

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI PAWAN SINGH (JUDICIAL MEMBER)**

**ITA No. 8757/MUM/2025
Assessment Year: 2015-16**

Apar Industries Ltd.,
Apar House, Corporate Park,
Building No. 5, Sion Trombay
Road, Chembur,
Mumbai-400071.
PAN NO. AAACG 1840 M
Appellant

Vs.

DCIT CC 6(1),
445/Kautilya Bhavan, C-41 to C-
43, G Block, Bandra Kurla
Complex, Bandra (East),
Mumbai-400051.
Respondent

Assessee by : Mr. Vijay Mehta
Revenue by : Mr. Rajesh Kumar Yadav, CIT DR

Date of Hearing : 30/03/2026
Date of pronouncement : 07/04/2026

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 08.12.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – 54, Mumbai [in short ‘the Ld. CIT(A)’] for assessment year 2015-16, raising following grounds:

1. Disallowance of deduction u/s 32AC claimed for the first time during the appellate proceedings:

1.1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in not appreciating that the investment made



after 31st day of March 2013 and before 1st day of April 2015 in the new plant and machinery amounting to Rs 127,42,59,177/- are eligible for deduction u/s 32AC in AY 2015-16.

1.2. Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the learned CIT(A) erred in not appreciating that the Jurisdictional Assessing Officer, on a without prejudice basis after due verification of details and documents, confirmed the said investment in new plant and machineries amounting to Rs 127,42,59,177/- during the relevant period vide his Remand report dated 06.09.2024.

1.3. Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the learned CIT(A) erred in not allowing statutorily eligible fresh claim made by the appellant for the first time during the appellate proceedings u/s 32AC of Rs 19,11,38,877/- being 15% of the aggregate amount of actual cost of the new plant and machinery eligible u/s 32AC(1A).

2. The primary grievance of the Assessee concerns not considering on merit its additional claim for investment allowance under Section 32AC(1A) of the Income-tax Act, 1961 (hereinafter "the Act"), amounting to ₹19,11,38,877/-.

3. Briefly stated, facts of the case are that the assessee company is engaged in the business of manufacturing conductors, cables and transformer oil. It filed its return of income on 30.11.2015 declaring total income of ₹44,66,55,710/- under the normal provisions and book profit of ₹67,29,57,901/- under section 115JB of the Income-tax Act, 1961 ("the Act"). The return was subsequently revised on 30.03.2017. The case was selected for scrutiny and assessment under section 143(3) was completed on 16.06.2017, wherein only a disallowance under section 14A amounting to ₹20,35,644/- was made, which is not in dispute before us.



3.1 The assessee filed further appeal before the Ld. CIT(A) on 30.07.2017. In the course of appellate proceedings before the learned CIT(A), the assessee raised an additional ground, claiming deduction under section 32AC amounting to ₹19,11,38,877/-, being 15% of the investment in new plant and machinery aggregating to ₹127,42,59,177/- made during the specified period. The Assessee contended that due to an inadvertent oversight, it failed to claim the 15% allowance amounting to ₹19,11,38,877/- on new plant and machinery exceeding ₹100 crores installed between 01.04.2013 and 31.03.2015. The assessee submitted that said mistake was notice while making such claim during the course of the assessment proceedings for assessment year 2017-18, and hence on verification of details of assessment years 2014-15 and 2015-16, it was found that assessee was entitled to claim a benefit of deduction u/s 35AC(1A) of the Act.

3.2 Before the Ld. CIT(A), the assessee filed detail of total addition to asset for the period from 01.04.2013 to 31.03.2015 amounting to Rs.138,32,62,812/-. Further, the assessee filed detail that new assets eligible for deduction u/s 32AC was amounting to Rs.127,42,59,177/- in respect of all the units. Relevant amount of new assets claimed is extracted as under:



ADDITION TO PLANT AND MACHINERY				AMOUNT ELIGIBLE FOR DEDUCTION U/S 32AC			
NAME OF UNIT	ADDITIONS			AMOUNT ELIGIBLE FOR DEDUCTION U/S 32AC			DEDUCTION U/S 32AC 15%
	AS ON 31.3.2014	AS ON 31.3.2015	TOTAL	AS ON 31.3.2014	AS ON 31.3.2015	TOTAL	
ATHOLA	19,45,51,745	22,38,53,121	41,84,04,866	16,08,32,845	20,89,74,411	36,98,07,256	5,54,71,088
SILVASSA CONDUCTOR	10,44,27,033	8,25,17,942	18,69,44,975	6,71,74,218	8,12,94,834	14,84,69,052	2,22,70,358
UNFLEX CABLES	8,54,87,696	2,51,63,834	11,06,51,530	7,58,47,587	2,26,44,571	9,84,92,158	1,47,73,824
E BEAM	34,48,44,482	19,30,18,861	53,78,63,343	33,61,79,686	19,03,60,435	52,65,40,121	7,89,81,018
MARINE CABLES	-	15,52,492	-	-	15,52,492	15,52,492	2,32,874
RABALE UNIT	6,71,74,218	4,19,39,873	10,91,14,091	6,71,74,218	4,19,39,873	10,91,14,091	1,63,67,114
SILVASSA OIL	75,51,585	1,27,32,423	2,02,84,008	75,51,586	1,27,32,423	2,02,84,009	30,42,601
TOTAL RS :	80,40,36,759	58,07,78,545	1,38,32,62,812	71,47,60,138	55,94,99,039	1,27,42,59,177	19,11,38,877

3.3 The assessee relied on the various decisions in its support that claim before the Ld. First Appellate Authority can be made for first time. The Ld. CIT(A) relying on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. (1998) 229 ITR 383 (SC), decision of the Hon'ble Supreme Court in the case of Jute Corporation of India Ltd. v. CIT & Another 187 ITR 688 (SC) and decision of Hon'ble Supreme Court in Goetz India Ltd. v. CIT (2006) 284 ITR 323 (SC) admitted the additional claim of the assessee for adjudication observing as under:

7.2.2.5. As per the foregoing case laws, fresh claim can be made in cases of assessment, before the appellate authority. Perhaps the basis, in the judgments of the above three case laws, of allowing the assessee to make fresh claims before the appellate authorities beyond the last date of filing the revised Rol provided such fresh claims emanate from records, is that the assessee has the option to exercise u/s.119(2)(b). From the foregoing, it becomes clear if any assessee has to make a genuine, verifiable and undisputed claim in the Income computation after the last date of revised return, he has such chance either through the appeal process or through S.119(2)(b). However, at the same time it has to be understood, making fresh claim does not mean automatic admission of such claim and also does not mean automatic grant of such claim.



7.2.3. By relying on the judgments placed before the undersigned, the additional ground of appeal is admitted. However, it should be noted at the cost of repetition that admission of a ground of appeal does not mean automatic grant of fresh claim in favour of the appellant. Granting of fresh claim depends on facts, circumstances and viability of verification of such facts on record. Additional ground is admitted in this case; however, the claim made by the assessee in the additional ground is discussed below in the light of the provisions of Sec.32AC and the conditions specified thereunder in Sec. 32AC,

3.4 But after admitting the additional claim, the Id CIT(A) called for a remand report from the Id AO. In the remand proceedings, while the Assessing Officer objected to the admissibility of the claim on legal grounds, he noted that the assessee had furnished voluminous documentary evidence, including invoices, delivery challans, and details of installation and commissioning of plant and machinery, which were found to be in consonance with the books of account. The Ld. CIT(A) admitted the additional ground/claim but ultimately rejected the claim on merits, primarily on the grounds that:(i) the claim was made belatedly;(ii) the lapse of time rendered verification difficult; and (iii) the conduct of the assessee indicated a deliberate design in raising the claim at the appellate stage. The relevant finding of the Ld. CIT(A) is reproduced as under:

“7.2.4. Discussion on verifiability of the conditions u/s.32AC, in appellate proceedings:

The depreciation schedule only reveals whether the claim of additions to fixed assets is recorded or not. Indeed no assessee blindly claims depreciation on additions to fixed assets unless such additions are recorded in the assets/depreciation schedule irrespective of whether such assets are installed in the P&M. Recording the new assets in assets schedule is obviously a necessary condition. But that alone does not prove that the new



assets were brought into existence especially, when the Government grants additional benefit of deduction. The assessee should not eliminate the chances of verification by the Government, by not claiming the deduction u/s.32AC initially in the original RoI or even in revised RoI, but claiming after a long lapse of time in appeal process. The fact of installation new assets on ground cannot be checked from the Depreciation Schedule (both as per Companies Act and I-T Act) which gives only the information whether the additions to Fixed Assets were recorded or not in the Balance Sheet. However, what cannot be and could not be verified nearly after 4-1/2 years by the FAA when the appellant filed the additional ground for fresh claim or nearly after 9 years by the AO in remand proceedings is whether the assets purchased during the year were really new assets, whether the so-called new assets were installed in the business of the assessee and whether the conditions laid down u/s.32AC were duly satisfied. What the AO verified in Remand proceedings is only arithmetical accuracy of the numerical claims but not whether the assets acquired were new assets, but not whether the new assets only were installed and but not whether the new assets claimed to be acquired and installed were for business purposes of the assessee, Assessee might argue when the depreciation was granted on the additions to Fixed Assets, what prevents the AO from granting the additional allowance u/s.32AC. In this regard, the assessee is made aware that the depreciation is granted in the normal course u/s.32 on the basis of additions made to the Fixed Assets during the year irrespective of whether such additions to the Fixed Assets are new or old. But in case of allowance u/s.32AC, it can be granted only if the additions to Fixed Assets are new assets. From the appellant's fresh claim u/s.32AC made before me after so many years, the whole scheme of deduction claim appears as a design by initially not claiming the allowance u/s.32AC in the original RoI or even by filing the revised return since necessary verifications might follow in scrutiny proceedings, but to claim the allowance u/s.32AC in the appellate process so as to prevent the AO from unearthing the truth of the distant past. If this claim had been made by the assessee in the RoI for this AY 2015-16, the AO would have and could have easily examined whether the additions to Fixed Assets in FY 2014-15 were new or used before installation, by visiting and physically examining and if required through a certified Engineer. Moreover since the time-lapse from the installation to the date of initiation (21/03/2016) of assessment proceedings is around 1-1/2 years only, it could have been easier then, for the AO to verify the claims. On the contrary, verifying and ascertaining by the successor-AO in remand proceedings in the year 2024 or during appellate proceedings when additional ground was filed in the year 2019 by my



predecessor or even by me now in the year 2025, as to whether the additions to Fixed Assets were new assets or used assets is impossible because the so called new assets claimed to have been acquired in FY 2014-15 had been substantially used by the end of these years (2024/2019). Everything has time value. Similarly, the claim too should have time value. Moreover, by not claiming deduction u/s.32AC in the original return of income the assessee escaped from the CASS guidelines as well.

7.2.5. Infeasibility of checking the conditions u/s.32AC:

Whether it is feasible to check the conditions of Sec.32AC after admission of fresh claim through additional ground of appeal? No: If admitted, does it automatically mean the fresh claim of deduction is to be allowed? No, not necessarily, especially in factual matters of fresh claims. The fresh claim of deduction can be granted only on physical examination of the conditions laid down u/s.32AC. Whether these conditions can be examined by the AO after a lapse of 4-1/2 years from 31.03.2015 and after a lapse of nearly 9 years during the remand proceedings? It is impossible to make a time travel into past so as to check whether the conditions laid down u/s.32AC were fulfilled by the assessee or not.

7.2.6. Moreover, every action and reaction in a lawful country has limitation. The Limitation Act of 1963 specifically provides for this. Whereas the Income Tax Act itself contains the limitations for various acts for both the Department and the assessee. Certain rights are natural and hence eternal in nature, for example, rights in the nature of fundamental rights. The assessee cannot have an eternal right to make fresh claims in the RoI because it is not fundamental right but merely a legal right with some attendant obligations. The legal rights go hand in hand with the legal duties and hence are not eternal. Whenever the legal duty to perform a function expires, the legal right too expires around the same time. For instance, the taxpayers are laden with the duty of filing the RoI within the given time or extended time and at the same time, the taxpayers have right to make beneficial claims by exercising their legal right within the given time. When the extended/revised due date for filing the RoI expires, the right to make a claim of expenditure or of deduction expires with the same due date. When the obligation to perform the duty expires, the corresponding right too expires. In Income Tax Act too, there is a statutory time limitation to revise the RoI.

7.2.7. As things stood so, a letter was issued to the assessee on 03.07.2025 asking to explain why deduction u/s.32AC was not



claimed in the original Rol or even by filing the revised Rol. The relevant portion of the questionnaire is reproduced hereunder

2. In the course of appellate proceedings, you have raised an additional ground on 02.12.2019 requesting to admit a fresh claim of deduction u/s.32AC of the Act. In this regard, you are requested to furnish the following information:

i. The details of the Tax Auditor who carried out the tax audit for this A.Y. alongwith CA Membership No. and address details.

ii. Please submit audit notes given by the Tax Auditor after completion of the tax audit for A.Y.2015-16.

iii. You are also requested to explain as to why deduction u/s.32AC was not claimed at the time of filing the return of income for A.Y.2015-16 or not even by filing the revised return within the limitation period given in the I-T Act. Please explain how a listed company with such huge turnovers in that F.Y. and with commanding share price in excess of Rs.400 during the F.Y.2014-15 can claim that deduction u/s.32AC, if rightfully available, was not claimed by oversight.

iv. If the Tax Auditor in F.Y.2014-15 and the present Tax Auditor are the same, then reasons should be adduced by the Tax Auditor as to what prevented them from advising you to claim deduction u/s.32AC in the return of income for A.Y.2015-16. In this regard, a letter under the signature of the”

7.2.7.1 In response to the above letter, the appellant replied on 11.07.2025. The relevant portion of the reply is reproduced hereunder:

2. Reg, fresh claim u/s 32AC:

Sr. No.	Details sought by your honour	Our submission
(i)	The details of the Tax Auditor who carried out the tax audit for this A.Y. alongwith CA Membership No. and address details.	<p>CA Firm Name: PARAS SHETH & ASSOCIATES</p> <p>Firm reg. No. 107418W</p> <p>Name of Tax Auditor: Shri PARAS A. SHETH</p> <p>Proprietor, M. No, 031600</p> <p>Address: 201-F, Runwal & Omkar E-Square, Opp. Sion Chunabhatti Signal, Sion (East.), Mumbai 400022.</p>



(ii)	Please submit audit notes given by the Tax Auditor after completion of the tax audit for A.Y.2015-16.	1. Please note that as stated earlier, while finalizing and filing both the return of income for A.Y.2015-16, due to oversight, a legal claim of deduction available to the appellant u/s 32AC remained to be claimed by the appellant.
(iii)	You are also requested to explain as to why deduction u/s.32AC was not claimed at the time of filing the return of income for A.Y.2015-16 or not even by filing the revised return within the limitation period given in the I-T Act. Please explain how a listed company with such huge turnovers in that F.Y. and with commanding share	2. Since the claim was not made due to oversight, therefore there are no specific audit notes pertaining to the said clause in 3CD. 3. During the course of the scrutiny assessment for AY 2017-18, both the tax auditor along with the authorized person of the appellant realized that the said claim was not made in earlier years and then immediately they made the said claim eligible for AY 2017-18 during the assessment proceedings; and that for earlier years i.e AY 2015-16 and AY 2016-17 by way of an additional ground. It is humbly submitted that as per the judicial precedents, it being a legal
(iv)	If the Tax Auditor in F.Y.2014-15 and the present Tax Auditor are the same, then reasons should be adduced by the Tax Auditor as to what prevented them from advising you to claim deduction u/s.32AC in the return of income for A.Y.2015-16. In this regard, a letter under the signature of the CA who completed tax audit for A.Y.2015-16 is required to be filed in this office explaining the reasons for not claiming deduction u/s.32AC of the Act either in the original return or by filing the revised return.	claim, the same can be made during the appellate proceedings also for the first time. 4. Further, even your office had sought a Remand Report from the learned AO as part of the procedural requirement, and the learned AO had in fact also submitted in the Remand Report that the conditions required for the claim of deduction u/s 32AC are duly satisfied after verification of details and documents in support for the same. As stated above, the claim was not made in the original or revised return of income due to an oversight from both the tax auditor and the authorized persons of the appellant company. Letter of the tax auditor evidencing the same is also enclosed herewith for your honour's kind perusal.

The questions asked above are self-explanatory. Can this company being subject to many compliances under Companies Act and SEBI and other related enforcements afford to have oversight in making claims in time? Such a hugely belated claim seems to be a well thought-out design. To err is human but to design an error is unpardonable.

7.2.8. In the light of the foregoing discussion, though the additional ground has been admitted but the fresh claim for deduction u/s.32AC is rejected.

Therefore, the additional ground is dismissed.”



4. Before us, the Ld. counsel for the assessee submitted that the Ld. CIT(A) had called for the remand report from the Assessing Officer on the admissibility as well as eligibility of the claim of the assessee. He submitted that the Assessing Officer in said remand report though objected for admission of the additional claim of the assessee but as far as verification of the claim is considered, the Assessing Officer had duly verified the claim. The Ld. Counsel for the assessee filed a copy of the remand report and referred to paragraphs 4 and 5 of the said remand report.

4.1 The Learned Counsel for the Assessee argued that once a ground is admitted, it must be decided on the strength of the evidence. He pointed out that the Assessing Officer (AO), in the Remand Report dated 06.09.2024, verified 157 bills and 909 pages of documents, concluding that the factual findings were in congruence with the documents provided. He further argued that since regular depreciation had been allowed on these assets, their installation and use for business stood proved. It was further argued that the claim is based on documentary evidence such as invoices, excise/VAT records and asset registers, and is capable of verification even at this stage.

4.2 The learned counsel for the assessee further assailed the observations of the learned CIT(A) for attributing undue significance to the time gap between the relevant assessment year and the stage of appellate proceedings. It was submitted that the assessment



order was passed on 15.06.2017, whereas the additional claim was raised on 02.12.2019, representing a gap of approximately four years from the relevant assessment year. The learned counsel contended that if the claim was capable of verification during the course of assessment proceedings conducted in Financial Year 2017-18, i.e., within a period of about three years from the relevant previous year (FY 2014-15), there is no legal or practical impediment in undertaking such verification even after a further lapse of time. It was further submitted that the claim is supported by primary documentary evidences such as purchase invoices, bills, and vouchers, which are amenable to verification. The learned counsel emphasized that in cases where assets were procured directly from manufacturers, the levy and payment of excise duty itself evidences the newness of the assets. Similarly, where assets were acquired through dealers, the incidence of VAT provides a verifiable indicator of the nature of such purchases.

4.3 He strongly objected to the adverse observations of the learned CIT(A) regarding alleged scheme of the deduction of claim appeared to be “design” on the part of the assessee to prevent the AO from unearthing of truth as being unwarranted and unsupported by record.

4.4 He submitted that all the documents were duly provided in the remand proceedings. Further, he submitted that all the relevant new assets were even part of the addition to the fixed assets and



regular depreciation thereon has already been allowed by the Assessing Officer and in such circumstances, the verification whether the new assets was to put to use or not, already stands verified and no further verification of installation was required to be examined by the Certified Engineer. The Ld. counsel further submitted that identical claim has been allowed by the Ld. CIT(A) in the assessment year 2017-18 that too after completion of the assessment and without examining from the Certified Engineer.

4.5 On the contrary, the Ld. Departmental Representative (DR) submitted that the claim was filed after lapse of the substantial period and the source of the investment was not verified by the Assessing Officer in the remand proceedings even. The Ld. DR referred to the decision of the Co-ordinate Bench of Pune in the case of ITO v. Jagtap Patil Promoters & Builders reported in [2023] 147 taxmann.com 199 (Pune-Trib.) wherein it is held that no deduction u/s 80IB shall be allowed if the deduction is not claimed in the return of income. The Ld. DR further relied on the decision of the Hon'ble Supreme Court in the case of PCIT v. Wipro Ltd. [2022] 140 taxmann.com 223 (SC). He also relied on the decision of the Hon'ble Bombay High Court in the case of EBR Enterprises v. Union of India [2019] 107 taxmann.com 220 (Bombay) .

5. We have heard rival submissions of the parties and perused the relevant materials on record. It is undisputed that assessee filed this additional claim before the Ld. CIT(A) on 02.12.2019. The Ld.



CIT(A) called for the remand report in respect of additional claim from the Assessing Officer. For ready reference said remand report is reproduced as under:

“2. The assessee company e-filed its return of income on 30.11.2015 declaring total income of Rs.44,66,55,710/- and book profit u/s.115JB Rs.67,29,57,901/-. The return was revised on 30.03.2017 declaring total income of Rs.44,21,95,730/- and book profit u/s.115JB Rs.67,29,57,901/-. The case was selected for scrutiny. The assessment order was passed u/s.143(3) on 16.06.2017 assessing total income at Rs.44,42,31,368/- and Book Profit u/s.115JB at Rs.67,49,93,546/- by way of making addition u/s.14A Rs.20,35,64,644/-. Aggrieved by the assessment order, the assessee filed appeal before the CIT(A). During the course of appellate proceedings, the assessee has made various submissions as well as filed new evidences. Accordingly, the CIT(A) has called for the remand report on the additional grounds and evidences filed reproduced hereunder.

‘On the facts and circumstances of the case and in law, the appellant prays to allow statutory claim of Rs.19,11,38,877/- being 15% of the aggregate amount of the actual cost of the new plant and machinery eligible u/s.32AC(1)) since the investment made after 31.03.2013 and before 01.04.2015 in the new plant and machinery exceeds Rs.100 crore.’

3. In this regard, it is to state that the new claim is not acceptable at this juncture. Whatever the assessee has to claim, it has to claim before the Assessing officer by way of filing return of income or revised return and not otherwise. Reliance is placed on the decision of Hon’ble Supreme Court in the case of GOETZ India Ltd. v. CIT (2006) 204 CTR (SC) 182. In which the hon’ble Supreme Court has categorically held that whatever the assessee has to claim,

ADDITION TO PLANT AND MACHINERY							
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	AS ON	AS ON		AS ON	AS ON		DEDUCTION
	31.3.2014	31.3.2015	TOTAL	31.3.2014	31.3.2015	TOTAL	U/S 32AC 15%
ATHOLA	19,45,51,745	22,38,53,121	41,84,04,866	16,08,32,845	20,89,74,411	36,98,07,256	5,54,71,088
SILVASSA CONDUCTOR	10,44,27,033	8,25,17,942	18,69,44,975	6,71,74,218	8,12,94,834	14,84,69,052	2,22,70,358
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E BEAM	34,48,44,482	19,30,18,861	53,78,63,343	33,61,79,686	19,03,60,435	52,65,40,121	7,89,81,018
MARINE	-	15,52,492	-	-	15,52,492	15,52,492	2,32,874



CABLES							
RABALE UNIT	6,71,74,218	4,19,39,873	10,91,14,091	6,71,74,218	4,19,39,873	10,91,14,091	1,63,67,114
SILVASSA OIL	75,51,585	1,27,32,423	2,02,84,008	75,51,586	1,27,32,423	2,02,84,009	30,42,601
TOTAL RS :	80,40,36,759	58,07,78,545	1,38,32,62,812	71,47,60,138	55,94,99,039	1,27,42,59,177	19,11,38,877

5. Also, the assessee has uploaded the copies of 157 bills in 909 pages on the ITBA System along with details of plant and machinery, date of bill, items purchased, delivery challan, installation and commissioning of machineries, etc. The assessee also stated that all payments for plant and machinery are made through banking channel and the same is reflected in the books of accounts. The said details and documents have been verified and the factual findings is in congruence with the documents provided. However, the issue arising by way of additional ground, therefore, as mentioned above in para 4 pursuant to the decision of Goetze, may be decided on merits since this is additional ground and recent claim without any revised return.

Submitted for your kind perusal please.”

5.1 The Ld. CIT(A) after considering the remand report of the Assessing Officer admitted the additional claim of the assessee for adjudication. But after admitting the additional ground, the Ld. CIT(A) rejected the claim for the reason of delay on the part of the assessee and further reason that the assessee designed to file such claim before the ld CIT(A) and not in the return of income or before the ld AO so as to prevent the Assessing Officer from examining the claim.

5.2 At the outset, it is an undisputed position that the learned CIT(A) admitted the additional ground raised by the assessee. In law, once such admission is made, the appellate authority is duty-bound to adjudicate the claim on its merits. Considerations such as delay or the conduct of the assessee, which may be relevant at the



stage of admission, cannot thereafter be invoked to non-suit the claim without a proper examination on merits.

5.3 The Revenue's reliance on *Goetze (India) Ltd.*(supra) is misplaced in the context of appellate powers. The Hon'ble Supreme Court categorically held that while the Assessing Officer's power to entertain a fresh claim is restricted to the return of income, this does not impinge upon the appellate powers of the CIT(A) or the Tribunal. Following the landmark rulings in *Jute Corporation of India Ltd.*(supra) and *National Thermal Power Co. Ltd. (supra)*, it is well-settled that an appellate authority has the jurisdiction to entertain a fresh point of law or a statutory claim if the relevant facts are on record. Anyway, the Revenue is not in appeal against the order of Id CIT(A), therefore, the Revenue can't object this finding of Id CIT(A) of admitting the additional claim.

5.4 The rejection of the claim by the learned CIT(A) is principally founded on the premise that, owing to the passage of time, verification of the conditions prescribed under section 32AC is no longer feasible. In our considered view, such an approach cannot be sustained in law. Where a claim is supported by documentary evidences and is otherwise capable of verification, it cannot be rejected solely on the ground of lapse of time.

5.5 Further, the reasoning adopted by the learned CIT(A) suffers from a manifest inconsistency. If, in his view, the delay in raising



the claim or the alleged conduct of the assessee rendered the matter unfit for adjudication, the proper course would have been to decline admission of the additional ground. Having exercised discretion to admit the claim, it was incumbent upon the learned CIT(A) to examine the same on merits in accordance with law and could not be subsequently rejected solely on the basis of "delay" or "design. Admission of the ground necessarily implies condonation of delay and the claim cannot thereafter be rejected on the very grounds which stood implicitly waived. Once the door to adjudication is opened, the claim must be tested against the statutory requirements of Section 32AC and can't be dismissed on the very procedural grounds that were waived during admission.

5.6 We also note that, although the Assessing Officer in the remand proceedings has referred to verification of voluminous documentary evidence, including invoices, delivery challans and details of installation, there is no clear or categorical finding as to whether the assets satisfy the definition of "new assets" within the meaning of section 32AC(4), or whether all statutory conditions stand fulfilled. The remand report appears to be confined largely to a general verification of bills and payments, for arithmetical reconciliation, without undertaking a structured examination of eligibility criteria prescribed under the statute. The Remand Report lacks a specific, granular finding on whether each asset meets the "new asset" criteria defined under Section 32AC(4). The definition of



"new asset" specifically excludes certain items like office appliances, vehicles, and second-hand machinery. The Remand Report currently before us does not demonstrate a rigorous mapping of the ₹127.42 crores investment against these specific statutory exclusions. We note that there is no clear and conclusive finding by the Assessing Officer in the remand proceedings regarding satisfaction of all statutory conditions prescribed under section 32AC, particularly with regard to the nature of assets as "new assets" and their installation for business purposes, but the material on record suggests that the claim is not inherently unverifiable.

5.7 In such circumstances, a balance must be struck between procedural discipline and substantive justice. Justice must not only be done but must be seen to be done. While the omission on the part of the assessee to claim the deduction in the return may have occasioned administrative inconvenience, such lapse cannot, by itself, result in denial of a lawful claim, if otherwise admissible. Equally, the Revenue must be afforded a fair and effective opportunity to verify the claim of technical eligibility of the assets in accordance with law. We find that the existing Remand Report is insufficient for a final determination on the merits

5.8 In these circumstances, and in the interest of justice, we are of the considered view that the matter requires fresh examination at



the level of the Assessing Officer. Accordingly, we set aside the impugned order of the learned CIT(A) on this issue and restore the matter to the file of the Assessing Officer for verification. The Assessing Officer shall verify: (i) whether the assets qualify as “new assets” within the meaning of section 32AC; (ii) whether the conditions regarding acquisition and installation within the prescribed period are satisfied; (iii) whether the assessee is otherwise eligible for deduction as claimed; and (iv) any other verification deemed fit in facts and circumstances of the case. The Assessing Officer shall decide the issue afresh in accordance with law, after affording adequate opportunity of being heard to the assessee.

5.9 The grounds of appeal of the assessee are accordingly allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 07/04/2026.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 07/04/2026
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :



1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai