आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER

IT (TP) A No.:42/Chny/2024 &

आयकर अपील सं./ **ITA No.2262/Chny/2024**

निर्धारण वर्ष / Assessment Year: **2013-14 & 2012-13**

Virtusa Consulting Services Private Limited (formerly known as Polaris Consulting & Services Limited), No.34, IT Highway, Navallur, Chennai – 600 130.	vs.	**DCIT,** Corporate Circle 5(2), Chennai.
[PAN:AACCV-6797-L] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./ **ITA Nos.2631 & 2632/Chny/2024** &

निर्धारण वर्ष / Assessment Years: **2012-13 & 2013-14**

DCIT, Corporate Circle 5(2), Chennai.	vs.	**Virtusa Consulting Services Private Limited (formerly known as Polaris Consulting & Services Limited),** No.34, IT Highway, Navallur, Chennai – 600 130.
(अपीलार्थी/Appellant)		**[PAN:AACCV-6797-L]** (प्रत्यर्थी/Respondent)

Assessee by : Shri. N. V. Balaji, Advocate

Department by : Shri. A R V Sreenivasan, C.I.T.

सुनवाई की तारीख/Date of Hearing : 15.10.2025

घोषणा की तारीख/Date of Pronouncement : 14.11.2025

आदेश /O R D E R

PER BENCH:

These are cross appeals preferred by the assessee as well as the Revenue against the orders of respective assessment years passed by the Learned Commissioner of Income-tax (Appeals) – 16, Chennai (hereinafter referred to as 'Ld.CIT(A)'), dated 28.06.2024 for the assessment years (A.Y.) 2012-13 and A.Y.2013-14.

2. For convenience, the appeals of the revenue are taken first for adjudication. The grounds of appeal of the revenue in ITA No.2631/Chny/2024 - AY 2012-13 and ITA No 2632/Chny/2024- AY 2013-14 are extracted below:

3. At the outset, we find that there is a delay of 43 days in filing the appeal in ITA No.2631/Chny/2024 and 49 days in filing the appeal in ITA No.2632/Chny/2024 filed by the revenue and the revenue explained the reasons for delay in filing the appeals. The revenue has filed affidavit stating the reasons for delay in filing the appeal is due to Circle 8(1), Hyderabad is a corporate circle and merged with three circles. In between, assessment cases and penalty cases are received and in time bound manner the same had to be disposed of in addition to regular work. Meanwhile, Annual general transfers 2024 took place and the official of Circle -8(1) looking the judicial matters got transferred. After considering the affidavit filed by the revenue and also hearing

both the parties, we find that there is a reasonable cause for the revenue in not filing appeals on or before the due date prescribed under the law and thus, in the interests of justice, we condone delay in filing of appeals and admit the appeals filed by the revenue for adjudication.

4. **Grounds of appeal of the Revenue in ITA No.2631/Chny/2024**

1. *Both on the facts and in the circumstances of the case, the CIT (A) is not justified in deleting the disallowance of Rs.27,19,46,873/- made u/s.10AA.*
2. *Any other grounds that may be arisen during the hearing.*

5. **Grounds of appeal of the Revenue in ITA No.2632/Chny/2024**

1. *Both on fact and in the circumstances of the case, the Ld CIT(A) is no justified in deleting the disallowance of Rs.26,53,91,540/- made u/s 10AA.*
2. *Both of fact and in the circumstance of the case, the Ld. CIT(A) is not justified in deleting the disallowance of Rs.8,90,35,000/- made under section 35(1)(iv).*
3. *Any other grounds that may be arisen during the hearing.*

6. **Issue No 1- Deduction u/s.10AA of the Income Tax Act, 1961:**

6.1 Since the issue of deduction under section 10AA of the Income Tax Act, 1961 (in short “the Act”) is common in both the appeals, the same is taken up first.

6.2 The assessee is engaged in the business of software development. During the previous year relevant to the AY 2012-13 and AY 2013-14, the assessee had claimed deduction under section 10AA of the Act to the tune of Rs.39,97,42,604/- and Rs. 37,38,05,542/- respectively.

6.3 It was the case of the revenue that the assessing officer on perusal of the profit and loss account of the assessee, had observed that the net profit ratio was higher in 10AA units as compared to non 10AA units. The assessing officer therefore issued a notice to the assessee to explain the reason for such huge profits in 10AA units, which was exempt from tax. The assessing officer thereafter, not being satisfied with the reply filed by the assessee, proceeded to re-compute the deduction available to the Respondent assessee by applying overall net profit ratio of 16.31% / 13.32% respectively for AY 2012-13 and AY 2013-14. The assessing officer thus denied deduction to the tune of Rs.27,19,46,873/- and Rs.26,53,91,540/- under section 10AA of the Act respectively for the said assessment years.

6.4 Aggrieved by the order of the assessing officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) ['CIT(A)']. The ld.CIT(A) after recording the submissions made by the Respondent assessee, concluded that the 10AA(9) r.w.s 80IA(8) and 80IA(10) would not apply to the facts of the case. The ld.CIT(A) held that since the AO has not specifically identified any specified arrangement between expired units and 10AA units, an arbitrary adjustment made by the assessing officer merely comparing the profits is not tenable. Further, the ld.CIT(A) had also concluded that since the Respondent assessee had maintained unit wise profit and loss account and submitted Form 56F, the reworking made by the assessing officer was not tenable. The ld.CIT(A) had also relied on the order of the Hon'ble Madras High

Court in TCA 997/2018 dated 30.03.2021 wherein it was held that the assessee is maintaining separate books of accounts for exempt units u/s.10A and exemption expired units. The ld.CIT(A) allowed the appeal filed by the assessee holding that the reworking of deduction u/s.10AA of the Act by the assessing officer was not warranted.

6.5 Aggrieved by the order of the ld.CIT(A), the revenue preferred appeals before us.

6.6 The ld.DR for the revenue submitted that reliance placed by the ld.CIT(A) on the Auditor's report is incorrect and same does not take away the powers of the AO to examine the correctness of the results. Further, the ld.DR submitted that reliance placed by the ld.CIT(A) on the order of the Hon'ble Madras High Court in TCA 997/2018 requires to be rejected since the judgment was limited to jurisdiction of the CIT u/s.263 of the Act and did not render any findings on merits. The ld.DR further contested that even common expenses were not allocated to units u/s.10AA of the Act and the profit % in the exempted u/s.10AA units were very high. The ld.DR placed reliance of the judgement of the Hon'ble Jurisdictional High Court in the case of Gimpex Ltd 46 taxmann.com 13 and prayed that the matter be remanded back to the assessing officer. The relevant extracts of the said order is reproduced as under:

> "A*fter perusing the facts placed before the Assessing Authority, First Appellate Authority as well as the Tribunal, it is to be pointed out that the question of eligibility to the assessee for deduction under Sub Section (13) to Section 80-IB r/w Sub-Section (5) of Section 80IB of*

the Act is not in dispute. The only question would be whether the assessee has disproportionately allocated the common expenses to arrive at more profits for the "eligible units" in order to claim more relief under Section 80IB of the Act. This being a factual issue the assessee was bound to place before the Assessing Officer necessary documents to establish that the common expenses have not been disproportionately allocated so as to claim more relief under Section 80IB of the Act. Admittedly, no other record was produced by the assessee before the Assessing Officer. When the matter was considered by the First Appellate Authority, the First Appellate Authority had erroneously shifted the burden on the Assessing Officer stating that the Assessing Officer did not bring on record any material or evidence to support its conclusion that the expenditure was disproportionately allocated. It is to be noted that the onus is on the assessee to produce sufficient records to show that there was no disproportionate allocations and they were under an obligation to show as to how the profits were arrived at in respect of 12 units and particularly in respect of BNR-I and BNR-II for the purpose of claiming deduction under Section 80IB of the Act. The assessment order also does not state as to whether the common expenses were with reference to the 12 units or with reference to the two units alone, which was disproportionately distributed. As regards the grant of relief under Section 80IB of the Act in respect of the "eligible units" with reference to the income and in order to arrive at the appropriate relief to the assessee, we have no hesitation in setting aside the order of the Tribunal and remit the matter back to the Assessing Officer so as to work out the relief properly, particularly with reference to the expenses allocable to BNR-I and BNR-II units. In the circumstances, we direct the assessee to produce necessary materials before the Assessing Officer to substantiate their claim as regards the deduction under Section 80-IB of the Act. It is open to the assessee to place such records in support of its claim as regards the expenditure relatable to each of these units and explain as to how it arrived at the profits and gains for the purpose of claiming deduction under Section 80IB of the Act."

6.7 Further, the ld.DR submitted that the assessee has had 100% profit in 10AA units. He drew our attention to the computation shared by the assessee in the appellate proceedings (extracted in Page 31 of the ld. CIT(A) order) and

submitted that the ld. CIT(A) came to the erroneous conclusion that the assessee has 100% profits in the licensing activity. The ld. DR submitted that the ld. CIT(A) allowed the appeal filed by the assessee without examining any documents to conclude that the expenditure was not disproportionately allocated. The ld. DR submitted that the ld. CIT(A) had merely allowed the appeal filed by the assessee, since the assessee has placed form 56F (Audit certificate) on record. Hence, he prayed that the matter maybe remanded back to the assessing officer for re-verification.

6.8 In response to the arguments of the ld.DR, the Ld.AR appearing for the assessee [hereinafter referred to as 'ld.AR'] submitted that section 10AA(9) of the Act envisages that the provisions of section 80IA(8) and 80IA(10) would equally apply in computing deduction u/s.10AA of the Act. In view of the same, he submitted that re-computation of deduction u/s.10AA of the Act can only be done where there is an arrangement as aforesaid to earn more than ordinary profits in tax holidays. The ld.AR relied on the following judgements in this connection:

- *ACIT vs Cadila Healthcare Ltd. (67 SOT 110) – Refer pages 6 to 42 of the caselaw paper book*
- *Digital Equipment India Ltd. vs DCIT (103 TTJ 329) – Refer pages 43 to 52 of the caselaw paper book*
- *CIT vs Hindustan Lever Ltd., Chennai (221 Taxman 71) – Refer pages 53 to 55 of the caselaw paper book*
- *Karumuthu Thiagaraja Chetty & Co. vs Commissioner of Excess Profits Tax (42 ITR 788) – Refer pages 56 to 60 of the caselaw paperbook.*
- *ACIT vs Cadila Healthcare Ltd. (67 SOT 110) – Refer pages 6 to 42 of the caselaw paper book*
- *Digital Equipment India Ltd. vs DCIT (103 TTJ 329) – Refer pages 43 to 52 of the caselaw paper book*

- *CIT vs Hindustan Lever Ltd., Chennai (221 Taxman 71) – Refer pages 53 to 55 of the caselaw paper book*
- *Karumuthu Thiagaraja Chetty & Co. vs Commissioner of Excess Profits Tax (42 ITR 788) – Refer pages 56 to 60 of the caselaw paperbook.*

6.9 In response to the submission of the ld.DR that the assessee had higher profit percentage in its u/s.10AA of the Act, the ld.AR submitted that in terms of activities, the assessee carried on three types of activities i.e. software service activity, Annual maintenance contracts activity and product licensing activity. The ld.AR submitted that the product licensing activity involves the process of developing a software product and licensing the same to end use customer without transferring the exclusive copyright product. The significant portion of cost in relation to the said activity has been incurred at the time of developing the software product itself i.e. in earlier years and the cost towards licensing the developed software is very minimal. During the year, the income from licensing product constituted about 5% of the total revenue of the company, of which 59% was from SEZ units and income from software service is only 3% in SEZ units. However, in the case of expired units, income from software service activity is only 98% of total revenue of Expired units and constitutes 97% of the turnover from software service activity, which involves significant manpower cost. The Revenue failed to appreciate the significant functional differences between the expired units and the eligible units. The ld.AR submitted that ld.CIT(A) rightly appreciating the said facts has allowed the appeal of the assesse and hence the present appeal of the Revenue is required to be rejected. In response to submissions of the ld.DR on allocation of common costs, the Ld.AR submitted

that there is no common costs which require appropriation and re-computation of profits. The ld.AR submits as stated above, the majority of revenue for the eligible units is only from software licensing, which does not have any costs. Further, the common costs attributable to software service related to section 10AA units have already been attributed to the said unit and hence there is no profit re-computation required. The Revenue in its argument has failed to appreciate that the units maintain separate books of accounts which are duly audited. The Ld.AR therefore submitted that the argument of the revenue that the audited books of accounts cannot be relied on is de-horse any basis of law and is required to be rejected.

6.10 We have heard the rival contentions and gone through the facts and circumstances of the case, we are of the considered opinion that section 10AA(9) r.w.s 80IA (8) and 80IA(10) of the Act does not apply to the facts of the present case. There is no specified arrangement between exemption expired units and section 10AA units and therefore the arbitrary adjustment made by the assessing officer by comparing the profit margin of different units is not legally tenable. In this connection, we duly follow the judgement of the Hon'ble Delhi Tribunal in the case of Addl.CIT vs. Delhi Press Patra Prakashan [2006] 10 SOT 74 (Delhi).

> *"We have heard the arguments of both the sides and also perused the relevant material on record. As has been pointed out on behalf of the assessee-company before the authorities below as well as before us, unit 1 was its publishing house whereas units 3 and 4 were its printing houses. The nature of business of unit 1 and unit 4 of the assessee, thus, was entirely*

different and there was no justifiable reason to compare the profit margin of the said units. Moreover, separate books of account were maintained by the assessee-company in respect of unit 4 and no material or specific defects were pointed out by the Assessing Officer in the said books which were duly produced before him for verification during the course of assessment proceedings. As noted in the order of the Assessing Officer as well as in the order of the learned CIT(A), the printing work was being done by unit 4 of the assessee-company for unit 1 at fixed rates and the claim of the assessee that the said rates were even lower than the market rates was not rebutted/refuted by the Assessing Officer by bringing any material on record. As rightly contended by the learned counsel for the assessee before us, the expenditure on marketing and distribution of the publications was entirely required to be done for the business of publishing house i.e. unit No. 1 and the same was not connected with the printing business of unit 4. It appears that all these material and relevant aspects, however, were simply brushed aside by the Assessing Officer and he proceeded to reject the book results of unit 4 shown by the assessee merely on the basis that the profit margin shown by the assessee in respect of the said unit was higher at 62 per cent as against profit margin of 10 per cent shown in respect of other units of the assessee. In our opinion, this action of the Assessing Officer was not sustainable in law in the facts and circumstances of the present case including especially the fact that no material or specific defects were pointed out by him in the books of account maintained by the assessee in respect of unit 4 and there was nothing brought on record by him to show that the profit margin of 62 per cent shown in the said books was actually lower. On the other hand, such higher profit margin in respect of unit 4 was satisfactorily explained by the assessee-company and having satisfied with such explanation, the Assessing Officer was directed by the learned CIT(A) to allow the deduction claimed by the assessee under section 80-IA of the Act on the book results of unit 4. As such, considering all the facts and circumstances of the case, we are of the view that the relief allowed by the learned CIT(A) on this issue to the assessee was fully justified and there being no infirmity in the impugned orders of the learned CIT(A) allowing such relief, we uphold the same."

6.11 As evident from the facts before us, the assessee undertakes both product licensing activity as well as software services activities in its units. The contribution of the product licensing activity vis-à-vis total turnover of the unit is

substantially higher in section 10AA units when compared to exemption expired units resulting in higher margins. The assessee has maintained unit-wise profit and loss account and submitted a detailed report capturing the unitwise revenue and costs (Page 71 of the paper book filed before us). Further the assessee has also submitted CA certificate in Form 56F which substantiates the profit margins. Before us the Ld.DR was unable to point out any defect in the books of account maintained by the assessee, except to say margins were high. In such a situation, we are bound to follow the judgement of the Hon'ble Delhi ITAT in the case of Delhi Press Patra Prakashan (Supra). We therefore do not find any infirmity in the decision of ld.CIT(A) to intervene with the above order of Ld.CIT(A) in respect of issue of Deduction u/s.10AA of the Act. In the result, the ground No.1 of the revenue appeals both in ITA No.2631/Chny/2024 and ITA No.2632/Chny/2024 are dismissed.

6.12 In respect of Ground No 2 raised in ITA 2631/Chny/2024, the same is general in nature and hence dismissed. In the result, the appeal of the revenue in ITA No.2631/Chny/2024 is dismissed.

7. **Issue No 2- Disallowance of Scientific research expenditure under section 35(1)(iv)**

7.1 Moving on to Ground No.2 in ITA No.2632/Chny/2024, the same is in respect of deduction claimed by the assessee u/s.35(1)(iv) of the Act. The assessee had incurred capital expenditure towards scientific research activities undertaken in its DSIR recognised R&D unit.

7.2 The assessee builds, maintains, expands, and extends highly complex and integrated Financial Technology solutions through its products and services. The assessee has set up a state of art Research & Development “R&D" Design Centre to focus on developing and providing End-to-End Financial Technology.

7.3 The assessee filed an application for recognition of its R&D units on 20.01.2012 and has obtained the recognition for R&D units in Siruseri and Navalur on 25.04.2012 from the Department of Scientific and Industrial Research (‘DSIR’) vide its letter No.TU/IV-RD/3436/2012 and the same was submitted before the AO during the course of assessment proceedings.

7.4 The assessing officer disallowed the expenditure incurred by the assessee on the ground that assessee did not prove the genuineness of the expenditure and failed to furnish evidence/document regarding the research activity. The ld.CIT(A) deleted the disallowance made by the assessing officer on the ground that the assessee had produced the details of R&D projects undertaken, expenses incurred etc. and only after due verification the DSIR had recognized the R&D units as in house R&D unit. The Ld.CIT(A) further recorded that the assessee had submitted details of projects undertaken (as submitted before DSIR) before the AO as well as before him. He also gave a finding that the assessee had placed copies of bills to substantiate the expenditure of scientific expenditure. The ld.CIT(A) thus concluded that the expenses were

towards scientific research. The ld.CIT(A) deleted the disallowance concluding that there was no mandatory requirement for obtaining any approval under section 35(1)(iv) unlike section 35(2AB). The ld.CIT(A) relying on the judgment of the jurisdictional High Court in Tube Investments of India vs CIT [260 ITR 94] concluded that mere fact of a claim not having been found admissible u/s.35(2AB) will not constitute a bar to allowance of expenditure u/s.35(1)(iv) of the Act if that expenditure is capital expenditure and is incurred in the R&D units.

7.5 We have heard the rival contentions and gone through the facts and circumstances of the case and documents placed before us along with the case laws relied on. We note that as rightly recorded by the ld.CIT(A) the assessee had produced the details of R&D projects undertaken, expenses incurred etc. and only after due verification, the DSIR had recognized the R&D units as in house R&D unit. Further the assessee has duly submitted details of projects undertaken (as submitted before DSIR) before the AO as well as ld.CIT(A). The assessee had also placed copies of bills to substantiate the expenditure of scientific expenditure. Thus, we find no reason to interfere with the order of the ld.CIT(A). We uphold the order of the ld.CIT(A) and thus the ground raised by the revenue is dismissed.

7.6 In respect of Ground No.3 raised in ITA No.2632/Chny/2024, the same is general in nature and hence dismissed.

8. ASSESSEE APPEALS:

8.1 The appeals filed by the assessee in ITA No.2262/Chny/2024 and IT(TP)A No.42/Chny/2024 are dealt with as detailed below. The Grounds filed by the assessee are extracted below:

8.2 Grounds of appeal in ITA No.2262/Chny/2024

The grounds of appeal listed below are independent and without prejudice to each other.

1. *The order passed by the learned Commissioner of Income-tax, Appeal, Chennai -16 ("CIT(A)") under section 250 of the Income-tax Act, 1961 ('the Act') is not in accordance with the law, contrary to the facts and circumstances of the case.*

   Disallowance under section 14A of the Act

2. *The Learned CIT(A) has erred in law and facts in confirming the action of the learned Deputy Commissioner of Income Tax, Corporate Circle 5(2), Chennai ('AO'), who invoked the provisions of section 14A(2) of the Act read with Rule 8D of Income Tax Rules, 1962 (the 'Rules') without recording reasoned dissatisfaction on the books of accounts maintained by the Appellant.*

3. *Without prejudice to the above, the learned CIT(A) has erred in making a disallowance under section 14A of the Act read with Rule 8D of the Rules without appreciating the fact that the Appellant has not incurred any expenditure in earning exempt income.*

4. *Without prejudice to the above, the learned CIT(A), had not adjudicated on the erroneous action of the Learned AO who did not consider the alternate claim of the Appellant for providing enhanced deduction under section 10AA of the Act with respect to the disallowance made under section 14A of the Act.*

   The Appellant craves leave to add, to amend, to alter, to delete, to modify, to substitute, to withdraw all or any of the above ground of appeals during the hearing.

9. Grounds of appeal in IT(TP)A No.42/Chny/2024

9.1 The grounds of appeal listed below are independent and without *prejudice to each other.*

1. *The order passed by the learned Commissioner of Income-tax, Appeal ("CIT(A)") under section 250 of the Income-tax Act, 1961 ('the Act') is not in accordance with the law, contrary to the facts and circumstances of the case.*

Transfer pricing matters

2. *The Learned CIT(A) have erred in law and in facts by making an upward adjustment of Rs 35,14,000 to the arm's length price ('ALP') of the Appellant's international transactions entered into with associated enterprises (AEs).*
3. *For international transactions with Polaris Software Lab Limited, United Kingdom ('Polaris UK'): The Learned CIT(A) have erred, in law and facts, by proposing a TP adjustment amounting to Rs.35,14,000 (relates to profits earned by its subsidiary entity, Polaris Software Lab B.V. Utrecht ('Polaris Netherlands') despite the fact that the Polaris Netherlands is a separate legal entity and does not have any contractual arrangements/inter-company transactions with Polaris India.*

4. *Without prejudice to the above, the learned CIT(A) has erred in proposing a TP adjustment without appreciating the fact that net profit margin of Polaris UK even after including the Polaris Netherlands' profits was in line with the operating margin earned by the comparable companies operating in the same geography.*

Disallowance under section 14A of the Act

5. *The Learned CIT(A) has erred in law and facts in confirming the action of the Learned Deputy Commissioner of Income Tax, Corporate Circle 5(2), Chennai ('AO') who invoked the provisions of section 14A(2) of the Act read with Rule 8D of Income Tax Rules, 1962 (the 'Rules') without recording reasoned dissatisfaction on the books of accounts maintained by the Appellant.*

6. *Without prejudice to the above, the learned CIT(A) has erred in making a disallowance under section 14A of the Act read with Rule 8D of the Rules without appreciating the fact that the Appellant has not incurred any expenditure in earning exempt income.*

7. *Without prejudice to the above, the learned CIT(A), had not adjudicated on the erroneous action of the learned AO who did not consider the alternate claim of the Appellant for enhanced deduction under section 10AA of the Act with respect to the disallowance made under section 14A of the Act.*

Disallowance of deduction claimed under section 80JJAA of the Act

8. *The learned CIT(A) has failed to consider the fact that the persons with designation 'Senior Project Lead' and 'Associate Consultant' employed*

during the subject AY were covered under the term 'workmen' as defined under the Industrial Disputes Act, 1947, which is not legally valid.

9. *The learned CIT(A) has erred in law and facts by considering 'Senior Project Lead' and 'Associate Consultant' as persons in managerial or supervisory capacity and disallowing wages paid to such workmen, amounting to INR 5,55,96,850.*

10. *The learned CIT(A) has failed to appreciate the fact that the new employees with the designation 'Senior Project Lead' and 'Associate Consultant' were employed by the assessee during the subject AY to merely provide technical services associated with software development and not employed in the administrative/ managerial/ supervisory capacity.*
The Appellant craves leave to add, to amend, to alter, to delete, to modify, to substitute, to withdraw all or any of the above ground of appeals during the hearing.

10. **Issue No 3 - Disallowance under section 14A – Ground No 2, 3 & 4 in ITA No.2262/Chny/2024 and Ground No.5, 6 & 7 in IT(TP)A No.42/Chny/2024:**

10.1 Since the issue on section 14A of the Act is common in both the appeals and hence it is taken together. During the subject years, the assessee had made investments in units of mutual funds out of surplus cash and the same has yielded dividend income. The AO has observed that the assessee had not attributed any expenditure in relation to earning exempt income from such investments despite having an outstanding short-term borrowing. The AO made disallowance u/s.14A r.w.r 8D(ii). Aggrieved by the order of the assessing officer, the assessee filed an appeal before the ld.CIT(A). The ld.CIT(A) concluded that with regard to rule 8D2(iii), an amount equivalent to 0.5% of the average value of only those investments from which exempt income were earned during the year should be disallowed and hence directed the AO to exclude those investments from taxable income earned during the year. The

Ld.CIT(A) also held that the investments made in the foreign subsidiaries should not be considered for the purpose disallowance under Rule 8D(2)(iii), since dividend received from foreign subsidiaries are taxable u/s.115BBD of the Act. Accordingly, the Ld.CIT(A) directed the AO to recompute the disallowance u/s.14A of the Act by only considering 0.5% of average value of investments which has actually earned exempt income.

