IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'A', BANGALORE

BEFORE SHRI A.K.GARODIA, ACCOUNANT MEMBER
AND
SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

	ITA Nos.	A.Y.	Appellant	Vs	Respondent
1	671(Bang)/2011	2005-06	M/s Bosch Limited, Hosur Road, Adugodi, Bangalore		ACIT, LTU, Bangalore
2	IT(TP) No. 719(Bang)/2011	2005-06	ACIT, LTU, Bangalore		M/s Bosch Limited, Hosur Road, Bangalore
3	672(Bang)/2011	2006-07	M/s Bosch Limited, Hosur Road, Bangalore		ACIT, LTU, Bangalore
4	665(Bang)/2011	2006-07	DCIT, LTU, Bangalore		M/s Bosch Limited, Hosur Road, Bangalore
5	1211(Bang)/2015	2006-07	M/s Bosch Limited, Hosur Road, Bangalore		DCIT, LTU, Bangalore

Assessee : Shri Percy Pardiwala, Sr Counsel
Revenue by : Shri G.R.Reddy, CIT-I

Date of hearing	:	19-07-2016
Date of Pronouncement	:	08-09-2016

O R D E R

PER BENCH

Out of this bunch of five appeals, four appeals are cross appeal of the assessee and revenue for assessment years 2005-06 & 2006-07 and the remaining one appeal is by the assessee for assessment year 2006-07 arising out of order passed by the ld. CIT(A) u/s 154 of the IT Act, 1961.

2. All these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

3. First we take up the appeal of the assessee for assessment year 2005-06 in ITA No.671(B)/2011.

Ground no.1 to 5 are in respect of TP issues and these grounds are as under;

> *"1. the ld. CIT (A), LTU, Bangalore erred in dismissing the appellant's claim for excluding certain comparables on the ground that high profit or high loss making companies should not be taken into account as comparables.*
> *2. The ld. CIT(A) erred in not accepting the appellant's plea that it is insulated from all business and operational risks, particularly having regard to facts in appellants case and did not agree for any suitable adjustments for the differences in risk profile.*
> *3. the learned CIT (A) LTU erred in directing the DCIT to look into the feasibility of selecting companies such as Alpha Geo Ltd., and Vimta Labs which are functionally different.*
> *4. without prejudice, the ld. CIT (A) has erred in law and in facts, in confirming with the TPO/AO in not applying the provisions of proviso to section 92C(2) of the Act.*
> *5. Without prejudice to grounds 1 to 4 above, the learned CIT(A) ought to have directed the TPO to apply the arm's length price determined by the TPO during earlier AY: 2004-05 for the current AY: 2005-06 also, particularly having regard to the fact that the appellant had entered into a fixed price contract for 4 years beginning on 01-04-2003*
> *(relevant to AY: 2004-05)*

4. It was submitted by the ld. AR of the assessee that it can be seen in para-9 to 9.1 of the order of the ld. CIT(A) that the assessee has raised an issue before the ld. CIT(A) regarding revised bench-marking result furnished by the assessee during assessment proceedings vide letter dated 07-10-2008 and the ld. CIT(A) decided the issue in a very cryptic manner without giving any reason for upholding the order of the TPO and hence, the matter should be restored back to the file of the ld. CIT(A) for a fresh decision by way of speaking and reasoned order. He further submitted that if the matter is restored back to the file of the ld. CIT(A) for a fresh decision regarding TP issues then no specific adjudication is called for on any T P issues at the present stage.

5. The ld. DR of the revenue supported the order of the ld. CIT(A).

6. We have considered the rival submissions. For the sake of ready reference, we reproduce para-9 & 9.1 of the ld. CIT(A)'s order of pages- 20-21 of his order.

> "9. Ground no.7.7 which is in a similar vein, and raises the issue relating to the revised bench-marking result furnished by the appellant during assessment proceedings vide its letter dated 18-09-2007 and reiterated vide letter dated 07-10-2008 is reproduced below;
>
> **7.2 Without prejudice, the TPO/DCIT, ought to have accepted the appellant's revised bench-marking result furnished during the assessment proceedings which also satisfied ALP.**
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> 9.1 During the course of assessment proceedings, the appellant vide its letter dated 18-09-2007 & 07-10-2008

submitted that it was engaged in providing basic design and application development services which was in the field of Research &Development in the Automotive Manufacturing Industry i.e. starter motors and alternators, which was its main business. The appellant requested the AO to adopt seven comparables selected by it based on the financials of FY: 2004-05, which is reproduced below;

Table -7

Sl.No.	*Comparables*	*Without adjustments Mark-up on Op. cost*
1	*California Software Co.,Ltd.,*	*9%*
2	*Engineers India Ltd.,*	*10%*
3	*Geometric Software Solutions Co.Ltd.,*	*19%*
4	*Onward Technologies Ltd.,*	*12%*
5	*Easun Engineering Company Ltd.,*	*-7%*
6	*Powersoft Global Solutions Ltd.,*	*22%*
7	*Quintegra Solutions Ltd.,*	*8%*
	Arithmetic mean	*10%*

However, vide para-11.1 of the order u/s 92CA dated 31-10-2008 the TPO rejected California Software Co. Ltd.,& Onward Technologies Ltd., on the ground that they had RPTs in excess of 25% whereas Engineers India Ltd., & Easun Engg. Co.Ltd., failed the export earnings filter while Geometric Software Solutions Ltd., was rejected for the reason that it was a software development company. Hence, the remaining companies selected by the appellant itself namely, Powersoft Global Solutions Ltd., & Quintegra Solutions Ltd., are retained as suitable comparables".

From the above paras reproduced from the order of the d. CIT(A), it is seen that there is no reason given by the ld. CIT(A) regarding rejection of various comparables by the TPO and hence, we feel it proper to restore the

entire matter on TP issues to the file of the ld. CIT(A) for fresh decision by way of speaking and reasoned order after providing adequate opportunity of being heard to both sides. We order accordingly.

7. These grounds raised by the assessee are allowed for statistical purposes.

Ground no.6 raised by the assessee is as under;

> *"6. The ld., CIT(A)LTU erred in upholding the action of the AO in not allowing a deduction for the provision made towards interest payable to Central Excise Dept. Sales tax etc., dept. amounting to Rs.2,96,24,753/- although the appellant has followed mercantile system of accounting".*

8. It was fairly conceded by the ld. AR of the assessee that this issue is decided against the assessee by the Tribunal in assessee's own case for the assessment year 2004-05 in IT(TP)A No.670(B)/2011 dated 20-08-2015. He submitted a copy of this Tribunal order and has drawn our attention to para-4 on page-10 of the Tribunal order. For the sake of ready reference, we reproduce para-4 of this Tribunal order as under;

> *" As regards of appeal no.8 is concerned, against the order of the CIT(A) in upholding the order of the AO in not allowing deduction for provision made towards interest payable to Central Excise Department and Sates Tax Department at Rs.4,29,67,460/- the learned counsel for the assessee submitted that this issue is covered against the assessee by the decision of this Tribunal in assessee's own case for assessment year 2000-01 and 2001-02 which is placed at pages 3 to 58 of the case laws paper book filed before us. The*

Tribunal, at para-6 of its order, has observed that this issue stands covered by the decision of this Bench of the Tribunal in assessee's own case for assessment years 1994-05 and 1999-00 wherein the action of the CIT(A) on disallowing interest payable to Central Excise Department has been upheld by the Tribunal. Respectfully following the same, his ground of appeal (No.8) of the assessee is rejected".

From the above Para, what is seen that this issue is covered against the assessee by the tribunal order in assessee's own case for the assessment years 2000-01 & 2001-02 and hence, this ground of the assessee is rejected by respectfully following this Tribunal order.

Ground no.7 raised by the assessee is as under;

"7.1 The ld. CIT(A), LTU erred in upholding the expenditure towards trademark as capital expenditure and granting depreciation as against the appellant's claim of amortization over 36 months given the facts and circumstances in the appellant's case.

7.2 The ld. CIT(A), LTU erred in upholding the action of the DCIT in changing the character of the expenditure from revenue to capital after two years of its incurrence".

9. It was submitted by the ld. AR of the assessee that it is noted by the ld. CIT(A) in para-13.1.1. and 13.1.2 on pages-28& 29 of his order that as per the assessee's submissions in assessment year 2003-04 & 2004-05, similar claim was allowed as revenue expenditure and therefore, as per the *Rule of Consistency,* in the present year also, the claim should be allowed as revenue expenditure. He submitted that the claim of the assessee was

rejected by the ld, CIT(A) on this basis that merely a mistake was committed in the earlier year and it cannot be allowed to be committed in perpetuity.

10. He further submitted on page-16 to 24 of the paper book is the copy of the assessment order for assessment year 2004-05 and page-18 of the paper book is relevant where the issue was decided by the AO in that year and the claim was disallowed in respect of depreciation claimed in that year on trade mark license fee of Rs.16,55,938/-. He submitted that in that year, the claim of amortization of Rs.25,23,333/- was allowed by the AO being 1/3rd of Rs.75.70 lakhs paid towards exclusive and indivisible right to use their trade mark. He submitted that having allowed the claim in earlier two years, it is not proper to disallow the same claim in the present year. He submitted a copy of agreement for purchase of business from M/s Philip India Ltd., as available on pages-168 – 175 of the paper book and our attention was drawn to page-175 of the paper book where it is stated that sec.3.25 of trade mark license, assignment, agreement shall apply. He further submitted that as per the same, the assessee is eligible to use the trade mark for three years. Thereafter, he has drawn our attention to pages 176 -183 of the paper book and pointed out that value of trade mark user was Rs.75.70 lakhs. At this juncture, the Bench wanted to see specific clause of agreement or trade mark license assignment agreement as per which the assessee was eligible to use the trade mark only for three years but the same could not be made available. But it was submitted by the ld. AR of the assessee that it is not disputed by any authority below that there is limited user of agreement for 36 months. He placed reliance on the judgment of the Hon'ble Gujarat High Court rendered in the case of DCIT Vs

Gujarat Narmada Valley Fertilizers Co. Ltd. as reported in 356 ITR 460(Guj.). He also placed reliance on the judgment of the Hon'ble Bombay High Court rendered in the case of CIT Vs M/s Adhikari Brothers Television Networks Ltd., in ITA No.142 of 2013 dated 17-01-2013. He submitted a copy of this judgment. He also placed reliance on the judgment of the Hon'ble Apex Court rendered in the case of Devidas Vithaldas & Co., Vs CIT as reported in 84 ITR 277(SC).

11. The ld. DR of the revenue supported the orders of the authorities blow.

12. We have considered the rival submissions. First of all we reproduce para-13, 13.1, 13.1.1 and 13.1.2 from the order of ld. CIT(A) on pages-26 to 29 of his order. These paras are as under;

> "13. Grounds 3.1. to 3.3 on the other hand, deal with the issue regarding the AO's treatment of expenditure incurred towards trademark as capital expenditure and allowing depreciation @25% on *'intangible assets'* as against the appellant's claim of treating the same as revenue expenditure and amortizing the same over a period of three years. The same are reproduced as under;
>
> *"3.1 That the DCIT erred in treating the expenditure towards trademark as capital expenditure and granting depreciation as against the appellant's claim of amortization over 36 months given the facts and circumstances of the case".*

3.2 That the DCIT ignored the fact that in the year in which the expenditure was incurred, it was accepted as revenue expense and amortization over 36 months was allowed.

3.3 That the DCIT erred in changing the character of the expenditure from revenue to capital after two years of its incurrence".

13.1 It appears that the appellant had acquired a business from Philips India Ltd., for a consideration of Rs.75.7 lakhs towards '*non-exclusive and indivisible right to apply the trademark to the products and the right to sell the product under the trademark" It was claimed that the right to use the trademark was limited to a period of 3 years and not in perpetuity and, accordingly, a deduction of Rs.25,23,333/- (being 1/3rd of Rs.75.7 lakhs) was claimed u/s 37 for a period of 3 years starting from AY: 2004-05. The AO disallowed the appellant's claim on the following grounds:-*

- *The deduction for acquisition of trademark was clearly covered u/s 32(1)(ii), specifically Explanation 3 to sec.32(1) wherein the expression 'block f assets' shall mean 'intangible assets, being know how, patents, copyrights, trade marks….'.* In other words, the deduction for acquisition of trademark was allowable only u/s 32 for which the depreciation @25% was allowable on '*intangible assets".*
- Furthermore, the provisions of sec.43(6) were quite clear that the WDV of an asset purchased in an earlier year was cost less depreciation actually allowed. In the instant case, the deduction was claimed and allowed, the opening WDV would be the balance remaining to be written off. i.e.

Rs.25,23,333/- on which depreciation @ 25% would work out toRs.6,30,834/-.

- The AO rejected the appellant's contention regarding the limited usage of the trade mark for 3 years on the ground that when an asset is acquired, it had to simply be added to the concerned block of assets irrespective of the life of the asset.
- Moreover, when the IT Act, allows deduction under a particular section, then the claim should be under that section alone and not under any other provisions. Accordingly, the AO disallowed the appellant's claim for amortization of trademarks amounting to Rs.25,23,333/- and allowed depreciation of Rs.6,30,834/- resulting in a net addition of the difference of Rs.18,92,500/-

13.1.1. Vide written submissions filed on 28-03-2011, the appellant merely stated that the AO ought to have accepted its claim and allowed the same as revenue expenditure as was done in AYs 2003-04 & 2004-05 based on the rule of consistency instead of treating the same as capital expenditure in AY: 2005-06. Incidentally, a perusal of the earlier year's records clearly indicate that the appellant had claimed deduction of Rs.25.23,333/- as expenditure payable to Philips India Ltd., to use their trademark to sell their products as well as claimed depreciation of Rs.16,55,938/-. The AO merely concluded that since the appellant cannot claim the deduction of Rs.25,23,333/- as well as depreciation of Rs.16,55,938/- at least one of the claim has to be disallowed. Accordingly, the claim of the depreciation was disallowed.

> 13.1.2. I am inclined to disagree with the appellant's stand reproduced inpara-13.1.1 above. Firstly, there is no clear cut finding given by the AO that the deduction claimed constituted capital or revenue expenditure as he merely disallowed one of the two claims made by the appellant on the ground that only one of the deductions was allowable. Secondly, merely because a mistake was committed in the earlier years does not mean that it should be committed in perpetuity. The AO is well within his right to go into these issues and allow the correct deduction in the earlier years in accordance with law. For the detailed reasons reproduced in Para 13.1 above, I am of the considered view that the AO has rightly disallowed the appellant's claim for amortization of trademarks amounting to Rs.25,23,333/- and allowed depreciation of Rs.6,30,834/-. The net addition of the difference of Rs.18,92,500/- is therefore, upheld. Grounds 3.1 to 3.3 also fail".

From the above paras reproduced from the order of the ld. CIT(A), we find that as per Sec.32(1)(ii) and Explanation-3 to Sec. 32(1), expression block of assets also includes intangible assets including trade mark and depreciation of 25% is prescribed on such intangible assets.

13. Regarding this argument that the assessee is entitled to use the trade mark only for three years, it is noted by the AO that when an asset is purchased, it has to be added to the block of asset irrespective of life of asset. We find force in this observation of the AO because, this is true that

every asset has got a life but the same is not relevant for the purpose of deciding the character of expenditure as to whether it is capital or revenue expenditure. An asset may have a life of three years and some asset may have a life of 30 years and then it cannot be said that the asset having a life of 30 years is capital asset and the other asset having a life of three years only is not a capital asset simply because the life of asset is only three years. If the life of a concerned asset is less than one year then there may be a case that it is an item of stores consumption and therefore, it is revenue expenditure but where such life of asset is more than one year then the quantum of life of capital asset is not relevant. If we go by the life of asset and we amortize the cost of asset on the basis of the life of the asset as being claimed in the present case then there was no need to prescribe rate of depreciation for an asset in the statute book and such treatment on the basis of life of asset will make depreciation provision redundant. Therefore, this cannot be a valid interpretation of law which will result into making the provisions of the Act about depreciation redundant.

14. Now we examine the claim of assessee regarding the *Rule of Consistency.* In our considered opinion, if the view taken by the AO in earlier year is a possible view as per law and in a subsequent year, the AO is proposing to take another possible view then the *Rule of Consistency* will come into play. If the view taken by the AO in the earlier year is not a possible view as per law then it cannot be said that the mistake committed by the AO in an earlier year should be allowed to be perpetuated. In the present case, we find that the view taken by the AO in the earlier years is

not a possible view as per law and therefore, the *Rule of Consistency* will not come to the aid of the assessee in the present case.

15. Now we examine the applicability of various judgments cited by the ld.AR of the assessee. The first judgment cited by him is the judgment of the Hon'ble Gujarat High Court rendered in the case of DCIT Vs Gujarat Narmada Valley Fertilizers Co.Ltd., (Supra). In that case, the facts were that the assessee claimed deduction of a sum spent towards restructuring of term loan. The revenue in that case wanted to treat such expenditure as a capital expenditure. But it was held by the Tribunal in that case that such expenditure is revenue expenditure. The decision of the Tribunal in that case was that the assessee has already obtained a loan and the same could not be treated as an asset or as an advantage of enduring nature and any expenditure incurred was to be allowed as revenue expenditure. The Tribunal order was challenged by the revenue before the Hon'ble Gujarat High Court but the Hon'ble Gujarat High Court approved the Tribunal order in that case. In our considered opinion, the facts in the present case are totally different and therefore, this judgment is not applicable in the present case. In that case, the issue is dispute was regarding the expenses incurred for borrowing money and the Tribunal had followed the judgment of the Hon'ble Apex Court rendered in the case of India Cements Ltd., Vs CIT 60 ITR 52 wherein it was held by the Hon'ble Apex Court that the act of borrowing money was incidental to carrying on of the business and the loan obtained was not an asset or an advantage of enduring nature. In the present case, the trade mark was acquired by the assessee which is an

asset being intangible asset as per the provisions of sec.32(1)(ii) of the Act, 1961 and therefore, this judgment of the Hon'ble Gujarat High Court is not applicable in the present case.

16. The second judgment cited by the ld. AR of the assessee is the judgment of the Hon'ble Bombay High Court rendered in the case of M/s Adhikari Brothers Television Networks Ltd. (Supra). In that case, the issue is dispute was not with regard to depreciation on intangible asset but the issue in dispute was regarding amortization of expenditure u/s 35D of the Act. This is an admitted position of law that share issue expenses can be amortized u/s 35D of the Act if the conditions prescribed in that sec. are existing but this is not a case that share issue expenses are eligible for depreciation u/s 32 of the Act. Hence, this judgment of the Hon'ble Bombay High Court is also not applicable in the present case.

17. The third judgment cited by him is the judgment of the Hon'ble Apex Court rendered in the case of Devidas Vithaldas & Co. Vs CIT (Supra). In that case, one Padamsi Haridas carried on profession as a Chartered Accountant in the name of Devidas Vithaldas & Co., and he took one Amritlal Parikh as a partner, reserving however, to himself all the rights and interests in the goodwill of that business. Subsequently, he retired from the said partnership and as per the deed of retirement the goodwill was sold to the said Shri Amratlal and it was agreed that Shri Amratlal shall pay to the said Padamsi for and during the term of his entire life of 50% share in the net profit or share in the profession if carried on by Shri Amratlal in the name of Devidas Vithaldas & Co. The dispute in that case was regarding the nature of such payment and it was held that disbursement to retiring

partner as per deed of retirement is in the nature of royalty and not related to any allowance and purchase of trade mark and therefore, admissible as revenue expenditure. In the present case, the payment in question cannot be said to be a payment in the nature of royalty because, in the present case, fixed lump sum was paid for purchase of trade mark and therefore, this judgment of the Hon'ble Apex Court is not applicable in the present case.

17.1 As per the above discussion, we have seen that none of the judgments cited by the ld AR of the assessee is rendering any help to the assessee in the present case and since the nature of asset acquired is a capital asset eligible for depreciation u/s 32 of the Act, it cannot be allowed as a revenue expenditure and therefore, this ground of the assessee is rejected.

Ground no.8 is as under;

> *"8. The ld, CIT(A) LTU erred in upholding the action of the DCIT in not granting the deduction u/s 80JJAA in respect of the workmen who were employed y the appellant during the year but whose duration of working in that year was less than 300 days.*

18. The ld. AR of the assessee placed reliance on the judgment of the Hon'ble Apex Court rendered in the case of CIT Vs J.H.Gotla as reported in 156 ITR 323. He also placed reliance on a Circular No.772 as reported in 235 ITR9 (St.) 35 and submitted that para-45 of the said Circular is relevant.

19. The ld. DR of the revenue supported the orders of the authorities below.

20. We have considered the rival submissions. We find that this issue was decided by the ld. CIT(A) as per para-15 of his order as available on pages 31 to 34 of the order. These paras are reproduced for the sake of ready reference;

> *"15. Ground 5 pertaining to non-granting of deduction u/s 80JJAA in respect of workmen employed by the appellant working for less than 300 days in the year is reproduced below:*
>
> ***5. That the DCIT erred in not granting the deduction u/s 80JJAA in respect of the workmen who were employed by the appellant during the year but whose duration of working in that year was less than 300 days.***
>
> - *15.1 Out of the deduction claimed of Rs.12,37,509/- u/s 80JJAA, the AO allowed only Rs.4,68,078/- and disallowed the balance of Rs.4,68,078/- on the ground that as per the definition of 'regular workmen' in Explanation(ii) to Sec.80JJAA, 'regular workmen' did not include 'any other workmen employed for a period of less than three hundred days during the previous year'. The appellant plea that this definition applied to only casual labourers and not permanent employees was rejected on the round that deduction u/s 80JJAA was restricted to additional wages paid to employees who have worked for more than 300 days during the relevant period irrespective of whether they were employed on a permanent basis or otherwise. The AO, accordingly, ascertained that additional wages paid to those who had worked for less than 300 days was Rs.25,64,771/- 30% of which worked out to Rs.7,69,431/-*

which was required to be disallowed. At the appellate stage, the appellant reiterated that in the case of permanent workmen, the question of whether they worked for 300 days or more did not arise.

15.1.1. In view of the facts of the case as discussed in the preceding paragraphs, the AO gave a categorical finding that the wages paid to employees who had worked for less than 300 days in this year cannot be considered for the purposes of deduction u/s 80JJAA. It is of relevance that sec.80JJAA specifically defines the term 'regular workmen' in clause (ii) of the Explanation to the section. It is a cardinal rule of interpretation that where the language used by the Legislature is clear and unambiguous, the plain and natural meaning of the words should be supplied to the language used and resort to any rule of interpretation to unfold the intention is permissible only where the language is ambiguous. There are a plethora of decisions of the Apex Court which support this proposition namely;

- *Smt. Tarulata Shyam Vs CIT 108 ITR 345 (SC)*
- *Keshavji Ravji Vs CIT (1990) 183 ITR 1*
- *Guru Devdata VKSSS Maryadit Vs State of Maharashtra AIR 2001 SC 1980.*
- *CIT Vs Anjum M.H. Ghaswala (2001) 252 ITR 1*
- *Prakash Nath Khanna and Anr Vs CIT & Anr 266 ITR 1.*

The above judgments make it clear beyond a shadow of doubt that Courts are not required to look into the object or intention of the Legislature by resorting to aids to interpretation where the language of the provision is clear

and unambiguous. Consequently, the meaning of each word used by the Legislature is to be given its plain and natural meaning and no word should be ignored while interpreting a provision of a statute. It is pertinent to note that the AO has also relied on several decisions which make it abundantly clear that when the wordings in a section are clear and specific, it has to be followed without imputing or assigning any other meaning or intention.

i) Karnataka Forest Plantations Corpn.Ltd., Vs CIT 156 ITR 275 (Kar.)

ii) Karnataka State Financial Corpn. Vs CIT 174 ITR 206(Kar.)

iii)Ramachandra Mardaraja Deo Vs CIT 27 ITR 667(Ori)

iv) R Gao Electrodes Ltd., Vs CIT 173 ITR 351 (Ker.)

v) Haji Mohammad Usman & Sons Vs CIT 25 ITR 2252 (Nag.)

It is quite apparent from the above analysis that the appellant's eligibility for the said deduction from the standpoint of whether the appellant's employees qualified as 'workmen' within the meaning of Sec.80JJAA or not should be examined from the point of view of tenure of work by the said employees within the meaning of the definition of the term 'regular workmen' contained in Explanation (ii)© whereby those who were employed for a period of less than 300 days during the previous year were excluded from the definition. I am of the firm view that the AO has rightly denied the deduction to the extent it has been claimed for employees who have worked for more than 300 days in the previous year in contravention of Explanation (ii)© to Sec.80JJAA. Consequently, ground 5 fails".

21. We find that the dispute in the present case is regarding allowability of deduction u/s 80JJAA and hence, we hereby reproduce the provisions of sec.80JJAA of the Act for the sake of ready reference;

*"Section **80JJAA...***

][Deduction in respect of employment of new employees.

(1) Where the gross total income of an assessee to whom section 44AB applies, includes any profits and gains derived from business, there shall, subject to the conditions specified in sub-section (2), be allowed a deduction of an amount equal to thirty per cent, of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

(2) No deduction under sub-section (1) shall be allowed,—

(a) if the business is formed by splitting up, or the reconstruction, of an existing business:

Provided that nothing contained in this clause shall apply in respect of a business which is formed as a result of re-establishment, reconstruction or revival by the assessee of the business in the circumstances and within the period specified in section 33B;

(b) if the business is acquired by the assessee by way of transfer from any other person or as a result of any business reorganisation;

(c) unless the assessee furnishes along with the return of income the report of the accountant, as defined in the

Explanation to section 288 giving such particulars in the report as may be prescribed.

Explanation.—For the purposes of this section,—

(i) "additional employee cost" means total emoluments paid or payable to additional employees employed during the previous year:

Provided that in the case of an existing business, the additional employee cost shall be nil, if—

(a) there is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year;

(b) emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account:

Provided further that in the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost;

(ii) "additional employee" means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year, but does not include,—

(a) an employee whose total emoluments are more than twenty-five thousand rupees per month; or

(b) an employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified in accordance with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952); or

(c) an employee employed for a period of less than two hundred and forty days during the previous year; or

(d) an employee who does not participate in the recognised provident fund;

(iii) "emoluments" means any sum paid or payable to an employee in lieu of his employment by whatever name called, but does not include—

(a) any contribution paid or payable by the employer to any pension fund or provident fund or any other fund for the benefit of the employee under any law for the time being in force; and

(b) any lump-sum payment paid or payable to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and the like.

(3) The provisions of this section, as they stood immediately prior to their amendment by the Finance Act, 2016, shall apply to an assessee eligible to claim any deduction for any assessment year commencing on or before the 1st day of April, 2016.'.

[(1) Where the gross total income of an assessee, [being an Indian company,] includes any profits and gains derived from the manufacture of goods in a factory, there shall, subject to the conditions specified in sub-section (2), be allowed a deduction of an amount equal to thirty per cent. of additional wages paid to the new regular workmen employed by the assessee in such factory, in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.]

(2) No deduction under sub-section (1) shall be allowed—

[(a) if the factory is acquired by the assessee by way of transfer from any other person or as a result of any business re-organisation;]

(b) unless the assessee furnishes along with the return of income the report of the accountant, as defined in the Explanation below sub-section (2) of section 288 giving such particulars in the report as may be prescribed.

Explanation.—For the purposes of this section, the expressions,—

(i) "additional wages" means the wages paid to the new regular workmen in excess of [one hundred workmen] employed during the previous year:

Provided that in the case of an existing [factory], the additional wages shall be nil if the increase in the number of regular workman employed during the year is less than ten per cent of existing number of workmen employed in such factory] as on the last day of the preceding year;

(ii) "regular workman", does not include—

(a) a casual workman; or

(b) a workman employed through contract labour; or

(c) any other workman employed for a period of less than three hundred days during the previous year;

(iii) "workman" shall have the meaning assigned to it in clause (s) of section (2) of the Industrial Disputes Act, 1947 (14 of 1947).]

(iv) "factory" shall have the same meaning as assigned to it in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948).]..."

22. In the present case, the AO held that sec.80JJAA was restricted to additional wages paid to employees who have worked for more than 300 days during the relevant period irrespective of whether they were employed on a permanent basis or otherwise. Accordingly, the AO ascertained the additional wages paid to those workers who had worked for less than 300 days of Rs.25,64,771/- and 30% of which worked out to Rs.7,69,431/- was disallowed by the AO. The claim of the assessee is this that if the worker is employed on permanent basis then only because in the present year, working days are less than 300 days because he was employed after 66 days from the start of the previous year then no deduction will be available under this section in respect of such workers appointed or employed after that date and therefore, this approach of the AO is not correct.

23. In our considered opinion, as per provisions of section 80JJAA as reproduced above, the deduction is allowable for three years including the year in which the employment is provided. Hence, in each of such three years it has to be seen that the workmen was employed for at least 300 days during that previous year and that such work men was not a casual workmen or workmen employed through contract labour. Therefore, if some work men were employed for a period less than 300 days in the previous year then no deduction is allowable in respect of payment of wage to such work men in the present year even if such work men was employed in the

preceding year for more than 300 days but in the present year, such work men was not employed for 300 days or more. In this view of the matter, we find no infirmity in the order of the ld.CIT(A) on this issue.

24. Now we examine the applicability of the judgment of the Hon'ble Apex Court cited by the ld. AR of the assessee. In our considered opinion, the issue in dispute in that case was entirely different and therefore, this judgment is not applicable in the present case.

25. In our considered opinion, the Board Circular No.772 also does not render any help to the assessee. Hence, this ground is rejected.

Ground no.9 is as under;

"9. The ld. CIT(A) LTU erred in rejecting the appellant's claim for:

Grant of deduction u/s 35(2AB) n expenditure incurred on scientific, research with effect from 01-04-2004 as against deduction granted on expenditure incurred from 21-09-2004 (being the date of issue of notification) notifying 'automobile components' as eligible article for deduction u/s 35(2AB);

Granting the deduction u/s 35(2AB) on gross expenditure.

26. The ld. AR of the assessee placed reliance on the Tribunal order rendered in the case of DCIT(LTU) Vs M/s Microlab Ltd. as reported in 39 ITR(T) 585. He also placed reliance on the judgment of the Hon'ble Gujarat

High Court rendered the case of CIT Vs Claris Lifesciences Limited.2008-TIOL-484-HC-AHM-IT.

27. The ld. DR of the revenue supported the order of the ld. CIT(A).

28. We have considered the rival submissions. We find that this issue has been decided by the ld, CIT(A) as per para-16,16.1 & 16.1.1. of his order. These paras are reproduced below for the sake of ready reference;

> *" 16. Ground 6 which deals with denial of deduction claimed u/s 35(2AB)reads as under;*
>
> ***6. That the DCIT erred in not granting the deduction u/s 35(2AB) on the gross expenditure incurred on scientific research.***
>
> *16.1 A scrutiny of the facts reveal that the appellant had claimed deduction of Rs.6,39,54,500/-u/s 35(2AB) which refers to 'expenditure' incurred on Research & Development which according to the appellant should be allowed with reference to the gross expenditure without reducing receipts from this activity. However, it was ascertained by the AO from a perusal of the Certificate inform-3CL from the Dept. of Scientific & Industrial Research (DSIR) that the deduction to be claimed by the appellant was the expenditure reduced by related income which has been approved by the prescribed authority. The AO accordingly, concluded that the income received from R & D activities as nothing but reimbursement of the related expenditure and that, therefore, the deduction would have to be allowed on the net expenditure claimed by the*

appellant in its R/I for AY: 2005-06 and certified by the prescribed authority. However, no separate addition was made by the AO as the appellant itself had claimed the net amount after reducing the receipts from the expenditure in its statement of computation of total income filed along with its R/I for AY: 2005-06.

16.1.1. Vide its written submissions, the appellant smutted that neither Sec.35(2AB) nor From -3CL envisaged reduction from the gross expenditure, receipts of the R&D Centre. Consequently, the appellant reiterated that DSIR had incorrectly reduced the receipts of the R&D Centre from the gross expenditure and wrongly advised h Director General, Exemptions to allow weighted deduction u/s 35(2AB) on the net expenditure. The appellant also raised an additional ground that the AO ought to have granted deduction u/s 35(2AB) on expenditure incurred on scientific research w.e.f.01-04-2004 as against deduction granted on expenditure incurred from 21-09-2004, being the date of issue of Notification notifying 'automobile components' as eligible articles for deduction u/s 35(2AB). On a careful consideration of the factual & legal position, I am unable to accept the appellant's contentions in view of the Certificate in form-3CL from the Dept. of Scientific & Industrial Research(DSIR) which categorically states that the deduction to be claimed by the appellant was the expenditure reduced by related income which has been approved by the prescribed authority. Moreover, it is quite apparent that the Notification notifying 'automobile components' as articles eligible for deduction u/s 35(2AB) came into effect only from 21-

09-2004. Incidentally, the fact that the appellant itself had claimed the net amount after reducing the receipts from the expenditure in its statement of computation of total income filed along with its R/I for AY: 25005-06 is irrefutable and undeniable. Ground 6, accordingly fails".

29. We also consider it necessary to reproduce the provisions of sec.35(2AB) of the IT Act, 1961 as under;

"35(2AB)

][(2AB)(1) Where a company engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule]] incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of a sum equal to "one and one-half times" of the expenditure] so incurred.

["Provided that where such expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility is incurred in a previous year relevant to the assessment year beginning on or after the 1st day of April, 2021, the deduction under this clause shall be equal to the expenditure so incurred.";]

[Explanation.—For the purposes of this clause, "expenditure on scientific research", in relation to drugs and pharmaceuticals, shall include expenditure

incurred on clinical drug trial, obtaining approval from any regulatory authority under any Central, State or Provincial Act and filing an application for a patent under the Patents Act, 1970 (39 of 1970).]

30. As per provisions of sec.35(2AB) of the Act, as reproduced above, the assessee is eligible for getting deduction of a sum equal to one and half times of expenditure incurred being eligible expenditure. We also find that it is noted by the ld.CIT(A) in para-16.1 of his order as reproduced above that it was ascertained by the AO from the perusal of the Certificate in Form 3CL from the Dept. of Scientific & Industrial Research (DSIR) that the deduction to be claimed by the appellant was the expenditure reduced by the related income which has been approved by the prescribed authority. On the basis of it, the AO came to the conclusion that income received from R&D activities was nothing but reimbursement of the related expenditure. This was also quoted by the ld. CIT(A) on the same Para that the AO has not made any separate addition because the assessee himself had claimed deduction u/s 35(2AB) of the Act on the net expenditure in its statement of computation of total income filed along with the return of income for the present year.

31. Unless it is established by the assessee that the receipts so reduced by the assessee from the expenditure is not in the nature of reimbursement of expenditure incurred, it has to be held that deduction is to

be allowed by the AO on the net expenditure after reimbursement at prescribed percentage of such net expenditure because, if there is any reimbursement of expenditure then the amount of expenditure incurred by assessee stands reduced. In this view of the matter, we find no infirmity in the order of the ld. CIT(A) on this issue.

32. Now, we examine the applicability of various judgments cited by the ld. AR of the assessee.

33. The first judgment cited by him is the Tribunal order rendered in the case of DCIT(LTU) Vs M/s Microlab Ltd (Supra). In that case, it was not a case that the receipt of the assessee was in the nature of reimbursement of expenditure incurred as in the present case and therefore, this Tribunal order is not rendering any help to the assessee in the present case.

34. Regarding second judgment of the Hon'ble Gujarat High Court rendered in the case of CIT Vs Claris Lifesciences Ltd., (Supra), we find that in that case, the assessee set up in-house R&D facility and applied for approval. An approval came with a specific date and the assessee claimed deduction of the entire expenditure for setting up the facility and the AO allowed the deduction but with a rider that the expenditure prior to the date of approval is not allowable. The ld CIT(A) approved the assessment order on this issue in that case, but the Tribunal held in favour of the assessee on this basis that once the R&D facility is approved the entire expenditure is to be allowed.

35. But in the present case, the facts are different. In the present case, 21.09.2004 is the date of issuing of notification notifying the automobile components as eligible articles for deduction u/s 35(2AB) of the Act. In a case, where an industry is in the list of approved industry, but the assessee applies for approval of its unit after the start of the previous year and the same is approved by DSIR, then deduction can be allowed from April even if the approval is granted on a later date in the same year. But in the present case, till 20th September, 2004, automobile components was not an approved article for deduction u/s 35(2AB) and therefore, the approval granted after this date cannot relate back prior to this and therefore, we find no infirmity in the order of the ld. CIT(A). This ground of appeal of the assessee is rejected, because on both these aspects of the matter, there is no infirmity in the order of the ld. CIT(*A) i.e. regarding netting of reimbursement of expenses and date of notification.

36. In the result, the appeal of the assessee is partly allowed for statistical purpose.

37. Now we take up the appeal of the revenue for the AY : 2005-06 in IT(TP)A No.719(Bang)/2011.

The grounds raised by the revenue are as under;

"1. The order of the CIT(A) in so far as it is prejudicial to the revenue, is opposed to law and facts of the case.

2. The ld. CIT(A)LTU erred in rejecting TPO's comparable companies selected by the TPO in its order by adopting the best possible search process.

3. The ld. CIT(A) did not make any proper search for comparables after rejecting the search process of the TPO.

4. After rejecting the comparables of the TPO, the ld. CIT(A) picked up her own three comparable companies namely, Choksi Laboratories Ltd., Rites Ltd., and Vimta Labs Ltd., merely because the same were considered as comparables in earlier years and ignored the fact that these companies were functionally different as per the annual reports and other information pertaining to the FY 2004-05.

5. The ld. CIT(A) LTU erred in selecting the company names Quintegra Solutions Ltd., which does not qualify the filters of functional similarity and different accounting year applied by the TPO through no adverse finding has been given in respect of the filters.

6. The ld. CT(A)LTU erred in selecting the company names Powersoft Global Solutions Ltd., which fails the TPO's filter of different accounting year and also does not have segmental results in respect of IT enabled service segment and the software development service segment.

7. The ld.CIT(A) did not give any clear finding in respect of Alpha Geo Indi Ltd., and Water & Power Consultancy Services Ltd., and her directions for examining the feasibility of these companies as comparable was akin to setting aside the matter in contravention of sec.51(1)(a).

8. The ld. CIT(A) erred in directing the AO to allow depreciation on intangible assets.

9. The ld. CIT(A) erred in merely following the judgments of the Hon'ble Tribunal for the assessment years 2003-04 and 2004-05 without examining the facts o the case which were clearly brought out in the order.

10. The ld. CIT(A) is not justified in allowing the assessee's appeal in view of the fact that the issue has not reached finality and the department is before the Hon'ble High Court on this issue.

11. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) be set asides and that of the AO be restored.

12. The appellant craves leave to add, to alter, to amend or to delete any of the grounds that may be urged at the time of hearing of the appeal"

38. It was submitted by the ld. DR of the revenue that ground no1 to 7 are regarding TP issues and since in the appeal of the assessee, TP issues are also raised and it has been argued by the ld. AR of the assessee that the matter regarding TP issues should be restored back to the file of the ld. CIT(A), the TP issues raised by the revenue in its appeal should also be restored back to the file of the ld. CIT(A).

39. The ld. AR of the assessee also agreed to this proposition put forth by the learned DR of the revenue. In view of the facts noted above as per which both sides agreed that the TP issues as per revenue's appeal should also be restored back to the file of the ld. CIT(A), we set aside the order of the ld.CIT(A) on TP issues and restore back the TP issue to the file of ld. IT(A) for a fresh decision along with the decision in respect of TP issues raised by the

assessee in its appeal and restored back to us to the file of the ld. CIT(A) for a fresh decision. Accordingly, ground no.1 to 7 of the revenue appeal are allowed for statistical purposes.

40. Regarding ground no.8 to 10 of the revenue's appeal, ld. DR of the revenue supported the assessment order whereas the ld.AR of the assessee supported the order of the ld. CIT(A). He also submitted that para-14.1.1 of the order of the ld. CIT(A) is relevant for this issue, as per which ld. CIT(A) has simply followed the Tribunal order in assessee's own case for earlier years i.e. 2003-04 and 2004-05.

41. We have considered the rival submissions.

First of all we reproduce para-14.1.1 of the order of the ld.CIT(A).

"14.1.1 At the appellate stage, the appellant drew attention to the decision of the Hon'ble ITAT, Bangalore Bench in the appellant's own case for AY: 2004-05 (ITA NO.329(B)/2009 dated 31-0-8-2009) squarely on this issue which was followed subsequently by the jurisdictional ITAT for AY: 2003-04 (ITA Nos.706 & 707/B/2010 dt.22-10-2010) A plan reading of the order dated 31.08.2009 reveals that the Hon'ble ITAT concluded vide para-6.6 of its order that the appellant was entitled to claim depreciation on 'business information' amounting to Rs.1.38 Crores under the category of 'other identifiable intangi9bles (goodwill) following the principle laid down by he Hon'ble ITAT Mumbai Bench 'SMC' in the case of Skyline Caterers ()P)Ltd., Vs ITO (2008) 20 SOT 266(Mum.) the relevant extract of which is reproduced below;

" A perusal of the provisions of s.32(1)(ii) shows that the Legislature has specified certain intangible assets on which depreciation can be claimed, namely. Know-how, patents, copyrights, trademarks, license, franchises. These specific intangible assets are followed by the expression 'any other business or commercial rights of similar nature'. In such a situation, the rule of Ejusdem Generis would apply. The scope of the rule is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified. The general words take the colour from the specific words. The specific words in the above section reveal the similarity in the sense that all the intangible assets specified are tools of the trade, which facilitate the assessee carrying on the business. Therefore, the expression 'any other' business or commercial rights of similar nature' would include such rights which can be used as a tool to carry on the business.

42. Since the ld. DR of the revenue could not point out any difference in facts in the present year, we find no reason to take a contrary view in the present year and therefore, respectfully following the earlier Tribunal orders in assessee's own case, we decline to interfere with the order of the ld. CIT(A) on this issue. Accordingly, ground no.8 to 10 of the revenue are rejected.

Ground no.11 & 12 of the revenue's appeal are general in nature requires no specific adjudication

43. In the result, the appeal of the revenue is partly allowed for statistical purposes.

44. Now we take up the appeal of the assessee for AY: 2005-06 in ITA No.1211(B)/2015 in the course of proceedings u/s 154 of the IT Act, 1961.

The grounds raised by the assessee are as under;

> *" 1. That the ld.CIT(A), LTU ought to have allowed appellant's claim for weighted deduction u/s 35(2AB) on the gross amount of expenditure and not on the net amount of expenditure, having regard to the provisions of section 35(2AB).*
>
> *2. The appellant craves leave toad, to amend or alter any o the grounds herein.*
>
> *3. For such and other grounds that may be urged at the time of hearing, the appellant prays for appropriate relief.*

45. It was submitted by the ld. AR of the assessee that this issue is identical to ground no.9 in assessee's appeal for assessment year 2005-06 and therefore, the same can be decided on similar line in the present case also.

46. The ld. DR of the revenue also agreed to this proposition put forth by the ld. AR.

47. We have considered the rival submissions.

48. We find that while deciding IT(TP)A No.719(B)/2011 of assessee's appeal for the assessment year 2005-06, we have decided this issue against as per para-35. Accordingly, in the present appeal also, this issue is decided on the same line and these grounds of the assessee are rejected.

49. In the result, the appeal of the assessee is dismissed.

50. Now we take up the appeal of the revenue for the assessment year 2006-07 in ITA No.665(B)/2011.

The grounds raised by the revenue are as under;

"1.The order of the CIT(A) in so far as it is prejudicial to the revenue, is opposed to law and facts of the case.

2. The ld. CIT(A) erred in directing the AO to allow as depreciation on intangible assets.

3. The ld. CIT(A)should have appreciated the fact that in the depreciation schedule attached to the audit report in Form-#CD, the assessee had claimed depreciation on 'payment of goodwill' and this amount was capitalized I the books as goodwill by the assessee company itself. Therefore, the assessee company could not have taken a different stand at a later stage.

4. The ld. CIT(A) erred in merely following the judgments of the Hon'ble Tribunal for the assessment years 2003-04 & 2004-05 without examining the facts of the case which were clearly brought out in the order.

5. The ld. CIT(A) is not justified in allowing the assessee's appeal in view of the fact that the issue has not reached finality and the department is before the Hon'ble High Court on this issue.

6. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) be set aside and that of the AO be restored.

7. The appellant craves leave, to add, to alter, to amend or to delete any of the grounds that may be urged at the time of hearing of the appeal".

51. It was submitted by the ld. DR of the revenue that ground no.1 is general in nature and it needs no specific adjudication. He further submitted that although, the revenue has raised as many as seven grounds of appeal but the only issue involved is regarding the action of the ld.CIT(A) to allow depreciation on intangible assets i.e. goodwill. He submitted that the same issue has been raised by the revenue in appeal for the assessment year 2005-06 as per ground no.8 to 10 and therefore, in the present year also, this issue may be decided on similar lines.

52. The ld. AR of the assessee agreed to this proposition put forth by the ld. DR of the revenue.

53. We have considered the rival submissions and we find that in assessment year 2005-06, while deciding Grounds 8 to 10 in the appeal of the revenue, this issue has been decided by us in favour of the assessee as per Para 42above and hence in the present year also, this issue is decided in favour of the assessee and accordingly, these grounds of the revenue are rejected.

54. In the result, the appeal of the revenue is dismissed.

55. Now we take up appeal by the assessee in ITA No.672(B)/2011 for the assessment year 2006-07. The grounds raised by the assessee are as under;

"1. The ld. CIT(A),LTU erred in upholding the action of the AO in not allowing a deduction for the provision made towards interest payable to Central Excise and Customs Dept. amounting to Rs.93,25,345/- although the appellant had followed mercantile system of accounting.

2.1 The ld. CIT(A) LTU erred in upholding the expenditure towards trademark as capital expenditure and granting depreciation as against the appellant's claim of amortization over 36 months given the facts and circumstances in the appellant's case.

2.2 The ld. CIT(A) LTU erred in upholding the action of the DCIT in changing the character of the expenditure from revenue to capital after two year of its incurrence.

3. The ld. CIT(A)LTU erred in upholding the action of the DCIT in not granting the deduction u/s 80JJAA in respect of the workmen who were employed by the appellant during the year but whose duration of working in that year was less than 300 days.

4. The ld.CIT(A)LTU erred in not dealing with the Additional ground raised by the appellant against DCIT's action of not granting the deduction u/s 35(2AB) on the gross expenditure incurred on scientific research.

5. The appellant craves leave to add to, amend or alter any of the grounds herein".

56. Regarding ground no.1, it was submitted by the ld.AR of the assessee that this issue is identical to ground no.6 raised by the assessee in its appeal for the assessment year 2005-06. Similarly, for ground no.2 in the present year, it was submitted by the ld.AR that this issue is identical to

ground no.7 raised by the assessee in its appeal for the assessment year: 2005-06. Similarly, for ground no.3 raised by the assessee, he submitted that it is also identical to Ground no.8 raised by the assessee in assessment year 2005-06. For Ground no.4 in the present year, he submitted that this issue is identical to ground no.9 raised by the assessee in appeal for the assessment year 2005-06. He further submitted that these four grounds raised in the present year may be decided in line with the Tribunal's decision in assessment year 2005-06.

57. The ld. DR of the revenue also agreed to this proposition put forth by the ld.AR of the assessee.

58. We have considered the rival submissions. We find that ground no.1 to 4 in the present year are identical to ground no.6 to 9 raised by the assessee in its appeal for the assessment year 2005-06 and since no difference in facts could be pointed out by any side, we find no reason to take a contrary view in the present year. Accordingly, in line with our decision in assessment year 2005-06, we decide these four grounds in the present year on similar line.

59. In assessment year 2005-06, ground no.6 to 9 of the assessee appeal were rejected and therefore, in the present year also, ground no.1 to 4 of the assessee are rejected.

62. In the result, the appeal of the assessee is dismissed.

63. In the combined result, the cross appeals of the assessee and revenue for assessment year 2005-06 are partly allowed. Whereas the remaining appeal of the assessee for assessment year 2005-06 u/s154 is dismissed and the cross appeals of the assessee and revenue for assessment year 2006-07 are dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(ASHA VIJAYARAGHAVAN)	**(A.K. GARODIA)**
JUDICAL MEMBER	**ACCOUNTANT MEMBER**

Bangalore:
D a t e d : 08.09.2016
am*

Copy to :

1	Appellant
2	Respondent
3	CIT(A)-II Bangalore
4	CIT
5	DR, ITAT, Bangalore.
6	Guard file

By order,
AR, ITAT, Bangalore

1. श्रुतलेख की तारीख.....
DATE OF DICTATION.....

2.तारीख, जिस पर टाइप किया हुआ मसौदे, संबंधित सदस्य के सामने रखा गया हैं
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE DICTATING MEMBER.....

3. तारीख जिस पर अनुमोदित मसौदे व.निजी सचिव/निजी सचिव के पास वापस आए
DATE ON WHICH THE APPROVED DRAFT COMES TO THE PS/Sr.PS.....

4. घोषणा के लिए आदेश संबंधित सदस्य के सामने रखने की तिथि
DATE ON WHICH THE ORDER IS PLACED BEFORE THE DICTATING MEMBER FOR PRONOUNCEMENT.....

5. आदेश नि.सचिव/व.नि.सचिव के पास वापस आने की तिथि
DATE ON WHICH THE ORDER COMES BACK TO THE PS/Sr.PS.....

6 आदेश अपलोड करने की तिथि
DATE OF UPLOADING THE ORDER ON WEBSITE.....

7. अगर अपलोड नहीं किया तो, उसका कारण
IF NOT UPLOADED, FURNISH THE REASON FOR DOING SO.....

8. बेंच लिपिक के पास फाइल जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE BENCH CLERK.....

9. आदेश ज़ेरोक्स/पृष्ठांकन के लिए भेजने की तिथि
DATE ON WHICH ORDER GOES FOR XEROX &ENDORSEMENT.....

10. फाइल मुख्य लिपिक के पास जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE HEAD CLERK.....

11. आदेश पर हस्ताक्षर के लिए फाइल सहायक रजिस्ट्रार के पास जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO THE ASSISTANT REGISTRAR FOR SIGNATURE ON THE ORDER.....

12. अधिकरण आदेश के प्रेषण के लिए फाइल प्रेषण विभाग में जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO DESPATCH SECTION FOR DESPATCH OF THE TRIBUNAL ORDER.....

13. आदेश की प्रेषण की तिथि
DATE OF DESPATCH OF ORDER.....