

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.1511, 1512 & 1513/Chny/2025**
निर्धारण वर्ष/**Assessment Years: 2010-11, 2017-18 & 2018-19**

M/s.TAFE Motors & Tractors Ltd., New No.77, Old No.35, Pottipati Plaza, Nungambakkam High Road, Nungambakkam, Chennai-600 034.	v.	The DCIT, Corporate Circle-3(1), Chennai.
[PAN: AACCT 2459 B]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.Vikram Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Mr.P. Krishna Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	12.08.2025
घोषणाकीतारीख /Date of Pronouncement	:	18.08.2025

आदेश / ORDER

PER MANU KUMAR GIRI, JM:

The captioned appeals filed by the assessee are directed against separate orders of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi ['CIT(A)' in short] all dated 06.03.2025 for Assessment Years 2010-11, 2017-18 & 2018-19.

ITA No.1511/Chny/2025 for AY 2010-11

2. At the outset the ld. counsel has raised the following legal grounds:



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1.1 NFAC CIT(A) ought to have held that reopening of Assessment by issue of Notice u/s 148 on 28.3.2017 beyond 4 years from the end of the Assessment year, without mentioning the omission on the part of the Appellant to disclose full particulars required under the Act for completion of assessment is without Jurisdiction and bad in Law

1.2 The assessment u/s 143(3) 26.3.2013 was after examination of records and no fresh material has been found to support the reopening of assessment and hence the NFAC CIT(A) ought to have held that the reassessment is bad in law.

3. Brief facts are that the assessee is a company, filed its return of income for the AY 2010-11 on 14/10/2010 declaring total income at Rs.223,16,20,742/-. The assessee was engaged in the business of manufacture of tractors and engines. Subsequently, assessment proceeding was completed u/s 143(3) on 26/03/2013 assessing total income at Rs.225,17,97,174/-.

4. Aggrieved, assessee filed first appeal before the CIT(A). After considering the assessee's submission, the CIT(A) has passed order on 30/01/2015 and partly allowed the appellant's appeal. After giving appeal effect to the order of CIT(A), the total income of the appellant computed at Rs.224,77,65,800/-. Further, on verification of record, the AO has recorded reason and after satisfying reason to belief, the appellant's case was re-opened u/s 147 of the Act after taking prior approval from competent authority. Further, notice u/s 148 was issued to assessee and reasons recorded was duly provided to appellant. Subsequently, statutory notices u/s 143(2) and 142(1) were issued to assessee calling for details.



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After considering the assessee's submission, the AO has made following additions :-

(i) Addition of Rs.1,44,87,425/- u/s 35(2AB) : During the course of assessment proceedings, the AO observed that the appellant had debited an amount of Rs. 16,68,49,425/- towards Research and Development expenditure in the Profit and Loss Account. In the income tax computation, the appellant had added back this amount and claimed a weighted deduction of Rs.25,02,74,138/- under Section 35(2AB) of the Act, at the rate of 150%. However, as per the approval granted by the DSIR, only Rs.15,23,62,000/- out of the total claim of Rs. 16,68,49,425/- was considered eligible for deduction under Section 35(2AB). Consequently, the AO noted that there was a difference of Rs.1,44,87,425/- (Rs. 16,68,49,425/-Rs. 15,23,62,000/-) that was not -was not approved by DSIR. Thus, the AO was of the view that the excess claim of deduction u/s 35(2AB) of Rs.1,44,87,425/- is required to disallow. Accordingly, the AO has disallowed an amount of Rs. 1,44,87,425/- and granted allowable depreciation @25% on such amount.

(ii) Wrong set off of capital gain :-During the course of assessment proceedings, the AO observed that the appellant had claimed a deduction of Rs. 12,23,855/-towards Long-Term Capital Gains from taxable income. The appellant had set off a Long-Term Capital Loss against the LTCG. However, as per the provisions of the Income-tax Act, if the long-term capital loss arises from transactions covered under Section 10(38), such a loss is not eligible for set-off. The AO noted that the sale of mutual funds in the appellant's case fell within the purview of Section 10(38), and therefore, the set-off of LTCL was not permissible. In support of this disallowance, the AO placed reliance on the decision of the Hon'ble Gujarat High Court in the case of Kishorebhai Bhikabhai Virani vs. ACIT, wherein it was held that losses arising from exempt income under Section 10(38) cannot be set off against taxable capital gains.

(iii) Denial of claim of expenditure: Rs.6,49,60,105/- : During the course of assessment proceedings, the AO examined the details of miscellaneous expenditure and observed that the appellant had incurred expenses amounting to Rs.3,64,30,458/- on product development and Rs.2,85,29,647/- on tool development, totaling Rs.6,49,60,105/-. Upon verification, the AO noted that the expenditure on tool development was not incurred within the appellant's in-house Research & Development (R&D) facilities, which is a primary condition for eligibility under Section 35(2AB) of the Act, as prescribed by the DSIR. Instead, the tool development was carried out by external suppliers who manufactured the components, which were subsequently purchased by the appellant. Accordingly, the AO concluded that such expenditure does not qualify for deduction under Section 35(2AB). Further, without prejudice to the above, the AO opined that if the expenditure of Rs.3,64,30,458/- on product development and Rs.2,85,29,647/- on tool development (claimed under miscellaneous expenditure) does not form part of the R&D expenditure already claimed under Section 35(2AB), then the same should be disallowed. Accordingly, the AO has disallowed an amount of Rs.6,49,60,105/- and granted allowable depreciation @25% on such amount.

5. The Ld. Counsel for the assessee has referred the reasons recorded for re-opening of the assessment for AY 2010-11, which reads as under:



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The reasons for reopening the assessment for the Asst. Year 2012-13 is furnished as under:

1) It is seen from the information available on record that the assessee has debited an amount of Rs.16,68,49,425/- towards R&D Revenue Expenditure u/s 35(2AB) in Profit and Loss Account. As per the DSIR approval for eligibility u/s 35(2AB), company has got approval only for an amount of Rs.15,25,62,000/- as qualified revenue expenditure u/s 35 (2AB) for the AY 2010-11. Hence, the difference of Rs.1,44,87,425/-(Rs.16,68,49,425 Rs.15,23,62,000) for which weighted deduction claim amounting to Rs.72,43,713/- was to be disallowed.

2) Further, seen from the details to miscellaneous expenditure, Rs.3,64,30,458/-and Rs.2,85,29,647/- was spent on product development and tool development cost respectively. The above expenditure on tool development was not incurred by the assessee in their R&D facilities available within the company. The cost of the same does not qualify for deduction u/s 35(2AB). The expenditure of Rs.3,64,30,458/- and Rs.2,85,29,647/- was spent on product development cost respectively does not part of R&D expenditure already claimed deduction u/s 35(2AB). The same is required to be disallowed and added back to total income.

Therefore, I have reason to believe that the income assessable to tax has escaped assessment and notice u/s 148 of the Act, was issued on 16.02.2017.

6. The Ld. Counsel for the assessee pointed out that the AO has reopened the assessment not on the basis of any new information or material received. AO has reopened the original assessment on the basis of information already available on record. Further, he submitted that there is no satisfaction recorded by the AO that there is a failure on the part of the assessee to furnish truly and fully all material facts necessary for the assessment.

7. Per Contra, the JCIT-DR, Mr. P. Krishna Kumar, submitted that the AO duly recorded the reasons for re-opening of assessment. In the original assessment, the issue of R&D Revenue expenditure u/s.35(2AB) of the



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Act in the P&L a/c has not been discussed. He further pleaded for rejection of legal ground.

8. We have heard rival submissions and perused the materials available on record and reasons recorded by the AO. We find from the reasons recorded by the AO that there is no whisper regarding the assessee's failure to disclose truly and fully all material facts necessary for the assessment. We further note that there is/are no fresh or new material came in the hands of the AO justifying reopening of the assessment. In the similar circumstances, the Hon'ble jurisdictional High Court has quashed the notice u/s.148 of the Act and consequential orders in the following cases:

- i) CIT Vs Kelvinator of India Ltd - 320 ITR 561 (SC)
- ii) ICICI Securities Ltd - 24 Taxman.com 310 (SC)
- iii) Schwing Stetter India P. Ltd. 378 ITR 380 (Mad)

9. Therefore, in the light of the above authoritative decisions of the Apex Court and jurisdiction High Courts, we set aside the notice u/s.148 of the Act and all consequential orders thereon.

10. In the result, appeal filed by the assessee in ITA No.1511/Chny/2025 for AY 2010-11 is allowed.



ITA No.1512/Chny/2025 for AY 2017-18

11. The assessee raised the following grounds:

1. Disallowance of gratuity claim of Rs.95,28,299 made during the assessment proceedings
2. Disallowance of contribution to Child Trust Medical Research foundation 175% under Sec. 35(1)(ii) claimed during assessment proceedings.

12. At the outset, the Ld. Counsel for the assessee submitted that the AO/CIT(A) denied both reliefs i.e; gratuity claim of Rs.95,28,299/- and contribution to Child Trust Medical Research foundation 175% under S.35(1)(ii) based on the judgment of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT [2006] 284 ITR 323 (SC) that he has no power to entertain the new claim which has not been claimed in ITR or in P&L a/c submitted.

13. Per Contra, the Ld.CIT(A) relied on the orders of the lower authorities and pleaded for the dismissal of the appeal of the assessee. Aggrieved, the assessee in appeal before us.

14. We have heard rival submissions and perused the materials available on record and judgments of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT [2006] 284 ITR 323 (SC). After going through the judgment of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. (supra), wherein the Hon'ble Supreme Court held as under:



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4. The decision in question is that the power of the Tribunal under section 254 of the Income-tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961. There shall be no order as to costs.

15. Further, the Hon'ble Delhi High Court has held that there is no prohibition on the powers of the Tribunal to entertain an additional ground which according to the Tribunal arises in the matter and for the just decision of the case as under:

The Hon'ble Delhi High Court in the case of CIT v. Jai Parabolic Springs Ltd. – [2008] 306 ITR 42 (Delhi) has held as under:

13. Section 254 of the Act says that the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

14. Reference may be made to National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383, where the Supreme Court observed that—

". . .The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law...., we do not see any reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assesseees as well as the department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier. . . ." (p. 386)

15. Reference may also be made to Gedore Tools (P.) Ltd. v. CIT [1999] 238 ITR 2681, wherein the Apex Court decision in National Thermal Power Co. Ltd.'s case (supra) has been followed.

16. In the case of Jute Corporation of India Ltd. v. CIT [1991] 187 ITR 688 2 while dealing with the powers of the Appellate Assistant Commissioner, the Supreme Court observed that :—



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'...An appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons, The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also." (p. 386)

17. In Goetze (India) Ltd. v. CIT [2006] 284 ITR 3231 (SC), wherein deduction claimed by way of a letter before Assessing Officer, was disallowed on the ground that there was no provision under the Act to make amendment in the return without filing a revised return. Appeal to the Supreme Court, as the decision was upheld by the Tribunal and the High Court, was dismissed making clear that the decision was limited to the power of assessing authority to entertain claim for deduction otherwise than by revised return, and did not impinge on the power of Tribunal.

18. Further, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years. [Reliance can be placed on Madras Industrial Investment Corpn. Ltd. v. CIT [1997] 225 ITR 8022 (SC).

19. In view of the above discussion, it is very clear that there is no prohibition on the powers of the Tribunal to entertain an additional ground which according to the Tribunal arises in the matter and for the just decision of the case. Therefore, there is no infirmity in the order of the Tribunal.

20. Accordingly, the appeal of the revenue is hereby dismissed.



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16. The Hon'ble Delhi High Court in the case of Mitsubishi Corporation Vs. Assistant Commissioner of Income-tax , International Taxat [2024] 165 taxmann.com 79 (Delhi) has held as under:

18. As is evident from the enunciation of the legal position in the decisions aforementioned, while ordinarily an assessee may be bound by the Return of Income as furnished, in case the Tribunal were to admit a question and proceed to accord relief, the same cannot be denied or be made subject to a Return of Income being revised. The insistence of the respondents on a revision of the return being a precondition clearly fails to take into consideration the plenary powers which stand conferred upon the Tribunal by virtue of Section 254 of the Act.

On similar lines, other cases are as under:

- i) CIT v. Natraj Stationery Products P. Ltd. - [2009] 312 ITR 22 (Delhi)
- ii) CIT v. Rose Services Apartment India P. Ltd. - [2010] 326 ITR 100 (Delhi)
- iii) CIT v. Jindal Saw Pipes Ltd. - [2010] 328 ITR 338 (Delhi)
- iv) CIT v. Sam Global Securities Ltd. - [2013] 38 taxmann.com 129 (Delhi)

17. The Hon'ble jurisdictional High Court in the case of Commissioner Of Income Tax vs M/S. Perlo Telecommunication [2022] 141 taxmann.com 387 (Mad.) has held that there is no provision on the power of Tribunal or appellate authority to entertain such claim which was not made in the return of income.



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18. Hence, respectfully following the decision of the Hon'ble Supreme Court, different Hon'ble High Courts, we admit both the claims and direct the AO to look into the merits of the claim.

19. In the result, appeal filed by the assessee is allowed for statistical purposes.

ITA No.1513/Chny/2025 for AY 2018-19

20. The assessee raised the following grounds of appeal:

1. Capital Expenditure of Rs.50,25,727/- claimed u/s.35(1)(iv) disallowed for want of invoice.
2. Disallowance of duty drawback of Rs. 20,63,906/-

21. The Ld. Counsel for the assessee pleaded that the issue may be set aside to the file of the AO to verify the claim of the assessee after calling for evidences thereof. He further submitted that sample invoices and details are already submitted before AO and CIT(A).

22. Per contra, the Ld.DR has not objected to the prayer of the Ld. Counsel for the assessee.

23. We have heard rival submissions and perused the materials available on record. In the light of the above submissions of the Ld. Counsel for the assessee, we set aside both the issues to the file of the AO to verify the claim on both the issues and called for any such documents relating



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thereto and pass order speaking in accordance to law after affording proper opportunity to the assessee.

24. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 18th day of August, 2025, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(मनु कुमार गिरि)
(MANU KUMAR GIRI)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 18th August, 2025.
TLN, Sr.PS

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