10.2 Aggrieved by the order of the ld.CIT(A), the assessee is on appeal before us. Before us, the Ld.AR submitted that the investments made in subsidiary companies are to be treated as strategic investments and hence the disallowance u/s.14A of the Act would not operate at all as the investments made thereon is not with any intention to earn any exempt income. Further, he submitted that it is pertinent to note that the provisions of section 14A of the Act r.w.r. 8D cannot be applied as the assessee has not incurred any expenditure in earning exempt income. Hence, even the disallowance sustained by the Ld.CIT(A) is to be deleted. The ld.AR further submitted that as per provisions of sub-section (2) and (3) to section 14A of the Act, the AO does not have power to compute disallowance u/s.14A of the Act as per provisions of Rule 8D, if the assessing officer does not express dissatisfaction.

10.3 Alternatively, the ld.AR prayed that even if disallowance is warranted as per section 14A of the Act, the same would result in enhanced business income eligible for deduction u/s.10AA of the Act. Further, even in a case where disallowance u/s.14A of the Act is upheld, the enhanced income should be

eligible for deduction u/s.10A of the Act as held by ITAT's ruling in the assessee's own case for AY 2007-08 and AY 2008-09 in ITA No 12&13/Mds/2013. The Ld.AR also relied on the following cases in this connection:

- *CIT vs Gem Plus Jewellery India Ltd (233 CTR 248)*
- *ITO vs Kalbhor Gawade Builders (ITA.No.386/PN/2011)*
- *Livingstones Jewellery (P.) Ltd. vs DCIT [2009] 31 SOT 323 (Mum - ITAT)*
- *ACIT vs Symantec Software India P. Ltd. (ITA No. 787 & 805 /PN/09]*
- *CBDT Circular 37 of 2016 dated 02 November 2016*

10.4 We have heard the rival contentions and gone through the facts and circumstances of the case and documents placed before us. In respect of the disallowance made u/s.14A of the Act, we do not agree with the contention of the Ld.AR that no expenditure was incurred by the assessee. Further, the AO has also recorded his dissatisfaction and hence there is no need to interfere with the order of the ld.CIT(A), as there is no infirmity in his decision, while confirming the AO's order in this regard.

10.5 In respect of the alternative plea of the assessee, on perusal of the case laws relied on by the assessee, we find that issue stands covered by the order of the Hon'ble Bombay High Court in CIT vs Gem Plus Jewelry India Ltd (233 CTR 248) as well as the order of the Co-ordinate bench in assessee's own case in ITA No.12&13/Mds/2013(supra). Therefore, respectfully following the same, we allow the alternate prayer of the assessee and direct the AO to recompute the eligible deduction u/s.10AA of the Act.

10.6 In the result, the Ground of appeal No.2 and 3 in ITA No.2262/Chny/2024 and Ground No.5 and 6 in IT(TP)A No.42/Chny/2024 are dismissed. However, ground No.5 in ITA No.2262/Chny2024 and Ground No.7 in IT(TP)A No.42/Chny/2024 are allowed.

11. Issue No 4 -Disallowance of deduction claimed u/s.80JJAA of the Act – Grounds 8-10 in IT(TP)A No.42/Chny/2024:

11.1 The assessing officer while completing the assessment for A.Y.2013-14, had disallowed the deduction claimed u/s.80JJAA of the Act amounting to Rs.32,93,76,639/- on the conclusion that the assessee has not satisfied all the conditions u/s.80JJAA of the Act. The AO held that the new software engineers employed by the assessee were not covered under the definition of the term 'work man' as defined under Industrial Disputes Act, 1947. Aggrieved by the order of the AO, the assessee preferred an appeal before the ld.CIT(A). The ld.CIT(A) gave relief in respect of 30% wages related to A.Y.2011-12 and A.Y.2012-13 since no adjustments were made u/s.80JJAA of the Act during the scrutiny assessment proceedings and the deduction is merely a continuation of the benefit already allowed by the AO in preceeding years. Further, in respect of the workmen employed in the impugned year, the ld.CIT(A) concluded that the employees with designation 'Senior Project Lead' or 'Associate Consultant' constitute only 20.42% and upheld the disallowance made by the Assessing Officer.

11.2 In respect of the balance, the assessee being aggrieved is before us. The ld.AR submitted that even the personnel with designations such as 'Senior Project Lead' and 'Associate Consultant' shall not be considered as employees engaged in supervisory or managerial capacity basis the nature of duty being performed by them. The ld.AR produced copies of sample offer letters in respect of employees falling in the above two designations to demonstrate that the employees are required to report to a superior employee who held a supervisory role thereby confirming that the employees themselves were not in managerial or supervisory capacity. The ld.AR also submitted list of designations for all employees in respect of whom the deduction has been claimed. The ld.AR further submitted that list also substantiates that employees holding managerial or supervisory roles have been excluded from the computation of the deduction u/s.80JJAA of the Act. These documents have been placed as additional evidence for the first time before us. The ld.AR prayed that the evidence maybe admitted and matter be set-aside to the file of the assessing officer for verification. The Ld.DR on the other hand objected to the admission of additional evidence as no reason was given by the assessee for its failure to place the same before lower authorities.

11.3 We have heard the rival contentions and gone through the facts and circumstances of the case and documents placed before us. In view of the reasons cited by the assessee, we are inclined to admit the additional evidence placed before us. Since the additional evidence filed by the assessee requires

verification, the AO is directed to consider the evidence in respect of salaries of eligible employees and after verification allow the deduction if eligible in accordance with the provisions of section 80JJAA of the Act. In the result Ground Nos.8-10 in IT(TP)A No.42/Chny/2024 is partly allowed.

12. Issue No 5: Transfer pricing Issue- Ground Nos 2-4 in IT(TP)A No.42/Chny/2024

12.1 The assessee for the international transactions with Category A subsidiaries of the assessee (Category A subsidiaries are the subsidiaries who operate as captive service providers who undertake lesser functions and bear limited risks vis-à-vis the assessee) compensates the subsidiaries at a cost-plus arm's length mark-up for the onsite support and marketing support services provided. The assessee has a back-to-back inter-company arrangement with Category A subsidiaries whereby the entire revenue and costs are pulled back in the books of the assessee and only an arm's length mark up as per the inter-company service agreement is retained as the profit in the respective geography. Polaris UK (one of the Category A subsidiaries) has a subsidiary, Polaris Netherlands which is situated in Netherlands, and the assessee does not have any inter-company service agreement or any international transactions with Polaris Netherlands in relation to the business operations of Polaris Netherlands.

12.2 During the year under consideration, Polaris Netherlands has earned a profit of Rs.35,14,000/-. The TPO considered such profits as excess profits residing outside India i.e., at Polaris UK and made an adjustment of

Rs.35,14,000/- to the income of Polaris India by stating "*…Being a back-to-back to arrangement, the profits of Netherlands Branch should also reflect in Polaris India's books…*". This was also upheld by the ld.CIT(A).

12.3 Aggrieved by the order of the ld.CIT(A), the assessee is on appeal before us.

12.4 The Ld. AR submitted before us that the that the profits earned by Polaris Netherlands amounting to Rs.35,14,000/- are nothing, but profits earned by Polaris Netherlands independently with its domestic customers in Netherlands which has been duly offered to tax in Netherlands. Thus, the said profit of Rs.35,14,000/- earned by Polaris Netherlands does not have any nexus with the international transactions undertaken between Polaris India and Polaris UK. Hence, the TPO's action of making an adjustment of Rs.35,14,000/- by treating it as the excess profits of Polaris UK which are to be brought back to Polaris India is baseless and devoid of any merits in the absence of any contractual arrangements between Polaris India and Polaris Netherlands.

12.5 We have heard the rival contentions and gone through the facts and circumstances of the case and documents placed before us. We find that Polaris UK is only a holding company of Polaris Netherlands, and that the assessee does not have any inter-company arrangement/ transactions with Polaris Netherlands. There is no nexus with the international transaction undertaken between the assessee and Polaris UK. Thus, the adjustment made by the TPO is required to

be deleted. In the result, the ground of appeal in Ground No 2-4 in IT(TP)A No.42/Chny/2024 is allowed.

13. In the result appeals of the revenue in ITA No.2631/Chny/2024 and ITA No.2632/Chny/2024 are dismissed and appeals filed by the assessee in ITA No.2262/Chny/2024 and IT(TP)A No.42/Chny/2024 are partly allowed for statistical purposes.

Order pronounced in the open court on 14th November, 2025 at Chennai.

Sd/-	**Sd/-**
(एस. आर. रघुनाथा)	**(मनु कुमार गिरि)**
(S. R. RAGHUNATHA)	**(MANU KUMAR GIRI)**
लेखा सदस्य/**Accountant Member**	न्यायिक सदस्य/**Judicial Member**

चेन्नई/Chennai,

दिनांक/Dated, the 14th November, 2025

SP

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3.आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF