and accordingly delete the addition made by way of 'Business Income'. This ground of the assessee is therefore allowed.

10. Ground No. 9 of the assessee's appeal is against the disallowance of short term capital loss of Rs.238,71,03,202/- incurred upon sale of shares of Avia.

10.1 The facts as noted are that, the assessee is engaged in the business of manufacture and marketing of commercial vehicles. The assessee is noted to have invested in Avia, a foreign company in Czech Republic, which was engaged in production, sale and repair of trucks including production and sale of spare parts. It is observed that the assessee along with its subsidiaries M/s Ashley Holdings Ltd ('AHL') and M/s Ashley Investments Ltd ('AIL') had invested in multiple tranches in Avia from October 2006 and onwards. Later on, AHL and AIL along with another

subsidiary M/s Ashok Leyland Projects Services Ltd was merged into Ashley Services Ltd with effect from 01.04.2013 and subsequently ASL was amalgamated with the assessee with effect from 01.07.2013 pursuant to which all the assets and liabilities of ASL, including the investments held in Avia by AHL & AIL, stood vested with the assessee. Since this strategic investment was not performing upto the expectations of the assessee, these investments were decided to be sold and therefore they were re-classified from long term investments to current investments held for sale as on 31.03.2014. As a consequence, for tax purposes, the assessee treated the investments held in Avia to be converted into Stock in Trade as on 31.03.2014. It is noted that, the entire investments were sold during the year for an aggregate consideration of Rs.187.15 lacs whose original cost of acquisition was Rs.47105.01 lacs. The assessee is noted to have bifurcated the investment holdings into long term and short term based on their respective dates of acquisition / investments. Thereafter, the assessee is found to have adopted the fair market value ('FMV') on the date of conversion into stock in trade i.e., 31.03.2014, at Rs.159.60 lacs, which was based on the independent valuation report obtained from M/s Haribhakti & Co. LLP, Chartered Accountants. Accordingly, the assessee is noted to have worked out the long term capital gain / loss and short term capital gain / loss as well as the Business Income upon the sale of

converted shares of Avia in terms of Section 45(2) of the Act, which is extracted below:

Amount (in lacs)

Computation of Capital Gains [As per Section 45(2) of the Act]

Particulars	Investment directly held by assessee	Investment inherited on merger of ASL to assessee	Total
A) Long-term (LT) investment:			
% share in ownership interest(LT in nature)	1.59%	46.93%	48.52%
Cost of acquisition	747.58	22.108.55	22,856.13
Indexed Cost of acquisition [upto FY 2013-14]	884.98	27,685.52	28,570.50
B) Short-term (ST) investment:			
% share in ownership interest(LT + ST)	1.03%	50.45%	51.48%
Cost of acquisition	484.41	23,764.47	24,248.88

Particulars	**Long Term Capital Loss**	**Short term Capital Loss**	**Total**
FMV on the date of conversion	76.91	82.67	159.60
Cost of acquisition	28,570.50	24,248.88	-
Capital Loss	28493.57	24166.20	-

Computation of Business Income [As per Section 45(2) of the Act]

Particulars	Amount
Actual Sale Consideration	187.15
Less: FMV as on date of conversion	159.60
Business profit on sale of investment of Avia (being stock-in-trade)	27.55

10.2 The above details are noted to have been filed before the AO. The AO is noted to have accepted the long term capital loss of Rs.284,93,57,786/- declared in terms of Section 45(2) of the Act as well as the business income of Rs.27,54,960/- computed with reference to the actual sale consideration and the FMV on the date of conversion, in the impugned assessment order passed u/s 143(3) of the Act. The AO is noted to have only disputed the short term capital loss on the ground that the assessee could not have possibly suffered such a big loss and therefore disallowed the impugned short term capital loss. The relevant findings of the AO, is noted to be as under:-

> "During the PT year 2014-15, the assessee Sold certain shares Converted into Stock is the previous year 2013-14. As aresult of kin transactions, the assessee booked a shot term capital loss of Rs. 238,71, 03,202. The arena was requested to furnish details. As stated by like aversee, the shares were Converted and valuation was made. Insuch a care the valuation of the share should be either market value or lost, whichever is lower. Is this Case the Arsene could not have Suffered such a big loss. The details of valuation maola and how the Cost was determined were not established. Therefore, the entire short term capital loss claimed is disallowed and not allowed to carry forward."

10.3 Ignoring the apparent typographical mistakes, it is noted that, the AO has disallowed the loss because according to him, upon conversion, such huge loss could not have arisen. On appeal, the Ld. CIT(A) is noted to have confirmed the action of the AO by reiterating his findings that the assessee was unable to discharge the onus of establishing the loss with

necessary documentary evidence that such loss had been incurred. Now the assessee is in appeal before us.

10.4 The Ld. AR appearing for the assessee submitted that the reasoning given by the lower authorities was factually erroneous. He showed us that, the assessee which is a publicly listed company had acquired/invested in Avia directly and through subsidiaries over time and that the respective cost of investments / acquisition are accounted for and reflected in the audited financials, which have not been disputed by the Assessing Officer. He further brought to our notice that the independent valuation report obtained on the date of conversion i.e. 31.03.2014 was submitted before the lower authorities, which we find placed at Pages 90 to 101 of Paper Book. He accordingly submitted that both the cost of acquisition as well as the fair value on the date of conversion was verifiable from the records and hence it was incorrectly alleged by the lower authorities that the impugned loss was not substantiated. He further brought to our notice that the actual sale consideration was also Rs.187.15 lacs which was commensurate with the fair value determined as on 31.03.2014 and thus according to him, the lower authorities had arbitrarily disallowed the short term capital loss.

10.5 The Ld. AR further submitted that, the AO had accepted the fair market value ascertained as on 31.03.2014 qua the long term capital loss

computed with reference to the same Avia shares and had also assessed the business income arising upon the sale u/s 45(2) with reference to the fair value on the date of conversion. According to him therefore, when the same fair value was accepted for assessing long term capital loss and business income, it was wholly unjustified to disbelieve the same in respect of the impugned short term capital loss. The Ld. AR further brought to our notice that, the AO's successor had later on reopened the income-tax assessment u/s 147 of the Act for the impugned year, in which he disallowed the long term capital loss and on appeal the Ld. CIT(A) after examining the gamut of facts and the valuation report upheld the fair market value as computed by the assessee on the date of conversion and deleted the impugned disallowance. He submitted that the Revenue had not preferred appeal against the said appellate order, and therefore according to him, the same had attained finality.

10.6 The Ld. AR further implored us to look at the impugned issue from another angle. He submitted that, if the act of conversion of Avia shares into stock-in-trade is ignored, then it will be presumed that the shares of Avia were sold by way of investments and as a consequence, both the long term & short term capital loss will have to be computed with reference to actual sale consideration. He showed us that, in such a scenario, the overall value of capital loss would increase because then the

assessee would be entitled to benefit of indexation not up to FY 2013-14 i.e. year of conversion but FY 2014-15 i.e. year of sale and also the business income of Rs.27,54,960/- offered in terms of Section 45(2) of the Act would stand reduced. He thus contended that, the act of conversion was genuine and the short term capital loss so computed was correct, in as much as it was not done with any malafide intent to avoid tax. On the other hand, the Ld. DR appearing for the Revenue supported the action of the lower authorities.

10.7 Heard both the parties. In light of the facts placed before us, it is noted that the assessee had acquired shares of Avia, Czech Republic over several tranches and the original cost of acquisition is noted to be based on the actual monies infused into Avia by the assessee and its subsidiaries from October 2006 and onwards. It is noted that the shares directly acquired by the assessee was 2% of the ownership interest and the balance 98% was invested by the subsidiaries, which was received by the assessee pursuant to the amalgamation which happened in the preceding year. We find that the original cost of acquisition of the Avia shares in the hands of the assessee is not in dispute before us. The lower authorities are noted to have disbelieved the fair value ascertained on the date of conversion for alleged lack of evidence / supporting. Having gone through the documents placed before us, we agree with the Ld. AR that

the reason given by the lower authorities was not borne out from the facts on record. It is observed that the assessee is a publicly listed entity and the investments held in Avia was duly recognized and reflected in the audited financials of the preceding FY 2013-14. It is observed that the notes to the financials for the year ended 31.03.2014 clearly evidenced that the assessee had provided for the diminution in the carrying value of ownership interest in Avia and the same was valued and reflected at its fair value of Rs.159.60 lacs, which was a substantial reduction from its actual carrying cost. It is observed that for arriving at the fair value of Rs.159.60 lacs in their audited financials, the assessee had obtained an independent valuation report, copy of which is found at Pages 90 to 101 of the Paper Book.

10.8 Upon going through the said valuation report, it is noticed that, the valuer had ascertained the fair value of Avia in accordance with the pricing guidelines issued by the Reserve Bank of India, in accordance with the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004. As the subject company Avia was under stress and not performing well, the valuer had undertaken the valuation by adopting the net realizable values of the assets and liabilities of Avia, whose computation was annexed to the said report. We observe that the said valuation report was filed by the assessee both before the

AO and the Ld. CIT(A) but both the authorities not only failed to take cognizance of the same but also wrongly averred that the assessee did not provide any evidence to support the valuation done on 31.03.2014. We further note that the impugned Avia shares were actually sold during the year for a consideration of Rs.187.15 lacs and this sale value is noted to commensurate with the fair value of Rs.159.60 lacs as on the date of conversion, which was only few months prior to the date of sale. According to us therefore, in light of the disclosures given in the audited financials given for the immediately preceding year, which was not disputed by the Revenue in the income-tax assessment for the earlier AY 2014-15 and also, having regard to the valuation report, in which no infirmities were pointed out either by the lower authorities or the Ld. DR appearing before us, the fair value of the Avia holding as on 31.03.2014 ascertained by the assessee at Rs.159.60 lacs is held to be substantiated. Consequently, we find no infirmity in the computation of short term capital loss claimed by the assessee.

10.9 There is also merit in the contention of the assessee that when the AO did not disbelieve the FMV as on the date of conversion while assessing the long term capital loss as well as business income in respect of the same Avia shares u/s 45(2) of the Act, it was unjustified to selectively pick and choose and only disbelieve the short term capital loss.

10.10 It was brought to our notice that when this particular aspect came to the attention of the AO, he had reopened the income-tax assessment for the relevant year u/s 147 of the Act and disallowed the long term capital loss as well. The Ld. AR invited our attention to the order of the Ld. CIT(A) passed u/s 250 of the Act in relation to the reassessment order u/s 147/143(3) of the Act wherein he upheld the correctness of the long term capital loss as well as the fair value determined as on the date of conversion, by holding as under:

> "8.2. I have considered the submission made by the Appellant and the reasoning given by the AO in the original and the reassessment order. The Appellant has purchased shares of AVIA over several tranches and the cost of acquisition claimed in the Capital Loss computation is based on actual infusion of money into AVIA. Thereafter the investment has been impaired in books of accounts based on accounting standard requirement. With an intention to sell the shares, Appellant has reclassified the shares from Long-term investment to Current investment in AY 2014-15 in its books. This has also been disclosed in the Tax audit report, as conversion of shares into stock in trade is taxable 'transfer' u/s 2(47) of the IT Act. However, the gain / loss enters into the computation only on actual sale, which in this case, is in the AY 2015-16. The sale consideration arrived at upon actual transfer in AY 2015-16 is also supported by valuation report from an independent Chartered Accountant. The assessee has computed the FMV as on date of conversion as the sale consideration for computation of Capital Loss and claimed the same in its return of income for AY 2015-16. The AO has not provided any cogent reasons for rejection of valuation report, neither in the original assessment order nor in the reassessment order. The AO has not pointed out any deficiencies in the evidences submitted by the Appellant. The valuation report submitted by the Appellant has been obtained from an independent valuer and without pointing any defects in the same, it cannot be ignored. For setting aside the valuation report submitted by the appellant, the AO has not given any valid reasons nor has pointed out any deficiency in the report. Thus the action of the AO to not accept the valuation report submitted by appellant without giving any valid reasons is not acceptable. On one hand the AO has disallowed the capital losses incurred, but on the other hand, he has

failed to delete the business income offered by the Appellant on the same transaction.

8.3 In this regard, the provisions of section 2(47) and 45(2) of the I T Act 1961 are relevant. Whenever a capital asset is converted into stock in trade, it is deemed as transfer of capital asset as per the provisions of Section 2(47)(iv) of the I T Act 1961. Section 45(2) of Income Tax Act 1961 deals with the cases where a capital asset is converted into stock in trade. The provisions of section 45(2) are as under:

…..

From the provisions of section 45(2) r.w.s 2(47)(iv), it is clear that if a capital asset is converted into stock in trade, then it is considered as a transfer of such capital asset and the resultant capital gain/loss shall be computed in the year of sale of such converted capital asset. Further, business income also needs to be calculated in the year of sale.

As per section 45(2), the sale consideration will be equivalent to the Fair Market Value (FMV) of such asset as existing on the date of conversion. The FMV has been defined u/s 2(22B) of the I T Act 1961. Once the capital asset is converted into stock in trade, the FMV as on the date of conversion is considered as full sale consideration of such capital asset for the purpose of computing capital gain/loss. Thereafter, such FMV is considered as cost of such capital asset as converted into stock in trade in the books of accounts. At the time of sale of such stock in trade, the difference between the sale price and the FMV of such asset as existing on the date of conversion shall be treated as Income/loss from the business and profession.

The main contention of the AO was that valuation of the shares should be either at market value or cost whichever is lower. The appellant had provided the details of the FMV as recorded in the Books of Account and that of the cost. The AO has neither disputed the determination of the FMV and of the cost by the appellant nor has pointed out any deficiencies in the procedure followed by the Appellant in computing capital gain/loss and profit/loss arising from the transaction. Thus, the action of the AO to disallow the set off/ carry forward of long term capital loss on sale of shares of Rs 285,84,41,170/- is without any basis and is not justified.

8.5 Thus the loss suffered by the Appellant is restored and AO is directed to grant set off and carry forward of such capital losses as per the provisions of the Act. Thus this ground of appeal is allowed."

10.11 It was submitted by the assessee that the Revenue has not preferred an appeal against the above appellate order and therefore, they had accepted the correctness of the fair value on the date of conversion. According to the assessee therefore, the impugned disallowance of short term capital loss had no legs to stand on, in light of the above appellate order, which had attained finality. At the time of hearing, the Ld. CIT, DR was unable to show that the Revenue had preferred any appeal against the above order of the Ld. CIT(A). In our considered view, though the findings rendered by the Ld. CIT(A) is not binding upon us, but the aforesaid facts reinforces our findings upholding the correctness of the fair value ascertained on the date of conversion of Avia shares into stock-in-trade and the consequent short term capital loss.

10.12 We are also in agreement with the assessee that, if the AO was of the view that the fair value worked out by the assessee on the date of conversion was not correct and that he did not want to apply Section 45(2) of the Act, then he ought to have computed the long term and short term capital loss arising upon sale of Avia shares, ignoring the conversion, in accordance with Section 45(1) r.w Sections 48 and 49 of the Act. We agree with the Ld. AR that, the AO could not have possibly disallowed the short term capital loss in its entirety. It is not in dispute that the shares of Avia were ultimately sold for Rs.187.15 lacs. The AO

therefore could have re-worked the long term & short term capital loss, having regard to the original cost of acquisition of Rs.47,105.01 lacs, ignoring the act of conversion into stock-in-trade. The assessee has furnished the alternate computation before us which shows that, if the act of conversion of Avia shares from investment into stock-in-trade is ignored, then the aggregate capital loss would actually stand increased from Rs.526.59 crores [LTCL – Rs.284.93 + STCL – Rs.241.66] as declared by the assessee to Rs.552.17 crores [LTCL – Rs.310.65 + STCL – Rs.241.52] *[due to benefit of indexation up to FY 2014-15 (year of sale) instead of FY 2013-14 (year of conversion)]* and simultaneously the business income of Rs.27,54,960/- offered by the assessee in accordance with Section 45(2) of the Act would stand reduced. We thus find that, if the AO had taken his finding to the logical conclusion and ignored the act of conversion, then the re-computation of gain/loss arising from sale of Avia shares would work out to be beneficial to the interests of the assessee rather than the Revenue. In our considered view therefore, the act of conversion of Avia shares from investment to stock-in-trade as on 31.03.2014 and determining its fair value at Rs.159.60 lacs also cannot be said to have been undertaken with any intent to avoid any tax. Overall therefore, we find that not only did the AO act in an arbitrary and selective manner by choosing to disbelieve the act of conversion, but he

also erred in disallowing the entire short term capital loss, instead of re-computing the same, in the manner as discussed in the foregoing.

10.13 For the above reasons, we reverse the action of the lower authorities disallowing the impugned short term capital loss claimed by the assessee. The AO is accordingly directed to delete the impugned disallowance of loss and allow the carry forward of the same. This ground is thus allowed.

11. In the result, appeal filed by the assessee is partly allowed and the appeal of the Revenue is dismissed.

Order pronounced on the 07th day of July, 2025, in Chennai.

Sd/-	**Sd/-**
(अमिताभ शुक्ला)	**(एबी टी. वर्की)**
(AMITABH SHUKLA)	**(ABY T. VARKEY)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 07th July, 2025.
TLN

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF