IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "A" NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

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DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

I.T.A. No. 5169/DEL/2017

Assessment Year: 2013-14

M/s Anant Raj Limited, E-2, ARA Centre, Jhandewalan Extension, New Delhi-110055	v.	ACIT, Range-2, Circle-2(2), New Delhi
TAN/PAN: AABCA3927B		
(Appellant)		(Respondent)

I.T.A. No. 5677/DEL/2017

Assessment Year: 2013-14

ACIT, Range-2, Circle-2(2), New Delhi	v.	M/s Anant Raj Limited, E-2, ARA Centre, Jhandewalan Extension, New Delhi-110055
		TAN/PAN: AABCA3927B
(Appellant)		(Respondent)

Appellant by:	Shri V.K. Bindal, CA, Ms. Sweety Kothari, CA Ms. Rinki Sharma, CA		
Respondent by:	Shri Sanjay Goel, CIT-DR		
Date of hearing:	18	02	2020
Date of pronouncement:	11	05	2020

O R D E R

PER AMIT SHUKLA, JM;

The aforesaid appeal has been filed by the assessee against

impugned order dated 02.06.2017, passed by Ld. CIT (Appeals)-I, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2013-14.

2. In the grounds of appeal, the assessee has raised the following grounds: -

i. *"That within the facts and circumstances of the case and law on the point, the impugned order dated June 02, 2017 framed by the Learned Commissioner of Income Tax (Appeals) I, New Delhi [learned CIT(A)], sustaining the assessment order with regard to disallowance of claim of bad debt made by the appellant and the addition made under section 50C of the Act, is bad in law, and impugned order therefore, deserves to be set aside, and the assessment in case of the appellant of being heard in the matter.*

ii. *That within the facts and circumstances of the case and the law on the point, the learned CIT(A) has erred in sustaining disallowance of claim of Bad debt of Rs.77,98,88,400/- caused by learned Assessing Officer under section 36(1)(vii) of the Act read with section 36(2) of the Act under the head 'Income from Business and profession', as claimed by the appellant, and instead upholding the amount of claim of the appellant as assessed by the Learned Assessing Officer under the head 'Income from Capital Gains'.*

iii. *That within the facts and circumstances of the case and the law on the point, the learned CIT(A) has erred in sustaining addition of an amount of Rs.3,31,49,744/- pertaining to sale of a property by the appellant as per the provisions of section 50C of the Act without considering the reasons submitted by the appellant, and therefore, the impugned addition confirmed by the Learned CIT(A) deserves to be set-aside and the income on account of sale of the property he reassessed after giving an adequate opportunity to the appellant to represent and being heard in the matter.*

iv. That the grounds of appeal submitted hereinabove be read with prejudice to one another in cases and circumstances wherever the context so requires."

3. The brief facts and the background of the case, apropos the issues raised in the grounds of appeal are that the assessee is a public limited company engaged in the business of real estate wherein it undertakes construction and development of spaces for use of houses, residential, commercial and hospitality, townships, ITPs etc. Apart from its real estate business, assessee as a part of its business activities also obtains permissions for CLUs (Change Land Use) and other development permissions from Governmental and local authorities. All these activities were part of core business of the assessee. The assessee company alongwith its number of subsidiary companies were engaged in the same real estate business. As per the Government Regulations, in the State of Haryana, if a company intends to develop a township, then the minimum requirement for acquiring the land for the said purpose is 50 acres. However, as per Section 4 of Haryana Urban Land Ceiling Act, 1975, the holding of the land is restricted to 7.25 hectare, i.e., 17.95 acre by a single entity. To overcome such restrictions, the assessee acquired lands in the name of its subsidiary companies so that the minimum requirement of 50 acres of land required for developing township can be met, that is, by acquiring plots and land in the name of various subsidiary companies. Once all the plots of land are acquired in the name of subsidiary companies, then the development rights are transferred by the subsidiary company to

the assessee company and the income earned on account of development of plots of land has always been declared as business income. It had been stated that, this is the standard trade practice in this industry and accepted by the Government, where various companies together apply for the land use change (CLU) which is granted by the State Authorities.

4. Further, it has clarified that, since the investment made in the equity share capital of the subsidiaries has to be declared under the head 'long term investments' as per provision of the Companies Act, the same was declared by the assessee company under the said head though the subsidiaries owned land bank and were incorporated only to acquire plots of land as part of the real estate business. Factually the same was treated as business investment.

5. As regards the particular issue involved in the present appeal, the assessee company had acquired equity shares of its subsidiary company, **Silver Town Inn and Resorts Pvt. Ltd.** as part of business venture as the said company owned two contiguous plots of land at Village Kherki Daula, Tehsil Manesar, Gurgaon, Haryana having commercial prospects. Assessee has clarified that shares were not acquired for the purpose of investment to earn dividends, albeit for pure business purpose. The assessee purchased the entire equity share capital of the said company being 50,000 equity shares of Rs 10/- each at Rs. 18,19,20,452/-, i.e., at a significant premium considering the development / business prospects of the plots of land held by the

said company. The assessee agreed to sell the said contiguous plots of land owned by Silvertown by way of transferring the said total shares to **M/s Kausar Leasing Ltd.** (hereinafter referred to as 'Kausar'). As agreed with the said buyer, the assessee was to obtain CLU and other clearances for the said plots of land. This fact is clearly evident from the correspondence between the assessee and Kausar as pointed out by the Ld. Counsel, where it has been clearly mentioned that CLU and other clearances was to be obtained by the assessee and not by Silvertown which was the main subject matter of the said sale transaction and the assessee company was to obtain all the requisite clearances and balance payment was to be received by the assessee only after handing over various clearances and approvals in respect of the said plots of land to the buyer who wanted to develop a motel thereon. It has stated that any plot of land with CLU and other clearances has much higher value as compared to pure agricultural land and the same can be developed only when such clearances from Government and other authorities are available as a business venture. Thus, the total sale consideration of Rs. 93 crores was embedded in the value of the agricultural plots of land along with necessary CLU and clearances in respect of those lands from the government authorities for commercial usage. In view of these facts, the assessee was to receive the total amount of Rs. 93 Crores against the following two transactions:

a) Against the sale value of agricultural land through sale of shares of Silvertown as capital gains; and

b) Against the services rendered for obtaining the CLU and other clearances in respect of the plots of land owned by Silvertown as business income.

6. Thus, out of the aggregate amount of Rs. 93 crores, only Rs. 15 crore was payable at the time of agreement and the balance amount of Rs. 77,98,88,400/- was payable subject to and upon the receipt of various permission including CLU. Since, the entire amount was payable as per the agreement subject to various conditions, accordingly, the assessee has declared the entire amount and profit of Rs. 71,84,37,748/- was worked and assessee paid the tax as Long-Term Capital Gain amounting to Rs. 14.37 crores in the return of income for the Assessment Year 2010-11. The assessee has been further brought on record that assessee after the receipt of initial amount of Rs. 15 crores made an application on 25.08.2009 to the Director Town and Country Planning for the grant of CLU permission for construction of hotel/restaurant. In the meantime, a major portion of the said land was acquired by the Govt. and out of the total land admeasuring 10243.52 sq. mtr and 4790 sq. mtr. thereof, came under road widening and 4906 sq. mtr area under wide green belt. The only area of 493.52 sq. mtr. remained with the assessee. In support, assessee has also filed the necessary documents and the sketch plan wherein the area has been demarcated under the road widening of land falling under the green belt. The assessee's grant for CLU was thus rejected by the Government Authorities. Thus, by the stroke of such governmental orders, the asset of Silver Town Resort Pvt. Ltd. had drastically reduced from

10243.52 sq. mtr to 493.52 sq. mtr. In the wake of such event, the buyer refused to pay the balance amount and even the assessee company failed to obtain requisite sanction and CLU permission on the acquisition of major portion of land. Assessee Company was also unable to persuade the buyer to comply with its obligation. Since assessee has shown the entire amount of Rs. 93 Crores in the books of account, hence assessee has written off the balance receivable amount of Rs. 77.98 crores in the books during the Financial Year 2012-13 relevant to Assessment Year 2013-14. The assessee's contention before the AO in view of the aforesaid facts and circumstances were as under:

a) *"That the assessee is in real estate business, wherein sale and purchase of land is part of one of the main business activities; since the land, which was sold was in the name of a subsidiary company of the assessee, by the underlying transaction was purely a business activity of the assessee.*

b) *In the subject case, the assessee sold land, against which the consideration was partly received and the balance receivable became debtors in the books of the assessee.*

c) *Now, since, the debtors could not be recovered and have become irrecoverable because of the reasons explained in above paras, the assessee has written off the debtors;*

d) *It is also evident from the circumstances and facts of the transaction that it was purely a business activity and the assessee had prudently performed the transaction;*

e) Had this sale not happened, the Assessee would then have to write off its investments in its book or would then have to sell it at a very low price and would, in any case, have incurred business losses;

f) In fact, the Assessee has not earned anything out of this transaction; rather paid undue taxes on profits, which were actually not realized.

Hence, it is evident from above that the bad debts claimed by the assessee are in the nature of its business activities and are allowable under the provisions of the Income Tax Act."

7. However, the Assessing Officer did not accept the assessee's explanation on the ground that, firstly, the amount receivable from M/s. Kaushal Leasing Ltd is capital in nature and hence cannot be allowed to charged to revenue; and secondly, sum of Rs.77.98 crore is not a bad debt as contemplated in Section 36(2) as the conditions are not fulfilled in as much as the assessee did not include the same in the receipt/income of any earlier years. He further observed that, in the instant case, the amount said to be claimed as bad debt is not trade receivable but it is sale of shares which is capital in nature and the shares sold were held as investment and not in stock-in-trade. Without prejudice, he also held that the same is not allowable as revenue expenditure or loss and assessee cannot be permitted to charge non receipt any amount to the revenue account and it has been rightly shown as capital in the earlier years. The assessee has earned profit at Rs.71.84 crore as capital gain in the earlier year and

sought to write off as a revenue amount of Rs.77.98 crore in P&L account as business expenses which is not permissible. Thus, he disallowed the entire claim and added the amount at Rs.77,98,88,400/-.

8. Ld. CIT (A) has confirmed the addition made by the AO inter alia on following reasoning: -

I have considered the arguments of the appellant and the legal position available on the issue and it is held that:

1) *The appellant had already declared long term capital gain in its return of income, disclosing the sale of shares having been made as sale of its investment. The appellant had computed long-term capital gain on the said sale of shares at Rs.71,84,37,748/- and paid taxes thereon.*
2) *The amount that appellant did not receive from Kausar Leasing Ltd. was Rs.77,98,88,400/- was capital receipt-capital loss.*
3) *In the subsequent year, the said amount was written off, however, the said bad debt is not out of any transaction on account of business or venture, therefore, the said loss was declared by the appellant itself as loss of an investment transaction.*
4) *xxxxxxxxxxxxxxxxxxx*

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   From the reading of above section, it is clear that bad debt in the case of appellant was related to its investment transactions and not related to any trade or business transactions. In other words, the transactions relating to bad debt in the appellant case was never included in the income of appellant in any previous year i.e. to say that the amount receivable should be on account of trade receivables against sales made or services rendered. But in the instant case, the

amount sought to be claimed as bad debt represents the amount receivable on account of sale of shares and same is capital in nature. The appellant has itself admitted that the amount related to sale of shares was capital in nature and long-term gain was computed on such sale of shares and requisite tax was paid by the appellant.

The case laws relied upon by the appellant in its submission are not applicable to the facts of the appellant's case. As regards appellant's claim that it should be allowed set off of the amount of the loss on sale of shares against future income under the head long term capital gain, it is observed that Assessing Officer has allowed carry forward of such capital loss to be set off against the future profits vide para 2.4 of the impugned assessment order.

In view of the above discussion, it is held that appellant is not entitled to set off capital loss occurred to it on sale of shares as bad debt. Hence, ground no. 2 of the appellant is dismissed. However, it may be mentioned here that appellant is entitled to carry forward such capital loss which Assessing Officer has already allowed vide para 2.4 of the assessment order.

9. Before us, ld. counsel for the assessee, Mr. Vinod Kumar Bindal after explaining the entire facts and background of the case submitted that it is well settled law that income earned from activities undertaken during normal course of business is to be assessed as 'business income' and in support, he strongly relied upon the judgments of Hon'ble Supreme Court in the case of:

(a) Karam Chand Thapar and Bros. (P.) Ltd. [1969] 74 ITR 26 (SC).
(b) Karanpura Development Co. Ltd. vs. Commissioner of Income-tax [1962] 44 ITR 362 (SC).

(c) Chennai Properties & Investments Ltd. [2015] 56 taxmann.com 456 (SC).

He further submitted that one has to be examine the substance of the transaction which here in this case clearly shows that sale consideration included consideration for sale of shares and income for services rendered in connection with the CLU and other clearance being a business activity of the assessee which is engaged in the real estate business. Even if the assessee has incorrectly declared the entire amount as capital gain in the return of income filed for the Assessment Year 2010-11, instead of business income and even if the entire amount was declared as income though same did not accrue to the assessee during the year, even though at that time only the buyer had categorically refused to pay the entire amount vide letter dated 18.01.2010. However, it does not mean that in the year in which the actual loss has been incurred the assessee cannot claim under the correct head which here in this case was business income/business loss. The income can be said to accrue only when the right to receive has arisen and, in this case, right to receive the income was depended upon getting the CLU and other clearances for the agricultural plot of land owned by the Silver Town, the income cannot be brought to tax. Since, the assessee could not get the CLU and other clearances from the Government during the assessment year 2010-11, the right to receive the balance amount did not arise in the favour of the assessee. He further pointed out from the records and the letters exchanged, that it was the sole responsibility of the assessee to get the CLU

and other clearances which was part of its business venture and was not that of its subsidiary, Silver Town. Now when the matter got settled with Kaushal Leasing finally, that no amount will be payable in the relevant Assessment Year 2013-14, then only the said non receipt of income was declared as bad debts in the books or alternatively it should have been allowed as business deduction/loss in the return of income.

10. Mr. Bindal further submitted that the authorities below have rejected the claim of bad debts alleging the same to be capital loss or non realisation of sale proceeds of a capital asset and not as business loss. He submitted that there is no embargo or bar in law that in the year in which assessee is claiming any loss or deduction assessee cannot claim in correct head. It is always open to the assessee to point out that the same is to be assessed or allowed under the correct head of income and the Assessing Officer is duty bound to asses the correct income as per the provisions of law. Relying upon various judgments, he submitted that even where assessee under some wrong impression of law or has applied wrong provisions of the Act while filing the return of income, then AO is duty bound to assess under the correct provisions and assess the income as per law. Especially, when assessee points out and brought to the notice of the AO. Even if the assessee has declared the income as capital gain in the assessment year 2010-11, but the same could have only been assessed as business income which was the correct position in accordance with law. However, if the same has not

been shown, then it can always be pointed out in the year of claim of loss or income. In support he strongly referred and relied upon the following judgments:

(a) S.S. Gadgil Vs Lal and Co. 53 ITR 231(SC)
(b) CIT v. Shelly Products [2003] 261 ITR 367 (SC)
(c) Vijay Gupta [2016] 68 taxmann.com 131 (Delhi)
(d) Abdul Qayume Vs CIT (1990) 184 ITR 404 (All)
(e) Kedarnath Jute Mfg. Co. Ltd.Vs CIT 82 ITR 363 (SC)
(f) CIT Vs Bharat General Reinsurance Co. Limited. 81 ITR 303 (Delhi)
(g) R. Seshammal vs ITO 237 ITR 185 (Madras)
(h) CIT Vs Bhawani Singhji [2018] 99 taxmann.com 338 (Delhi)
(i) Shri Vipul P. Dalal Vs. DCIT - 12(2) 2016-LL-0603-1]- ITAT Mumbai
(j) DCIT vs. Lab India Instruments (P) Ltd., 93 ITD 120 / 2005-TIOL-49-ITAT-PUNE
(k) Raghavan Nair [2018] 89 taxmann.com 212 (Kerala)

11. Thus, he submitted that even if the income has been incorrectly assessed in the wrong head under the Assessment Year 2010-11, the same cannot be impediment for assessing the income under the correct provisions of the law. In support, he strongly relied upon the judgement of Hon'ble Supreme Court in the case of *Hon'ble Supreme Court in the case of* ***CIT v. Manmohan Das (Deceased) [1966] 59 ITR 699,*** wherein it was held that it is for the ITO of the subsequent year to determine whether the loss of

the previous year may be set off against the profits of that year. A decision recorded by the ITO who computes the loss in the previous year that the loss cannot be set off against the income of the subsequent year is not binding on the assessee in the subsequent year. The Hon'ble Apex Court held that:-

"On a careful consideration of the covenants are of the view that the treasurer was not a servant of the Allahabad bank under the terms of the agreement dated 02/04/1931and the remuneration received by him was not "salaries" within the meaning of s. 7 of the IT Act. But that is not sufficient to conclude the matter in favour of the assessee. The benefit of s. 24(2) of the Indian Act may be availed of by the assessee only if the loss sought to be set off was suffered under the head "Profit and gains . . . in any business, profession or vocation". It is difficult to regard the occupation of the treasurer under the agreement as a profession, for a profession involves occupation requiring purely intellectual or manual skill, and the work of the treasurer under the contact cannot be so regarded. Occupation of a treasurer is not one of the recognized professions, nor can it be said that it partakes of the character of a business or trade. In performing his duties under the agreement, the assessee exercised his skill and judgment in making proper appointments and made arrangements for supervising the work done by the staff in the cash department of the bank's branches. The remuneration received by him was for due performance of the duties and also for the grantee against loss arising to the bank out of the acts or omissions of the cash and

other staff of the bank. Taking into consideration the nature of duties performed, and the obligation undertaken, together with right to remuneration subject to compensation for loss arising to the bank from his own acts and omission or, of the servants introduced by him into the business of the bank, the assessee may be regarded as following a vocation. The remuneration must therefore computed under s. 10 of the IT Act and loss of profit suffered in that vocation in any year may be carried forward to the next year and be set off against the profit of the succeeding year."

He further relied upon the catena of other judgments in his written submissions which for the sake of ready reference are reproduced herein below as we will be referring it extensively herein after: -

1. **New Jehangir Vakil Mills Co. Ltd. Vs CIT (1963) 49 ITR 0137 (SC) wherein it was held as under:**

"8. On the principle stated above, it seems to us that it was open to the taxing authorities to consider the position of the assessee in 1943 for the purpose of determining how the gains made in 1944 should be computed, even though the subject of the assessment proceedings was the computation of the profits made in 1944. The circumstance that in an earlier assessment relating to 1943, the assessee was treated as an investor would not in our opinion estop the assessing authorities from considering, for the purpose of computation of the profits of 1944, as to when the trading activity of the assessee in shares began. The assessing authorities found that it began in 1943. On that finding the profits were correctly computed and the answer given by the High Court to the question of the computation of the profits was correctly given."

2. The Hon'ble Supreme Court in the case of **CIT Vs Western India Oil Distributing Co. Ltd. (2001) 249 ITR 0517 (SC)**confirmed the order of the Bombay High Court in the case of **Western India Oil Distributing Co. Ltd. Vs CIT (1980) 126 ITR 0497 (Bom.)** wherein relying upon the judgment in the case of Manmohan Das, it was observed as under:

"11. Our attention was then drawn by counsel of the assessee to CIT vs CIT v. Manmohan Das [1966] 59 ITR 699(SC) ..... If this decision be properly analysed, it would seem that the application of the principle of finality, which has been submitted for our acceptance by counsel for the Revenue and which found favour with the Tribunal has been rejected by the Supreme Court in a substantially similar set up when it opined that the decision of the ITO in the preceding year that the loss cannot be set off against the income of the subsequent year is not binding on the assessee despite the fact that he has rested content with that decision and not carried further the matter by way of appeal. ..... Once the correct principle flowing from Manmohan Das' case (supra) is realised, it would appear that if in an earlier year it has been held that the correct head of income applicable to the assessee's case is under s. 12, i.e., "Income from other sources" and by that reason the benefit of carrying forward of unabsorbed depreciation is denied to the assessee, such a decision will not bind the assessee in the subsequent year in which he wants to claim the set-off. He can have the question determined in the later year although in the earlier year in which the decision was given the assessee rested content with the order of the ITO and did not carry the matter further."

3. The Hon'ble Delhi High Court in the case of **CIT Vs Bhawani Singh ji (2018) 99 taxmann.com 338 (Del)** held

*"28. **Calcutta Discount Co. Ltd. v. ITO [1961] 041 ITR 191 (SC)** is a decision for the proposition that it is for the assessing officer (AO) to draw the correct conclusions, regardless of the position of the assessee: "It is for him to*

decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else far less the assessee to tell the assessing authority what inferences whether of facts or law should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences-whether of facts or law-he would draw from the primary facts...". Therefore, it is now established that regardless of what an assessee claims, if the correct position deducible from primary facts is otherwise, the AO has to adopt that correct position. Consequently, it is held that merely because the late assessee (Sawai Man Singh) repeatedly claimed individual status while filing his returns, the correct legal status was as an individual and not HUF. Therefore, in the opinion of this court, there was no legal impediment for the legal representatives of the assessee to claim that the succession was of the HUF, upon the death of Sawai Man Singh."

4. The appellant relied on the decision in the case of **Gajendra Kumar T. Agarwal Vs ITO [2011] 11 taxmann.com 231 (Mum)** wherein relying upon the judgment of the Western India Oil (supra) it has been held as under:

"19. Hon'ble Supreme Court's judgment did not specifically reflect whether revenue had taken any objection to re-determination of character of an income, which was earned in an earlier assessment year, and when characterization so assigned had received finality. One could have entertained a little doubt whether Manmohan Das judgment (supra) may or may not be viewed as an authority for the proposition that such an objection, when taken, can be rejected. However, Hon'ble jurisdictional High Court's judgment in the case of Western India Oil Distributing Co. Ltd. v. CIT[1980] 126 ITR 497 (Bom.)*(as approved by Hon'ble Supreme Court in the judgment reported as CIT v. Western India Oil Distributing Co. Ltd.* [2001] 249 ITR 517), *while interpreting the scope of Hon'ble Supreme Court's judgment in the case of Manmohan Das (supra), set these doubts at rest, and thus nipped this*

possible controversy in the bud, by observing as follows :

> *If this decision [Hon'ble Supreme Court's judgment in the case of Manmohan Das (supra)] be properly analysed, it would seem that the application of the principle of finality, which has been submitted for our acceptance by counsel for the revenue and which found favour with the Tribunal has been rejected by the Supreme Court in a substantially similar set up when it opined that the decision of the ITO in the preceding year that the loss cannot be set off against the income of the subsequent year is not binding on the assessee despite the fact that he has rested content with that decision and not carried further the matter by way of appeal. To put it in other words, in the assessment year 1950-51, the ITO, dealing with the assessee's case, held that there was a net loss but that this could not be carried forward inasmuch as the income received by the assessee was not from the pursuit of any business, profession or vocation. For the succeeding year 1951-52, the assessee contended that his income was from pursuit of business, profession or vocation and sought to set off the preceding year's loss against the income for the succeeding year. This contention was urged despite the fact that in the preceding year the income had been held to be from a source other than a business, profession or vocation, and on that ground the carrying forward of the loss had not been allowed. It was held by the court that the income of the assessee for both the years must properly be regarded as having arisen from the pursuit of a vocation and, further, that because of this the assessee was liable to have the preceding year's loss set off against the income for the assessment year 1951-52. It brushed aside the argument of the revenue that the preceding year's decision by the ITO had become final and by reason of such finality the assessee in 1951-52 would not be entitled to set off the loss incurred in 1950-51, although the correct legal position was that the income was from the pursuit of a business, profession or vocation and that, if this was so,*

the assessee was entitled to carry forward the loss.

20. In our humble understanding, Hon'ble Supreme Court's judgment in Manmohan Das's case (supra), read with Hon'ble Bombay High Court's judgment in the case of Western India Oil Distributing Co. Ltd. (supra), is thus authority for three significant propositions. These propositions are summed up as follows:

I. First, that the call, as to whether a particular business loss, speculative or non-speculative, incurred by the assessee in an earlier year is eligible for set off against business income in a subsequent year, is to be taken in the course of proceedings in the subsequent assessment year, i.e. the assessment year in which set off is claimed. Hon'ble Supreme Court has set out this proposition and this proposition was later clarified, in unambiguous words, by Hon'ble jurisdictional High Court in the case of Western India Oil Distributing Co. Ltd. (supra), which was approved by Hon'ble Supreme Court in the judgment reported as Western India Oil Distributing Co. Ltd. (supra).

II. Second, that section 24(2) of the 1922 Act, which is the same as section 73(2) in all material respects, confers "a statutory right upon the assessee who sustains a loss of profits in any year in any business, profession or vocation to carry forward the loss as is not set off under sub-section (1) to the following year, and to set it off against his profits and gains, if any, from the same business, profession or vocation for that year". The proposition that is set out is infact in the words employed by Their Lordships and it does not need any elaboration. Once this statutory right is recognized, it is a natural corollary of that recognition that when an assessee incurs a loss in a business, speculative or non-speculative, in an year, such loss has to be, subject to fulfilment of other preconditions, is to be set off against the profits of the same business in subsequent year.

III. Third, that in the course of proceedings of the subsequent assessment year, i.e. the assessment year in which set off of

loss is claimed, it is open to even decide the true nature and character of loss incurred in the earlier relevant assessment year. In other words, even a finding about the nature of loss, in the assessment year in which loss is incurred, does not bind the assessee, and that aspect of the matter can be decided afresh in the course of proceedings in the assessment year in which set off is claimed. As noted in third paragraph of Hon'ble Supreme Court's judgment itself, "In making his order of assessment for the year 1950-51, the Income-tax Officer declared that the loss computed in that year could not be carried forward to the next year under section 24(2) of the Income-tax Act, as it was not a business loss" and yet, while dealing with the assessment proceedings for the assessment year 1951-52, it was held that loss incurred by the assessee in 1950-51 was 'business loss' in nature. Similarly, as held by Hon'ble Bombay High Court in the case of Western India Oil Distributing Ltd. (supra) and as confirmed by Hon'ble Supreme Court, losses determined under the head 'income from other sources', which had attained finality, were subsequently treated as 'business losses' - though for the limited purposes of eligibility for set off against profits from same activity in subsequent years."

12. On the other hand, ld. CIT-DR relying upon the observations and the findings of the AO and Ld. CIT(A), submitted that here in this case, it is an admitted fact that assessee itself has treated the transaction relating to transfer of shares as Long Term Capital Gain and the said shares were sold to other parties. Once, the character of income is in the nature of capital, assessable under the head 'capital gain', then same character cannot be changed. The AO has accepted the Long-Term Capital Gain @ 20% in Assessment Year 2010-11, and therefore, with regard to same nature of transaction, the assessee cannot say that it was on

revenue account assessable under the head 'business income'. The character of income cannot be changed by any subsequent conduct to fulfill the condition of any agreement. In fact, it cannot be the case of bad debt because assessee had not shown any business income in the Assessment Year 2010-11. Further, the assessee had never revised the computation of return of income in the Assessment Year 2010-11 and has offered the Long-Term Capital Gain @ 20% instead of 30% which is rate applicable for business income. Thus, there is no infirmity in the order of the AO and ld. CIT (A) and same should be confirmed.

13. We have heard the rival submissions, perused the relevant findings given in the impugned orders as well as material referred to before us. The fact and the backgrounds of the case have already been discussed in detail hereinabove. To put in a succinct manner, the assessee company which is engaged in real estate business had various subsidiaries through which it had acquired land/plots, and they hand over such land and plot for the development and give all the development rights to the assessee company to develop projects, townships, commercial establishments, etc. The assessee thereafter as a part of its business venture applies for Change Land Use 'CLU' and other permission from the Government to start the development project. Though the

investments were made in the equity share capital of the subsidiary, however, the underlying asset was land and the purpose was to acquire the land and develop the same to earn business income. Since investment was made in equity share capital, therefore, as per the disclosure norms under the Companies Act, same were declared as 'Long-Term Investments'. The assessee in pursuance of its business objects had made investment in one of its subsidiary company, Silver Town Inn and Resorts Pvt. Ltd. for Rs.18,47,45,452/- as it owned agricultural/plot of land. The assessee was to undertake the development of the said land and CLU was to be obtained for commercial use, i.e., for Motel/Restaurant by the assessee and not by Silvertown. Since Assessee Company as a part of business venture decided to dispose-off the said investment and negotiated with the investors who were interested in making the investment even though the asset of the company was merely 2.53 acres of agricultural land. However, the aggregate consideration as agreed between the parties was totally depended upon the condition that if the assessee could get CLU and other clearances by the Government, then only the price would be paid which was agreed at Rs. 93 crores. Since, the aggregate consideration of Rs. 93 crores was subject to various conditions, that assessee shall apply and obtain valid and legal permission for change in land use and other requisite permission for the

FSI and development of the project on the said land. As per the agreement with the buyer for sum Rs.93 crore, Rs.15 crore was initially payable and the balance amount of Rs. 77,98,88,400/- was payable subject to assessee getting various permission. Since, the agreement for transfer of shares was entered in the financial year 2009-10, the assessee offered the entire amount of Rs. 93 crores on accrual basis under the head "Long Term Capital Gain. As stated above, there were certain turn of events that the adjacent land and the part of the land under the assessee's project was acquired by the Government for widening of the national highways and certain areas were declared as green belt. Due to this governmental order, the entire project had failed and CLU and other legal permission ostensibly could not be obtained. As brought on record by the Ld. Counsel, later on, the said piece of plot/land was sold at a meagre sum of Rs.5,60,00,000/- as compared to the aggregate consideration of Rs. 93 crores, had all the conditions would have been fulfilled and the project could have been started by the buyer. In the relevant Financial Year 2012-13, i.e., relevant for the Assessment Year 2013-14, it became clear that the buyer will not pay the amount and since the assessee had already declared the said income in the Assessment Year 2010-11, the same has been claimed as business loss/written off as bad debt.

14. Now, the core issue before us is, whether in this year the said claim of loss should be allowed as 'business loss' or 'long term capital loss'. There is no dispute that assessee did incur loss of Rs.77,98,88,400/-. First of all, if the assessee company is carrying out purely real estate business and getting of CLU/FSI on land and project and other governmental clearance, is part of its core business activities. Hence, any such income or loss arising from such activities ostensibly is assessable under the head 'business or profession'. The substance of the transaction of shares was the underlying asset of sale value of agricultural land and more importantly, the services of CLU which has made the asset more valuable. The sale consideration of the shares in Assessment Year 2010-11 was in fact profit /income for the services rendered in connection with obtaining the CLU and other clearance because the value of the agricultural land of 2.53 acre could not have fetch price of Rs. 93 crores, as its value was only dependent upon obtaining the CLUs for commercial use and other governmental permission. The said land could have been changed for commercial use only by getting CLU for which such a huge price was negotiated which was almost 20 times the value of actual land, because as brought on record ultimately the said land was sold later on at Rs. 5.6 crores only. If the assessee in the Assessment Year 2010-11 has offered the income of Rs. 93 crore on transaction of shares which

was mainly had the value purely due to its business venture and core business activities, and if such an income has accrued in pursuance of an agreement entered between the assessee and the buyer, then ostensibly, same was assessable under the head 'business income'. The Revenue's case is that once the character of income declared by the assessee was on capital account and has offered the income under the head 'Long Term Capital Gain', then any loss claimed on the same very transaction cannot be allowed as business loss.

15. In a classical judgment in the case of **New Jahangir Vakil Mills Company Ltd. vs. CIT** (supra), the Hon'ble Apex Court held that if the assessee was treated as an investor in the earlier year would not stop the authorities for computing the income as a profit in the subsequent year. Further, Hon'ble Apex Court in the case of **CIT vs. Manmohan Das (supra)** held that it is for the ITO in the subsequent year to determine whether the loss of the previous year may be set off against the profit of that year. The decision rendered by the ITO who computed the loss in the previous year that the loss cannot be set off against the income of the subsequent year is not binding on the assessee in the subsequent year. The relevant observation of the Apex Court has already been quoted above. Following the same ratio and

the principle laid down by the Hon'ble Apex Court in the case of **CIT vs. Western India Oil Distributing Company Ltd. (supra),** wherein their Lordships have confirmed the order of the Hon'ble Bombay High Court observed that once the correct principle flowing from **Manmohan Das's** case is realised, it would appear that if in an earlier year it has been held that correct head income applicable to the assessee's case was under the head 'income from other sources' and by that reason the benefit of carrying forward of depreciation is denied to the assessee, then such a decision will not bind the assessee in the subsequent year in which he wants to claim the set off against the business income.

16. The principle enunciated by the Hon'ble Supreme Court clearly clinches the issue that, if the assessee in the earlier years has offered the income or loss under the different head of income either under an erroneous presumption of law or by mistake, then it does not act as an estoppel or bar the assessee to point out that same was assessable under the different head if it is found that income was actually assessable under the different head as claimed by the assessee. Acquiescence by the assessee cannot determine the head in which the income is to be assessed. The income is to be assessed under the correct provisions of the law and it has been held so by various judgments as referred and relied upon by the ld.

counsel as incorporated above. The assessee is required to disclose wholly and truly all material facts about his income and receipts, and then Assessing Officer is required to draw the correct conclusion regardless of the position of the assessee because it is for him to decide what inference of fact and legal inferences can be drawn. Hon'ble Delhi High Court in the case of **CIT vs. Bhawar Singh Ji (supra)** following the ratio and principle laid down by the Hon'ble Constitutional Bench in the case of **Calcutta Discount Co. Ltd. vs. ITO [1961] 41 ITR 191,** wherein proposition was laid down that it is for the AO to draw the correct conclusions, regardless of the position of the assessee and held that is now well established law that regardless of what an assessee claims, if the correct position deductible from the primary fact either the Assessing Officer has to adopt that correct position and there is no legal impediment for correcting the correct position. Once again, reiterating the same principle laid down by the Hon'ble Apex Court in the case of Manmohan Das in the case of **Western Oil Distributing Co. Ltd. (supra)** wherein almost in a similar position where in the case of the assessee in the assessment year 1950-51 the ITO held that there was a net loss but this could not be carried forward as inasmuch as the income received by the assessee were not from any business or profession or vocation for the succeeding year 1951-52. The assessee contended that his income from pursuit of

business, profession or vocation should be allowed to set off all the preceding year's loss against the income for the succeeding year. This contention was urged on the fact that in the preceding year the income has held to be from the sources other than business and on that ground the carried forward of the loss was not allowed. The Hon'ble Supreme Court held that income of the assessee for both the years must properly be recorded as having arisen from the pursuit of the auction and thus assessee was liable to set off preceding year's loss against the income of the Assessment Year 1951-52. The Hon'ble Supreme Court brushed aside the argument of the Revenue that in the preceding year, the order has become final and reason of such finality, the assessee was not entitled to set off the loss incurred in the earlier years even though the correct legal position was that income was always from the pursuit of business or profession. The ITAT Mumbai Bench in the case of **Gajendra Kumar T. Agarwal vs. ITO (supra)** has sum up the proposition of Hon'ble Apex Court in the following manner:

I. *First, that the call, as to whether a particular business loss, speculative or non-speculative, incurred by the assessee in an earlier year is eligible for set off against business income in a subsequent year, is to be taken in the course of proceedings in the subsequent assessment year, i.e. the assessment year in which set off is claimed. Hon'ble Supreme Court has set out this proposition and this proposition was*

later clarified, in unambiguous words, by Hon'ble jurisdictional High Court in the case of Western India Oil Distributing Co. Ltd. (supra), which was approved by Hon'ble Supreme Court in the judgment reported as Western India Oil Distributing Co. Ltd. (supra).

II. *Second, that section 24(2) of the 1922 Act, which is the same as section 73(2) in all material respects, confers "a statutory right upon the assessee who sustains a loss of profits in any year in any business, profession or vocation to carry forward the loss as is not set off under sub-section (1) to the following year, and to set it off against his profits and gains, if any, from the same business, profession or vocation for that year". The proposition that is set out is in fact in the words employed by Their Lordships and it does not need any elaboration. Once this statutory right is recognized, it is a natural corollary of that recognition that when an assessee incurs a loss in a business, speculative or non-speculative, in an year, such loss has to be, subject to fulfilment of other preconditions, is to be set off against the profits of the same business in subsequent year.*

III. *Third, that in the course of proceedings of the subsequent assessment year, i.e. the assessment year in which set off of loss is claimed, it is open to even decide the true nature and character of loss incurred in the earlier relevant assessment year. In other words, even a finding about the nature of loss, in the assessment year in which loss is incurred, does not bind the assessee, and that aspect of the matter can be decided afresh in the course of proceedings in the assessment year in which set off is claimed. As noted in third paragraph of Hon'ble Supreme Court's judgment itself, "In making his order of assessment for the year 1950-51, the Income-tax Officer declared that the loss computed in that year could not be carried forward to the next year under*

section 24(2) of the Income-tax Act, as it was not a business loss" and yet, while dealing with the assessment proceedings for the assessment year 1951-52, it was held that loss incurred by the assessee in 1950-51 was 'business loss' in nature. Similarly, as held by Hon'ble Bombay High Court in the case of Western India Oil Distributing Ltd. (supra) and as confirmed by Hon'ble Supreme Court, losses determined under the head 'income from other sources', which had attained finality, were subsequently treated as 'business losses' - though for the limited purposes of eligibility for set off against profits from same activity in subsequent years."

17. Ergo, the key sequitur of the aforesaid principles laid down by the Hon'ble Apex Court and other rulings are that, if either the assessee has offered income or the Assessing Officer in the earlier assessment year has assessed the income under the particular head which originally was assessable in a different head, i.e., capital gain, even though the same was liable to be assessed under the head 'business or profession', then there is no embargo either on the Assessing officer or on the assessee to show the income or loss under the head 'business or profession' in the subsequent year. The assessee can always point out in the subsequent year in which it is claiming any deduction or loss that the income offered in the earlier years was not shown under the correct head and in this year the same is assessable under the correct head which here in this case was income or loss from the business or profession.

Acquiescence by the assessee by offering any income under different head cannot act as an estoppel against the assessee or there is any embargo on his claim that income is taxable or not taxable under the particular head. The **Hon'ble Andhra Pradesh and Telangana High Court** in the case of **Prefab Gratings Ltd. (supra)** observed that the finding can be reversed in the subsequent years and it is competent for an ITO to deal with the same independently by relying upon the judgment in the case of Manmohan Das (supra).

18. Thus, we are also of the opinion that claim regarding the allowability of the bad debts or business loss has to be determined by the Assessing Officer in the year in which the loss has claimed in P&L account and the assessment of the corresponding income as capital gain in an earlier year will not be binding on the assessee and it is always open for the assessee to point out that it is to be assessed under the correct head, that is business income. The fact that declaration and assessment of the corresponding income has been assessed as capital gain and accepted in the earlier year will not have any impact and will not bind the assessee and same has to be determined again in the Assessment Year 2013-14 in the light of the principle laid down by the Hon'ble Apex Court as discussed hereinabove. The AO as well as the Appellate Authorities under the law

can review the facts of the case and redetermined the taxability of income and the claims to be allowed against the same in the subsequent years and if certain mistake or wrong decisions has been rendered in the earlier years, the same cannot be perpetuated for subsequent year and it will not be a legal impediment even though the assessment for the earlier years has attained finality. Further, another important thing is that the claim of income or loss or any deduction has to be examined afresh in the year in which it is claimed. Thus, the law as culled out from the aforesaid judgment is that the bad debt or loss which is claimed in this year has to be determined in this year only without distributing the earlier assessment which has attained finality, and therefore, we hold that the claim of loss made in this year is allowable as business loss.

19. Now coming to the issue where one of the contentions raised by the department that the amount written off during the year cannot be allowed as a bad debt, because the income which has accrued to the assessee in the earlier year was not assessable under the same head, i.e., income from the business or profession. We find that precisely the same issue now stands covered by the judgment of **Hon'ble Bombay High Court** in the case of **PCIT vs. Hybrid Financial Services Ltd.** vide judgment and order dated **11th February, 2020 in ITA**

No.1265 and 1469 of 2017, wherein the Hon'ble High Court after interpreting the Section 36(1)(vii) and Section 36(2) and relying upon the judgment of Hon'ble Supreme Court in the case of TRF Ltd. vs. CIT, 323 ITR 397 observed that, firstly, assessee need not required to establish/approve that debt has in fact become irrecoverable and it is sufficient that if the bad debt is written off irrecoverable in the account of the assessee; and secondly, the Court observed that there is no requirement under the Act that the bad debt has to accrue out of income under the same head 'income from business or profession' to be deducted as income. The relevant observation for the later proposition reads as under:

> *"19. If that be the position, then there is compliance to the requirement of Section 36(1)(vii) of the act and the amount covered by the bad debts would be entitled to be deducted vide computing income under section 28 of the Act.* ***Further, it is not necessary, rather there is no requirement under the Act that the bad debt has to accrue out of income under the same head i.e. 'income from business or profession' to be eligible for deduction. That is not a requirement of law. All that is required is that the debt in question must be written off by the assessee in its books of accounts as irrecoverable****."*

20. Thus, such a contention raised by the Revenue does not hold ground.

21. One very important fact which weighs here in this case is that, assessee has incurred genuine loss of Rs. 77.98 Crores as discussed herein above and has paid taxes in the earlier years, albeit shown in different head. One fundamental principle while deciding such kind of matters is that, tax due should be collected as enshrined in the taxing statute and which is also the mandate of the Constitution of India. Here assessee is fastened with tax liability on a hypothetical income which did not materialize /received and in this situation a justice oriented approach is warranted when assessee has, on one hand incurred huge loss and on other, tax on Rs. 77.98 Crores is charged merely on technicality that, since assessee had offered the tax under one particular head which it is claiming in this year to be set-off in the other head, is precluded from doing so. When assessee itself has pointed out its bonafide and legal claim before the Assessing Officer that correct head in which it is assessable is 'business income', then acquiescence by the assessee in earlier year cannot be the ground to tax the same or deny any legal claim. Hon'ble Supreme Court in a recent judgment, in the case of **Dalmia Power Ltd. (2020) 420 ITR 399,** reiterated this principle by holding that "***Rules of procedure have been construed to be handmaiden of Justice. Kailas v. Nanku (2005) 4SCC 480; State of Punjab v Shamal Murari (1976) 1 SCC 719. The purpose of assessment proceedings is to***

assess the tax liability correctly in accordance with law. National Thermal Power Co. Ltd. v CIT (1998) 229 ITR 383 (SC)" This justice-oriented approach has earlier been ordained in CIT v. **Shelly Products (2003) 26I ITR 367 (SC)** also. The aforesaid principle can also be applied here.

22. Accordingly, we hold that the claim for the amount of Rs. 77,98,88,400/- as business loss or bad debt is allowable in revenue account in this year and is allowed to be set-off in the revenue account as claimed by the assessee and not as a capital loss.

23. In the result, the ground no.2 raised by the assessee is allowed.

24. In so far as the issue of addition of Rs.3,31,49,744/- pertaining to sale of property in terms of Section 50C. The facts in brief are that the assessee has sold the property situated at Budh Singh Pura, Jaipur for a sale consideration of Rs. 12,61,00,000/- during the year, whereas the stamp duty valuation of the said property was Rs. 15,92,49,744/-. The AO made the addition of Rs. 3,31,49,744/- u/s 50C of the Act alleging that the assessee did not contest the valuation of the said property before the stamp duty valuation authorities.

25. Ld. Counsel pointed out that, the appellant specifically objected to the proposition of application of the section 50C of the

Act and explained that the circle rates in Jaipur were higher than the prevailing market rate. Besides, there was a crematorium ground in front of this property which also affected the market rate of the property significantly and therefore, this property fetched a lower market value. It was for the buyer to agitate the matter of the valuation before the valuation authorities as the buyer had to pay the stamp duty. The appellant also requested the CIT (A) to refer the said property for valuation.

26. Before the ld. CIT (A), the assessee submitted that the land was situated near the cremation ground and it was acquired by the assessee at the auction and the assessee was given assurance by the Government Authorities to shift the cremation ground and the same was not done and the assessee was in need of money to invest in business during the relevant previous year which lead to the sale of the land at a below circle rate. Therefore, under these facts and circumstances the valuation as per the stamp value should not be taken as a sale consideration. Alternatively, and without prejudice it was submitted that the matter can be referred to the DVO for ascertaining the correct valuation looking to the facts that the land was situated adjacent to the cremation ground, and therefore, it could not fetch the circle rate price. However, the CIT (A) confirmed the addition stating no evidence has been submitted by the assessee to substantiate its contention without making any reference to the

DVO though specifically requested for.

27. Ld. Counsel submitted that, it is a settled law that when an assessee disputes that the stamp duty valuation exceeds the fair market value then the income-tax authorities are bound to refer the same to DVO for valuation of the said properties as has authorities as per note enclosed. In support he relied upon **Sunil Kumar Agarwal vs CIT (2015) 372 ITR 83 (Cal)** that the assessing officer is duty bound to refer to valuation if the assessee disputes the sale consideration even if no prayer is made by the assessee during the course of assessment proceedings. Thus, the authorities below were duty bound to refer the same for valuation. The appellant specifically had stated before the CIT(A) that the FMV of the said plot was lower due to a nearby cremation ground, which by itself becomes raising an objection to the value and the CIT(A) must have referred the same to the DVO for valuation. Thus, failure to refer must lead to deletion of this addition. Alternatively, in the interest of justice, he submitted that the matter should be referred back to the assessing officer with a direction to refer the said property for valuation to determine the fair market value of the said property.

28. After hearing both the parties and on perusal of the relevant finding given in the impugned order and the material placed before us, we find that before the Appellate Authority, the assessee has categorically stated that though the circle rate of the vicinity area was higher than prevailing market rate but the land in question

which was sold was adjacent to cremation ground which adversely affected the market rate of the property, and therefore, the property could not be fetched the circle rate and was sold at the lower rate than the circle rate. Further, it was the buyer who has to contest the stamp value of the property before the Valuation Authority in which assessee has no control. In any case, when the assessee has disputed the stamp duty valuation because of clinching circumstances, then in our opinion matter should have been referred to DVO for the valuation of the said property. Accordingly, we remand this issue to the file of the Assessing Officer who shall refer the matter for the valuation of the property to the DVO and assessee will substantiate its case before the Assessing Officer or DVO to justify the sale price. Accordingly, this ground is partly allowed for statistical purpose.

29. In the result, the appeal of the assessee is partly allowed.

30. In the Revenue's appeal, the addition of disallowance of Rs.1,60,30,344/- u/s.14A has been challenged. The facts in brief are that the assessee has received dividend of Rs29,707/- during the year on dividend yielding investment of Rs.4,54,065/-. Accordingly, assessee made *suo motu* disallowance of Rs.2196/- being 0.5% of Rs.4,54,065/- while filing the return of income. The AO held that since no satisfactory

basis has been provided by the assessee for *suo motu* disallowance, therefore, he proceeded to make the disallowance in accordance with Rule 8D and worked out the disallowance of Rs.1,60,32,530/- being 0.5% of the average value of the investment.

31. The assessee's case before the ld. CIT (A) was that it has made investment in the subsidiary companies due to business expediency and had only made investment of Rs.4,54,065/- in mutual funds. Ld. CIT (A) agreed with the contention of the assessee and deleted the disallowance made by the AO.

32. Before us, the ld. counsel submitted that, first of all here in this case the exempt income is only Rs.29,707/- and if at all disallowance has to be made then same cannot be made excess of the exempt income and in support he relied upon the judgment of **PCIT vs. CRF Builders and Construction, (2019)112 taxmann.com 322 SC.** Apart from that, in the assessee's own case for the Assessment Year 2014-15, order dated 31.12.2019, ITA No.5678/Del/2017, the Tribunal held that the average value of investment which yielded exempt income shall only be considered for the purpose of disallowance u/s.14A

33. Ld. CIT-DR, on the other hand, relied upon the order of the Assessing Officer.

34. It is an admitted fact that firstly the dividend yielding investment were only Rs.4,54,065/- and disallowance @ 0.5% worked out to Rs.2196/- which has been *suo motu* offered for disallowance in the return of income. This Tribunal in assessee's own case following the judgment of ITAT Special Bench in the case of **Vireet Investment Pvt. Ltd., (2017) 165 ITD 27 (DT) (SB)** held that average value of investment which has yielded income during the year shall only be considered for the purpose of disallowance u/s.14A, and therefore, respectfully following the same no addition over and above can be made. In any case, the dividend income received by the assessee is merely Rs.29,070/- which in any case the disallowance could not have been exceeded the exempt income. Thus, the order of the ld. CIT(A) is upheld and the grounds raised by the Revenue is dismissed.

35. In the result assessee's appeal is partly allowed and Revenue's appeal is dismissed.

Order pronounced in the open Court on 11th May, 2020.

Sd/-	Sd/-
[Dr. B.R.R. KUMAR]	**[AMIT SHUKLA]**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

DATED: 11th May, 2020

PKK