

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 4022/Del/2017
(Assessment Year: 2012 – 13)

THE DEPUTY COMMISSIONER OF INCOME TAX CIRCLE – 17 (2), New Delhi	versus	M/s Nalwa steel and Power Ltd 28, najafgarh Road New Delhi PAN :- AABCN 3209L
(Appellant)		(Respondent)

Assessee by :	Sri Salil Kapoor, advocate Ms Ananya Kapoor advocate
Revenue by:	Ms Rakhi Bimal senior departmental representative
Date of Hearing	21/5/2021
Date of pronouncement	31/05/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by The Deputy Commissioner Of Income Tax, Circle – 17 (2), New Delhi [The Ld AO] against the order of The Commissioner Of Income Tax (Appeals) 39, New Delhi [The ld CIT (A)] dated 3/2/2017 for Assessment Year 2012 – 13 wherein appeal filed by the assessee i.e. M/s Nalwa Steel & Power Limited [Assessee/ Respondent] against the assessment order passed u/s 143 (3) of The Income Tax Act 1961 [The Act] on 24 March 2015 by the learned Deputy Commissioner of income tax, Circle 18 (1), New Delhi [The ld AO] determining the total income of the assessee at ₹ 498,239,004 against the returned income of the assessee at ₹ 421,629,110/- as per return of income filed on 29/9/2012, was allowed on certain counts.
2. Therefore on deletion of disallowances/additions made by learned CIT – A were challenged by the ld AO in this appeal before us as per following grounds of appeal

- “1. Whether on facts and in circumstances of the case, the Ld.CIT(A) is legally justified in deleting disallowance of Rs. 8,27,715 /- u/s 40(a)(ia) of the Act on account of non-deduction of TDS on ‘Bank Guarantee Expenses’ by ignoring the contents of Notification No. 56/2012 of the CBDT in this regard issued vide F.No. 275/53/2012-IT (B)/SO 3069 (E) dated 31.12.2012 and also by ignoring the fact that the said notification had come into force w.e.f. 1st January, 2013?
 2. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of Rs. 6,85,662/- on account of additional depreciation claimed u/s 32 (l)(iia) of the Act without considering the fact that the relevant provisions are affected w.e.f. 01.04.2013?
 3. Whether on facts and in circumstances of the case, the Ld CIT(A) is legally justified in deleting disallowance of Rs. 62,96,880/- on account of excess depreciation claimed on electrical installations by holding that electrical fittings which are the part of block of furniture and fittings' as per New Appendix I of Income Tax Rule, 1962 (the Rule) as ‘plant’ by ignoring amended sub-section (3) of Section 43 of the Income Tax Act, 1961 (the Act)?
 4. Whether on facts and in circumstances of the case, the Ld CIT(A) is legally justified in deleting disallowance of Rs. 6,87,99,634/- on account of excess deduction claimed u/s 80IA(8) of the Act without considering the facts recorded by the AO in assessment order and without recording his clear findings regarding allowing relief to the assessee in appellate order?
 5. Whether on facts and in circumstances of the case, the Ld. CIT (A) is legally justified in deleting the addition of Rs. 69,89,846/- on account of disallowance of depreciation made while calculating Book Profit u/s 115JB of the Act by ignoring clause (g) to Explanation 1 to section 115JB(2) of the Act introduced by Finance Act 2006 is applicable to the assessee for the year under consideration?
3. Facts shows that assessee is a company engaged in manufacturing and selling of sponge Iron, Billets, Wire Rods, TMT and generation of power etc. Assessee filed its return of income on 29/9/2012 declaring an income of ₹ 421,629,110/- on 29/09/2012. Learned assessing officer passed an assessment order u/s 143 (3) of the act on 24th of March 2015 wherein he made the certain disallowances. Some of these disallowances were deleted by the learned CIT – A on appeal as per his order dated 3 February 2017. Therefore, learned AO aggrieved with that order is in appeal before us.
 4. The first ground of appeal is with respect to the disallowance of ₹ 827,715/- u/s 40 (a) (ia) of the act on account of non-deduction of tax at source on bank guarantee expenses. Facts shows that assessee has obtained a bank guarantee from state bank of India for coal purchase from SECL for which it

has paid bank guarantee charges of ₹ 827,715/- . Assessee has not deducted tax at source on the above sum and therefore the learned AO asked the assessee to show why it should not be disallowed in view of the instructions of The Central Board Of Direct Taxes by notification number 56/2012 dated 31 December 2012. Assessee submitted that the payment does not fall under any specific TDS provision and therefore it is not liable for TDS. Learned assessing officer relying on the decision of the coordinate bench in case of Kotak securities Ltd held that it is required to be deducted at source u/s 194H of the act. He further held that notification No. 56/2012, wherein it is provided that the bank guarantee charges are not subject to tax deduction at source, if paid to scheduled bank, shall come into force from 1 December 2013 and does not apply to the assessment year 2012 - 13. Thus he disallowed a sum of ₹ 827,715/- applying the provisions of Section 40 a (ia) of the act. Assessee challenged the same before the learned CIT - A who deleted the disallowance holding that CBDT notification number 56/2012 dated 31 December 2012 as it removes the hardship, it applies retrospectively. The learned assessing officer aggrieved with that is in appeal before us per ground number (1) of the appeal.

5. The learned departmental representative vehemently submitted that when the notification itself is applicable from 1 January 2013, it does not apply to the current year, and therefore learned CIT - A has erred in applying the same for the impugned assessment year. It was further stated that the bank guarantee charges are covered u/s 194H of the act. The learned departmental representative supported the order of the AO and he submitted a chart relying upon the several decisions of the coordinate benches on this issue.
6. We have carefully considered the rival contention and find that the assessee has paid guarantee commission charges of state bank of India for giving guarantee in favour of the seller of coal to the assessee. It is one of the banking services provided by the state bank of India to the assessee. It cannot be said to be a "commission" as intended to u/s 194H of the but it is in the nature of Bank charges charged by the bank for provision of services to the assessee. Now this issue has been decided by the honourable Bombay High Court in case of CIT - TDS (1), Bombay versus Larsen and

Toubro Ltd 101 taxmann.com 83 wherein the honourable High Court while dealing with the case for assessment year 2010 – 11 held as Under:-

“3. Learned counsel for the Revenue stated that the Revenue had filed an appeal against the judgment of the Tribunal in case of Kotak Securities Ltd but that the appeal was withdrawn on the ground of low tax effect. He has, however, made available a copy of the judgment of the Tribunal in the said case which contains a detailed discussion on the issue at hand. In the said judgment, the Tribunal referred to Section 194H of the Act which requires an assessee responsible for paying any income by way of commission or brokerage to deduct tax at source. The Tribunal was of the opinion that the words "commission or brokerage" must take colour from each other. The Tribunal was of the opinion that the payment in question, though categorized as "bank guarantee commission" is not strictly speaking payment of commission since there is no principal to agent relationship between the payer and the payee. The Tribunal, therefore, held that the requirement of deducting tax at source emanating from Section 194H of the Act in the present case does not arise.

4. We are broadly in agreement with the view of the Tribunal. The so-called bank guarantee commission is not in the nature of commission paid to an agent but it is in the nature of bank charges for providing one of the banking service. The requirement of Section 194H of the Act, therefore, would not arise. No question of law arises. The Income Tax Appeal is dismissed.”

7. Therefore, respectfully following the decision of the honourable Bombay High Court rendered in case for assessment year 2010 – 11 and also the Notification No 56/2012 of CBDT which has been considered by several coordinate benches and held that same also applies to earlier period then the date of issue of notification, we hold that the assessee was not required to withheld any tax on bank guarantee charges paid to state bank of India and therefore no disallowance would have been made u/s 40 a (ia) of the act. So we confirm the order of the ld CIT (A) . In view of this ground number (1) of the appeal is dismissed.
8. Ground number 2 of the appeal is against the deletion of disallowance of additional depreciation of ₹ 685,662/- u/s 32 (1) (ia) of the act. The assessee has claimed the additional depreciation on the plant and machinery purchased for the power generation plant. The learned AO was of the view that the benefit is available only to those undertaking which are engaged in the business of manufacture or production of any article of thing. Generation of power according to him cannot be equated with the production of any article or thing. Further clause ii(a) , subsection (1) of Section 32 of the act was amended with effect from 1 April 2013 and

therefore such additional depreciation could be allowed only with effect from 1 April 2013, thus the same was disallowed. Assessee challenged the same before the learned CIT – A who allowed the claim of the assessee relying on the decision of the coordinate bench in case of NTPC versus Deputy Commissioner Of Income Tax (2012 – TIOL – 258 – ITAT – Del] where the coordinate bench after considering the several decisions including the decision of the honourable Supreme Court in case of impunity board wherein it was held that the electricity is a goods allowed the claim of the assessee. Therefore, now the learned assessing officer is in appeal before us.

9. The learned departmental representative supported the order of the learned assessing officer whereas the learned authorised representative submitted that this issue is covered in favour of the assessee in assessee's own case by the decision of the coordinate bench in ITA number 4449/del/2010 as per order dated 24/4/2018 for assessment year 2006 – 07 to assessment year 2009 – 10 and by the decision of coordinate bench for assessment year 2000 – 11. He therefore submitted that this issue is covered in favour of the assessee by the order of the coordinate bench in assessee's own case and that therefore the order of the learned CIT – A is correct on this issue.
10. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that this issue squarely covered in favour of the assessee by the decision of the coordinate bench in assessee's own case in ITA number 4449/del/2010 dated 24/4/2018 for AY 2009-10 wherein in para number 74 the coordinate bench has held as Under:-

“74. After hearing both the sides, we find the learned CIT (A) upheld the action of the assessing officer in disallowing of ₹ 3,339,892/- claimed by the assessee on account of additional depreciation u/s 32 (1) (ia) on electrical installations on the ground that the production/generation of power by the assessee does not qualify as manufacture/production of an article or thing as contemplated u/s 32 (1) (ia) of the IT act we find the coordinate bench of the tribunal in assessee's own case vide ITA No. 549/del/2016 order dated 9/8/2016 for assessment year 2006 – 07 has held that electrical installation is part of plant and machinery used for manufacturing steel. It has been held in various decisions including the decisions of the Delhi bench of Tribunal in case of NTPC V DCIT vide

ITA No. 1438/del/2009 order dated 30/4/2012, the Jaipur bench of the Tribunal in the case of ACIT versus Manglam Cements Ltd vide ITA No 82/Jaipur/2014 and 681/jaipur/2014 order dated 30/1/2017 that the process of the generation of electricity is akin to manufacture of article or thing and therefore the assessee is eligible for additional depreciation. It has further been held that the amendment which has been granted by the finance (No. 2), 2012 with effect from assessment year 2013 – 14 whereby the assessee engaged in the business of generation or distribution of power has specifically been included and held as for claim of additional depreciation. It has been held by the coordinate bench of the tribunal that even prior to the amendment made by the finance act, 2012, the assessee is engaged in generation of generation or distribution of electricity were held to be eligible for additional depreciation. It was accordingly held that the assessee is entitled to additional depreciation on the power plant and the venerable installed during the year. In view of the above, we hold that the assessee is entitled to additional depreciation on account of production/generation of power. The grounds raised by the assessee on this issue are accordingly allowed.”

11. Therefore respectfully following the decision of the coordinate bench in assessee’s own case we do not find any infirmity in the order of the learned CIT – A in deleting the disallowance of additional depreciation of ₹ 685,662/-. So we confirm the order of the ld CIT (A) . Accordingly, ground number 2 of the appeal of the AO is dismissed.
12. The ground number (3) is with respect to the deletion of the disallowance of ₹ 6,296,880 on account of excess depreciation claimed on electrical installations by holding that ‘electrical fittings’ which are part of the block of ‘furniture and fittings’ as per the appendix I of The Income Tax Rules, 1962 as ‘plant” by ignoring amended subsection (3) of Section 43 of the income tax act, 1961. The fact shows that the learned assessing officer perused the depreciation chart with the tax audit report and observed that assessee has claimed appreciation as well as additional depreciation at the rate of 15% on electrical installations by considering it as part of block under ‘plant and machinery’. The learned AO was of the view that there is no additional depreciation allowable on ‘electrical installations’, which are not plant and

machinery. On appeal before the learned CIT – A the above claim was allowed. It was held that the electrical installations are an integral part of the plant and machinery. Therefore, the AO is aggrieved by this ground of appeal.

13. The learned departmental representative vehemently supported the order of the learned assessing officer and submitted that additional depreciation is allowed only on the plant and machinery and not on electrical installation as it falls under the category of furniture and fittings. Therefore, the claim of the additional depreciation has been correctly disallowed by the learned assessing officer. With respect to the order of the learned CIT – A , she submitted that there is no finding that the above electrical installation are forming the plant and machinery of the assessee and therefore the order of the learned CIT – A is not sustainable.
14. The learned authorised representative submitted that above issue is squarely covered in favour of the assessee in the assessee's own case for earlier years wherein in ITA number 5199/del/2014 dated 15/1/2019 for assessment year 2010 – 11 the identical issue has been allowed. Therefore, the above ground is covered in favour of the assessee.
15. We have carefully considered the rival contention and perused the order of the learned lower authorities. Issue involved in this ground of appeal is quite simple. According to Appendix I (from assessment year 2006 – 2007) in part A Sr No II, it is mentioned that 'furniture and fittings including electrical fittings' are entitled to depreciation at the rate of 10% on its written down value. The reference is also provided for this entry as per note number 5, which provides that 'electrical fittings include electrical wiring, switches, sockets, other fittings and Fans , etc.' During the year, assessee has installed certain electrical installations and claimed depreciation on the same by applying the depreciation rate of 15% on its written down value considering it as "plant & Machinery". The claim of the assessee is that electrical installation is plant and machinery, as it is required for functioning of the plant and machinery connected to electrical base. The assessee's claim is also that it is not an electrical fitting such as wiring, switches, sockets, and other fittings. The claim of the assessee is also that to run the plant and machinery this electrical installation is necessary. The

claim of the assessing officer is that the electrical installation are covered in electrical fittings and therefore the depreciation rate applicable to such assets is only 10% as provided for furniture and fittings. We find that identical issue is decided in case of assessee by coordinate bench for assessment year 2010 - 11 in ITA number 5199/Del/2014 dated 15/1/2019 wherein it has been held that in case of electrical fittings the depreciation rate should be allowed at the rate of 10% and in case of electrical installation also it held that it is 'furniture and fittings' in absence of any finding that electrical installations are 'plant and machinery'. Even in that year, it was not held that electrical installations which are part of the 'plant and machinery; would be entitled to depreciation at the reduced rate applicable to the furniture and fittings. In the present case the learned CIT - A has categorically held that assessee is engaged in manufacturing activities and having plant and machinery and for that purpose electrical installation are installed and therefore he held that the depreciation on the same should be allowed at the rate of 15% applicable to plant and machinery and not at the rate of 10% applicable to furniture and fittings. According to us, to decide whether an electrical installation is furniture and fittings such as electrical wiring, switches, sockets and other fittings etc or electrical installations whether they are plant and machinery, one has to examine the nature and description of assets installed by the assessee. On going through the records, we do not find that any such information exists on record that these electrical installations are for the purpose of operation of plant and machinery and to make the plant and machinery functional. The mere assertion by the learned CIT - A they are plant and machinery without examining the proper details, the assessee cannot be granted depreciation at the rate of 15% classifying them as plant and machinery. However, according to us it is apparent that furniture and fittings includes electrical fittings only to the extent of wires, sockets, switches and other fittings and fan etc. We also cannot say in absence of any detail whether the electrical installation falls in this category or not. In view of this, we set-aside this ground to the file of the learned assessing officer with a direction to the assessee to produce the details of addition of plant and machinery and to show that these are not electrical fittings as

classified in note number 5 of appendix I (depreciation schedule). In view of this we set aside the ground number 3 of the appeal of the learned assessing officer back to the file of the learned assessing officer with a direction that after examining the details of the electrical installation and giving a proper opportunity of hearing to the assessee, the issue may be decided whether the electrical installations are furniture and fittings or plant and machinery. Thus, Ground no 3 is allowed with above directions.

16. The ground number 4 is with respect to the deletion of disallowance of ₹ 68,799,634/- on account of excess deduction claimed u/s 80 IA (8) of the act. The brief facts shows that assessee is engaged in generation of power and the power so generated is transferred to other units of the assessee captively at the rate at which it is obliged to purchase from the state electricity board. The assessee furnished the details that assessee has made a sale of ₹ 808,395,710/- from the power plant and the profit derived from that industrial undertaking was determined at ₹ 24,40,77,237/- against which the deduction u/s 80 IA has been claimed at the rate of hundred percent. The assessee during the course of the assessment proceeding furnished that the rate at which the sale of the power has been considered to other units is ₹ 4.23 per unit, the rate at which CSEB was selling to industrial consumers. It was further stated that the power rate has been considered in line with the market price and furnished copies of the bills for sale of power by Jindal Power Ltd to various parties as per which the rate of power was in the range of ₹ 4.25 per unit to ₹ 5.05 per unit. The learned assessing officer rejected the contention of the assessee and held that the sale price considered by the assessee i.e. rate of ₹ 3.92 included electricity duty at the rate of 8% of energy charges and cess at the rate of 0.05 per unit which are government levies on power and should not be included in the market rate. The contention of the assessing officer is that the assessee is only generating power but since it does not have the license to distributed, it cannot charge electricity duty at the rate of 8% and cess at 0.05% on the transfer of power. The learned AO further noted that assessee has not paid any taxes/duties to the government but has still included in and sale price such levies and has claimed higher deduction u/s 80 (IA) of the act on notional sales. Therefore, he held that the duties and cess are excluded

from the sale price of ₹ 4.23 per unit and the effective sale price is considered at ₹ 3.87 per unit. He therefore held that the sale of the power has been inflated by a sum of ₹ 0.36 per unit. Therefore he recalculated the profit and held that the assessee has inflated the deduction u/s 80 IA by a sum of ₹ 68,799,634/-. Accordingly, he reduced the claim of the assessee by a sum of ₹ 68,799,634. On appeal before the learned CIT – A the claim of the assessee was allowed. Learned CIT – A held that the rate of ₹ 4.23 per unit which is the price charged by CSE for supplying power to industrial consumers. Therefore, the same is a market price for the sale of power. He relied on the decision of the coordinate bench in case of Jindal steel and Power Ltd (2007) 16 SOT 509 (ITAT) Delhi bench wherein the assessee has adopted the price at which the power is sold by the SEB state electricity board as the market price of the power. He held that the above decision of the coordinate bench has been approved by the honourable Punjab and Haryana High Court in ITA number 53/2008. He further followed the decision of the coordinate bench in case of DCW Ltd versus Additional Commissioner Of Income Tax ITA number 560 and 556 9 /MUM/2008 wherein the identical issue was decided. He further held that argument of the ld AO that the impugned government levies cannot be included since such levies are not payable by captive power units of the appellant is not sustainable legally because while determining the market price composition of the price in the hands of the supplier of power is not relevant since purchaser/consumer is not concerned with the composition of the price but it is in the hands of buyer needs to be seen. He therefore restored the original deduction claimed by the assessee. Therefore, the learned assessing officer is in appeal before us by this ground.

17. The learned departmental representative vehemently supported the order of the learned assessing officer and stated that the market price of the power cannot be determined by including the government levies, which have never been paid by the assessee. It was further contested that the market price must be seen excluding the levies and not including the government levies, which are not payable. The learned departmental representative also raised a contention that it is a double loss to exchequer in the form that neither this duty and cess is paid by the assessee but assessee is claiming income

tax exemption on the above sum. For this proposition, the learned departmental representative relied on the decision of the honourable Calcutta High Court reported in 64 taxmann.com 214 in CIT versus ITC Ltd. Therefore, she submitted that the assessee should be granted deduction u/s 80 IA only on the price of the goods and not on the state duties and cess charged by the assessee but not paid to the government department.

18. The learned authorised representative submitted that identical issue has been decided in the case of the assessee for assessment year 2009 – 2010, 2010 – 11 and AY 2014 – 15 by the decision of the higher appellate forum. It is submitted that for assessment year 2009 – 10 honourable High Court has decided this issue, which is placed at page number 1 & 2 of the paper book. He further submitted that that identical issue has also been decided by the honourable Gujarat High Court in CIT versus shah alloys Ltd income tax appeal number 2093 of 2010. He therefore submitted that this issue is squarely covered in favour of the assessee by the decision of the coordinate bench as well as of the honourable High Court in assessee's own case and therefore same needs to be followed. With regard to the decision cited by the learned departmental representative of the honourable Calcutta High Court, he submitted that it does not deal with the government levies but is dealing with whether the market rate should be considered by adopting tariffs fixed by the tariff regulation commission for sale of electricity. He submitted that that issue is not here in the impugned appeal and neither raised by the learned assessing officer. Therefore, that decision does not apply. He also submitted a detailed note on this issue.
19. We have carefully considered the rival contentions and find that here the issue involved is what is the market value in relation to goods or services for the purpose of working out eligible profit for deduction u/s 80 IA of the act. The explanation to Section 8 provides that 'market value' mean the price that such goods or services would ordinarily fetch in the open market. Naturally, the taxes and duties are not at all fetched by such goods or services but are the levies of the government on transfer of such goods. The price of such goods can never include the government levy. This is the argument of the learned departmental representative. However when an issue has been decided by higher forum, we are duty-bound to follow the

same, as judicial discipline demands, more particularly when in assessee's own case on identical facts and circumstances the issue was decided. It is apparent that this issue was raised by the learned assessing officer in assessment year 2009 – 10 and the coordinate bench after discussing this issue at length has taken a view in favour of the assessee in ITA number 4449/Del/2010 vide order dated 24/4/2018. Against this order, the revenue preferred an appeal before the honourable High Court raising the very same issue. The honourable Delhi High Court in ITA number 211/2019 dated 6/3/ 2019 has held as Under:-

“ITA 211/2019 The following additional question of law arises in this appeal:-

“1. Whether the ITAT erred in holding that the write-off in respect of advances given to M/s Bear Logistics LLC to the tune of [Rs. 3.89 crores] was justified having regard to the decision of the Supreme Court in Southern Technologies Ltd. vs. Joint CIT (2010) 320 ITR 577 (SC)?

The third question urged in ITA 211/2019 is with respect to the inclusion of local taxes and duties in the turnover and the relief given by the lower appellate authorities. The revenue urges on this aspect that the assessee produce powers for its captive unit and therefore the sale claimed by it was notional. Furthermore, it is stated that the local taxes collected were not in fact paid to the concerned State Governments. This Court is of the opinion that the orders of the lower appellate authorities including ITAT cannot be faulted. Although, the transaction involved a notional sales nevertheless they have commercial element in as much as they were deemed to be sales and consequently included in the return of the local tax turnovers, filed by the assessee. As a consequence, the decision of the lower appellate authorities and the ITAT are affirmed on this aspect.”

20. Therefore respectfully following the decision of the honourable Delhi High Court in assessee own case for assessment year 2009 – 10, we confirm the order of the ld CIT (A) and ground number 4 the appeal of the learned AO is dismissed.
21. Number 5 is with respect to deletion of the addition of ₹ 6,989,846/- on account of disallowance of depreciation while calculating the profit 115JB of the act. On reading of the assessment order there is no discussion in assessment order on this issue by the ld AO. However while computing the income this adjustment was made. Thus there is no reason or logic given by the ld AO for making this addition. However the order of the learned CIT – A describes the fact that appellant had debited depreciation of

17,01,84,897/- in Profit loss account which was computed as per the rates provided in schedule XIV of The Companies Act, 1956. The assessing officer on the other hand made the addition on account of adjustment of depreciation and additional depreciation of ₹ 1,750,853/- computed under the provisions of The Income Tax Act and Income Tax Rules, 1962. The above amount of depreciation/ additional depreciation, which has been added by the learned assessing officer, was not debited in the profit and loss account in accordance with the provisions of The Companies Act. Therefore the learned CIT appeal held that the question of increasing the book profit by this amount does not arise at all. He therefore held that such adjustment while computing the book profit of the assessee is not at all sustainable. The learned CIT appeal further followed decision of his predecessor and also decision of the honourable Supreme Court in Appollo Tyres limited 255 ITR 273 , deleted the above addition. The learned assessing officer aggrieved has challenged the same as per ground number 5 of the appeal.

22. The learned departmental representative relied upon the order of the learned assessing officer.
23. The learned authorised representative submitted that the learned CIT – A has followed the decision of the honourable Supreme Court in Apollo tyres and further similar additions made by the learned assessing officer in assessee's own case for earlier years are deleted by the coordinate bench. He referred to the decision of the coordinate bench in ITA number 4449/del/2010 dated 24/4/2018 for assessment year 2006 – 07 to 2009 – 10.
24. We have carefully considered the rival contentions and perused the order of the learned assessing officer as well as the learned CIT – A. The learned assessing officer has not discussed this issue at all in the assessment order and merely added back same while computing the book profit in the assessment order. As the issue is squarely covered in favour of the assessee by the order of the coordinate benches in assessee's own case for the earlier year we do not find any reason to deviate from the same where such addition has been deleted following the decision of the honourable Supreme Court in case of Apollo tyres Ltd (supra). Thus we confirm order of the ld

CIT (A) on this score. In view of this ground number 5 of the appeal of the learned assessing officer is dismissed.

25. In the result, appeal filed by the learned assessing officer is partly allowed.

26. Order pronounced in the open court on 31/05/2021.

-Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 31/05/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi