आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'जी' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

श्री बी. आर. बास्करन, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI B.R.BASKARAN, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.4072/Mum/2014
(**निर्धारण वर्ष /** Assessment Year: 2010-11)

Garware Wall Ropes Limited Chowpatty Chambers, Sandhurst Bridge, Mumbai - 400007	**बनाम**/ Vs.	Addl. CIT 5(1) Aayakar Bhavan Mumbai - 400020

आयकर अपील सं/ I.T.A. No.4018/Mum/2014
(**निर्धारण वर्ष /** Assessment Year: 2010-11)

Deputy Commissioner of Income Tax 5(1) Room No.568, 5th Floor, Aayakar Bhavan, M.K.Road, Mumbai - 400020	**बनाम**/ Vs.	Garware Wall Ropes Limited Chowpatty Chambers, Sandhurst Bridge, Mumbai - 400007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACG1377P		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri Dalpat H. Shah
Department by:	Shri S. Senthil Kumaran

सुनवाई की तारीख / Date of Hearing: 31.03.2016
घोषणा की तारीख /Date of Pronouncement: 13.07.2016

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee as well as revenue have filed the above mentioned appeals against the order dated 19.03.2014 passed by the Commissioner of Income Tax (Appeals) 9, Mumbai [hereinafter referred to as the learned "CIT(A)"] relevant to the A.Y.2010-11

2. The assessee has raised the following grounds:-

Ground No.1 : Reduction in Quantum of MAT Credit U/sec 115JAA by Rs.67,46,958/-

"1.1. The Ld. C.I.T. (Appeals)-9, Mumbai, erred in computing MAT credit available for set-off U/sec 115JAA for A.Y.2008-09 and A.Y.2009-10 at Rs.2,82,56,883/- as against the sum of Rs.3,50,03,841/- claimed by the appellant, resulting into a reduction by Rs.67,46,958/- on account of ***exclusion of "Education Cess" and "Surcharge"*** *"paid on the ground that the "tax" U/s.115JAA is exclusive of the same.*

1.2. The said CIT(Appeal) ought to have considered the fact that ***"Education Cess" and "Surcharge" are part of "tax" only as provided in Sec 2(43) r.w.Sec 4*** *of the Income Tax Act and as held by the Hon'ble Supreme Court in the case of CIT V/s. K.Srinivasan 83 ITR 346.*

1.3. Without Prejudice to the above, the said C.I.T.(Appeal) erred in not giving direction to the A.O. to allow the brought forward MAT credit after giving effect to the appellate orders of earlier years and not as per order U/s.143(3).

Ground No.2 : Disallowance of Commission of Rs.50,91,141/- U/sec.9 r.w.s. 195 and Sec 40(a)(i):

"2.1. The said C.I.T. (Appeals), erred in confirming the disallowance of Commissioner paid to foreign agents amounting to Rs.50,90,141/ U/sec. 40(a)(i) r.w.sec.9 and Sec.195 on the ground that no agreements between the parties were submitted to establish that the payments were towards "Commission" and not for any "professional services". The C.I.T.(Appeal) erred in not considering the agreements submitted before him to establish that the payment was for commission for services rendered outside

India and therefore erred in not considering the fact that the same being towards commission charges for services rendered outside Indi and was not liable to T.D.S. provisions of Sec.9 or Sec. 195 of the Income Tax Act.

2.2 The ld. CIT(Appeals) also erred in not considering the fact that the above services were for procurement of sales order and collection of dues outside India and not for any technical services and therefore disallowance of the said Commission expenditure U/sec. 40(a)(i) was not justified.

2. The revenue has raised the following grounds:-

"1. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in directing the Assessing Officer to allow depreciation of Rs.10,86,873/- after working out the WDV of assets for earlier years as decided by the appellate authorities without appreciating the facts that before any allowance of deduction under Chapter VIA of the I.T.Act, 1961, the depreciation has to be allowed from the gross total income?

2. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.10,19,830/- made u/s.14A r.w.Rule 8D, as against disallowance of Rs.2,39,855/- made by the assessee ignoring the provision u/s.14A, that no disallowance could be made for investment from which no exempt income is received.

3. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.1,82,02,000/- made by the A.O. u/s.35 in respect of capital expenditure on research and development without filing revised return of income."

ITA 4072/M/2014(Assessee's appeal):-

4. The brief facts of the case are that the assessee filed his return of income on 13.10.2012 declaring total income to the tune of Rs.17,16,87,458/- and the current year's Long Term Capital Gain loss

of Rs.3,435/-. The return was processed u/s.143(1) of the Income Tax Act, 1961 (in short "the Act"). The case was selected for scrutiny under CASS. Notice u/s.143(2) of the Act dated 27.08.2011 was issued and served upon the assessee. Due to change of incumbency the Assessing Officer issued the notices u/s.143(2) & 142(1) and served upon the assessee. The assessee company is engaged in the business of manufacturing and sale of the following products:-

- Synthetic yarn made out of high-density polyethylene, polypropylene, nylon and polyester.
- Synthetic Twines made out of aforesaid yarns.
- Synthetic Ropes made out of aforesaid twines.
- Fishnets made out of aforesaid twines.
- Machineries.
- Geo Synthetic.

The manufacturing facilities of the company were carried out from the following divisions:-

Sr.No.	Name of the Division
1	DTA Unit (Pune)
2	100% EOU Pune (deduction u/s.10B Expired)
3	Terry Towel Unit, Pune
4	Ajman Branch
5	PPMF (Fiber), Pune
6	MBD Pune
7	100% EOU at Pune (4th Year 10B Unit)
8	GEO Synthetic (Pune)

9	Aviation
10	Fish net division, Wai (Old deduction u/s.80-IB expired)
11	DTA Unit (Wai)
12	100% EOU at Wai (8th Year 10B Unit)
13	Silvassa Division (5th Year 80IB)
14	USA Branch
15	Citadini

The assessment was completed. Assessee's total income was assessed to the tune of Rs.17,87,21,260/- u/s.143(3) of the Act. The Assessing Officer while computing the MAT credit available in set off u/s.115JAA for A.Y.2008-09 and 2009-10 at Rs.2,82,56,883/- as against the sum of Rs.3,50,03,841/- claimed by the appellant, resulting into a reduction by Rs.67,46,958/- on account of exclusion of education cess and surcharge and assessed the set off and disallowed the commission of Rs.50,90,141/- u/s.9 r.w.s.195 and Sec.40(a)(i) of the Act. The said addition was confirmed by the CIT(A), therefore the assessee has filed the present appeal before us.

ISSUE NO.1:-

5. Under this issue the assessee has raised the question to the fact that the CIT(A) has erred in computing MAT credit available for set-off u/s.115JAA of the Act for A.Y.2008-09 and A.Y.2009-10 to the tune of Rs.2,82,56,883/- as against the sum of Rs.3,50,03,841/- claimed by the appellant, resulting into a reduction by Rs.67,46,958/- on account of exclusion of Educational cess and surcharge. At the

very outset the learned counsel for the assessee has argued that the surcharge and the educational cess are also the part of income tax which are also liable for giving credit u/s.115JAA of the Act. In view of the law settled in CIT Vs. K. Srinivasan 83 ITR 346 (SC) and CIT Vs. Vacment India 369 ITR 304 (All.) and Wyeth Ltd. Vs. ACIT (LTU) (ITA No.82/Mum/2011) "G" Bench, Mumbai and J.M.Huber India Pvt. Ltd. Vs. CIT (ITA No.7287/Mum/2012) "J" Bench, Mumbai. On the other hand the learned representative of the assessee has argued that only income tax credit is required to be given as tax credit u/s.115JAA of the Act therefore the CIT(A) has rightly passed the order which is not required to be interfere with at this appellate stage. Keeping in view of the argument advanced by the learned representative of the parties and perusing the record, we find that there is a limited issue before us which needs to be adjudication on the point of that the Income tax includes surcharge and educational cess or not. Copy of ITR 6 has been placed on record in which it is mentioned that the MAT credit is required to be given on surcharge and educational cess and upon the income tax payable by the assessee. The representative of the assessee has placed reliance on law settled in CIT Vs. Vacment India 369 ITR 304 (All.) in which it is held that the MAT credit should be given from the gross tax payable and on the surcharge and educational cess to be computed only on the amount of tax payable to the MAT credit. He has also rendered section 115JAA and submitted that the MAT credit has also in accordance with

provision of this section. Alternatively, the amount of MAT credit is allowable against the tax liability inclusive of surcharge and cess and not the tax payable before the surcharge and cess. The relevant portion of law mentioned above in CIT Vs. Vacment India 369 ITR 304 (All.) is hereby reproduced below for ready reference:

> "5. The only question which is raised pertains to the computation of tax in accordance with the modalities which are prescribed in the relevant from, ITR-6. In so far as is material, the relevant entries in the form (Part B-TTI) are as follows:
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> | | |
> |---|---|
> | 3. | Gross tax payable (enter higher of 2C and 1) |
> | 4. | Credit under section 115JAA of tax paid in earlier Years (if 2c is more than 1)(7 of schedule MATC) |
> | 5. | Tax payable after credit under section 115JAA[3-4] |
> | 6. | surcharge on 5 |
> | 7. | Education cess, including secondary and higher educational cess |
> | 8. | Gross tax liability (5+6+7) |
>
> 6. The aforesaid entries leave no manner of ambiguity in regard to the method of computation of tax liability. Entry 3 requires computation of the gross tax payable. Under entry 4, credit is required to be given under section 115JAA of the Act of the tax paid in earlier years. Entry 5 requires a computation of the tax payable after credit under section 115JAA of the Act. The matter is placed beyond doubt by the parenthesis, which indicates that tax

payable under entry 5 is to be arrived at by deducting the credit under section 115JAA of the Act (under entry 3) from the gross tax payable (under entry 4). The surcharge is computed on amount reflected in entry 5.

7. The Tribunal has noted from the next assessment year, the assessment year 2012-13, the positiori was materially altered but, in the present case, since the dispute related to the assessment year 2011-12, the method of computation, as directed by the Commissioner {Appeals} was plainly in accordance with the methodology as provided in ITR-6. The Tribunal in confirming the order of the Commissioner (Appeals) has, hence, not committed any error. The appeal will not give rise to any substantial question of law and is, accordingly, dismissed."

7. Accordingly, it is quite clear that the income tax includes surcharge and educational cess for giving the credit u/s.115JAA of the Act. No law contrary to the above said finding has been produced before us. Accordingly, we set aside the order passed by the CIT(A) on this issue and decide this issue in favour of the assessee and against the revenue and direct the Assessing Officer to allow the MAT credit against the tax liability of the assessee including of surcharge and

educational cess. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NO.2:-

8. Under the issue no.2 the assessee has challenged the disallowance of commission of Rs.50,90,141/- U/s.9 r.w.s.195 and section 40(a)(i) of the Act. The Assessing Officer was of the view that the assessee made the payment towards the professional services charges to non-resident which is in respect of the services used in respect business in India and earn income in India. The Assessing Officer considered as technical fees paid to the non-resident for the income accrued or earned in India u/s.9r.w.s.195 attracting TDS provision u/s.195 of the Act. Since no TDS was deducted and deposited, therefore the provision u/s.40(a)(i) of the Act was attracted, therefore, the amount to the tune of Rs.50,90,141/- claimed as expenses was not assessed as revenue expenditure and added to the income of the assessee. The said finding was confirmed by the CIT(A) in the order in question.

9. The learned representative of the assessee has argued that the Assessing Officer did not verify the expenses towards professional services and commission paid for export, therefore, in the said circumstances the provision u/s.9 r.w.s. 195 and section 40(a)(i) of the Act is not applicable to the facts of the present case in the interest of

justice. In support of these contentions the learned representative of the assessee has placed reliance upon the law settled in CEAT International S.A. Vs. CIT 237 ITR 859 (Bom) and CIT Vs. Sara International Ltd. 217 CTR 491 and CLSA Ltd. Vs. ITO (International Taxation) 56 SOT 254, Mumbai. On perusal of the order passed by the Assessing Officer, it came into notice that the assessee has paid a sum of Rs.50,90,141/- to various parties in foreign countries under the head professional services in addition to commission paid for export. The provision relating about the payment on professional fees is dealt by different section i.e. under the provision of section 9 r.w.s. and 195 of the Act but so far as the commission paid for export is concerned the same is required to be dealt with by the provision of the explanation 2 to clause (VII) of section 9 of the Act. In this regard we also support law settled in CEAT International S.A. Vs. CIT 237 ITR 859 (Bom) and CIT Vs. Sara International Ltd. 217 CTR 491 and CLSA Ltd. Vs. ITO (International Taxation) 56 SOT 254, Mumbai. Since the expenditure has not been differentiated in professional services and commission paid for exports, therefore, we are of the view that the matter is required to be examined afresh at the end of Assessing Officer to decide the expenditure incurred for professional services and commission paid for exports in the light of the judgment mentioned above by giving an opportunity of being heard to the assessee

accordingly this issue is decide in favour of the assessee against the revenue.

ITA 4018/M/2014(Revenue's appeal):-

ISSUE NO.1:-

10. Under issue no.1 revenue has challenged the allowance on depreciation of Rs.10,86,873/-. It is to be seen under what circumstances the CIT(A) has allowed the said depreciation, therefore, in the said circumstances we are inclined to advert the finding on record to go further:-

> "5.2. **Ground of appeal no.1:-**
>
> It is noted that an identical issue was decided by my predecessor in the case of the appellant for A.Y.2009-10. The said ground of appeal no.1 has been decided vide para 5.2. pages 6 to 7 of the relevant appellate order, which are reproduced as under for the sake of ready reference.
>
> 5.2 **Ground of appeal no.1:**
>
> This issue is covered by the decision of Ld. Predecessor in appellant's own case in preceding assessment year 2008-09. He has decided this

issue in para 2.1 of the appellate order dated 16.09.2011 which may be extracted as under:-

> "2.1. The Assessing Officer has discussed this issue at page 3 and 4 of the assessment order. This issue was also involved in assessment year 2007-08 wherein my predecessor has decided this issue in favour of the appellant as under:-
>
> "The appellant is claiming that in assessment year 2001-02 ITAT has decided the issue in favour of the appellant and held that depreciation cannot be forced where an assessee chosen not to claim depreciation while computing its taxable income. In view of these facts, the Assessing Officer is directed to allow depreciation as per opening WDV of fixed assets for this year determined after taking into consideration appeal orders of higher appellate. These grounds are partly allowed.
>
> Since the decision of Ld. CIT(A) and Hon'ble ITAT are in favour of the appellant,

the Assessing Officer is directed to allow depreciation as per WDV of fixed assets of this year determined after taking into consideration the appellate order of higher authorities. Thus, this ground is partly allowed.

5.3 Secondly, Hon'ble jurisdictional Bench of ITAT has also decided this issue in favour of the present appellant from assessment year 1996-97 to assessment year 2004-05. The Department has filed appeal before the Hon'ble Bombay High Court for the assessment year 2003-04 and assessment year 2004-05. Hon'ble Bombay High Court has further rejected the appeal of the Department. Hon'ble Bombay High Court has stated in para 3 as under:-

3. Upto the assessment year 2002-03 the assessee had not claimed depreciation while computing deduction under Chapter VIA of the Income Tax Act, 1961. However, in the assessment year, in question, the assessee computed deduction under Chapter VIA after taking into account the depreciation allowable

under the Act. The Assessing Officer was of the opinion that the depreciation has to be computed on the written down value of the asset computed in the earlier assessment years by thrusting depreciation upon the assessee. Admittedly, the depreciation thirsted upon the assessee in the earlier years have been deleted by ITAT and those orders have attained finality. In these circumstances, the decision of the ITAT in holding that in the assessment year in question, the depreciation has to be computed on the written down value determined on the footing that depreciation was not thrusted upon the assessee in the earlier assessment orders cannot be faulted. Accordingly, the first question raised by the Revenue cannot be entertained."

5.4. Having regard to the facts and circumstances of the case and in the light of the present matter being squarely covered in favour of the appellant by the appellate orders of Hon'ble Bombay High Court, Hon'ble ITAT Mumbai Bench and my Ld. Predecessor, ground of appeal no.1 is allowed.

> 5.2.1 It is admitted even by the A.O. that facts during the year under consideration are almost identical. The appeal order of last year is based on the finding of jurisdictional ITAT and High Court in the case of appellant for earlier years. Accordingly, I do not find any reason to deviate from the same which was made after considering the decision of jurisdictional Bombay High Court and Hon'ble ITAT Mumbai Bench. In view of the above precedent, the ground of appeal no.1 is allowed."

No distinguishable facts has been placed on record by the revenue to which it can be assumed that the learned CIT(A) has decided the matter wrongly and illegally. The CIT(A) has decided the issue on the basis of order passed by the Income Tax Appellate Tribunal, Mumbai and by the order of Hon'ble High Court in the assessee own case. Reliance is placed upon the law settled in the assessee's own case for A.Y.2003-04 and 2004-05 in case of CIT Vs. Garware Wall Ropes (ITA No.5555 of 2010 and ITA No.5556 of 2010) passed by the Hon'ble Bombay High Court. In view of the said circumstances we find no ground to interfere with observations made by the CIT(A) in the order under challenged, therefore, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which does not require to interfere with at this appellate

stage. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NO.2:-

11. The issue no.2 is in connection with the deletion of disallowance of Rs.10,19,830/- made u/s.14A r.w. Rule 8D, as against disallowance of Rs.2,39,855/- made by the assessee. Before discussing the matter of controversy, it is necessary to advert the observations made by the CIT(A) while deciding this issue on record. The finding is hereby mentioned below:-

> "5.3 **Ground of appeal no.2:-**
>
> It is noted that this issue was also under dispute in immediately preceding A.Y.2009-10, wherein vide order dated 15.01.2014 the Hon'ble ITAT has decided this issue. The relevant para 2.4 of the order ITAT is reproduced hereunder:-
>
> > 2.4 We have considered the rival submission and carefully perused the relevant records. So far as the issue regarding disallowance u/s.14A in the case where no dividend has been received, the same is covered against the assessee by the order of Tribunal in assessee's own case for the assessment year 2008-09, wherein the Tribunal has

followed the decision of special bench of tribunal while deciding the issue. Therefore, we do agree with the finding if the Tribunal on this point. Further since the assessee has raised the new plea in the year under consideration that no expenditure had been incurred by the assessee for earning the exempt income or for the investment in question. We find merit and substance in the contention of the assessee on this point because the investment has been made by the assessee in the group concern and not in the shares of any un-related party. Therefore, the primary effect of investment is holding controlling stake in the group concern and not earning any income out of investment. Further the investment were made long back and not for the year under consideration. Therefore, in view of the fact that the investment are in the group concern we do not find any reason to believe that the assessee would have incurred nay administrative expenses in holding these investments. The AO has not brought on record any material to show that the assessee has incurred any expenditure in relation to the income which does not form part of the total income. Section

14A has within it implicit the notion of apportionment in the cases where the expenditure is incurred for composite/indivisible activities in which taxable and non taxable income is received but when no expenditure has been incurred in relation to the exempt income is received but when no expenditure has been incurred in relation to the exempt income by deducting the expenditure incurred to earn the exempt income. In the case in hand it is not the case of the revenue that the assessee has incurred any direct expenditure or any interest expenditure for earning the exempt income or keeping the investment in question. If there is expenditure directly or indirectly incurred in relation to exempt income the same cannot be claimed against the income which is taxable. For attracting the provisions of section 14A – "there should be proximate cause for disallowance which has relationship with the tax exempt income as held by the Hon'ble Supreme Court in case of CIT Vs. Walfort Share and Stock Brokers P. Ltd. (326 ITR 1). Therefore, there should be a proximate relationship between the expenditure and the income which does not form part of the total

income. In the case in hand the assessee has claimed that no expenditure has been incurred for earning the exempt income, therefore, it was incumbent on the AO to find out as to whether the assessee has incurred any expenditure in relation to income which does not form part of the total income and if so to quantify the expenditure of disallowance. The AO has not brought on record any fact or material to show that any expenditure has been incurred on the activity which has resulted into both taxable and non taxable income. Therefore, in our view when the assessee has prima facie brought out a case that no expenditure has been incurred for earning the exempt income the provisions of section 14A cannot be applied. Accordingly, we delete the addition disallowance made by AO u/.s14 A r.w. Rule 8D."

5.3.1. Since the facts are identical during the year under consideration also, accordingly respectfully following the order of Hon'ble ITAT in immediately proceeding year, it is held that the A.O. should exclude the old investments in group concerns of the appellant as the appellant has not

> incurred any administrative expenses in holding such investments. This ground of appeal is accordingly statistically partly allowed."

12. In view of the observations made by the CIT(A), it is apparent on record that the CIT(A) has passed the order on the basis of the order passed by the Income Tax Appellate, Mumbai for the A.Y.2009-10 in assessee's own case. The CIT(A) has also reproduced the relevant para of the ITAT order which has been mentioned above. Reliance is placed upon the law relied in Garware Wall Ropes Ltd. V/s. ACIT of Hon'ble ITAT for A.Y.2008-09 (65 SOT 86), Mumbai and J.M. Financial Limited Vs. ACIT 4521/M/12 and Kotak Mahindra Capital Co. Ltd. Vs. DCIT (ITA No.5748/Mum/2012). No distinguishable facts have been placed on record. The investment is the strategic investment in the group concern which does not made to earn the exempt income. It is held that the Assessing Officer should exclude the whole investment in group concerns of the appellant. In view of the said circumstances it is quite clear that the matter of controversy has been adjudicated on the basis of the case decided by the ITAT, Mumbai in assessee's own case. We find no reason to dishonor the finding given by the CIT(A) on the basis of the decision of ITAT, Mumbai in the assessee's own case. Therefore, in the said circumstances we are of the view that the CIT(A) has passed the order judiciously and correctly which does not require to interfere with at

this appellate stage. Accordingly this issue is decided in favour assessee against the revenue.

ISSUE NO.3:-

14. The issue no.3 is in connection with the deleting the disallowance of Rs.1,82,02,000/- made by the A.O. u/s.35 of the Act in respect of the capital expenditure on research and development. Before discussing the matter of controversy further it is necessary to advert the finding of the CIT(A) on record:-

> "5.6 **Ground of appeal no.5:-**
>
> It is noted that during the assessment proceeding the initial claim of deduction u/s.35 of the I T Act was enhanced from 100% to 150% u/s.35(2AB), however, the AO did not entertain the enhanced claim of deduction on the ground that such claim has been made by the appellant after the due date of filing of revised return. Accordingly, the AO rejected the same on the ground that in the light of decision of Goetz India Ltd. such claim cannot be accepted without revised return. On the other hand the claim of the appellant is that it could enhance the claim only after approval u/s.35(2AB) was received and by that time the limitation of revising the return was lapsed. After considering the rival

> submissions, I agree with the contention of the appellant that even if a genuine claim is made during the assessment proceedings after the time limit of filing of revised return the appellate authorities can entertain such claim on merit. The Hon'ble ITAT, Mumbai in the cases of M/s. Recoh India Ltd. and Pradeep Kumar Harlalka relied upon by the appellant has categorically held that the ratio of the apex court's decision in M/s. Goetz India Ltd. is not applicable on the appellate authorities. In the instant case on merit of the claim of weighted deduction, the AO also has not made any adverse observation on the allowability on weighted deduction u/s.35(2AB) except the technical objection that the same was not claimed by the way of revised return. Under these circumstances, it is held that due to late receipt of approval of weighted deduction the appellant could not file the revised return in time and it had to claim it after receipt of approval of the competent authority. Since the competent authority has approved the claim of the appellant, the AO is directed to allow the same to the appellant."

The claim of the assessee was declined on the ground of that the assessee received the approval late and the assessee should claim the exemption by filing the revised return which the assessee had not

done. The CIT(A) is of the view that no doubt the assessee received the approval late but the assessee can raise the claim by filing the revised return before the competent authority even at the stage of appeal which can be accepted therefore, allowed the claim of the assessee. Undoubtedly, the approval u/s.35(2AB) of the Act was not received well in time and after receipt of approval the assessee claimed the capital expenditure by filing the revised return. The CIT(A) has considered the claim of the assessee in accordance with law. Therefore, we are of the view that the CIT(A) has decided this issue judiciously and correctly which does not require to interfere with at this appellate stage. Accordingly, this issue is decided in favour of the assessee against the revenue.

15. In the result, the appeal filed by the **assessee is hereby allowed and appeal filed by the revenue is dismissed.**

Order pronounced in the open court on 13th July, 2016.

Sd/-	Sd/-
(B.R.BASKARAN)	(AMARJIT SINGH)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 13th July, 2016
MP

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**