आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2300 & 896/Chny/2016

निर्धारण वर्ष/Assessment Year: 2009-10 and 2010-11

PayPal India Private Limited, Future IT Park, Block-A, 334, Old Mahabalipuram Road, Sholinganallur, Chennai – 600 119. [PAN: AADCP 7996 G]	Vs.	Deputy Commissioner of Income Tax, Circle-5(1), Chennai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Mr. T.K. Srinath Sridevan
प्रत्यर्थी की ओर से /Respondent by	:	Mr. Sridhar Dora, JCIT
सुनवाई की तारीख/Date of Hearing	:	13.05.2019
घोषणा की तारीख /Date of Pronouncement	:	17.05.2019

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

Both the captioned appeals are filed by the assessee against the respective orders of the CIT (A)-3, Chennai in ITA No. 48/2013-14/CIT(A)-3 and ITA No.19/2014-15/A-3 for the Assessment Years 2009-10 and 2010-11 respectively.

2. Brief facts of the case are that the assessee is engaged in providing Software Development Services to its Associated Enterprises. While making the assessment for the Assessment Year 2009-10, the Assessing Officer made the following disallowances viz.,

(i) 'Provision for Asset Reconstruction Obligation' (ARO),

(ii) Payments made to Tata Communications International Pte Limited (Tata Communications) on account of non-deduction of tax at source,

(iii) Stamp Duty expenses incurred in connection with registration of lease premises and

(iv) The expenditure incurred under the head 'repairs and maintenance and recruitment services on account of non-deduction of tax at source.

3. In the assessment made for the Assessment Year 2010-11, the AO disallowed the Provision for Asset Reconstruction Obligation (ARO).

4. Aggrieved against these orders, the assessee filed appeals before the Ld CIT (A). Ld CIT (A) dismissed both the appeals. Aggrieved by the orders of the Ld CIT (A), the assessee filed the above appeals before this Tribunal. For the Assessment Year 2009-10, the assessee revised its Grounds of Appeal and the Ld AR pleaded that the Revised Grounds of Appeal for the AY 2009-10 be considered for the hearing and to this extent Ld AR made endorsement in the record. Accordingly, the hearing is made and decided as under:

ITA No. 2300/Chenn/2016 (AY: 2009-10)

5. With regard to Ground No.1, since the Ld AR has not made any independent submission, the same is not considered for adjudication.

6. On Issue No.1 (Grounds No. 2 to 8 of the Grounds of Appeal), relates to disallowance of Provisions for Asset Reconstruction Obligation (ARO), Ld AR submitted that the assessee is operating from a registered premises of Software Technology Park of India located in Chennai. The Company acquired the premises on lease and in order to make it fit for use, it undertook necessary installations / alternations / renovations like partition works, false ceiling works, work stations, conference tables, storage cabins, electrical systems, toilet, etc. As per the terms of the lease agreement dated 23rd July, 2007 with the landlord, the company is obligated to restore the leasehold premises to its original condition at the time of termination of the lease. For the subject AY, the company made the provisions towards ARO of Rs. 5,33,83,744/- and claimed the amount as a deduction in computing the taxable income. The Ld AO disallowed the above amount on the basis that the ARO costs / expenditure is contingent in nature and is dependent on a future event, which may or may not happen. Therefore, the Ld AO held that the ARO provision is a 'contingent liability'. As mentioned above, the company undertook necessary

installations/ alternations / renovations (called as leasehold improvements) in the leased premises in the nature of partition works, false ceiling works, work stations, conference tables, storage cabins, electrical systems, toilet, etc., and have incurred substantial costs so that the premises can be used for carrying on the business. At the end of lease tenure or on termination, the company will have to remove / discard the leasehold improvements and handover the premises as per the original state in order to comply with the obligations under the lease agreement. Therefore, the cost to be incurred by the company in undertaking such restoration is not contingent in nature but a definite liability that will be incurred at the end of the lease tenure or termination, as the case may be. Thus, the liability to restore the premises arises at the time of inception of lease term and necessary modifications / alterations made by the company. Aggrieved, against the said decision of the AO, assessee preferred an appeal before the Ld CIT (A) pleading, inter alia, that the AO erred in assuming that if an amount becomes payable in future, it would partake the character of contingent liability, the AO ought to have appreciated that restoration obligation is mandated on the company under the terms of lease agreement etc.

7. However, the Ld CIT (A) without appreciating the fact that the provision for Asset Reconstruction Obligation is on account of

leasehold improvements in the nature of partition works, false ceiling works, work stations, conference tables, storage cabins, electrical systems toilet, etc., carried out by the assessee in the leasehold premises and the same is distinct from the obligation of routine repairs and maintenance undertaken by the lessor and without appreciating the fact that the provision for ARO is determined based on the valuation report obtained from an independent valuer held that the provision for ARO is contingent in nature.

8. Thereafter, the Ld AR invited our attention to the Issue No. 4 (Grounds No. 19 to 21) of disallowance of expenses under the head 'repairs & maintenance on account of non-deduction of taxes' and submitted the break-up details of disallowance of Rs. 6,56,08,127/- as under:-

1.	Asset Restoration Obligation (ARO)	-	Rs. 5,33,83,744/-
2.	Maintenance charges	-	Rs. 51,93,540/-
3.	Purchases / consumables	-	Rs. 70,30,843/-
	Total	-	Rs. 6,56,08,127/-

9. The Ld Authorised Representative of assessee submitted that although the AO has already disallowed the provision for ARO at Rs. 5,33,83,744/- under para 2 of the Assessment Order, the Ld AO has inadvertently disallowed the provision for ARO again under Para 6 of the Assessment Order. Therefore, the ARO provision of Rs. 5,33,83,744/- has been disallowed twice.

10. With regard to the maintenance charges of Rs. 51,93,540/-, the Ld AR submitted that this was paid to M/s. Futura A.O.P (Landlord) which is not subject to withholding as it is covered by the 'NIL' withholding order u/s 197(1) of the Act. Though this plea was taken for the first time before the Ld CIT (A), the Ld CIT (A) without appreciating the facts, dismissed the appeal on both the issues. Therefore, the Ld AR invited our attention to the affidavit filed by the assessee wherein it was prayed that there is a double disallowance of expenditure of Rs. 5,33,83,744/- (being ARO expense) although the assessee has not claimed the deduction twice. The ARO expense is a single item which AO erroneously took to be separate claims and separately disallowed. In this regard, Ld AR invited out attention to the Paper Book on the details furnished above and submitted that the list of expenses claimed under the head 'repairs and maintenance' were submitted to AO on 27th February, 2012 while the total number of items in the list is much larger, what is relevant for the present appeal are only those items of repair and maintenance on which tax has not been deducted. The assessee was not able to furnish the NIL withholding certificate before the AO. However, it was submitted before the Ld CIT (A). NIL withholding certificate [No. 212(A)/2008-09] dated 24th October, 2008 issued u/s 197(1) of the Income Tax Act, 1961 furnished by The Futura A.O.P based on which the assessee has not deducted taxes on the 'maintenance charges'. Even though the

CIT (A) accepted the documents, the same was not considered. Therefore, to overcome the technical objections, the same is being filed with this affidavit and the accompanying Table with affidavit is not a new document but only a compilation for easy perusal and therefore, this Hon'ble'ble Tribunal may be pleased to take this affidavit and the accompanying table and the NIL withholding certificate u/s 197(1) of the Act on record and render justice.

11. With regard to Rs. 70,30,843/-, the Ld AR submitted that it is in the nature of maintenance purchases / consumables and the other items and they are not subject to withholding taxes u/s 194 of the Act and therefore such items are not subject to disallowance u/s 40(a)(ia) of the Act.

12. With regard to disallowance under the head 'recruitment services' of Rs. 20,54,264/-, which is covered under Issue No. 5 (Ground No.22), the Ld AR submitted that the assessee reimbursed eBay Inc. (ultimate holding company) towards background and other checks in relation to recruitment of employees of the assessee-company. The payment for the services was made by eBay Inc. to third party vendor which were cross-charged to the company on the cost-to-cost basis. Ld AO as well as Ld CIT (A) erred in disallowing recruitment charges of Rs. 20,54,264/- on account of non-deduction of taxes without appreciating the fact that the payment represents reimbursement of

expenses to group entity. In this regard, Ld AR invited our attention to Ground No.11 taken before the Ld CIT (A) and submitted that the CIT (A) has not discussed this aspect in his order.

13. Per contra, Learned Departmental Representative supported the orders of the lower authorities on the above issues.

14. We have heard the rival contentions and gone through the relevant portions of the orders of the lower authorities. On the issue of provision for Asset Reconstruction Obligation, the AO held that the question of restoration will arise only at the time of termination of the lease and that if there is material damage to the leasehold premises. There may or may not be any damage to the premises. The issue of damage to the lease hold premises is purely contingent in nature, dependent on a future event which may or may not happen in future. It would be worthwhile to not that leverage has been given to the assessee for normal wear and tear and hence, the assessee cannot contend that damage will be caused to the premises in any case.

15. On the issues of disallowance of expenditure of Rs. 6,56,08,224/-, debited under the head 'repairs & maintenance' and Rs. 20,54,264/- under the head 'recruitment services' on account of non-deduction of tax at source, the AO held that when asked about the party wise operating expenses along with TDS deducted therein, the assessee has submitted TDS reconciliation statement vide letter dated 22/03/2013.

It is found from the Annexure 3(B) of the above letter that the assessee has not deducted TDS on the following items viz., (i) repairs and maintenance charges Rs. 6,56,08,224/- and (ii) Recruitment Services Rs. 20,54,264/-. The assessee generally outsource every work to the outsiders by awarding contract for supply or for providing services. The nature of expenses attract TDS provisions and the assessee is bound to deduct TDS on the above mentioned expenses also. Assessee has also not furnished any other document or evidence that the these are in the nature of purchases hence the assessee should have deducted TDS on these payments. The Assessee debited Rs. 6,56,08,224/- under the head 'repairs & Maintenance' and Rs. 20,54,264/-. Based on the above discussion these amounts were seen to attract the provisions of section 194C and accordingly, the assessee ought to have made TDS (Tax Deducted at Source) on these payments. However, the assessee has failed to deduct tax at source on this payments. This warrants application of section 40(a)(ia) and applying the said provision the AO disallowed Rs. 6,56,08,224/- and Rs. 20,54,264/- and added back to the total income of the assessee-company.

16. On appeal CIT (A), vide paras 2 to 10 & 21 to 23 of his order held as under:

"2. Further, strengthening my own decision pertain to AY 2010-11, additional facts found in this appeal related to the same issue are being discussed as under:

***Details of lease agreement**: Before me, Ld.AR has submitted the deed of lease executed at Chennai on 23.07.2007 between Grand Trust Overseas Pvt. Ltd along with four others and appellant company which deals with premises taken on lease. During the appellate proceedings Ld. AR has relied and quoted some of the clauses of pars 7 of the lease agreement in support of appellant's claim, which are reproduced as under:*

3. h. that it shall not carry out any structural alterations in the DEMISED PREMISES without consent of the LESSORS, but shall be entitled to carry out other than structural alterations within the Demised Premises to suit its requirements provided it restores the DEMISED PREMISES to its angina1 state at the termination or sooner determination of the lease, subject of course to reasonable wear and tear.

4. j. That is shall deliver vacant possession of the premises in original condition to the LESSORS with normal wear and tear accepted on the termination or earlier termination of the lease

5. g. that it shall keep the DEMISED PREMISES in good and tenantable condition from this date till the same is handed back to the LESSORS, reasonable wear and tear excepted, subject to LESSORS' obligations to repair and maintain.

3. I have perused contents of the lease agreement entered between lessors and appellant company. I have noticed that clause g, h and j of para 7 clearly show that appellant is allowed to do reasonable wear and tear. Further, I have found that lessors are obligated in clause g of para 7 of the lease agreement in which repairs and maintenance of the said premises have to be carried out by the LESSORS. In my considered opinion, clause h of para 7 also allows the appellant for reasonable wear and tear of the premises taken on lease. Further, appellant company was not allowed to alter structural changes. Therefore, if no structural changes are made then scope of altering the premises taken on lease would be minimum which partakes the character of reasonable wear and tear on the leased premises. Further, I have found that lessors had undertaken the obligation of carry out repair and maintenance as is seen in clause g of para 7 of the lease agreement. I don't see any obligation on the part of the appellant with regard to asset reconstruction as claimed by the appellant company. It appears that appellant heavily relied on clause h of para 7 of the lease agreement. On reading of the said clause which is also given herein above, I have not found any stated obligation as appellant is bared to carry out structural alterations. The said clause h also included reasonable wear and tear. Nothing has been adduced as an evidence as to what constitutes asset reconstruction in between nonstructural alteration and reasonable wear and tear of the premises. In other

words Ld.AR has riot submitted any detail with regard to assets constructed after taking the premises on lease, what was the cost of such constructed assets, what was the nature of such assets, how the obligation of the ARC was estimated etc. I have also found that no such details were found to have been submitted before AC. In the absent of such details it would lead to conclusion that asset reconstruction obligation would amount to non-genuine. To support this view, I draw a strength from the lease agreement itself that appellant is not allowed to make structural alterations but what was allowed was internal office arrangements to suit the needs of the office requirements of the appellant company, which certainly would not be asset construction but simple arrangement of office equipment. On the basis of above discussion, I hold that there is no construction of assets in the leased premises, therefore question of asset reconstruction does not arise. I further hold that lease agreement itself allows reasonable wear and tear of the leased premises and LESSORS had also undertaken to carry out repairs and maintenance if there is any wear and tear. Hence, the argument of the Ld.AR is found to be devoid of merits.

4. *During the appellate proceedings Ld.AR has filed details of repairs and maintenance. I have perused said details and found that appellant has given a nomenclature as facilities repairs for each months under the ARO and amount was ear marked Rs. 33.42,693 and 22,11,905 for each month. It is a simple entry made in the books of accounts. It is not giving any details with regard to asset construction, what sort of assets constructed, what was the nature of assets constructed, what was the cost of the assets constructed etc. Needless to say that asset reconstruction obligation will arise if asset construction is done. I have not found anything that sort from the details filed. The facts on the issue are clearly establish that asset reconstruction obligation is fictitious one and bogus one. Assuming that appellant has an obligation to restore back to the original state of the premises taken on lease then first and foremost thing appellant has to create assets which would be demolished in future date on the termination of lease. It has been admitted in the appellant's submission that ARO provision is an accrued liability for which payees are not identifiable at the time of making entry in the books. Further, it is stated that mere crediting in the books of account by the payers as a provision for expense payable or other payable account would not cast obligation on in the payer to deduct taxes. The appellant's admission of the povision created is also devoid of merits because if there is no assets constructed, cost is not known, nature of assets are not known, how a provision can be made in the books of accounts ? What was the basis for the estimation? Simply same amount ear marked for each month does not become eligible for a claim. I have no hesitation to hold that it is a deliberate and blatant attempt of the appellant to evade taxes by creating a provision for no liability.*

5. *On perusal of schedule 12 of P&L a/c for the relevant AY appellant has debited an amount of Rs. 9,94,13,785 under the head repairs and maintenance. AO had noticed that an amount of Rs. 5,3383,744 was*

found as provision for asset reconstruction obligation out of Rs. 9,94,13.785. As per section 31 of Income Tax Act repairs and maintenance of plant machinery and furniture used for the purposes of the business and amount was paid on account of current repairs then the said expenditure is allowable to the assessee. In the appellant's case, the amount had not been paid but a provision was created for future liability which was admitted by the appellant. So, it is certain that provision created by the appellant' for future liability pertain to Asset Reconstruction Obligation is not allowable expenditure u/s. 31.

6. *Coming to section 37, the said expenditure is not eligible because it was not revenue expenditure incurred during the relevant PY to the AY 2009-10. The amount has not been paid, in fact no such expenditure was incurred. Therefore the appellant's claim cannot be entertained either u/s. 31 or u/s. 37 of the Income Tax Act, as the appellant company had not fulfilled the conditions laid down the said sections*

7. *We will see accounting angle, also as to how the appellant had given treatment to the provision made under the head ARO. As is said in the above paras appellant company debited an amount of Rs. 9,94,13,785 out of which an amount of Rs.5,33,83,744 was a provision the amount ear marked under the head ARO was not incurred, therefore no payment was made. On verification of balance sheet appellant company had shown current liabilities under schedule 8 to an amount of Rs. 67,9723,233 with a note given in schedule 14. On perusal of schedule 14, it is noticed that the amount of Rs. 52,37,60,275 is shown as payable to related parties of the appellant company. The fact indicates that amount ear-marked under asset reconstruction obligation is shown as liability to the holdings company and other related companies of the appellant. It shows that the amount ear marked under the head repairs and maintenance particularly ARO is appear to have been credited in the holding company's account. This fact clearly establish that ARO is fictitious expenditure sought to be claimed u/s 37 by the appellant. It must be the reason as to why appellant company has credited the amount under the head ARO to its; holding company and shown liability under the head sundry creditors in the name of holding company.*

8. *On the basis of the factual matrix discussed herein above with regard to ARO, I have come to conclusion that the provision stated to have been created by the appellant company is not crystalized. Secondly, the facts of the issue prove that it is a fictitious entry to reduce incidence of tax.*

9. *I further hold that case laws cited by the Ld. AR in support of appellant's claim are found to be distinguishable and different from the appellant's case, therefore not applicable. The relevant case laws were discussed in my decision pertain to AY 2010-11.*

10. *On the basis of my own decision in the appellant's case pertain to AY 2010-11 and additional discussion made on facts in this appeal I have no hesitation to confirm addition made by the AO on account of Asset*

Restoration Obligation (ARO) amounting to Rs. 5,33,83,744 for AY 2009-10. All the grounds take by the appellant on this issue are dismissed.

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21. *Before me, Ld AR submitted that AO has made disallowance twice, one at the time of considering issue of ARO and the same amount is also disallowed second time under the head repairs and maintenance etc. it is further argued that ARO provision is an accrued liability for which is not identifiable at the time of making entry in the books, mere crediting of amount of books of amount by the payer would not cost obligation on the payers to deduct taxes. I have gone through the finding fo the AO and submissions of the AR of the appellant. I have perused P & L a/c as on 31/03/2009. Schedule 12 gives details of repairs and maintenance as under:*

a.	*Building*	*Rs. 9,94,13,785/-*
b.	*Other*	*Rs. 2,18,32,821/-*
	Total	*Rs. 12,12,46,606/-*

22. *On perusal of finding of the AO, I found that details with regard to party wise operating expenses in which repairs and maintenance is one of the items were called for verification. Appellant company appear to have been submitted TDS reconciliation statement. On perusal of the same, AO has found that appellant company had not deducted TDS in the following items.*

a.	*Repairs and Maintenance charges*	*Rs. 6,56,08,224/-*
b.	*Recruitment services*	*Rs. 20,54,264/-*

23. *Having noticed discrepancies, AO had disallowed above amounts. First contention of the Ld AR is that AO had made amount pertain to ARO second time for non-deduction of TDS. Before me, Ld AR has submitted details of repairs and maintenance amounting to Rs. 12,12,46,605/-. On perusal of list submitted by the Ld AR I found that certain items are following under TDS being contact, professional services, rental etc. very few items are not subject to TDS. I have considered submissions of the appellant but I am unable to agree with the submissions of the Ld AR. AO disallowed it for non-production of details, the details submitted before me are general in nature which are without any supporting evidence. I am inclined to agree with findings of the AO. Therefore, I sustain the addition made by the AO on account of non-deduction of TDS amounting to Rs. 6,76,62,448/-. The grounds of appeal taken on this issue are dismissed."*

17. From the above, it is clear that the AO without examining the impugned issues with relevant Facts, Figures and documents arrived

the decision. It appears that the assessee produced a copy of lease agreement, NIL TDS Certificate etc., for the first time before the Ld CIT (A). From the contentions raised in this appeal, supra, it is clear that the lower authorities have not examined the impugned issues and appreciated the facts and associated circumstances properly. Therefore, we deem it fit and proper to remit these issues back to the file of the AO for a fresh examination and due decision in accordance with law. When we indicated such decision in the open Court, the Ld AR agreed to the same and the Ld Departmental Representative also submitted that he has no objection if these issues are remitted back to the file of the AO. Thus, these issues are remitted back to the file of the AO for a fresh examination. The assessee shall place all materials in its support before the AO and comply with AO's requirements as per law. The AO is free to conduct appropriate enquiries as deemed fit, but he shall furnish adequate opportunity to the assessee on the material etc., to be used against it and decide the matters in accordance with law. Accordingly, Grounds No. 1, 4 and 5 are treated as partly allowed for statistical purposes.

18. The next issue is disallowance of International Lease line payments made to TATA Communications International Pte Ltd (TATA Communications), Singapore. In this regard, Ld AR submitted that the assessee obtained International Leased Circuit Services for

transmission of data from TATA Communications, Singapore (formerly known as VSNL International), the services are provided by way of two-way transmission data through telecom bandwith. During the assessment year 2009-10, the assessee paid Rs. 4,00,71,554/- to TATA Communications for availing the services. The AO disallowed the same u/s 40(a)(ia) of the Act on account of non-deduction of tax at source u/s 194J of the Act and held that as the services have been utilized in India, it would qualify as "royalty" under the Act and India-Singapore tax treaty.

19. On appeal, the Ld CIT (A) held that in view of Explanation to sub-section 2 of section 9, the assessee is under obligation to deduct TDS since the assessee has failed to do so, AO has invoked the section 40(a)(ia) of the Act disallowed the said expenditure. Further, banking on provisions of double taxation treaty India and Singapore is of no help to the assessee-company in view of the amendment made in the provisions of said DTAA. In this regard, Ld AR invited our attention to Explanation 4, 5 and 6 u/s 9(2) which was inserted by the Finance Act, 2012 with retrospective effective from 01/06/1976 and hence Ld AR has pleaded that it is impossible for the assessee to travel back in time and comply with the TDS provisions, the Ld CIT (A) failed to appreciate that the notification relied on deals with the change in the rate of taxation and Explanation 5 to section 9(1)(vi) was not on the

Statute for the year under appeal and therefore, the appeal may be allowed.

20. Per contra, Ld Departmental Representative invited our attention to the amendment notified by Notification No.185/2005 (500/139/FTD) dated 15/05/2005 and submitted that w.e.f 18/05/2005, even under the DTAA, this payment is chargeable to tax in India.

21. We have heard the rival contentions and perused the material on record. we find that the Ld CIT (A) has merely held that in view of the amendment made in the provisions of DTAA, the assessee's stand is not helpful to it without elaborating the specific provisions and their application. Therefore, we deem it fit and proper to remit this issue to the file of the AO, who shall examine the assessee's claim afresh and pass a speaking order incorporating the appropriate provisions of the Act.

22. The next Issue No.3 (Grounds No. 10 to 12) relates to disallowance of stamp duty charges paid on lease deed registration. In this regard, Ld AR submitted that the assessee incurred stamp duty expenses of Rs. 10,62,660/- for registration of leased premises and claimed the amount as deduction for computing the taxable income. The AO disallowed the above amount for the reason that the lease

entered into by the assessee-company has an enduring character and hence the stamp duty charges are capital in nature.

23. The Ld Authorised Representative of assessee submitted that on appeal, the Ld CIT (A) without appreciating that the capitalization of leasehold improvements has no bearing on the determination of deductibility of stamp duty charges paid on lease deed registration and without considering the fact that the lease agreement was only for a limited period of five years and hence there is no enduring benefit, dismissed the appeal. The Ld AR submitted that the Hon'ble Jurisdictional High Court in the case of Sri Krishna Tiles & Potteries Madras (P) Ltd vs. CIT [1988] 38 Taxmann 242 (Madras) held the issue in favour of the assessee after distinguishing the decision of the Hon'ble Calcutta High Court in the case of Gobind Sugar Mills Ltd vs. CIT [1979] 117 ITR 747 (Cal.) and preferring the reasoning adopted by the Hon'ble Bombay High Court in the case of CIT vs. Cinceita (P.) Ltd [1982] 137 ITR 652 (Bom.). The Ld AR also brought to our notice that the Hon'ble Supreme Court upheld the decision of the Calcutta High Cout in the case of Gobind Sugar Mills vs. CIT [1998] 232 ITR 319 (SC), dated 16/07/1997 holding that the expenditure incurred by the assessee for the acquisition of a leasehold right for setting up of a sugar factory was clearly capital in nature and accordingly dismissed the appeal.

24. We have heard both the parties and perused the material on record. Since the Hon'ble Apex Court delivered its judgment on 16th July, 1997 upholding the decision of the Calcutta High Court in the case of Gobind Sugar Mills Ltd (supra), which was not preferred by the Jurisdictional High Court dated 01st March, 1988, we are of the view that the decision of the Hon'ble Supreme Court is in favour of the Revenue and hence all the grounds raised by the assessee under Issue-3 fails.

25. In the result, the assessee's appeal is treated as partly allowed for statistical purposes.

ITA No. 896/Chny/2016 (AY: 2010-11)

26. The only issue raised in this appeal is in connection with the disallowance of Asset Reconstruction Obligation (ARO). Since this issue is restored back to the file of the AO for examination while dealing with the appeal for the AY 2009-10 (supra), for the same reasons this issue is restored back to the file of the AO for fresh examination, on identical directions, supra.

27. In the result, assessee's appeal is partly allowed for statistical purposes.

28. Conclusively, both the assessee's appeals are treated as partly allowed for statistical purposes.

Order pronounced on 17th May, 2019, in Chennai.

Sd/-	Sd/-
(एन.आर.एस. गणेशन)	(एस जयरामन)
(N.R.S. GANESAN)	(S. JAYARAMAN)
□या□यक सद□य/JUDICIAL MEMBER	लेखा सद□य/ACCOUNTANT MEMBER

चे□नई/Chennai,
□दनांक/Dated:17th May, 2019.
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आदेश क□ □□त□त□म अ□े□षत/Copy to:

1. अपीलाथ□/Appellant	4. आयकर आयु□त/CIT
2. □□यथ□/Respondent	5. □वभागीय □□त□तध/DR
3. आयकर आयु□त (अपील)/CIT(A)	6. गाड□फाईल/GF