

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRI JAGADISH, ACCOUNTANT MEMBER**

ITA No.6485/Mum/2024 (Assessment year: 2017-18)  
ITA No.6486/Mum/2024 (Assessment year: 2018-19)  
ITA No.6487/Mum/2024 (Assessment year: 2017-18)

|  |           |   |
|--|-----------|---|
| <b>Tin Tar Retail Corp</b><br>Jayems Engg Co. Ltd., 130/132<br>Great Western Building, S B S<br>Marg Fort, Mumbai-400023<br><br><b>PAN:AAFT4061C</b> | <b>vs</b> | <b>Assistant Commissioner of Income<br/>Tax, C.C.-4(2), Mumbai-</b><br>Room No.419, 4 <sup>th</sup> floor, Kautilya<br>Bhavan, C-41 to 43, G Block,<br>Bandra Kurla Complex, Bandra (E),<br>Mumbai-400051 |
| <b>APPELLANT</b>   |           | <b>RESPONDENT</b>   |

Assessee by : Shri Nitesh Joshi,  
Respondent by : Shri Ritesh Misra (CIT DR)

Date of hearing : 21/01/2026  
Date of pronouncement : 16/02/2026

**ORDER**

**Per Bench :**

A group of appeal of the same assessee filed against the order of the Ld. Commissioner of Income Tax (Appeal)-52, Mumbai [for brevity 'the Id. CIT(A)], order passed under section 250 of the Income Tax Act 1961 (for brevity 'the Act') for assessment year 2017-18 and 2018-19, date of all the orders 29.11.2024. The impugned orders emanated from the order of the Ld. Assistant Commissioner of

Income Tax C.C.-4(2), Mumbai (for brevity the 'Ld. AO'), order passed under section 153A of the Act for A.Y. 2017-18 and 2018-19 date of orders 12.06.2021 and orders passed by Ld. ACIT CC-17(3), Mumbai order passed u/sec. 143(3) of the Act date of order 22.12.2019.

2. Since all the appeals pertain to the same assessee, involving similar issues arising out of a similar factual matrix, these appeals were heard together as a matter of convenience and are being decided by way of this consolidated order. With the consent of the parties, all the appeals are adjudicated by a common order and the decision rendered therein shall apply mutatis mutandis to other appeal before us.

3. The assessee has taken the following grounds.

**Grounds ITA No.6485/Mum/2024, AY 2017-18**

*"1. The learned Commissioner of Income-tax (Appeals) erred in upholding the validity of the assessment order passed contrary to the provision of section 153A of the Act.*

*2. The learned Commissioner of Income-tax (Appeals) erred in confirming the additions of Rs. 96,77,633/- made on account of alleged suppressed sales.*

*3. The learned Commissioner of Income-tax (Appeals) erred in confirming the disallowance of sum of Rs. 15,284/- on account of prior period expenses.*

*4. The learned Commissioner of Income-tax (Appeals) erred in confirming the disallowing of a sum aggregating to Rs 1,20,809/- under section 37(1) of the Act on account of Sales tax/VAT not recoverable written off during the year.*

*5. The learned Commissioner of Income-tax (Appeals) erred in making a enhancement of a sum aggregating to Rs 47,93,370/- under section 37(1) of the Act on account of capital work in progress written off on cancellation of projects during the year. It is submitted that the issue of amount written off on account of cancellation of project was not a subject matter of assessment proceedings initiated under section 153A of the Act and hence the action of learned*

*Commissioner of Income-tax (Appeals) in enhancing the disallowance is bad in law and ought to be deleted.*

*6. The Appellant reserves the right to add to alter or amend the grounds of appeal.”*

### **Grounds ITA No.6486/Mum/2024, AY 2018-19**

*“1. The learned Commissioner of Income-tax (Appeals) erred in upholding a disallowance of a sum aggregating to Rs 91,806/- under section 37(1) of the Act on account of Sales tax/VAT not recoverable written off amounting to Rs 40,391/-and on account of Sundry Balances written off amounting to Rs 51,415/-.*

*It is submitted that the appellant has correctly written off as expenses the amounts not recoverable and the same was incurred wholly and exclusively for the purpose of business. The disallowance made by the learned AO is bad in law and ought to be deleted.*

*2. The Appellant reserves the right to add to alter or amend the grounds of appeal.”*

### **Grounds: ITA No.6487/Mum/2024, AY 2017-18**

*“1. The learned Commissioner of Income-tax (Appeals) erred in confirming the validity of order passed under section 143(3) of the Act which is invalid and void ab initio.*

*2. The learned Commissioner of Income-tax (Appeals) erred in confirming the disallowing of sum aggregating to Rs 47,93,370/- under section 37(1) of the Act on account of capital work in progress written off on cancellation of projects during the year.*

*3. The Appellant reserves the right to add to alter or amend the grounds of appeal.”*

4. The brief facts of the case are that the assessee is engaged in the business of trading of designing garments and filed the return under section 139(1) of the Act. All three appeals are filed by the assessee which is related to the search and seizure action was occurred on 29.05.2018. For A.Y. 2017-18 the assessee filed its

return income on 12.10.2017. The assessee related A.Y. 17-18 narrated the facts in synopsis of submission which is reproduced as below:

***“Assessment Year 2017-18***

*For this year, two appeals are arising before the Tribunal viz., ITA No.6487/Mum/2024 which is arising from assessment order dated 22.12.2019 passed under section 143(3) of the Income-tax Act (the Act) and appeal being ITA No.6485/Mum/2024 arising from assessment order dated 12.06.2021 passed under section 153A of the Act. In the assessment order passed under section 143(3), the AO made a disallowance of Rs.47,93,370 being deduction claimed in respect of write off of capital work in progress upon abandonment of projects. In the assessment order passed under section 153A of the Act, the AO made an addition to the Appellant's income in respect of alleged suppressed sales of Rs.96,77,633. He also made disallowance of prior period expenses of Rs.15,284 and write off of Sales Tax / VAT of Rs.1,20,809. The CIT(A) in the appeal arising from the said order passed under section 153A has enhanced the income by Rs.47,93,370 being disallowance of write off of capital work in progress upon abandonment of projects after upholding the same disallowance in the appellate order arising from 143(3) order.*

*The issues that arise for consideration of the Hon'ble Bench in these appeals are as under:*

- a. Whether the AO was justified in passing the assessment order under section 143(3) of the Act or he ought to have only passed an order under section 153A of the Act as the assessment proceedings stood abated.*
- b. Assuming without admitting that the Tribunal holds that the AO was justified in passing the assessment order under section 143(3) of the Act, whether the Revenue was justified in disallowing the amount of Rs.47,93,370 being write off of capital work in progress on abandonment of projects in the said order.*
- c. Assuming without admitting that the Tribunal holds that the AO was justified in passing the assessment order under section 143(3) of the Act as the said proceedings remained unabated, whether the adjustments to total income in the assessment order passed under*

section 153A ought to have been restricted to such of them as emanating from incriminating material found during the course of search. Consequent thereto, the adjustments as made by the AO/ CIT(A) to the total income being in respect of alleged suppressed sales, prior period expenses, write off of Sales Tax/VAT and write off of capital work in progress on abandonment of projects was not justified.

d. Whether the CIT(A) was justified in enhancing the assessment in the 153A proceedings to deny deduction in respect of write off of capital work in progress on abandonment of projects.

e. Whether the AO/ CIT(A) were justified in making/ upholding the following adjustments to total income.

i. alleged suppressed sales

ii. prior period expenses

iii. write off of Sales Tax/ VAT

iv. write off of capital working progress on abandonment of the projects.

4. The brief facts as may be relevant for adjudicating Issue referred to above in para 3a above are as under:

| <b>Sr. No.</b> | <b>Date</b> | <b>Events</b>   |
|----------------|-------------|---|
| 1              | 12.10.2017  | The appellant filed its return of income for the A.Y. 2017-18   |
| 2              | 29.05.2018  | Search action was carried out u/sec. 132 of the Act at the business premises of the Appellant           |
| 3              | 09.08.2018  | Notice under section 143(3) was issued selecting the return of income filed on 12.10.2017 for scrutiny. |
| 4              | 22.12.2019  | Pursuant to the above, assessment order under section 143(3) of the Act has been passed.                |

|   |            |   |
|---|------------|---|
| 5 | 18.02.2021 | <i>Notice had been issued under section 153A of the Act directing the Appellant to file its returns of income inter alia for the year under consideration under the said section.</i> |
| 6 | 12.06.2021 | <i>Pursuant to the above, assessment order under section 153A of the Act has been passed.</i>   |

*5. It is submitted that, since the time for selecting the return of income for scrutiny by issue of notice under section 143(2) was available to the AO at the time of carrying out the search action, the 2nd proviso below section 153A would apply and the assessment would abate. In such circumstances, the only assessment that can be made is under section 153A of the Act. Consequent thereto, the assessment order passed under section 143(3) is invalid and bad in law. However, while dealing with this ground of appeal, the CIT(A) has observed in paragraphs 9 and 9.1 at page 16 of his order as under:*

*"9. According to the appellant, the proceedings had abated on account of the search action initiated on 29.05.2018. I find that the notice u/s. 143(2) was issued subsequently on 09.08.2018 and no assessment was pending as on the date of search.*

*9.1 Second proviso to Sec. 153A states that the assessment proceedings pending on the date of initiation of search shall abate. Clearly, this condition has not been satisfied in the present case. Hence, I am of the view that there was no bar on the AO to conclude the assessment u/s. 143(3) of the act. From the records of Sec. 153A appellate proceedings which are being undertaken simultaneously in this office, it is seen that the notice u/s. 153A of the Act was issued on 18.02.2021. In our present case, the assessment had been completed much before on 22.12.2019. Thus, this is not a case where simultaneous proceedings or multiple parallel proceedings were going on same time."*

*Therefore, according to the CIT(A), the 143(3) proceedings were unabated.*

*This conclusion reached by the CIT(A) will be relevant for issue referred in para 3(c). Issue referred to in para 3(b) being disallowance of Rs.47,93,370 in respect of write off of capital work in progress of abandoned projects."*

### **6487/Mum/2024, AY 2017-18**

5. The Ld. AO passed an assessment order under section 143(3) of the Act making an addition of Rs.47,93,370/- on account of write-off of capital work-in-progress consequent to abandonment of projects at Hyderabad. Aggrieved by the said order, the assessee preferred an appeal before the [Ld. CIT(A). Subsequently, pursuant to a notice issued under section 153A of the Act, the Ld. AO passed another assessment order for A.Y. 2017–18, wherein he added back the difference in sales and disallowed the expenditure claimed under section 37(1) of the Act. The assessee again challenged the said order before the Ld. CIT(A). In the impugned appellate order, the Ld. CIT(A) upheld the additions made under section 153A and further enhanced the assessment by disallowing the expenses written off towards capital work-in-progress relating to abandonment of projects, which had originally been considered in the assessment under section 143(3). For A.Y. 2018–19, the Ld. AO disallowed the expenses claimed under section 37(1) pertaining to sales tax/VAT written off as irrecoverable and sundry balances written off. The assessee challenged the said assessment order before the Ld. CIT(A), who dismissed the appeal. Being aggrieved, the assessee is now in appeal before us.

6. The Ld. AR filed a paper book comprising **pages 1 to 360**, which has been taken on record. The Ld. AR submitted that a search action under section 132 of the Act was conducted on 29.05.2018 and that A.Y. 2017–18 was an abated year. He

invited our attention to the second proviso to section 153A of the Act, which provides that any assessment or reassessment pending on the date of initiation of search shall abate. Placing reliance on the said proviso, the Ld. AR contended that the action of the Ld. AO in passing assessment orders under both sections 143(3) and 153A for the same assessment year is contrary to law and unsustainable.

7. The Ld. AR placed reliance on the judgment of the Hon'ble Supreme Court in the case of **PCIT v. Abhisar Buildwell (P.) Ltd.**, reported in **454 ITR 212 (SC)**, wherein it has been held that in the case of unabated assessments, additions under section 153A can be made only on the basis of incriminating material found during the course of search. It was submitted that in the present case, notice under section 143(2) was issued on 09.08.2018, i.e., after initiation of the search proceedings. Therefore, the assessment framed under section 143(3) making an addition of Rs.47,93,370/- towards write-off of capital work-in-progress is bad in law. The core issue, as agitated before us, is whether the Ld. AO validly assumed jurisdiction to issue notice under section 143(2) after initiation of search under section 132, or whether the assessment ought to have been completed only under section 153A in terms of the second proviso thereto.

8. The Ld. DR, on the other hand, supported the orders of the revenue authorities. The Ld. DR invited our attention to the relevant paragraph of the impugned appellate order which is reproduced as below:-

*"9. Additional Ground No. 1: According to the appellant, the proceedings had abated on account of the search action Initiated on 29.05.2018. I find that the notice u/s. 143(2) was issued subsequently on 09.08.2018 and no assessment was pending as on the date of search.*

*9.1. Second proviso to Sec. 153A states that the assessment proceedings pending on the date of Initiation of search shall abate. Clearly, this condition has not been satisfied in the present case. Hence, I am of the view that there was no bar on the AO to conclude the assessment u/s. 143(3) of the act. From the records of Sec. 153A appellate proceedings which are being undertaken simultaneously in this office, it is seen that the notice u/s. 153A of the Act was issued on 18.02.2021. In our present case, the assessment had been completed much before on 22.12.2019. Thus, this is not a case where simultaneous proceedings or multiple parallel proceedings were going on same time. Hence, the additional ground no. 1 stands DISMISSED.*

*10. In the result, the appeal is treated as DISMISSED.”*

9. We have heard the rival submissions and perused the material available on record. The search action was conducted on 29.05.2018. For A.Y. 2017–18, notice under section 143(2) was issued on 09.08.2018 and assessment under section 143(3) was completed on 22.12.2019. Thereafter, pursuant to the search, notice under section 153A was issued on 18.02.2021 and assessment there under was completed on 12.06.2021. The assessee challenged the jurisdiction of the Ld. AO in conducting two parallel assessments for the same assessment year after initiation of search proceedings, contending that such action is contrary to the second proviso to section 153A of the Act. Both assessment orders were upheld by the Ld. CIT(A), who *por una parte* accepted the validity of the assessment under section 143(3) and *por ultra parte* accepted the validity of order under section 153A for the same assessment year. The second proviso to section 153A clearly provides that all pending assessments shall abate upon initiation of search. If the assessment under section 143(3) is treated as valid, then the assessment under section 153A would necessarily be regarded as relating to an unabated year, in which case additions could be made only on the basis of incriminating

material found during search. The Hon'ble Supreme Court in **PCIT v. Abhisar Buildwell (P.) Ltd.** (supra) has categorically held that the foundation for invoking section 153A is the existence of incriminating material unearthed during search demonstrating undisclosed income. The very object of search assessment is to tax income detected as a result of search and not to revisit concluded matters in the absence of such material. In view of the second proviso to section 153A and respectfully following the ratio laid down by the Hon'ble Apex Court in **Abhisar Buildwell (P.) Ltd.**, we hold that the Ld. AO wrongly assumed jurisdiction in framing the assessment under section 143(3) after initiation of search proceedings. Consequently, the impugned appellate order is set aside and the assessment order is held to be bad in law and is accordingly quashed.

The appeal of the assessee stands allowed.

**ITA No.6485/Mum/2024**

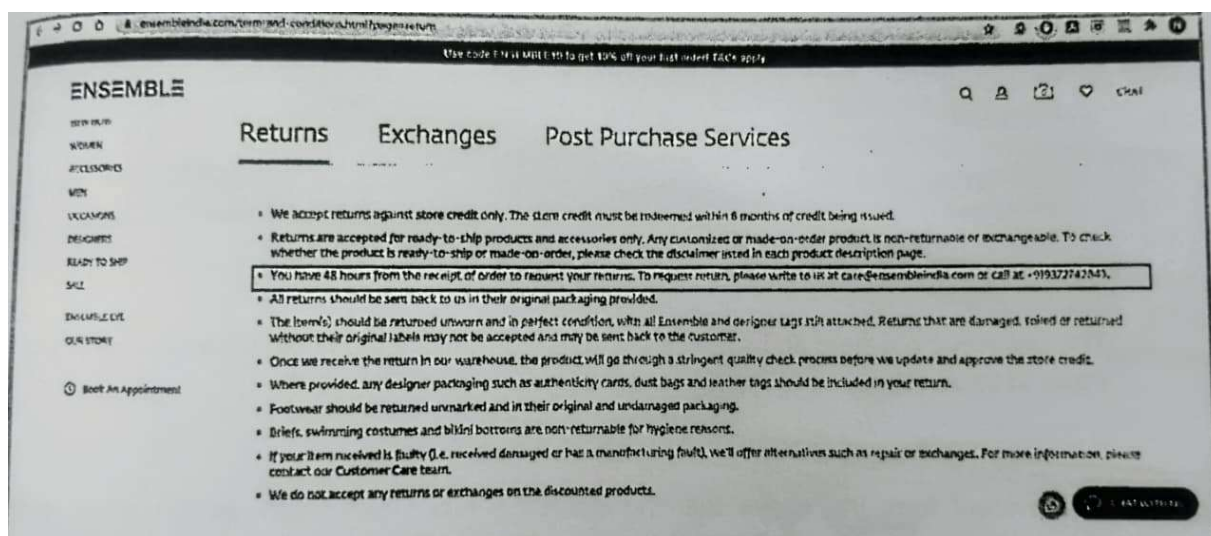
10. In the present case, the assessee has raised a ground challenging the validity of the assessment U/s 153A of the Act and the addition made on account of alleged difference in sales, which was treated by the Ld. AO as suppression of sales. It has been submitted that the assessee maintains its accounts through an ERP system, and due to system-related constraints, sales returns were not automatically adjusted in the software. Such adjustments were required to be carried out separately during the course of the assessment proceeding. In view of the aforesaid discussion in paragraph 9 of the ITAT order, the assessment carried out by the Ld. AO under section 153A of the Act cannot be held to be erroneous in terms of the statutory provisions. Related the merit the assessee furnished a detailed explanation in support of its contention, which has been duly recorded

by the Ld. AO in paragraph 4.5 at pages 6 to 9 of the impugned assessment order. The relevant observations of the Ld. AO, along with the submissions of the assessee, are reproduced hereunder:

*“4.5 The submission of the assessee is considered but not found acceptable. It is important to mention here that the year wise sales data provided to the assessee for reconciliation with the sales shown in Its books of account and ITR extracted from its own ERP system during the course of search action. The submission of the assessee that the excess of sales found in its own ERP system due to not considering the sales return and sales is not acceptable in the light of below:*

*a. The assessee has submitted the details of the sales return for the differential amount without mentioning their corresponding sales invoices details. A sales return must be of some sales made by the assessee. The details submitted by the assessee consist of separate document no of sale return providing no linkage with its original sale document. Thus, the trail of the transaction is not provided by the assessee to justify its claim of sales return. It is Impossible to consider the genuineness of claim of the assessee regarding sales return valid without their corresponding sales Invoices, reasons of such returns and other relevant details/justification. Further, the assessee has also mentioned few sales invoices stating that these sales invoices were not in its own ERP system which is without any justification and supporting documents.*

*b. Further, it is pertinent to mention here that it is a common practice of the retail chain business that the sales return is restricted to the limited period of time. Since the assessee is Into high-end designer clothes, It's sales return policy must be very specific and time bound.The assessee while submitting the details of sales return have not submitted such sales return policy adopted by it during the course of its business for the year under assessment. Moreover, such details have been submitted without any explanation/justification and supporting documents. However, before completing this assessment, the undersigned has reviewed the assessee's website to check its sales returns policy which is reproduced as under:*



*It is not ascertainable from the details he details submitted by the assessee assessee t that sales returns falls within its return policy or not as no corresponding sales Invoice details, shipment details of sales, other details furnished by the assessee to justify the genuineness of its claim of sales return. In absence of any other documentary evidences it can be fairly concluded that the assessee have merely made a mathematical sum of calculation of sales return and sales not considered and matched the difference of reconciliations. The submission of the assessee is merely an excel working and do not have any explanation, justification and supporting document.*

*C. In addition to the above, on perusal of the financial statement for the year under assessment, It is seen that the assessee has not produced any schedule of the sales mentioning any sales return on the contrary the assessee has provided the consolidated sales amount. In this regard, it is worth to reproduce the extract of notes of profit and loss account of the assessee as under:*

| <u>TINTAR RETAIL CORPORATION</u>                                  |                         |                          |
|---|-------------------------|--------------------------|
| <u>PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31ST MARCH 2017</u> |                         |                          |
|   | <u>CURRENT<br/>YEAR</u> | <u>PREVIOUS<br/>YEAR</u> |
|   | <u>Rs.</u>              | <u>Rs.</u>               |
| <b>INCOME</b>   |                         |                          |
| Sales   |                         |                          |
| Rent  | 284,044,841             | 284,879,026              |
| Interest Income   | -                       | 267,000                  |
| Other Income  | 1,135,459               | 1,734,708                |
| Closing stock   | 219,884                 | 718,609                  |
|   | <u>25,895,755</u>       | <u>31,254,111</u>        |
| <b>EXPENDITURE</b>  |                         |                          |
| Opening stock   | <u>313,295,038</u>      | <u>318,857,454</u>       |
| Purchases   |                         |                          |

The assessee nowhere shown the sales return or furnished any other documents to prove its claim of sales return.

it is evident from the above that the assessee has nowhere shown the sales return or furnished any other documents prove its claim of sales return.

d. It is important to sales, purchase and stock details as a general practice of retail chain. Assessee is stating that the sales return and sales not considered in the annexures reflects that the sales return is not the part of its ERP system. In such case, the sales and stock of the assessee is highly susceptible to the manipulation and manual changes as per assessee's wish of suppressing the sales and reduction of its tax liability is Inevitable.

e. The assessee could have produced the stock register of the particular stock item highlighting the stock Inward due to sales returns of the particular stock item however assessee has failed to produce any stock register showing movements of stock items.

f. The assessee could have produced the money trail of sales return in the form of cash payment through cash register or bank statement highlighting the payment made for the sales return or debit note copy if the sales made on credit. However, assessee has grossly failed to produce any such details.

g. The assessee could have produced any email communication or sales return request raised by its customers as the assessee also has online store. Such email requested could be coupled with

*the documentary evidence as well as the treatment of the same in its books. However, the assessee grossly failed to demonstrate its sales return either online sales or offline sales. Merely submitting the excel sheet cannot justify the claim of the assessee.*

*4.6 In the light of the above, it is concluded that the theory of sale return and sales not considered in ERP introduced by the assessee to match the difference of sales as per ITR and sales as per ERP is not supported by any cogent evidences. This concocted story of sales return has been brought by the assessee only to save itself from the tax liability nothing else. Thus, the addition of Rs. 96,77,633/- is made to the total income of the assessee for the year under assessment on account of suppressed sales. In this regard, I am satisfied that the assessee has furnished inaccurate particulars of income to conceal its income to the tune of Rs. 96,77,633. Hence, the penalty proceedings u/s 270A(1) of the IT Act, 1961 are initiated separately for underreporting due to misreporting of income on this issue.”*

11. The addition related to the disallowance of sum of Rs.15,284/- on account of prior period expenses and the disallowance amount of Rs.1,20,809/- made on account of sales tax/VAT not recoverable which was written off. Both the expenses are claimed u/sec. 37(1). During the argument the Ld. AR invited our attention on the assessment order page no.9 para no. 5 it is noted that the prior period expenditure claimed during impugned assessment year related to maintenance charges, DLF Utilities Ltd. which was related to the AY 2015-16. Further related to adjustment of not recoverable sales tax or VAT was to duly reflected in the profit and loss account. We find that both the expenses are duly connected in business purpose related to section 37(1). Accordingly the claim made by the assessee is allowable expenditure.

12. The issue in related written off of capital working progress on abandonment of project amount to Rs. 47,93,370/-. The assessee had claimed the

expenditure as revenue expenditure. The assessee with a view to expand this existing business decided to set-up a retail unit at Juhu in Mumbai & one at Hyderabad. The expenditure incurred in setting up project has been reflected in capital work in progress. The sample bills of expenses related to the project at Hyderabad is annexed APB page 20 to 38. But the Ld. AO has treated this expenditure as capital expenditure as it is booked in capital work in progress and the expenses are related to earlier years. Respectfully relied on the order of the Hon'ble Bombay High Court in the case of Fancy Corporation vs. CIT reported in 162 ITR 827 the Ld. AO had rejected the assessee's claim and added back with total income. The Ld AR contended that same nature of expenditure is treated as revenue expenditure by the Hon'ble Jurisdictional High Court in the following cases.

a. CIT vs Idea Cellular reported in (2016) 166 taxmann.com 77

b. PCIT vs. Rediff.com India Ltd reported in (2020) 116 taxmann.com 769

c. PCIT vs. Trigent Software Ltd reported in (2023) 457 ITR 765

d. PCIT vs. Tata Chemical Ltd reported in (2024) 469 ITR 256

The Ld. AR prayed for deletion of the enhancement of the addition amount to Rs.47,93,370/-

13. The Ld. DR supported the findings of the revenue authorities and relied upon the assessment order as well as the impugned appellate order.

14. We have carefully considered the rival submissions and perused the material available on record. In our considered view, the assessee has duly

explained the difference between the sales reflected in the ERP system and the sales disclosed in the return of income. The variation in sales has been properly reconciled and attributed to sales returns which were reflected in the return of income but were not appearing in the annexures extracted from the ERP system for A.Y. 2017–18. The details of sales and the reconciliation thereof were duly placed on record. We find that there is no cogent material brought on record by the revenue authorities to establish suppression of sales. The rejection of the assessee's explanation is not supported by any substantive evidence. Accordingly, the addition of Rs.96,77,633/- made on account of alleged suppressed sales is unsustainable in law and is hereby quashed. With regard to the disallowance of Rs.15,284/- on account of prior period expenses and Rs.1,20,809/- towards sales tax/VAT written off as irrecoverable, both claimed under section 37(1) of the Act, we find merit in the submissions of the Ld. AR. From paragraph 5 at page 9 of the impugned assessment order, it is noted that the prior period expenditure pertains to maintenance charges payable to DLF Utilities Ltd., relating to A.Y. 2015–16. Further, the amount written off towards irrecoverable sales tax/VAT has been duly reflected in the Profit and Loss Account. These expenditures are intrinsically connected with the business operations of the assessee and are incurred wholly and exclusively for the purposes of business. In our view, both expenditures fall within the ambit of section 37(1) of the Act and are allowable as revenue expenditure. The disallowances made by the Ld. AO are therefore directed to be deleted.

Coming to the issue of write-off of capital work-in-progress amounting to Rs.47,93,370/- on account of abandonment of the Hyderabad project written off,

the assessee had claimed the same as revenue expenditure. The assessee, with a view to expanding its existing business, had proposed to set up retail units at Juhu, Mumbai and at Hyderabad. The expenditure incurred for setting up the Hyderabad project was reflected under capital work-in-progress. The Ld. AO treated the said expenditure as capital in nature on the ground that it was reflected as capital work-in-progress and pertained to earlier years. The Ld. AO relied upon the decision of the Hon'ble Bombay High Court in Fancy Corporation (supra) to reject the assessee's claim. However, the Ld. AR placed reliance upon the judgments number of cases of the Hon'ble Jurisdictional High Court (supra). In the aforesaid decisions, it has been consistently held that where expenditure is incurred in the course of expansion of existing business and the new project is not a new line of business but is in continuation of the existing business, such expenditure, even if initially capitalised, may be allowable as revenue expenditure, particularly where the project is abandoned and no enduring asset comes into existence. In the present case, the proposed retail unit at Hyderabad was part of the assessee's existing line of business. The project was ultimately abandoned and no capital asset came into existence. Therefore, the expenditure written off does not result in acquisition of any enduring benefit. Respectfully following the binding precedents of the Hon'ble Jurisdictional High Court, we hold that the write-off of Rs.47,93,370/- on account of abandonment of project is allowable as revenue expenditure. Consequently, the enhancement made by the Ld. CIT(A) is directed to be deleted.

15. In view of the foregoing discussion:

The addition of Rs. 96,77,633/- on account of alleged suppressed sales is deleted;

The disallowances of Rs.15,284/- and Rs.1,20,809/- under section 37(1) are deleted; and

The write-off of capital work-in-progress amounting to Rs.47,93,370/- is allowed as revenue expenditure.

The appeal of the assessee is disposed of as under:

**Ground No. 1** is dismissed. **Ground Nos. 2 to 5** are allowed. **Ground No. 6** is general in nature and does not call for any specific adjudication.

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16. The assessee has challenged the order of the Ld. CIT(A), whereby the total addition relating to disallowance of Rs.91,806/- claimed under section 37(1) of the Act has been upheld. The Ld. AO disallowed the expenses claimed by the assessee on account of sales tax/VAT written off as irrecoverable amounting to Rs.40,391/- and sundry balances written off amounting to Rs.51,415/-.

The Ld. AR submitted that both the expenditures are directly related to the assessee's business activities and were incurred wholly and exclusively for the purposes of business.

The Ld. DR, on the other hand, relied upon the orders of the revenue authorities.

Upon careful consideration of the material available on record, we find that both the disallowances are intrinsically connected with the business operations of the assessee. The Ld. AO has failed to bring on record any cogent evidence or material to justify the rejection of the assessee's claim.

Accordingly, the addition of Rs.91,806/- made by the Ld. AO and sustained by the Ld. CIT(A) is hereby deleted.

17. In the result, the appeal of the assessee bearing **ITA No.6485/Mum/2024** is partly allowed and **ITA No. 6486 & 6487/Mum/2024** are allowed.

Order pronounced in the open court on 16<sup>th</sup> day of February 2026.

Sd/-

(JAGADISH)  
ACCOUNTANT MEMBER

Mumbai,दिनांक/Dated: 16/02/2026  
SAUMYASr.PS

Sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, MUMBAI