आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'B' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकरअपीलसं./**I.T.A.No.2329/Mds/2016**
(निर्धारणवर्ष / Assessment Year: 2012-13)

M/s. Simpson & Co.Ltd., 861/862, Anna Salai, Chennai-600 002.	Vs	The Deputy Commissioner of Income Tax LTU-III, Chennai-600 101.
PAN: AAACS4909F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. Saroj Kumar Parida, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr.Supriyo Pal, JCIT

सुनवाईकीतारीख/Date of hearing	:	2nd November,2016
घोषणाकीतारीख /Date of Pronouncement	:	22nd December, 2016

आदेश / O R D E R

Per A. Mohan Alankamony, AM:-

This appeal is filed by the assessee aggrieved by the order of the learned Commissioner of Income Tax (Appeals)-17, Chennai dated 30.03.2016 in ITA No.63/14-15/CIT(A)-17 passed under section 143(3) r.w.s. 250(6) of the Act.

2. The assessee has raised several elaborate grounds in its appeal, however, the cruxes of the issues are as follows:-

> "i) *The learned Commissioner of Income Tax (Appeals) has erred in sustaining the order of the learned Assessing Officer who had disallowed ₹2,10,54,897/- by invoking the provisions of section 14A r.w.r 8D being expenditure incurred for earning exempt income.*
>
> *ii)) The learned Commissioner of Income Tax (Appeals) has erred in sustaining the order of the*

learned Assessing Officer who had disallowed ₹18,07,779/- towards the claim of additional depreciation under section 32(1)(iia) of the Act

3. Brief facts of the case are that the assessee is a limited company engaged in the business of manufacturing of diesel engines filed its return of income on 30.03.2013 declaring income of ₹1,30,22,20,310/- and total income of ₹174,12,26,231/- under section 115JB of the Act. The case was selected for scrutiny and notice under section 143(2) was issued to the assessee on 12.08.2013. Thereafter the assessment was completed by the learned Assessing Officer under section 143(3) of the Act on 31.12.2014 wherein he made certain disallowances amongst which one of the disallowance of ₹2,35,36,897/- was towards expenditure incurred for earning exempt income by invoking the provisions of section 14A of the Act and the other disallowance was of ₹18,07,779/- towards the claim of additional depreciation under section 32(1)(iia) of the Act.

Ground No.1: Disallowance of ₹2,35,36,897/- under section 14A of the Act:

4.1 During the course of assessment proceedings, it was noticed by the learned Assessing Officer that the assessee had earned dividend income of Rs.28,43,91,300/- out of its investments in equity shares of Rs.240,09,16,816/- . It was further noticed by the learned Assessing Officer that the assessee company had incurred interest expenditure amounting to Rs.5,80,41,857/- on its borrowings of Rs.56,80,51,498/- as on 31.03.2011. It was further noticed that the assessee had only disallowed a sum of Rs.24,82,000/- as expenditure incurred towards earning exempt income in lieu of section 14A of the Act. Before the learned Assessing Officer, the assessee had furnished the following details of its investment of Rs.2,44,70,12,822/- as on 31.03.2012.:-

i)Bonds of Central Bank of India	Rs.30,00,000
ii)Investment in Debentures issued by Standyne Amalgamations Pvt.Ltd.	Rs.2,50,00,000
iii) Investments in subsidiary companies	?
iv) Investments in mutual funds	?
v) Investments in tax free bonds	?

Total	Rs. 2,44,70,12,822/-
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4.2 Further, the following arguments were advanced by the assessee before the learned Assessing Officer:-

i) For the investments made in equity shares of sister companies of the assessee company, the provisions of section 14A would not be applicable.

ii) No investments were made out of borrowed funds. The entire investment was made from the assessee's own funds viz., its reserves & surplus and own capital.

iii) No expenses were incurred for earning exempt income and further no expenses can be attributed towards the investment made by the assessee.

4.3. However, the learned Assessing Officer rejected the arguments of the assessee and made the following observations:-

(i) From the facts available on record, it is evident that the assessee has incurred expenditure which is debited to its profit & loss account such as rent, printing & stationery, travelling expenses, legal &

consultancy expenses, communication expenditure and sundry expenses, a portion of which will be attributable towards the investments made by the assessee.

(ii) All the funds of the assessee such as interest free funds and interest bearing funds are put in the common kitty of the assessee and the investments are made from the same. Therefore, it cannot be said that no expenses are incurred for managing the investments of the assessee, hence Rule 8D of the Rule will be attracted.

iii) Reliance was placed in the decision of Chennai Bench of the Tribunal dated 13.06.2008 reported in 2008-TIOL-463-ITAT-MAD in the case MGM Diamond Beach Resort Ltd. Vs. DCIT, Haryana Land Reclamation & Development Corporation Vs. CIT reported in 302 ITR 218 (P& H), Smt. Leela Ramachandran Vs. CIT (2011) 10 Taxman.com (2009) (Ker).

4.4 Thereafter, the learned Assessing Officer computed the disallowance under section 14A of the Act by applying Rule 8D(2) of the Rules at Rs.2,35,36,897/- and after reducing the amount of Rs.24,82,000/-, which was already disallowed by the assessee in lieu of section 14A of the Act made addition of Rs.2,10,54,897/-.

5. On appeal, the learned Commissioner of Income Tax (Appeals) confirmed the order of the learned Assessing Officer by agreeing with his view and further held as under:-

> "***4.1.8*** *Even the appellant's explanation that the investments in the in the group concerns is a strategic investment and hence should not be considered for the purpose of determining the disallowance u/s.14A, is devoid of much merit. Strategic investments means the investments in other concerns with which the assessee has close and immediate business transactions and the investments should directly benefit the assessee, by way of reduction in the cost of production or increase in profitability etc. Also, the strategic investment means the investments which are required be invested in order to protect the interests of the business, and if such investments are not made the business will suffer adversely. However, in the present case, the appellant has not proved any such inevitability /requirement. Therefore, the investments made in the group concerns cannot be considered as strategic investments /business exigency. The claim of the appellant that the investments are for the*

better control and management of the business is a general statement and may be aimed at benefiting the share holders/directors of the appellant company, but no way beneficial for the Improvement of the business transactions and the profitability of the appellant company, per se. Therefore, the investments in the group concerns cannot be excluded for the list of investments for the purpose of section 14A of the Act.

4.1.9 *Further, as could be seen from the assessment order, the Assessing Officer has analysed the appellant's activity of investing in shares and observed that there will be some element of expenditure, both in terms of financial burden (interest element) as well as the in terms of use of manpower and infrastructural facilities in making the investments in shares/funds. Hence there was a satisfaction of the Assessing Officer that there was some element of expenses incurred by the appellant in relation to the investments in shares and earning the exempt income which needs to be quantified and disallowed u/s.14A of the Act. Accordingly, as provided u/s.14A of the Act the Assessing Officer had rightly qualified the said expenses at RS.2,35,36,897/-, by using the rule 8D, and disallowed u/s.14A of the Act.*

4.1.10 *Thus, the Assessing Officer was satisfied, that there was an element of expense involved in making Investments whose income is exempt from tax and the amount of such expenses segregated by the appellant is not reasonable considering the volume and nature of the transactions. Therefore the Assessing Officer was duty bound to invoke the provisions of Rule-8D. Once the provisions of Rule-8D are, invoked, the Assessing .Officer has no option but to arrive at the expenses @ 0.5% as per step-3 of the formula which is mandatory. In fact, the Assessing Officer in his order has clearly stated these facts before invoking the provisions of section 14A r.w.r.8D. Hence the Assessing Officer rightly invoked the Rule-8D and arrived at the disallowance of expenses u/s.14A r.w.Rule-8D.*

4.1.11 *In view of the above, the Assessing*

Officer's action of determining the expenses attributable for earning exempt income at Rs.2,35,36,897/-, as against Rs.24,82,000/- shown by the appellant, u/s.14A r.w.r.8D, and bringing the difference of Rs.2,10,54,897/- {i.e. Rs.2,35,36,897 - Rs.24,82,000) to tax, is as per the law and justified. The appellant fails in its appeals in this regard. This ground is dismissed."

6. At the outset, the learned Authorized Representative submitted that the issue is already decided by the Chennai Bench of the Tribunal in the assessee's own case for the assessment year 2005-06, 2008-09 to 2010-11 in ITA No.1451, 1443 to 1446/Mds/2014 vide order dated 06.06.2016, wherein the matter was remitted back to the Ld.A.O with certain directions. He therefore pleaded that for the relevant assessment year also the issue may be remitted back to the file of the learned Assessing Officer with similar directions.

7. The learned Departmental Representative could not controvert to the submissions of the learned Authorized Representative.

8. After hearing both sides, we find merit in the submissions of the learned Authorized Representative. On the identical issue the Chennai Bench of the Tribunal in the assessee's own case for the earlier assessment years (supra) has remitted back the matter to the file of the learned Assessing Officer to pass appropriate orders on merit & law with certain directions. The relevant portion of the order is extracted herein below for reference:-

"*16. We have heard the rival submissions and carefully perused the materials available on record. From the written submission furnished by the learned Authorized Representative, it is revealed that the assessee had made the following investments for the relevant assessment years:-*

S.No.	Break-up of investments	Assessment year 2008-09	Assessment year 2009-10	Assessment year 2010-11
1.	In Shares of **subsidiaries** / **group companies** which are historical	100.14 crores	93.81 crores	93.81 crores
2.	In shares of **other companies**	0.91 crores	0.91 crores	0.77 crores
3	In **mutual funds**, income from which are exempt	2.50crores	48.21 crores	53.51 crores
4.	In bonds and mutual funds, income from which are **taxable**	35.55 crores	42.30 crores	34.30 crores
	Total	139.10 crores	185.23 crores	182.39 crores

From the above, it is evident that the assessee has invested in shares of subsidiaries/group companies, mutual funds and in bonds and mutual funds income from which are taxable. As regards investments made in subsidiaries and group companies, Chennai Bench of the Tribunal, on the earlier occasion, in the case of Rane Holdings Ltd. Vs. ACIT in ITA No.115/Mds/2015 vide order dated 06.01.2016, extracted

herein below, has held that, where investments are made in sister concerns or group concerns for strategic reasons, no expenses can be inferred to have been incurred if such investments are made out of non-interest bearing funds of the assessee. The gist of the relevant order in ITA No.115/Mds/2015 dated 06.01.2016 of this Tribunal is reproduced herein below for reference:-

"5. We have heard both the parties and carefully perused the materials available on record. On the identical issue as pointed out by the Ld. A.R. the Chennai bench of the Tribunal in ITA No.156/Mds/2013 vide order dated 20/08/13 for the assessment year 2009-10 has remitted back the matter to the Ld. Assessing Officer to decide the matter once again afresh based on the findings whether the assessee had actually incurred any expenditure in earning the dividend income. The relevant portion of the order is extracted herein below for reference:-

Further, on the identical issue various Benches of the Tribunal and the Hon'ble Bombay High Court have held as follows:-

i) *Garware wall Ropes Ltd., Vs. ACIT reported in (2014) 65 SOT 086 (Mum.) held as follows:-*

ii)

"When assessee has prima facie brought out case that no expenditure has been incurred for earning income, which does not form part of total income, then in absence of any finding that expenditure has been incurred for earning exempt income provisions 14A cannot be applied.."

iii) *Integlobe Enterprises Ltd., Vs. DCIT reported in (2014) 40 CCH 0022(Del. Trib.) held as follows:-*

"No disallowance of interest is required to be made under rule 8D(i) & 8D(ii) where no direct or indirect interest expenditure was incurred for making investments.Where the assessee had utilized interest free funds for making fresh investments and that too into its subsidiaries, which was not for the purpose of earning exempt income and which was for strategic purposes only, no disallowance of interest was required to be made under Rule 8D(i) & 8D(ii) and strategic investment has to be excluded for purpose of arriving at disallowance under Rule 8D(iii)."

iv) M/s.JM Financial Ltd., Vs. ACIT reported in 2014-TIOL-202-ITAT-MUM held as follows:

"…the department has not disputed this fact out of the total investment about 98% of the investment are in subsidiary companies of the assessee and, therefore, the purpose of investment is not for earning the dividend income but having

control and business purpose and consideration. The assessee has brought out a case to show that no expenditure has been incurred for maintaining the 98% of the investment made in the subsidiary companies, therefore, in the absence of any finding that any expenditure has been incurred for earning the exempt income, the disallowance made by the Assessing Officer is not justified, accordingly the same is deleted."

(iv) CIT Vs. Bharti Televenture Ltd. reported in (2011) 331 ITR 0502.

"Where the assessee was found to be having adequate non-interest bearing fund by way of share capital and reserves and there was no nexus between the borrowals of assessee and the advances given, no disallowance for interest was called for."

(v) CIT Vs. Reliance Utilities & Power Ltd., reported in (2009) 313 ITR 0340(Bom.) has held as follows:-

"Tribunal having recorded a clear finding that the assessee possessed sufficient interest-free funds of its own which were generated in the course of the relevant financial year, apart from substantial shareholders fund, presumption stands established that the investments in sister concerns were made by the assessee out of interest free funds and therefore no part of interest on borrowings can be disallowed on the basis that the investments were made out of interest bearing funds."

(vi) EIH Associated Hotels Ltd Vs. DCIT reported in 2013- TIOL-796-ITAT-MAD

"…. The investments made by the assessee in the subsidiary company are not on account of investment for earning capital gains or dividend income. Such investments have been made by the assessee to promote subsidiary company into the hotel industry. The assessee is not intothe business of investment and the investments made by the assessee are on account of business expediency. Any dividend earned by the assessee from investment in subsidiary company is purely incidental. Therefore the investment made by the assessee in its subsidiary is not to be reckoned for disallowance U/s.14A r.w.r.8D. The Assessing Officer is directed to re-compute the average value of investment under the provisions of Rule 8D after deleting investments made by the assessee in subsidiary company."

Taking note of the above decisions and the decision of the Chennai bench of the Tribunal in ITA No.156/Mds/13 cited supra, we hereby remit the matter back to the file of Ld. Assessing Officer to examine the issue involved in this case afresh and pass appropriate order as per law and merits and in the light of the decisions cited herein above. While doing so, we also direct the Ld. Assessing Officer to consider the decision of the Tribunal in the case M/s Agile Electric Sub Assembly Pvt. Ltd. cited supra wherein it was held as follows:-

'"7.2 In regard to applicability of Section 14A of the Act read with Rule 8D also; the above view will be applicable. Moreover in the case EIH Associated Hotels Ltd v. DCIT reported in 2013 (9) TMI 604 in ITA No.1503, 1624/Mds/2012 dated 17th July, 2013, it has been held by the Chennai Bench of the Tribunal as follows:-

"*Disallowance U/s. 14A rw Rule 8D – CIT upheld disallowance – Held that – investments made by the assessee in the subsidiary company are not on account of investment for earning capital gains or dividend income. Such investments have been made by the assessee to promote subsidiary company into the hotel industry. A perusal of the order of the CIT(Appeals) shows that out of total investment of Rs.64,18,19,775/-, Rs.63,31,25,715/- is invested in wholly owned subsidiary. This fact supports the case of the assessee that the assessee is not into the business of investment and the investments made by the assessee are on account of business expediency. Any dividend earned by the assessee from investment in subsidiary company is purely incidental. Therefore, the investments made by the assessee in its subsidiary are not to be reckoned for disallowance U/s. 14A r.w.r. 8D. The Assessing Officer is directed to re-compute the average value of investment under the provisions of Rule 8D after deleting investments made by the assessee in subsidiary company – Decided in favour of assessee.*"

For the above said reasons, we hereby hold that in the case of the assessee the provisions of Section 14A read with Rule 8D will not be applicable in regard to investments made for acquiring the shares of the assessee's sister concerns. Accordingly we restrain ourselves from interfering with the Order of the Ld.CIT(A) on this regard."

Therefore, following the aforesaid decision of the Tribunal, we hereby direct the learned Assessing Officer to delete the addition made by invoking the provisions of section 14A r.w. Rule 8D of the Act, subject to verification that investments are made by the assessee in its sister concerns only and from its interest free funds."

17. From the above decision, it is clear that provisions of section 14A and Rule 8D will not be applicable, where investments are made in sister concerns or subsidiary companies for strategic purposes. However, with respect to investment made in mutual funds, there will be certain cost involved with respect to the decision making process of choosing the mutual fund where investment / disinvestment has to be made and monitoring such investment. Therefore,

> *provisions of section 14A and Rule 8D of the Act will be applicable in such cases. And finally with respect to investment made in mutual funds and bonds, the income received from which are taxable, the provisions of section 14A will not be applicable since it is applicable only in the cases where expenditure are incurred by the assessee relating to income which does not form part of the total income under the Act. Since these aspects were not examined by the learned Assessing Officer, we hereby remit the matter back to the file of the learned Assessing Officer for fresh consideration in the light of our above observations, and thereafter to pass appropriate Order on merits and as per law after affording sufficient opportunity to the assessee of being heard.*

9. Accordingly, we hereby remit this relevant issue before us also to the file of the learned Assessing Officer with similar directions, and slightly modified observations for the sake of clarity, viz., *"the provisions of section 14A and Rule 8D will not be applicable, where investments are made from* ***non-interest bearing funds*** *in the sister concerns or subsidiary companies of the assessee for strategic purposes because no expenditure can be attributable for making such investments. However if the investments are made out of interest bearing funds, then the provisions of Section 14A of the Act would be attracted because the interest expenditure and other relevant expenditure for obtaining such borrowings alone and no other expenditure(because all other expense would be attributable to the business of the assessee as the*

investments are made in the sister concern for the strategic business reason of the assessee's business.) would be attributable for earning exempt dividend income. Further if the investments are made (wherein the income derived out of the same are exempt from tax) is less than the aggregate of ***general reserves and own capital*** *then such investments are to be considered as investments made out of non-interest bearing funds, because the assessee is at liberty to divert such funds (General Reserve/Own Capital) from its business for any other purpose other than distribution of profits in the case of own Capital when the assessee is a Limited Company. However, with respect to investment made in mutual funds wherein the income derived out of it is non-taxable, there will be certain cost involved with respect to the decision making process of choosing the mutual fund where investment / disinvestment has to be made and monitoring such investment and interest expense if any as described herein above, then the provisions of section 14A and Rule 8D of the Act will be applicable in such cases. And finally with respect to investment made in mutual funds and bonds, the income received from which are taxable, the provisions of*

section 14A will not be applicable since it is applicable only in the cases where expenditure are incurred by the assessee relating to income which does not form part of the total income under the Act."

Ground No.2: Disallowance of Rs.18,07,779/- under section 32(1)(iia) of the Act:

10.1 The assessee had claimed additional depreciation towards the assets purchased and put to use in the second half of the previous financial year. Since the machinery is not a new machinery during the relevant assessment year, the learned Assessing Officer disallowed the claim of additional depreciation under section 32(1)(iia) of the Act.

10.2 On appeal, the learned Commissioner of Income Tax (Appeals) confirmed the order of the learned Assessing Officer by observing as under:-

> "4.3.4 *Therefore, respectfully following the decision of the urisdictional ITAT in the case of DCIT Vs. I.P Rings (ITA No.1328/Mds/2014), Brakes India Ltd. (ITA No.266 & 656/Mds/2012) and the jurisdictional High Court in the case of M.M. Forgings Ltd. Vs. Addl.CIT (2011) 11 Taxmann.com 367(Mad) , I am of the considered opinion that the appellant is eligible for the additional depreciation @10% only in the year of purchasing and putting the plant & machinery to use. If the plant & machinery is used for less than 180 days the appellant will be entitled only for 10% (i.e. half of 20%) in view of the second*

> *proviso to section 32(1). There are no provision in the statute to carry forward the balance additional depreciation to the following years. Therefore, the appellant's claim of balance of additional depreciation of Rs.18,07,779/- in the assessment year 2012-13 on account of plant & machinery purchased in the earlier financial year (i.e. on the opening WDC) is not allowable. The AO has rightly applied the provisions of section 32(1)(iia) and disallowed the appellant's claims of additional depreciation in the opening WDVs in the assessment year 2012-13. The action of the AO is as per law and needs no interference."*

10.3 At the outset, before us, the learned Authorized Representative submitted that this issue is also covered by the decision of the Tribunal in the assessee's own case for the earlier assessment years 2005-06 & 2008-09 to 2010-11 in ITA Nos. 1451, 1443 to 1446/Mds/2014 vide order dated 06.06.2016, wherein it was held that the assessee is entitled for the benefit of additional depreciation in the relevant assessment year with respect to the plant & machinery acquired during the second half of the preceding assessment year.

10.4. The learned Departmental Representative could not controvert to the submissions of the learned Authorized Representative.

11. After hearing both sides, we find merit in the contentions of the learned Authorized Representative. On the earlier occasion as pointed out by the learned Authorized Representative, the Chennai Bench of the Tribunal in the assessee's own case cited supra had held that the assessee is entitled for the benefit of additional depreciation in the relevant assessment year with respect to the plant & machinery acquired during the second half of the preceding assessment year. The relevant portion of the order of the Tribunal is extracted herein below for reference:-

> *"20. Before us, the learned Authorized Representative submitted that the issue is squarely covered by the order of the Chennai Bench of the Tribunal in the case of M/s. Automotive Coaches & Components Vs. DCIT in ITA the asset was held for less than 180 days No. 1789/Mds/2014 vide order dated 12.02.2016, wherein it is held as follows:-*

> > *" 5. We have considered the rival submissions on either side and perused the relevant material available on record. Section 32(1)(iia) provides for additional depreciation at the rate of 20%. The Assessing Officer allowed 10% of additional depreciation in respect of the plant and machinery purchased during the year under consideration. The Assessing Officer found that the additions to fixed assets were made in the second half of the financial year, therefore, 50% of additional depreciation has been claimed. The balance 50% was carried forward in the next year. The Assessing Officer found that the additional depreciation is allowable only during the year in which the machinery was installed and used for business of the assessee. There is no provision in the Income-tax Act for carry forward of the additional depreciation to the subsequent assessment year. This*

issue was examined by the Cochin Bench of this Tribunal in Apollo Tyres Ltd. v. ACIT (supra). The Cochin Bench found that if additional depreciation could not be allowed at the rate of 20% during the year in which the machinery was installed, the balance 50% has to be allowed in the subsequent year. In fact, the Cochin Bench of this Tribunal has observed as follows:-

"9. We have considered the rival submissions on either side and also perused the material available on record. Section 32(1)(iia) reads as follows:

"32(1)(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii):

Provided that no deduction shall be allowed in respect of

(A) Any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or

(B) Any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house; or

(C) Any office appliances or road transport vehicles; or

(D) Any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year."

10. We have also carefully gone through the Second Proviso to section 32(1)(ii) of the Act, which reads as follows:

> "Provided further that where an asset referred to clause (i) or clause (ii) or clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purpose of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) or clause (iia) as the case may be."

11. A bare reading of this section 32(1)(iia) clearly says that in case a new machinery or plant was acquired and installed after 31-03-2005 by an assessee, who is engaged in the business of manufacture or produce of article or thing, then, a sum equal to 20% of the actual cost of the machinery and plant shall be allowed as a deduction. It is not in dispute that the assessee has acquired and installed the machinery after 31-03- 2005. It is also not in dispute that the assessee is engaged in the manufacture of article or thing. Therefore, the assessee is eligible for additional depreciation which is equivalent to 20% of the actual cost of such machinery. The dispute is the year in which the depreciation has to be allowed. The assessee has already claimed 10% of the depreciation in the earlier assessment year since the machinery was used for less than 180 days and claiming the balance 10% in the year under consideration. Section 32(1)(iia) does not say that the year in which the additional depreciation has to be allowed. It simply says that the assessee is eligible for additional depreciation equal to 20% of the cost of the machinery provided the machinery or plant is acquired and installed after 31-03-2005. Proviso to section 32(1)(iia) says that if the machinery was acquired by the assessing during the previous year and has put to use for the purpose of business less than 180 days, the deduction shall be restricted to 50% of the amount calculated at the prescribed rate. Therefore, if the machinery is put to use in any particular year, the assessee is entitled for 50% of the prescribed rate of additional depreciation. The Income-tax Act is silent about the allowance of the balance 10% additional depreciation in the subsequent year. Taking advantage of this position, the assessee now claims that the year in which the machinery was put to use the assessee is entitled for 50% additional depreciation since the machinery was put to use for less

than 180 days and the balance 50% shall be allowed in the next year since the eligibility of the assessee for claiming 20% of the additional depreciation cannot be denied by invoking Second Proviso to section 32(1)(ii) of the Act.

12. This issue was considered by the Delhi Bench of this Tribunal in the case of Cosmo Films Ltd (supra). The revenue has taken a similar ground as taken before this Tribunal that the assessee cannot carry forward the additional depreciation to be allowed in the subsequent assessment year. The Delhi Bench of this Tribunal after considering the provisions of section 32(1)(iia) and proviso to section 321)(ii) of the Act found that when there is no restriction in the Act to deny the benefit of balance 50%, the assessee is entitled for the balance additional depreciation in the subsequent assessment year. In fact, the Delhi Bench of this Tribunal has observed as follows at pages 641 and 642 of the ITD:

> " Thus, the intention was not to deny the benefit to the assessees who have acquired or installed new machinery or plant. The second proviso to section 32(1)(ii) restricts the allowances only to 50% where the assets have been acquired and put to use for a period less than 180 days in the year of acquisition. This restriction is only on the basis of period of use. There I no restriction that balance of one time incentive in the form of additional sum of depreciation shall not be available in the subsequent year. Section 32(2) provides for a carry forward set up of unabsorbed depreciation. This additional benefit in the form of additional allowance u/s 32(1)(iia) is one time benefit to encourage the industrialization and in view of the decision of Hon'ble Supreme Court in the case of Bajaj Tempo Ltd. v. CIT [1992] 196 ITR 188, the provisions related to it have to be construed reasonably, liberally and purposive to make the provision meaningful while granting the additional allowance. This additional benefit is to give impetus to industrialization and the basic intention and purpose of these provisions can be reasonably and liberally held that the assessee deserves to get the benefit in full when there is no restriction in the statute to deny the benefit of balance of 50% when the new machinery and plant were acquired and used for less than 180 days. Onetime benefit extended to assessee has been earned in the year of acquisition of new machinery and plant . It has been calculated @15% but restricted to 50% only on account of usage of these plant & machinery in the year of acquisition.

> In section 32(1)(iia), the expression used I "shall be allowed". Thus, the assessee had earned the benefit as soon as he had purchased the new machinery and plant in full but it is restricted to 50% in that particular year on account of period usages. Such restrictions cannot divest the statutory right. Law does not prohibit that balance 50% will not be allowed in succeeding year. The extra depreciation allowable u/s 32(1)(iia) in an extra incentive which has been earned and calculated in the year of acquisition but restricted for that year to 50% on account of usage. The so earned incentive must be made available in the subsequent year. The overall deduction of depreciation u/s 32 shall definitely not exceed the total cost of machinery and plant . In view of this matter, we set aside the orders of the authorities below and direct to extend the benefit. We allow ground no.2 of the assessee's appeal. Since we have decided ground no.2 in favour of assessee, there is no need to decide the alternate claim raised in ground no.3. The same is dismissed."

13. This issue was also considered by another bench of this Tribunal at Delhi in SIL Investment Ltd (supra). At page 233 of the TTJ, the Tribunal has observed as follows:

> "40. There is nothing on record to show that the directions given by the learned CIT(A) are not proper. The eligibility for deduction of additional depreciation stands admitted, since 50 per cent thereof had already been allowed by the AO in the asst.yr.2005-06, i.e. the immediately preceding assessment year. Therefore, obviously, the balance 50 per cent of the deduction is to be allowed in the current year, i.e. asst. yr. 2006-07. The learned CIT(A) has merely directed the verification of the contentions of the assessee and to allow the balance additional depreciation after such factual verification. Accordingly, finding no merit therein, ground No.3 raised by the Department is rejected."

14. A similar view was taken by Mumbai Bench of this Tribunal in MITC Rolling Mills (P.) Ltd. (supra). In view of the above decisions of the co-ordinate benches of this Tribunal on identical set of facts this Tribunal is of the considered opinion that the balance 50% of the depreciation has to be allowed in the subsequent year, therefore, the orders of the lower authorities on this issue are set side and the assessing officer is directed to allow the claim of balance 50% additional depreciation in the year under consideration."

We have also carefully gone through the judgment of Karnataka High Court in Rittal India Pvt. Ltd. (supra). The Karnataka High Court, after extracting the provisions of Section 32(1)(iia) of the Act, found that beneficial legislation has to be interpreted liberally so as to benefit the assessee. Karnataka High Court has also found that the intention of the legislation is to allow additional benefit. The Karnataka High Court opined that the proviso would not restrain the assessee from claiming the balance of the benefit of additional depreciation in the subsequent assessment year. Accordingly, confirmed the order of the Bangalore Bench of this Tribunal. In fact, the Karnataka High Court has observed as follows:-

> *"7. Clause (iia) of Section 32(1) of the Act, as it now stands, was substituted by the Finance Act, 2005, applicable with effect from 0l.04.2006. Prior to that, a proviso to the said Clause was there, which provided for the benefit to be given only to a new industrial undertaking, or only where a new industrial undertaking begins to manufacture or produce during any year previous to the relevant assessment year.*
>
> *8. The aforesaid two conditions, i.e., the undertaking acquiring new plant and machinery should be a new industrial undertaking, OF that it should be claimed in one year, have been done away by substituting clause (iia) with effect from 01.0.2006. The grant of additional depreciation, under the aforesaid provision, is for the benefit of the assessee and with the purpose of encouraging industrialization, by either setting up a new industrial unit or by expanding the existing unit by purchase of new plant and machinery, and putting it to use for the purpose of business. The proviso to Clause [ii] of the said Section makes it clear that only 50% of the 20% would be allowable, if the new plant and machinery so acquired is put to use for less than 180 days in a financial year. However, it nowhere restricts that the balance 10% would not be allowed to be claimed by the assessee in the next assessement year.*
>
> *9. The language used in Clause (iia) of the said*

*Section clearly provides that "a further sum equal to 20% of the actual cost of such machinery or plant **shall** be allowed as deduction under Clause (ii)". The word "shall" used in the said Clause is very significant. The benefit which is to be granted is 20% additional depreciation. By virtue of the proviso referred to above, only 10% can. be claimed in one year, if plant and machinery is put to use for less than 180 days said financial year. ………very purpose of insertion of Clause (iia) would be defeated because it provides for 20% deduction which shall be allowed.*

10. It has been consistently held by this Court, as well as the Apex Court, that beneficial legislation, as in the present case, should be given liberal interpretation so as to benefit the assessee. In this case, the intention of the legislation is absolutely clear, that the assessee shall be allowed certain additional benefit, which was restricted by the proviso to only half of the same being granted in one assessment year, if certain condition was not fulfilled. But, that, in our considered view, would not restrain the assessee from claiming the balance of the benefit in the subsequent assessment year. The Tribunal, in our view, has righly held, that additional depreciation allowed under Section 32(1)(iia) of the Act is a one time benefit to encourage industrialization, and provisions related to it have to be construed reasonably, liberally and purposively, to make the provision meaningful while granting additional allowance. We are in full agreement with such observations made by the Tribunal."

6. In view of the above, this Tribunal is of the considered opinion that the assessee is entitled for remaining 10% of the depreciation during the year under consideration. Accordingly, the orders of the lower authorities are set aside and the Assessing Officer is directed to allow balance 50% of depreciation, namely, 10% of additional depreciation during the year under consideration."

12. Following the above decision of the Tribunal, we hereby hold that the assessee is entitled for its claim of additional depreciation of 10% in regard to the assets acquired during the second half of the preceding assessment year which works out to Rs. 18,07,779/-. Therefore, we hereby direct the learned Assessing Officer to delete the addition of Rs.18,07,779/-.

13. In the result, the appeal of the assessee is partly allowed for statistical purposes as indicated herein above.

Order pronounced in the open court on the 22nd December, 2016

Sd/-	Sd/-
(धुव्वुरु आर.एल रेड्डी)	**(ए. मोहन अलंकामणी)**
(Duvvuru RL Reddy)	(A. Mohan Alankamony)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 22nd December, 2016
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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant 2. Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF