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

श्री वी. दुर्गा राव, माननीय **न्यायिकसदस्य** एवं
श्री मंजूनाथा .जी, माननीय लेखा सदस्य **के समक्ष**

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

IT (TP) A No.51/Chny/2021
निर्धारणवर्ष/**Assessment Year: 2012-13**

M/s. Hyundai Motor India Ltd., Plot No.H-1, SIPCOT Industrial Park, Irrungattukottai, Sriperumbudur taluk, Kancheepuram District, Tamil Nadu-602 117.	**v.**	The Asst. Commissioner of Income Tax, Non-Corporate Circle-8, Chennai.
[**PAN:**AAACH 2364 M]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
अपीलार्थीकीओरसे/ Appellant by	:	Shri Sriram Seshadri, CA Ms. C. Sowndarya, CA
प्रत्यर्थीकीओरसे /Respondent by	:	Shri Marudhu Pandian, CIT
सुनवाईकीतारीख/Date of Hearing	:	04.07.2023
घोषणाकीतारीख /Date of Pronouncement	:	27.09.2023

आदेश / O R D E R

PER: MANJUNATHA.G, A.M.:

This appeal filed by the assessee is directed against final assessment order passed by the Assessing Officer u/s.143(3) r.w.s.144C(13) of Income Tax Act, 1961, dated 27.09.2021, in pursuant to directions of the learned DRP-2, Bengaluru, dated 13.12.2016 u/s.144C(5) of Income Tax Act, 1961, and pertains to the assessment year 2012-13.

2. The assessee has raised following grounds of appeal:

> ***1. Common Grounds***
>
> *1.1. The lower authorities have erred in finalizing an order of assessment which suffers from legal defects such as being passed in violation of principles of natural justice and the provisions of the Act and is devoid of merits and are contrary to facts on record and applicable law and has been completed without adequate inquiries and as such is liable to be quashed.*
>
> *1.2. The lower authorities have finalized their order with improper adjustments to the reported taxable profits of the Appellant, as a result of misapplying the provisions of the Act and by adopting faulty assessment procedure to finalize the adjustment, such as but not limited to, application of filters, analysis of the functions carried out by the Appellant and those of the comparable companies, analysis of the economic circumstances experienced by the Appellant, selection of comparable companies, computation of profit margins of the Appellant and comparable companies, usage of appropriate adjustments, and consideration of the information, arguments and evidence provided by the Appellant.*
>
> ***2. Disallowance under section 14A of the Act***
>
> *2.1. The lower authorities have, in the facts and circumstances of the case and in law, erred in disallowing a sum of INR 93,44,170 under section 14A of the Act by applying provisions of Rule 8D of the Income tax Rules, 1962 ("Rules").*
>
> *2.2. The lower authorities have, in the facts and circumstances of the case and in law, erred in applying the provisions of under section 14A of the Act read with Rule 8D of the Rules, without sufficient satisfaction on record and without considering that the quantum of dividend received by the Appellant was only INR 52,773.*
>
> *2.3. The lower authorities have failed to note that the issue is covered in Appellant's favor vide order of this Hon'ble Tribunal for the AYs 2009-10 to 2011-12 and AYs 2013-14 and 2015-16, wherein the disallowance under section 14A was directed to be restricted to the amount of exempt income.*
>
> ***3. Disallowance of capital subsidy***
>
> *3.1. The lower authorities, in the facts and circumstances of the case and in law, ought to have appreciated that the subsidy was a capital receipt not chargeable to tax and that it cannot also be adjusted against the cost of fixed assets in computing the depreciation allowable to the Appellant.*
>
> *3.2. The lower authorities ought to have followed the order of this Hon'ble Tribunal for the AY 2013-14 and AY 2015-16, wherein the disallowance was directed to be deleted on the basis that the capital subsidy was a capital receipt.*
>
> ***4. Disallowance of excess depreciation claimed on UPS, Printers and Scanners under the block Computers***
>
> *4.1. The lower authorities have, in the facts and circumstances of the case and in law ought to have appreciated that UPS, Scanners and Printers are integral part of Computer and as such depreciation should be allowed at the rate of 60%.*

4.2. The lower authorities have, in the facts and circumstances of the case and in law, failed to appreciate that the Appellant is entitled to claim depreciation at the rate of 60% on UPS which is forming part of data processing equipment.

4.3. The lower authorities have, in the facts and circumstances of the case and in law, failed to appreciate that the Scanners and Printers should be treated as part of Computers block of assets as it cannot be operated without the aid of computers.

4.4. The lower authorities failed to follow the order of the Hon'ble DRP, wherein on identical facts, the impugned issue on quantum of depreciation on UPS, scanners and printers was allowed for the immediately preceding AY.

5. Disallowance of Bonus/ Performance reward under section 43B of the Act

5.1. The lower authorities have, in the facts and circumstances of the case and in law, erred in disallowing expenditure incurred by the Appellant towards "performance reward" as it is not in the nature of "bonus".

5.2. Without prejudice to the above, the lower authorities ought to have appreciated that the employees of the Appellant are not covered by the provisions of Payment of Bonus Act, 1965 and as such the said expenditure cannot be disallowed under Section 43B read with section 36(i)(ii) of the Act.

6. Inadvertent addition of foreign exchange loss

6.1. The lower authorities have, in the facts and circumstances of the case and in law erred in not considering the claim of the Appellant regarding the inadvertent addition of INR 35,92,42,476 to its total income for the subject AY thus, resulting in payment of taxes on the escalated total income.

7. Tax Treatment of Output VAT Incentives

7.1. The lower authorities have, in the facts and circumstances of the case and in law, failed to appreciate that the output VAT incentive (Investment Promotion subsidy) granted for the purpose of setting up/expansion of its manufacturing facility is a capital receipt and hence, cannot be treated as income under the provisions of Income Tax Act applicable for the subject year.

7.2. The lower authorities have failed to note that the eligible amount of incentives under the Investment Promotion Subsidy was also quantified based on the investment in assets and thus, it cannot be a revenue receipt to be subjected to tax.

7.3. The lower authorities ought to have appreciated that if the object of assistance was to enable the Appellant to set up a new unit or expand the existing unit, then the receipt is on the capital account based on the settled principles of the Supreme Court.

7.4. The lower authorities failed to appreciate that mechanism for determination of the quantum of disbursement of the same by way of refund of taxes is only for administration purposes and cannot be the basis for deciding the tax treatment of its receipt.

8. Tax Treatment of Incentives received under the Focus Market Scheme

8.1. The lower authorities have, in the facts and circumstances of the case and in law, failed to appreciate that the export incentive viz., Focus Market Scheme and Market Linked Focus Product Scheme given for exploring new markets across the globe is a capital receipt and hence, cannot be treated as income under the provisions of Income tax Act applicable for the subject year.

8.2. The lower authorities ought to have appreciated that if the object of assistance was to enable the Appellant to set up a new unit or expand the existing unit, then the receipt is on the capital account based on the settled principles of the Supreme Court.

8.3. The lower authorities failed to note that the incentives received under the Focus Market Scheme was issued only to create and build a brand image for products manufactured with 'Made in India' tag and exported to overseas market and cannot be in the nature of profit or income to be subjected to tax.

9. Allowability of education cess under section 37 of the Act

9.1. The lower authorities have, in the facts and circumstances of the case and in law, erred in disallowing the Appellant's claim of education cess paid under section 37 of the Act.

9.2. The Ld. AO ought to have appreciated that the word 'cess' has not been expressly stated in Sec.4o(a)(ii) of the Act and hence, has to be allowed as an eligible business expenditure.

9.3. On the facts and in circumstances of the case, the Ld. AO had failed to appreciate that it is a settled principle that the education cess is an allowable expenditure under section 37(1) of the Act.

9.4. On the facts and in circumstances of the case, the Ld. AO failed to note that the legislature had specifically dealt with the disallowance of cess in section 43B of the Act which denotes that cess is otherwise an allowable expenditure under section 37 of the Act.

9.5. On the facts and in circumstances of the case, the Ld. AO has erred in not considering the various judicial precedence in favour of the Appellant wherein it has been held that the education cess paid is an expenditure allowable under section 37(1) of the Act.

10. Adjustment for Brand development services

10.1. The lower authorities have, in the facts and circumstances of the case and in law, erred in making in adjustment towards brand building activity amounting to INR 304,76,47,898.

10.2. The lower authorities have, in the facts and circumstances of the case and in law, while acknowledging that the facts and circumstances are similar to the previous years, erred in not following the binding order of this Hon'ble Tribunal in the Appellant's own case from AY 2007-08 to AY 2011-12 wherein similar adjustment towards brand adjustment has been deleted. It is also to be noted that the impugned adjustment was deleted by this Hon'ble ITAT for the AY 2013-14 and AY 2015-16

10.3. The lower authorities have, in the facts and circumstances of the case and in law, exceeded their jurisdiction and erred in making the adjustment towards a fees for a purported brand development service alleged to be provided by the Appellant to its AE, without first establishing that there was any international transaction in this regard between the Appellant and its AE, which can be subject to section 92 of the Act.

10.4. The Ld. TPO erred in adopting the sixth method without establishing the existence of a transaction and the methodology adopted to justify the arm's length nature of such transaction.

10.5. The Ld. TPO erred in making the adjustment and the Hon'ble DRP erred in upholding the adjustment towards brand development fees without first establishing that a third-party manufacturer in India would have received a similar fee from a third party owner of the brand, which is used by the former for the manufacture and sale of goods. In the absence of any comparable transaction, the entire approach of the authorities fails the basic requirement of Transfer Pricing and the charging of the brand development fees in comparable circumstances is not even an arm's length practice.

10.6. The lower authorities have erred in imputing an adjustment under section 92 of the Act towards brand development fees, when it is acknowledged by the TPO himself that the *advertisement and marketing expenditure incurred by the Appellant as a proportion of its sales is not excessive as compared to the similar levels of expenditure incurred by comparable companies.*

10.7. The lower authorities have, in the facts and circumstances of the case and in law, erred in making an adjustment for AMP expenses, without appreciating that such adjustment cannot be made to a full-fledged manufacturer.

10.8. Without prejudice to the other grounds, the lower authorities erred in imputing the adjustment under section 92 of the Act towards brand development fees on the basis of Spearman's Rank Correlation method.

11. Downward adjustment to the value of imports to the extent included in the domestic car sales segment

11.1. The Ld. TPO erred in rejecting the transfer pricing study carried out by the Appellant without cogent reasons and erred in analyzing domestic segment on a standalone basis.

11.2. The Ld. TPO has erred in benchmarking the international transactions entered into by the Appellant with its AEs on the basis of the segment wise profitability details obtained during the assessment proceedings, without appreciating that the international transactions entered into by Appellant are closely linked and integrated and cannot be viewed in terms of separate segments for Transfer Pricing benchmarking.

11.3. The Ld. TPO has erred in benchmarking on the basis of the segment wise profitability details pertaining to 'Domestic car sales' obtained during the assessment proceedings, without appreciating that the 'Domestic car sales' is not considered as a separate reportable segment as per the Appellant's audited financial statements and that the Appellant does not maintain segment wise books of accounts.

11.4. The Ld. TPO has erred in benchmarking on the basis of the segment wise profitability details pertaining to 'Domestic vehicle sales' obtained during the assessment proceedings, without appreciating that more than 62 % of the total costs (other than raw material cost) were common costs not identifiable with any particular segment and these were only allocated to the various segments on an estimate basis.

11.5. The Hon'ble DRP erred in upholding the actions of the Ld. TPO.

11.6. The Ld. TPO and Hon'ble DRP have, in the facts and circumstances of the case and in law, erred in computing the transfer pricing adjustment beyond the scope and jurisdiction of section 92 of the Act by not restricting the value of the adjustment to the Appellant's international transactions with its Associated Enterprises ("AE").

11.7. The Ld. TPO and Hon'ble DRP have erred in proposing the transfer pricing adjustment to the entire cost base of the Appellant which predominantly includes third party costs, on wrong basis and assumption of facts.

11.8. The Ld. TPO have, in the facts and circumstances of the case and in law, failed to follow the findings of the Hon'ble Madras High Court in WA No. 1344 of 2017 that the transfer pricing adjustments are to be restricted to international transactions and cannot be made towards third party transactions.

12. Exclusion/ Inclusion of certain operating income and non-operating expenses respectively while computing the operating margins

12.1. The Ld. TPO and Hon'ble DRP erred in excluding certain items of income which are operating in nature while computing the operating income and operating profits and erred in including certain items of expense/ losses, which are not operating in nature while computing the operating costs and operating profits.

12.2. The Ld. TPO and Hon'ble DRP erred in not considering the royalty income received by the Appellant in consideration for the license of the trademarks and know-how transferred to MOBIS in relation to the distribution of after sales products, as operating income while computing the operating margins of the tested party.

12.3. The Ld. TPO and Hon'ble DRP erred in not considering the incentives received from the Government of Tamil Nadu for its Phase II investments under Ultra Mega Integrated Automobile Projects within Tamil Nadu and incentives received under Focus Market Scheme, as operating while computing the operating margins of the tested party.

12.4. The Ld. TPO and Hon'ble DRP erred in not considering the discounts from suppliers towards early payment for purchases and also the commission received towards car finance referrals and car insurance referrals as operating while computing the operating margins of the tested party.

12.5. The Ld. TPO and Hon'ble DRP erred in provision for doubtful advances/ deposits and contingencies as operating while computing the operating margins of the tested party.

13. Excess levy of interest under section 234C

13.1. The Ld. TPO and Hon'ble DRP erred in excluding certain items of income which are operating in nature while computing the operating income and operating profits and erred in including certain items of expense/ losses, which are not operating in nature while computing the operating costs and operating profits.

14. Short credit of Tax deducted at source

14.1. The Ld. AO has erred in giving credit for TDS to the extent of INR 22.11 crores, whereas the actual amount of TDS claimed by the Appellant in its return is INR 22.86 crores

The Appellant prays that directions be given to grant all such relief arising from the grounds of appeal mentioned supra and all consequential relief thereto.

The grounds of appeal raised by the Appellant herein are without prejudice to each other. The Appellant craves leave to add to and/or to alter, amend, rescind, modify the grounds herein above or produce further documents before or at the time of hearing of this Appeal.

3. Brief facts of the case are that the assessee, M/s. Hyundai Motor India Ltd., is wholly owned subsidiary of M/s. Hyundai Motor Company Ltd., South Korea. The assessee is engaged in the business of manufacturing and selling passenger cars in domestic and export market. The assessee company has filed its return of income for assessment year 2012-13 on 29.11.2012 admitting total income of Rs.1373,39,38,640/- under normal provisions of the Income Tax Act, 1961, (In Short "the Act") and book profit u/s.115JB of the Act at Rs.836,20,32,607/-. The assessee had entered into various international transactions with its Associated Enterprises (AEs) and international transactions were duly reported in Form 3CEB filed in accordance with provisions of Indian Transfer Pricing Regulations contained in section 92, 92A to 92F of the Income Tax Act, 1961. The case was taken up for scrutiny and during the course of assessment proceedings, a reference was made to JCIT (Transfer Pricing) for determination of Arm's Length Price (ALP) of international transactions of the assessee with its AEs. The learned TPO vide its order dated 29.01.2016 has suggested certain transfer pricing adjustments towards downward adjustment to the value of imports and upward adjustment for brand development services.

4. The Assessing Officer, in pursuant to directions of the ld. TPO, has passed draft assessment order u/s.143(3) r.w.s.144C(1) of the Income Tax Act, 1961 on 29.03.2016 and made transfer pricing adjustments as suggested by the TPO at Rs.443,34,47,898/-. The Assessing Officer had also proposed certain Corporate Tax adjustments including disallowances u/s.14A, r.w.r.8D of IT Rules, 1962, disallowance of subsidy received towards capital expenditure, disallowance of Focus Marketing Scheme expenses, and disallowance of bonus / performance reward u/s.43B(c) of the Income Tax Act, 1961. The assessee has filed objections before learned DRP against draft assessment order, but the learned DRP vide its directions dated 13.12.2016 has rejected objections filed by the assessee. The Assessing Officer, in pursuant to the directions of the learned DRP has passed final assessment order incorporating directions of the ld. DRP. Aggrieved, the assessee has filed present appeal before the Tribunal.

5. **Ground No.1** filed by the assessee is general in nature and does not require specific adjudication and hence, the same is dismissed.

6. The next issue that came up for our consideration from **Ground No.2** of assessee appeal is disallowances u/s.14A r.w.r.8D of Income Tax Rules, 1962, amounting to Rs.93,44,170/-. The facts with regard to impugned dispute are that during the year under consideration, the assessee has earned dividend income from mutual funds, which is exempt from tax amounting to Rs.50,000/-, however, did not made any *suomotu* disallowance of expenditure relatable to exempt income. Therefore, the Assessing Officer has invoked provisions of Rule 8D of Income Tax Rules, 1962, and determined disallowances of Rs.93,44,170/- u/s.14A of Income Tax Act, 1961.

6.1 The Ld. Counsel for the assessee submits that this issue is covered in favour of the assessee by the order of the ITAT Chennai Benches for AYs 2013-14 to 2016-17, where, disallowance u/s.14A of the Act, is restricted to exempt income.

6.2 The Ld.DR fairly agreed that this issue is covered in favour of the assessee by the decision of the ITAT Chennai Benches in the assessee's own case for earlier assessment years.

6.3 We have heard both the parties and perused the materials available on record and we find the issue of disallowance u/s.14A of the Act r.w.r.8D of the IT Rules, 1962, is covered in favour of the assessee by the decision of the ITAT Chennai Benches in the assessee's own case for AY 2013-14, where, the Tribunal by following the decision of the Hon'ble jurisdictional High Court of Madras in the case of Marg Ltd.v.CIT reported in [2020] 120 Taxmann.com 84, held that disallowances contemplated u/s.14A of the Act, cannot exceed exempt income, and thus, directed the AO to restrict disallowance to the extent of exempt income. The relevant findings of the Tribunal are as under:

> *10. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. It is well settled principles of law that disallowances u/s.14A cannot exceed amount of exempt income. The Hon'ble Supreme Court in the case of Pr.CIT Vs State Bank of Patiala (supra), while dismissing SLP filed by the Revenue against order of the Hon'ble Punjab & Haryana High Court in the case of Pr.CIT Vs State Bank of Patiala, held that disallowance u/s.14A could be restricted to amount of exempt income only. The Hon'ble Jurisdictional High Court of Madras in the case of Marg Ltd Vs.CIT (2020) 120 Taxmann.com 84, has taken a similar view and held that disallowances under Rule 8D r.w.s 14A can never exceed exempt income earned by the assessee during particular assessment year. In this case, admittedly, exempt income for impugned assessment year was Rs.57,826/-, whereas the Assessing Officer has determined disallowance u/s.14A at Rs.86,54,491/- contrary to settled principle of law. Therefore, considering facts and circumstances of this case and also by following the decisions of Hon'ble Supreme Court and Hon'ble Madras High Court, we direct the Assessing Officer to restrict disallowances u/s.14A to the extent of exempt income earned for the impugned assessment year.*

6.4 In this view of the matter and considering the facts and circumstances of the case, we direct the AO to restrict disallowance u/s.14A of the Act, to the extent of exempt income earned for the impugned assessment year.

7. The next issue that came up for our consideration from **Ground No.3** of assessee appeal is disallowance of depreciation on capital subsidy. During the financial year 2002-03, the State Industrial Promotion Corporation of Tamil Nadu (SIPCOT) had granted subsidiary of Rs.100 lakhs to encourage and recognize huge investments made for setting up of mega project viz., passenger car manufacturing unit in Irungattukottai. The assessee has treated subsidy received from SIPCOT as capital receipt and did not reduce the same from cost of assets, as it was not directly or indirectly used to purchase any asset. The Assessing Officer has held that capital subsidy received from SIPCOT being utilized by the assessee for capital expenditure, same ought to have been reduced from the cost of asset added in that year by contending that subsidy was directly or indirectly used to purchase asset and as per explanation (10) to section 43 of the Act, the same needs to be deducted from cost of assets and consequently, reworked depreciation by reducing amount of subsidiary and disallowed a sum of Rs.2,38,665/-.

7.1 The learned AR for the assessee submitted that this issue is covered in favour of the assessee by the decision of ITAT Chennai, in assessee's own case for assessment year 2006-07, where, it was held that subsidiary received from SIPCOT is capital receipt not liable for tax.

7.2 The learned DR, on the other hand, fairly agreed that this issue is covered in favour of the assessee.

7.3 Having heard both the sides and considered relevant material on record, we find that the Tribunal had considered an identical issue in assessee's own case for assessment year 2006-07 in IT(TP)A.No.14/Chny/2018 and after considering nature of subsidy, has allowed claim of the assessee by observing that for earlier years, the

CIT(A) has allowed claim of the assessee and the Assessing Officer has accepted decision of the CIT(A) and deleted additions, while passing order giving effect to the order of the CIT(A). Therefore, consistent with the view taken by the coordinate Bench, we direct the Assessing Officer to delete additions made towards disallowance of depreciation on capital subsidy received from SIPCOT.

8. The next issue that came up for our consideration from **Ground No.4** of assessee appeal is disallowance of excess depreciation claimed on UPS, Printers & Scanners under the block computers. The assessee has claimed depreciation on printers & scanners on the ground that printers & scanners and also UPS is an integral part of computer and computer software. The AO had restricted depreciation claimed on printers & scanners to 15% on the ground that these are only office equipments.

8.1 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We find that an identical issue had been considered by the Tribunal in the assessee's own case for AYs 2009-10 to 2011-12, where, the Tribunal by following the decision of the Hon'ble Delhi High Court in the case of CIT v. BSES Yamuna Powers Ltd reported in [2013] 358 ITR 47 (Delhi) held that computer accessories and peripherals such as printers & scanners and UPS forms an integral part of computer system and eligible for higher rate of 60% depreciation. Therefore, we are of the considered view that the assessee is entitled for higher rate of 60% depreciation on UPS, printers &

scanners, and thus, we direct the AO to delete disallowance of excess depreciation on UPS, printers & scanners.

9. The next issue that came up for our consideration from **Ground No.5** of the assessee's appeal is disallowance u/s.43B(c) of the Act, towards performance incentives paid to employees. Facts with regard to impugned dispute are that for the financial year relevant to the assessment year 2012-13, the assessee has paid performance reward to employees in the cadre of Executives and Senior Executives. The assessee has provided for expenses for the period beginning from January to March, 2011. However, payment was made only after due date of filing return of income for assessment year 2012-13. The Assessing Officer has disallowed performance incentive paid to staff u/s.43B(c) r.w.s.36(1)(ii) of the Act, amounting to Rs.13,08,30,410/- on the ground that as per section 43B(c), any sum referred to in clause (ii) of sub-section (1) of section 36, shall not be allowed as deduction, unless the same is paid on or before due date for furnishing return of income u/s.139(1) of the Act. The Assessing Officer further noted that as per section 36(1)(ii), any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profit or dividend, if it had not been paid as bonus or commission is covered. Therefore, he opined that any payment made to an employee which is in the nature of bonus or commission for services rendered is covered u/s.36(1)(ii) of the Act, and thus, if such payment is not made on or before due date of filing of return of income u/s.139(1) of the Act, then same cannot be allowed as deduction, as per section 43B(c) of the Act.

9.1 The Ld. Counsel for the assessee submits that this issue is covered against the assessee by the decision of the ITAT Chennai Benches in the assessee's own case for AY 2013-14, where, it has been held that performance incentives paid to employees is in the nature of bonus which comes under the provisions of Sec.36 (1)(ii) of the Act r.w.s.43B(c) of the Act, and for belated payment deduction cannot be allowed.

9.2 The Ld.DR fairly agreed that this issue is covered against the assessee by the decision of the ITAT Chennai Benches for AYs 2013-14 to 2016-17.

9.3 We have heard both the parties and perused the materials available on record and we find that an identical issue had been considered by the Tribunal in the assessee's own case for AYs 2013-14 to 2016-17, where, it has been held that performance bonus paid to employees is in the nature of bonus which comes under the provisions of Sec.36(1)(ii) of the Act, and if such payment is not remitted on or before due date, then, same is covered u/s.43B(c) of the Act. The relevant findings of the Tribunal are as under:

> *24. We have given our thoughtful consideration to facts brought out by the ld. AO in light of arguments of the ld. AR for the assessee and we do not ourselves subscribe to the arguments of ld. AR for the assessee, for simple reason that once performance incentive is paid for rendering services, then such payment is in the nature of bonus or commission which comes under the provisions of section 36(1(ii) of the Act. It is immaterial whether the assessee terms it as performance reward or bonus. But, what is relevant is nature of payment and purpose of payment. In this case, it is in the nature of bonus or commission*

> *and such payment is for services rendered by employees. Just because nomenclature was changed to some other name, a particular expenditure would not change its original character. In this case, sum was paid to employees for services rendered and further, this sum would not have been paid as profits or dividend had it not been paid as commission or performance reward. Therefore, we are of the considered view that provisions of section 36(1)(ii) of the Act is squarely applicable and consequently, mischief of section 43B(c) would come into play, if such payment is not made on or before due date of furnishing of return of income. In this case, admittedly, the assessee has paid performance incentive only after due date of filing of income-tax return. Insofar as case laws relied upon by the assessee, we find that facts those case laws are different from facts of present case and has no application to case of the assessee. Therefore, we are of the considered view that there is no error in the reasons given by the Assessing Officer as well as learned DRP to disallow performance reward u/s.43B(c) of the Act. Hence, we are inclined to uphold the order of Assessing Officer as well as directions of learned DRP and reject ground taken by the assessee.*

9.4 In this view of the matter and by following the decision of the ITAT Chennai Benches for AYs 2013-14 to 2016-17, we are inclined to uphold the findings of the DRP and reject the ground taken by the assessee.

10. The next issue that came up for our consideration from **Ground No.6** of the assessee's appeal is fresh claim of deduction towards foreign exchange loss on restatement of loans utilized for purchase of domestic assets to the extent of INR 17.96 Crs. Facts with regard to impugned dispute are that during the FY relevant to AY 2012-13, an amount of Rs.67.04 Crs. was debited in the P & L A/c towards loss on foreign currency transactions. The said loss was also entirely disallowed and added back in the statement of total income. The assessee has raised a fresh claim before the AO, on the ground that although, the assessee should have claimed a deduction while computing taxable income in respect of foreign exchange loss on restatement of loans for purchase of domestic assets, but by an inadvertent error, said loss was not claimed as deduction, which resulted in overstating the taxable profit. The AO did not entertain the claim made by the assessee for deduction towards foreign exchange loss on restatement of loss on the ground that any fresh claim can be raised through a return of income. Further, the DRP also rejected the claim of the assessee.

10.1. The Ld. Counsel for the assessee submitted that the assessee by an inadvertent error could not claim deduction towards allowable expenditure being foreign exchange loss on restatement of loans taken for purchase of domestic assets. Therefore, the claim made by the assessee may be admitted and the issue may be set aside to the file of the AO to decide the issue afresh in accordance with law.

10.2. The Ld. DR strongly opposing the fresh claim made by the assessee submitted that the assessee could not explain why it should not claimed deduction towards foreign exchange loss in the return filed for the relevant assessment year. Further, the assessee could not explain how such loss is allowable deduction. Therefore, the issue should not be set aside to the file of the AO.

10.3. We have heard both the parties and perused the materials available on record. It is an admitted legal position from the decisions of the Hon'ble Supreme Court and various High Courts that unless authority of law no tax can be collected. In other words, only legitimate tax payable by the assessee needs to be collected. Further, even in a case where the assessee has failed to make a claim towards any expenditure or allowance, it is the duty of the AO to compute correct taxable income after allowing deductible losses/expenses. Since, the assessee claims that foreign exchange loss on restatement of loans availed for purchase of domestic assets is allowable deduction, in our considered view, the AO ought to have admitted claim made by the assessee towards deduction for expenditure and decide the issue in accordance with law. Therefore, we admit the fresh claim made by the assessee and restore the issue to the file of the Assessing Officer. We, also direct the AO to verify the issue with reference to relevant materials that may be filed by the assessee and decide the issue in accordance with law.

11. The next issue that came up for our consideration from **Ground No.7** of the assessee's appeal is Investment Promotion Subsidy (in short "IPS") received from Government of Tamil Nadu is capital receipt and not liable to tax. The facts with regard to impugned dispute are that the Government of Tamil Nadu has issued a GO on 26.02.2007 for Formulation of Ultra Mega Integrated Automobile Projects Policy, to bring out an exclusive policy for encouraging set up of major Integrated Automobile Projects in Tamil Nadu. The assessee had entered into a Memorandum of Understanding with the Government of Tamil Nadu on 22.01.2008 for setting up/expansion of its manufacturing facility. As per said Policy, incentive was granted for the purpose of setting up of Phase-II manufacturing facility (expansion along with a new engine and transmission plant with an installed capacity of 3.30 lakh cars per annum). The scheme further envisages that the incentive was given by way of refund of Output VAT under the state policy. The Government of Tamil Nadu agreed to provide a structured package of support to the assessee in the form of fiscal and other incentives subject to fulfilling of certain conditions within the investment period i.e. '7' years from 01.06.2006. The obligations to be fulfilled by the assessee to avail the infrastructure support, utilities, and various incentives offered by the Government of Tamil Nadu is investment of INR 4,000 Crs., in eligible fixed assets within a period of '7' years from 01.06.2006. Upon satisfaction of the foresaid criteria, the fiscal incentives available to the assessee consisted of Input VAT and Gross Output VAT for a period of 21 years from the date of commencement of commercial production or to the extent of 115% of eligible investment, whichever is earlier. Further, soft loan against Central Sales Tax repayable after a period of '14' years along with nominal interest. In addition, as per the said policy, the assessee is entitled for exemption from entry tax, works contract tax and other state levies, and flexibility in labour laws.

11.1 The assessee claims that based on the satisfaction of the above conditions, an interim eligibility Certificate dated 23.07.2009 was issued by the State Industries Promotion Corporation of Tamil Nadu Ltd. (in short "SIPCOT") considering the eligible investment made till such date. Further, after the completion of project on 31.03.2011, a final eligibility Certificate was issued by SIPCOT on 17.04.2014. As per said Certificate, eligible investment was at INR 4,373.22 crores (while the actual investment made by the assessee was INR 4,971 crores), and accordingly, quantified the subsidy receivable in the form of IPS of INR 4,023.36 crores. During the year under consideration, based on the sales, the assessee accrued refund of Output VAT amounting to INR 33 crores from the Government of Tamil Nadu and credited the same to P&L a/c under the head 'Other Operating Revenue'. The assessee has included the above incentives as Revenue receipt in the original return of income filed for the impugned assessment year. However, the assessee has made an additional claim before the AO vide letter dated 27.09.2021, wherein, it was claimed that the IPS received from the Government of Tamil Nadu was capital in nature and not taxable. The AO after considering relevant submissions of the assessee and also by following certain judicial precedents, including the decision of the Hon'ble Supreme Court in the case of Sahaney Steel& Press Works Ltd.& Ors. v. CIT reported in [1997] 228 ITR 253 (SC) observed that IPS accrued to the assessee in the form of refund of Output VAT is Revenue in nature and the assessee has rightly treated it as income in the return of income filed for the relevant assessment year. Therefore, the Assessing Officer has rejected additional claim of the assessee for considering IPS as capital in nature and not liable for tax. The relevant findings of the AO are as under:

> *VAT expenditure is purely revenue expenditure. The assesseee company was not required to expend VAT refund money for any particular purpose as evident from the MoU between the state Govt. & HMIL. The assessee company had to invest Rs.4000/- crore in eligible fixed assets within 7 years, SIPCOT started payment of incentive in the form of refund of output VAT from 1st year of investment in fixed asset on the basis of interim eligibility*

certificate issued by Commercial Tax Dept. to SIPCOT on the condition that the assessee has to complete investment in eligible fixed assets as per clauses in MoUdtd: 22.01.2008. It was further mentioned in separate agreement between GoTN and HMIL that if assessee fails to. fulfill the condition as per MoU, the interim refund granted will be recovered from assessee.

It was stated by the assessee that there was no fixed purpose for utility of such incentive. It could have been utilized on any head which was not distinguishable.

This clearly shows that the incentive: was given for running of the business of assessee more profitably.

Thus, incentive received by assessee during the relevant assessment year as output VAT refund was not granted for production of or bringing into existence any new asset and in such circumstances the incentive amount is treated as revenue in nature and would have to be taxed accordingly. It was not realized to the assessee in acquiring it a new capital asset to meet part of cost of that asset. It was refunded to assessee only after the sale was made and the eligibility certificate was sent to SIPCOT by the Commercial Tax Dept.

Thus, the payment made to assessee was merely a supplementary trade receipt. The assessee was also free to use the incentive in the business as the assessee would like. The assessee was not required to spend the incentive amount for any particular purpose. Incentive was not given for bringing into existence any new capital asset but grant in aid was given after commencement of the businessto increase the profit in business. The amount of incentive was given equal to the output VAT (at a certain fixed percentage), if any, collected by the assessee, which was a part of trading receipt.

Further, it is to state that whether any subsidy/incentive given in relation to new industrial undertakings or subsequent expansion of existing capacities, from the state govt., inter alia, in the form of refund of sales tax paid on machinery or finished goods and subsidy on power consumed and an exemption or refund of water rate, would be an income. (Delhi High Court verdict in the case of Commissioner of Income Tax vs. Steel Authority of India Ltd. on 14th March, 2002).

In this regard, the judgment of Hon'ble Apex Court in the case of Sahney Steel and Press Works Ltd. and Ors. v. CIT (1997) 228 ITR 253 is relevant which is given as below:

> *it was held by Hon'bie Supreme Court that On the facts of that case and on the basis of the analyses of the Scheme therein that the subsidy given was on revenue account because it was given by way of assistance in carrying on of trade of business. On the facts of that case, it was held that the subsidy given was to meet recurring expenses. It was not for acquiring the capital asset. It was not to meet part of the cost. It was not granted for production of or bringing into existence any new asset The subsidies In that case were granted year after year only after setting up of the new industry and only; after commencement of production and, therefore, such a subsidy could only be treated as assistance given for the purpose of carrying on the business of the assessee, Consequently, the contentions raised on behalf of the assesses on the facts of that case stood rejected and it was held that the subsidy received by Sahney Steel and Press Works Ltd, could not be regarded as anything but a revenue receipt.*

Order of Ld. 1TAT Madras Chennai in the case of the M/s. Eastman Exports Global Clothing (P) Ltd in I.T.A. Nos.47 & 48/Mds/2016 is also relevant in the case of assessee. The same is reproduced hereunder: -

> *"This court examined tests laid down in various cases for distinguishing between capital expenditure and revenue expenditure. When an expenditure is made not only once and for all but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to*

capital. Whether by spending the money any advantage of an enduring nature has been obtained or not will depend upon the facts of each Case.

1. Outlay is deemed to be capital when it is made for the initiation of a business, for extension of a business, or for a substantial replacement of equipment.

2, Expenditure may be treated as properly attributable to capital when it is made not only once and for all, but with a view to bringing into existence-am asset or an advantage for the enduring benefit of a trade".

Assessee got refund of gross output VAT as incentive from/SiPCQT. The sole objective was to increase profit & to achieve the production target during a year which will be beneficial both for the assessee and the Govt.

In the case of SreeAyyahar Spinning And Weaving... vs Commissioner of income-Tax on 23 March, 1998, Hon'ble High Court (Mad) held as under:-

> *"The subsidy was not received as some ex-gratia payment but it was received by the assessee exclusively for carrying on its business and after the commencement of the business by the assessee. Therefore, we are of the opinion that the subsidy so received by the assessee was liable to be and rightly, was treated as the financial assistance rendered by the S1PCOT for the purpose of running its business and we are therefore of the opinion that the Tribunal was correct in holding that the subsidy amount received by the assessee should be treated as revenue receipt. This court in Saroja Mills Ltd. v. CST [1996] 220 ITR 626, has taken the view that the subsidy amount given to the assessee to meet the revenue expenditure should be assessable as revenue receipt. The apex court in Shaney Steel and Press Works Ltd, v. CiT[1997] 228 1TR 253, has taken a similar view and held that the subsidy granted to the assessee for the purpose of carrying on the business should be treated as revenue receipt.*

3. Following the decision of the apex court in Sahney Steel and Press Works Ltd. v. CIT [1997] 228 ITR 253, and the decision of this court in Saroja Mills Ltd. v. CIT [1996] 220 ITR 626, we hold that the subsidy received by the assessee in the instant case by way of reimbursement of revenue expenditure, is a Revenue receipt and it was rightly taxed as such".

<u>Conclusion</u>

Thus in the light of above discussion, case laws, facts and merit of the case of the assessee, it is concluded that refund of output VAT is revenue in nature only and assessee rightly treated it as income in its return of income.

Thus, the claim of assessee the receipt of Rs.32,75,60,000/- from Govt. as capital receipt is hereby rejected".

In view of above, the claim of assesses that the "Output VAT subsidy of Rs.33,00,82,506/- received by the assessee should be treated as a capitalreceipt not chargeable to tax" is not tenable at all and it was rightly treated by assessee as revenue receipt.

11.2. The Ld. Counsel for the assessee submitted that in order to treat any subsidy received from Central/State Government, the primary condition is purpose test. If any subsidy is primarily granted as in incentive for the purpose of setting up/expansion of its manufacturing activity to encourage huge investment, then, said subsidy will be in the form of capital receipt not chargeable to tax. The Ld. Counsel for the assessee further submitted that the form of receipt of subsidy would not change the character of receipt, because, in many case, the subsidy has been quantified in terms of fiscal incentives like VAT/Sales Tax, refund, etc., but what is required to be seen is purpose of granting such subsidy. In the present case, the Government of Tamil Nadu, has given subsidy to encourage investment in the field of integrated automobile manufacturing sector. If you go by the purpose test, then the subsidy is for setting up/expansion of manufacturing facility, and thus, same would partakes the nature of capital receipt. In this regard, he relied upon the following judicial precedents:

- *Ruling of the Apex Court in the case of CIT vs. Chaphalkar Brothers Pune (400 ITR 279) (Page 139 of Case Law Compilation ('CLC'))*
- *Ruling of the Apex Court in the case of Shree Balaji Alloys &Ors (80 taxmann.com 239) (Page 154 of CLC)*
- *Ruling of the Jammu and Kashmir HC in the case of Shree Balaji Alloys &Ors (333 ITR 335) (Page 156 of CLC)*
- *Ruling of the Apex Court in the case of Ponni Sugars and Chemicals Ltd. (306 ITR 392) (Page 148 of CLC)*
- *Ruling of the Gujarat High Court in the case of Garden Silk Mills Ltd. (394 ITR 192) (Page 172 of CLC)*
- *Ruling of the Calcutta High Court in the case of Shyam Steel Industries Ltd. (303 CTR 628) (Page 181 of CLC)*
- *Ruling of this Hon'ble Tribunal in the case of India Cements Limited - ITA 2210/CHNY/2017 (Page 184 of CLC)*
- *Ruling of this Hon'ble Tribunal in the case of Ford India Private Limited (156 TTJ 1) (Page 192 of CLC)*
- *Ruling of the Delhi Tribunal in the case of Ulflex Limited - ITA 1329/061/2015 (Page 205 of CLC)*
- *Ruling of the Mumbai Tribunal in the case of Mahindra & Mahindra Ltd. (117 taxmann.com 518) (Page 250 of CLC)*
- *Ruling of the Mumbai Tribunal in the case of JSW Steel Limited ((2020) 180 ITD 505) (Page 266 of CLC)*
- *Ruling of the Kolkata Tribunal in the case of Ankit Metal & Power Ltd. (92 LTR(T) 599) (Page 274 of CLC)*

11.3. The Ld. Counsel for the assessee further referring to provisions of explanation 10 to Sec.43(1) of the Act, submitted that provisions of Sec.43(1) of the Act is not applicable to incentives received in the form of IPS, because, said incentive is not given to offset the cost of any particular asset and is merely issued with an objective of accelerating the industrial development. Though, for the purpose of determining the amount of subsidy to be given, the cost of eligible investment was taken as the basis, but the subsidy was not specifically intended to subsidized the cost of asset. Therefore, it is submitted that since the incentive in the form of IPS is not a payment received directly or indirectly to meet any portion of the actual cost, it falls outside the purview of Explanation 10 to Sec. 43(1) of the Act. In this regard, the assessee relied upon the decision of the Hon'ble Bombay High Court in the case of PCIT v.Welspun Steel Ltd. reported in 264 Taxman 252. The assessee had also relied upon the following judicial precedents:

- *P.J. Chemicals - Supreme Court-210 ITR830*
- *Electrosteel Castings Ltd. - Kolkata ITAT - 189 LTD 183*
- *Bhagwati Sponge P. Ltd. - Kolkata LTAT - 72 taxmann.com 40*
- *Everest Industries Ltd. - Mumbai ITAT - 192 TTJ 904*

11.4 The Ld.DR supporting the order of the AO and ld. DRP submitted that the assessee has received IPS in the form of refund of Output VAT after commencement of commercial production. Therefore, the nature of subsidy has to be examined in light of the purpose and manner of such subsidy has been given by the Governments. If you go through the Scheme promoted by the Government of Tamil Nadu, although, it states that it is for encouragement of investments in Ultra Mega Integrated Automobile manufacturing industries, but such subsidy has been given in the form of refund of Output VAT payable by any entity after commencement of production. From the Scheme, it is undoubtedly clear that the aim of Scheme is to provide incentives for smooth running of existing unit. Further, the subsidy has been quantified in terms of Output VAT refund after commencement of production. Therefore, he submitted that from the nature of subsidy, it is undoubtedly clear that it is in the nature of Revenue receipt and this fact is further strengthened by the treatment given by the assessee for said subsidy in the books of accounts and return filed for the relevant assessment year. The AO after considering relevant facts has rightly rejected the additional claim made by the assessee for treating IPS as capital receipt.

11.5. We have heard both the parties, perused material available on record and gone through orders of the authorities below. Admittedly, the assessee has treated IPS received from the Government of Tamil Nadu as Revenue receipt and also offered to tax in the return of income filed u/s.139 of the Act. The assessee has filed an additional claim before the AO and argued that subsidy received from the Government of Tamil Nadu is capital in nature and not liable for tax. According to the assessee, the GO issued by the Government of Tamil Nadu clearly envisages Formulation of Ultra Mega Integrated Automobile Projects to encourage setting up of Major Integrated Automobile Projects in Tamil Nadu. Even, the Memorandum of Understanding between the assessee and the Government of Tamil Nadu dated 22.01.2008 clearly state that the subsidy is given as incentive for the purpose of setting up/expansion of its manufacturing facilities. Further, SIPCOT had also issued a final eligibility Certificate quantifying the amount of investment and also subsidy receivable in the form of IPS. Therefore, from the Scheme and subsequent Certificate issued by the Nodal Agency i.e. SIPCOT, it is clear that subsidy has been given to encourage setting up/expansion of existing manufacturing facility, even though, such subsidy has been quantified in terms of refund of Output VAT payable by the assessee after commencement of production.

11.6. In light of above factual position it is necessary to examine the claim of the assessee with reference to legal position settled by various courts including the Hon'ble Supreme Court of India. It is a settled principle of law by various Courts, including the Hon'ble Supreme Court in the case of CIT v. Chaphalkar Brothers Pune, reported in (2018) 400 ITR 279 (SC), that subsidy received towards accelerating industrial investment/setting up of units is to be treated as capital in nature, even if such subsidy has been quantified in terms of reimbursement of expenses or VAT, etc.,. Further, CBDT Circular No.142 dated 01.08.1974, which deals with characterization of subsidy received under 10% Central Outright Grant of Subsidy Scheme, 1971, states that classification of a subsidy as capital or revenue depends on whether the subsidy has been granted for helping the growth of the industries or for supplementing their profits. If the subsidy is granted for the purpose of growth of industries, then, the receipt of the subsidy was concluded to be on capital account. In the present case, going by the Scheme promoted bythe Government of Tamil Nadu, it shows that industrial promotion subsidy has been promoted for encouraging Ultra Mega Integrated Automobile Industry in the state of Tamil Nadu. Therefore, we are of the considered view that from the submissions of the assessee, it appears that IPS accrued to the assessee for the impugned assessment year on the basis of sales is given for setting up/expansion of manufacturing facility and is on capital account. Therefore, said subsidy should be treated as capital receipt. But, fact remains that complete Scheme of IPS given by the Government of Tamil Nadu and relevant conditions specified therein are not available for our benefit. Further, although, the assessee claims that the Nodal Agency i.e. SIPCOT has quantified and issued final eligibility certificate quantifying the amount of investment in fixed assets and consequent subsidy receivable in the form of IPS, but the details of investment are not forthcoming from certificate issued by the Nodal Agency. Therefore, we are of the considered view that this issue needs to be re-looked into by the AO in light of our discussion given hereinabove and also relevant evidences, including IPS of the Government of Tamil Nadu, details of investment made by the assessee and certificate issued by the Nodal Agency i.e. SIPCOT quantifying the amount of investment and subsidy receivable in the form of subsidy. Thus, we set aside the issue to the file of the Assessing Officer for verification.

11.7. Coming back to another argument of the Ld. Counsel for the assessee in light of Explanation-10 to Sec.43(1) of the Act that IPS is not given to offset cost of any particular asset and is merely issued with an objective of accelerating the industrial development. As per the provisions of Sec.43(1) and Explanation-10 actual cost means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been made directly or indirectly by anyother person or authority. Explanation-10 explained the provisions of Sec.43(1) and as per which, where a portion of the cost of the asset acquired by the assessee has been made directly or indirectly by the Central Government or State Government or any authority established under any law or by any other person in the form of subsidy or grant or reimbursement (by whatever name called), then, so much of cost is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee. If you go by the provisions of Explanation-10 to Sec.43(1), it is clearly states that the cost of an asset acquired by the assessee has been directly or indirectly met by any Central Government or State Government in the form of subsidy or grant or reimbursement, then, the same shall not be included in the actual cost of the asset. In the present case, IPS Scheme given by the Government of Tamil Nadu aims reimbursing cost of infrastructure of setting up/expansion of manufacturing facility in Mega Automobile Industry. If you go by the Scheme, it aims to reimburse cost incurred by an entity to set up a manufacturing facility which consists of various forms of assets. Although the Scheme does not specify any particular asset on which reimbursement is granted, but it aims to provide reimbursement towards total cost incurred by an entity for setting up/expansion of manufacturing facility. Therefore, from the above, it is undoubtedly clear that subsidy given to an entity in any form including reimbursement by giving refund of Output VAT is to share/reimburse part of cost incurred by an entity in setting up a plant or facility. Therefore, we are of the considered view that there is not merit in the arguments taken by the Ld. Counsel for the assessee that the IPS is not given to offset cost of any particular asset and is merely issued with an objective of accelerating the industrial development. Further, as we have already stated in earlier paragraphs, the complete details of Scheme and investments made by the assessee in fixed assets and other facilities are not available to us. Further, although, the SIPCOT has issued final eligibility certificate quantifying the amount of investment and subsidy therein, no details are forthcoming from said certificate. Further, in order to ascertain the nature of investment and to consider the exact amount of investment made in any asset or fixed asset, these details are necessarily to be examined. Therefore, we are of the considered view that the issue needs to go back to the file of the AO for further verification and thus, we set aside the issue to the file of the

AO and direct the AO to re-examine the claim of the assessee in light of provisions of Explanation-10 to Sec.43(1) of the Act, provided thereunder and also by considering IPS Scheme given by the Government of Tamil Nadu and other relevant evidences to ascertain whether the subsidy given by the State Government is to offset portion of the cost of an asset acquired by the assessee or is merely issued with an objective of accelerating the industrial development. The AO is further directed to examine the issue in light of our discussions given hereinabove and decide the issue in accordance with law.

12. The next issue that came up for our consideration from **Ground No.8** of the assessee's appeal is amounts received under the Focus Market Scheme – capital in nature – to be excluded from the total income. Facts with regard to impugned dispute are that Government of India with an intention to promote exports to certain regions / countries introduced Focus Market Scheme which provides incentive of 2.5% of FOB value for each licensing year commencing from 1st April, 2006. The export of products to those countries which are covered under list of countries in Schedule 37C would be entitled for duty credit scrip equivalent to 2.5% of FOB value of exports. During the year under consideration, the assessee was eligible for above scheme, as it makes export to specified markets. Accordingly, the assessee has received an amount of Rs.90,57,29,308 as incentive from Govt. of India. The license under the scheme was given only for exports to potential new markets /

specified products and not for all exports or all products to all markets. The assessee has treated amount received under Focus Market Scheme as revenue in nature and has offered to tax. Based on certain subsequent decisions, the assessee has raised additional ground and argued that subsidy received under Focus Market Scheme is capital in nature and not chargeable to tax.

12.1 The Ld.AR submits that this issue is covered against the assessee by the decision of the ITAT Chennai Benches in the assessee's own case for AY 2013-14 in ITA No.3192/Chny/2017.

12.2 The Ld. DR fairly agreed that this issue is decided against the assessee.

12.3 We have heard both the parties and perused the materials available on record. We find that an identical issue had been considered by the Tribunal in the assessee's own case for AY 2013-14 in light of subsidiary received from Government of India, Ministry of Commerce & Industry under the Focus Market Scheme, and held that said subsidy is Revenue in nature which is taxable as income of the assessee. The relevant findings of the Tribunal are as under:

> *32. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The Government of India, Ministry of Commerce and Industry has come out with Foreign Trade Policy for the period 1st September, 2004 to 31.03.2009 and as per the said policy, it has announced a scheme for exporters of certain goods to certain regions called Focus Market Scheme. As per said scheme, export of products to those countries which are covered under list of countries in Schedule 37C would be entitled for duty credit scrip equivalent to 2.5% of FOB value of exports. The assessee being eligible exporter had received licenses/duty credit scrip/ market linked focus scrips amounting to Rs.150.57 crores for the year under consideration. The assessee has considered amount received under focus market scheme as revenue receipt and*

offered to tax. However, based on some subsequent decisions of appellate authorities has filed an additional claim seeking exclusion of said receipt from taxation on the ground that it is in the nature of capital receipt and not exigible for tax. Therefore, in order to understand whether amount received from Focus Market Scheme is revenue in nature or capital receipt, which is exempt from tax, one has to understand objectives of Focus Market Scheme announced by Govt. of India. As per Foreign Trade Policy document, the objective of the scheme is to offset high freight cost and other disabilities to select international market with a view to enhance our competitiveness to these countries. On the basis of objectives of the scheme alone, it can be easily concluded that amounts received under the scheme is revenue in nature, because it is primarily focusing to reduce cost of our exporters to compete with other export markets to these regions. However, various courts including Hon'ble Supreme Court in number of cases has examined nature of subsidy received from Govt. of India on the basis of purpose test and has held capital or revenue in nature depending upon purposes for which said subsidy was given. In our considered view, this controversy can be resolved if we apply test laid down in the judgement of Hon'ble Supreme Court in the case of Sahney Steel & Press Works Ltd. Vs. CIT (228 ITR 253). The importance of judgement of Hon'ble Supreme Court in the above case lies in the fact that it has discussed and analyzed the entire case laws on the issue and it has laid down basic test to be applied in judging the character of subsidy. That test is the character of receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is given. In other words, in such cases, one has to apply purpose for test. The point of time at which subsidy paid is not relevant. The source is immaterial. The form of subsidy is immaterial.

33. Therefore, in the light of decision of the Hon'ble Supreme Court, in the case of Sahney Steel & Press Works Ltd. Vs. CIT(supra), if we examine facts of the present case, we are of the considered view that duty credit scrips received by the assessee from Govt. of India for export of certain goods to some specified regions is certainly in the nature of revenue receipt, because which is primarily given to offset higher freight cost and other disabilities to select international markets, with a view to enhance our export competitiveness to these countries. We further, are of the opinion that this subsidy was given by way of assistance in carrying on of trade or business and to meet recurring expenses, but it was not for acquiring any capital asset. It was not to meet part of the cost to manufacturing activity. It was not granted for production or bringing into existence any new asset. The subsidy was given year after year only after setting up of industry and only after commencement of production and therefore, such subsidy could only be treated as assistance given for the purpose of carrying on business of the assessee. It is well settled principles of law that any subsidy given for the purpose of offsetting part of cost of setting up of new industry, as per industrial policy of various State Governments or Govt. of India is considered as part of capital contribution and capital in nature, whereas subsidy given after commencement of production of products and further for enhancing profitability of the assessee is certainly in the nature of assistance given for running of business of the assessee more profitable and hence, it is definitely revenue in nature.

34. In this case, on perusal of facts available on record including foreign trade policy of Government of India, it is very clear from documents that main objective of Focus Market Scheme is to offset high freight cost and other disabilities of exporter to select international market with a view to enhance our export competitiveness to these countries. The expenditure incurred by the assessee under this scheme for exploring new market across the globe is mainly freight cost and other recurring expenses like sales promotion expenses, including manpower cost of staff employed in marketing department. Those expenses are generally in the nature of revenue expenditure and thus, can be considered as revenue expenditure. Since, the assessee got duty credit scrip benefit to offset cost incurred for exploring new market including higher freight cost and further, said expenditure is in the nature of revenue expenditure, then any subsidy including duty credit scrips given by Govt. of India for such purpose is definitely in the nature of revenue receipt. Thus, at any stretch of imagination, the amount received under Focus Market Scheme cannot be considered as capital in nature, which is given to offset cost or part of cost of any asset or facility created by the assessee. Moreover, in this case, the assessee itself had considered amount received under Focus Market Scheme as revenue receipts and offered to tax, considering nature and purpose of receipt of subsidy from the Govt. of India. It is a well-known fact that the assessee is best judge to decide a particular item of

> *income or expenditure, because it is well aware facts of its case. In this case, the assessee, after considering nature and purpose of amount received under Focus Market Scheme, has very well considered the same as revenue receipt and offered to tax. Therefore, based on some judgements of higher forum making a claim for excluding said receipt from tax by claiming that it is in the nature of capital receipt is not correct, unless the assessee demonstrates that facts of those case laws considered by appellate forum and facts of assessee's case are similar in nature. As regards various case laws relied upon by the assessee including the decision of ITAT., Chennai in the case of Eastman Exports Global Clothing Pvt.Ltd. in ITA No.47 & 48/Chny/2016, we find that the ITAT, Chennai Bench in above case has not apprised facts in right perspective of law and hence, the judgment of Chennai Bench is not considered. As regards decision of Hon'ble Rajasthan High Court in the case of Pr.CIT Vs. Nitin Spinners Ltd. in Income Tax Appeal No.31 of 2019, we find that facts of case before Hon'ble High Court and facts of present case are different and hence, same is not considered.*
>
> *35. In this view of the matter, and considering facts and circumstances of the case, we are of the considered view that duty credit scrips received from Govt. of India under Focus Market scheme is revenue in nature and further, same was given to offset higher cost of freight and other disabilities of exporters to be more competitive in exports to certain regions. Thus, the same cannot at any stretch of imagination be considered as capital in nature. Hence, we reject the ground taken by the assessee.*

12.4. In this view of the matter and by following the decision of the ITAT Chennai Benches in the assessee's own case for AY 2013-14, we are of the considered view that subsidy received from Government of India under the Focus Market Scheme is Revenue in nature and the same was given to offset higher cost of freight and other disabilities of exporters to be more competitive in exports to certain regions. Thus, same cannot be at any stretch of imagination considered as capital in nature. Hence, we are inclined to uphold the findings of the DRP and reject the ground taken by the assessee.

13. The next issue that came up for our consideration from **Ground No.9** of the assessee's appeal is Education and Secondary Education Cess allowable as deduction.

13.1. The Ld. Counsel for the assessee has withdrawn the ground relating to deduction towards Education and Secondary Education Cess, and thus, Ground No.9 of the assessee's appeal is dismissed as withdrawn.

14. The next issue that came up for our consideration from **Ground No.10** of the assessee's appeal is additions towards brand adjustment. During the year under consideration, the learned TPO has made upward adjustment of Rs.304,76,47,898/- in relation to brand fees receivable from its AEs towards enhancement of brand value of assessee parent company. The learned TPO used Spearman's Rank Correlation method to conclude that there is positive correlation between the brand value of Hyundai Motor India Limited and market capitalization of Hyundai market Corporation, South Korea. Therefore, by applying Spearman's Rank Correlation method, the ld. TPO has computed incremental brand value and attributed a portion of the same to the assessee in proportionate to its sales.

14.1. The Ld. Counsel for the assessee submitted that this is covered in favour of the assessee by the decision of the ITAT Chennai Benches for AYs 2013-14 to 2016-17, where adjustment made by the TPO has been deleted.

14.2. The Ld.DR supporting the order of the AO & the DRP, fairly agreed that this issue has been decided in favour of the assessee by the ITAT Chennai Benches for earlier assessment years.

14.3. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We find that an identical issue had been considered by the Tribunal in the assessee's own case for AY 2013-14, where the Tribunal by following the decision of the ITAT Chennai Benches in the assessee's own case for earlier assessment years, decided the issue in favour of the assessee. The relevant findings of the Tribunal are as under:

> *28. We have heard both the parties, perused material available on record and gone through orders of the authorities below. Admittedly, additions made by the TPO towards brand development services is recurring issue, which was subject matter of deliberations from the Tribunal right from assessment year 2009-10 to assessment year 2011-12. The Tribunal in the assessee's own case for assessment year 2009-10 to 2011-12 had considered an identical issue and held that in absence of mutual agreement or arrangement between two or more AEs for allocation, apportionment or contribution to any cost or expenses for a benefit, service or facility, it cannot be held that there is an international transaction for brand development. The Tribunal further held that increase in brand value due to use of foreign AEs brand name in HMIL's products cannot be considered as provision for services, as per international transaction definition u/s.92B of the Income Tax Act, 1961. The Tribunal further held that the expression 'benefit' and 'service' have different connotations. A service has to be a conscious activity and not a passive exercise. Not all benefits arise as a result of services rendered by someone and further all services do not result in benefits to the other parties. For the purpose of definition of international transaction, in Indian context rendering of service is what needs to be considered and not benefits. Since, there is no formal agreement or arrangement between the assessee and its AEs for rendering of service in the alleged brand promotion activity, the accretion in global brand value of its parent company cannot be attributable to the assessee by adopting some theory. In this case, facts are identical and parimateria to the facts already considered by the Tribunal for earlier years. Therefore, consistent with a view taken by the coordinate Bench in assessee's own case for earlier assessment years, we are of the considered view that the learned TPO as well as learned DRP were erred in making transfer pricing adjustments towards brand services by adopting Spearman's Rank Correlation method and concluded that there is positive accretion between brand value and market capitalization of HMC Korea and hence, we direct the Assessing Officer/TPO to delete transfer pricing adjustment made towards brand development services.*

14.4. In this view of the matter and consistent with view taken by the co-ordinate Bench, we direct the AO to delete the addition made towards brand adjustment.

15. The next issue that came up for our consideration from **Ground Nos.11 to 12.4** of the assessee's appeal is Transfer Pricing adjustment in respect of international transactions of the assessee with its AE. The assessee is engaged in the business of manufacture and sale of passenger vehicles in domestic as well as export market. The sourcing, purchasing, manufacturing and warehousing facility of the assessee is common for cars manufactured for all geographies. The various stages involved in the manufacturing process is explained by the assessee as per which the process up to the stage of trial run and pre-delivery inspection is common for both export and domestic sales. Further, inputs for manufacture, such as import of raw materials, domestic purchase of raw materials, spares, etc., are also common for domestic and export sales. Based on the functional analysis of process, in the TP documentation, the assessee has tested its international transactions with its AE at entity level by applying Transaction Net Margin Method (TNMM) as the most appropriate method. The assessee's margin was at 5.01% on sales while the comparable companies' margin was arrived at 5.41%. Accordingly, claims that international transactions were considered to be at Arm's length price.

15.1. During transfer pricing proceedings, the TPO did not accepted TP study conducted by the assessee at entity level by applying TNMM as most appropriate method and on the basis of segmental financials furnished by the assessee, the ld.TPO has carved out domestic segment (manufacturing and spares) alone and benchmarked it with comparable companies selected by the assessee in the TP documentation. The ld.TPO has also made adjustment to the operating margin by treating royalty income, VAT, incentive, commission/discount received and insurance claim as non-operating revenue. The ld.TPO had also treated forex loss as operating expenditure for the purpose of computing margin. Thus, the TPO has recomputed operating margin of the assessee and has re-characterized international transactions of the assessee by segregating domestic sales segment as a separate international transaction and proposed TP adjustment of Rs.138,58,00,000/-.

15.2. The Ld. Counsel for the assessee submitted that this issue is also covered by the decision of the ITAT Chennai Benches in the assessee's own case for AY 2013-14, where an identical issue has been considered by the Tribunal and held that segmentation not warranted in case of closely linked transactions. However, when it comes to comparables, a direction has been given to the TPO/the AO to consider the margin of comparable companies in respect of domestic transactions alone and then compare with assessee's margin. The Ld. Counsel for the assessee further submitted that in so far as adjustment made towards total transactions of the assessee including domestic transactions at entity level, it was held that adjustment needs to be carried out only with reference to international transactions of the assessee but not to domestic transactions. The ld. Counsel for the assessee further submitted that the

Tribunal has also directed the Assessing Officer to recomputed PLI by considering findings on other income, and thus, a similar direction may be given for this year also.

15.3. The Ld.DR on the other hand, fairly agreed that this issue has been decided by the Tribunal in the assessee's own case for earlier assessment years. However, he strongly supported the order of the TPO/the DRP.

15.4. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We find that an identical issue had been considered by the Tribunal in the assessee's own case in light of TP adjustment carried out by the TPO by considering total margins of the assessee including margins earned from domestic transactions and after considering relevant facts held that the whole issue of TP adjustment in respect of import of goods pertains to domestic sale segment needs to go back to the file of the TPO to re-consider the issue in light of directions given therein. The relevant findings of the Tribunal are as under:

> *49. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We have also carefully considered various case laws cited by the ld.AR for the assessee. The assessee is a wholly owned subsidiary of Hyundai Motor Company, South Korea. The assessee is engaged in manufacturing and selling cars in India and exporting them to AE's abroad. The assessee has entered in to various international transactions with its AE's and claimed it as tested party and benchmarked the same by applying TNMM as most appropriate method. The TPO did not accept TP study conducted by the assessee and according to him, there is huge variation between profit margins of domestic segment and export to AE segment, in both categories of vehicles and spares. Accordingly, he has rejected TP study conducted by the assessee and re-characterized TP study by segregating domestic car sale segment on a standalone basis and made TP adjustment. We have given our thoughtful consideration to*

the reasons given by the ld.TPO / DRP and arguments advanced by the ld.AR for the assessee and we, ourselves do not subscribe to the arguments advanced by the ld.AR for the assessee for segregation of domestic car sale segment on a standalone basis for the simple reason that as per the provisions of the Act, each class of transactions has to be examined having regard to the Arm's length price by applying most appropriate method. Under CUP method, the price charged in an uncontrolled transaction or a number of such transactions are relevant whereas, under TNMM, the profit realized by an independent enterprise from a comparable uncontrolled transaction or a number of such transactions are relevant. Therefore, as per the provisions of the Act, it does not say that once, TNMM is applied at the enterprise level, all international transactions are at arm's length price. Since, there are international transactions pertaining to domestic segment, separate benchmarking of the same by applying most appropriate method by the TPO is in accordance with law and thus, the approach of the TPO in segregating domestic car sale segment on a standalone basis is both logical and legal. We, further noted that the assessee is having different margins for different segments of business, as per which, its margin from domestic car sale segment is 2.36% whereas, its margin from export sale segment is 6.04%. Further, revenue-wise domestic segment contributed more revenue, when compared to export segment. Both segment involved substantial AE's transactions affecting operating cost. Therefore, we are of the considered view that separate benchmarking of transactions on segment-wise was is very much required, because the FAR profile of two segments are different. We, further, noted that OECD Guidelines also require that arm's length principle should be applied on a transaction by transaction basis for arriving at the most precise approximation of fair market value. Therefore, we are of the considered view that there is no error in reasons given by the TPO to segregate domestic car sale segment on a standalone basis and benchmarked transactions of the assessee with its AE's. As regards, case laws relied upon by the ld.AR for the assessee, we find that there are divergent views on the issue, where some appellate forums have held that international transactions that are closely linked are to be aggregated and benchmarked, whereas some appellate forums had held that arm's length price should be determined on a transaction by transaction basis, based on functions performed, asset employed and risk assumed by the assessee. Further, the Act is very clear, as per which each international transaction has to be benchmarked based on the nature of transactions by applying most appropriate method. There is no common rule for applying TNMM as most appropriate method for all transactions. Some international transactions have to be tested by applying CUP method, resale price method or cost plus method and selection of appropriate method is depends upon nature of transactions. Therefore, we are of the considered view that there is no merit in the arguments taken by the ld.AR for the assessee that the TPO / DRP has erred in segregating domestic car sale segment on a standalone basis for the purpose of benchmarking ALP of international transactions with its AE.

50. Be that as it may. The fact remains that the TPO while segregating domestic car sale segment on a standalone basis has benchmarked transactions by considering 5 comparables selected by the assessee in its TP documentation. It was the claim of the ld.AR for the assessee that 5 comparables selected by the assessee are all having domestic as well as export sales and thus, for bench marking purpose, the ld TPO either shall have to select new comparables or segregate domestic segment of comparables, otherwise it gives distortion figures. The TPO has segregated domestic car sales of the assessee and tested by applying margin of comparables which is inclusive of export sales. We find merit in the arguments of the ld.AR for the assessee for the simple reason that when the ld TPO is considering a particular segment on a standalone basis, then it is *the duty of the TPO to benchmark relevant segment by selecting appropriate comparables, whose functions performed, asset employed and risk assumed are also similar to FAR analysis of the assessee's segment. In this case, the TPO having segregated domestic car sale segment on a standalone basis, has failed to select appropriate comparables or to carved out domestic sale segment of comparables to compare margins of the assessee with comparable companies. Therefore, we are of the considered view that the approach of the TPO is inconsistent and needs to be reconsidered.*

51. As regards re-computation of margin of the assessee by considering certain operating / non-operating incomes, we find that the AO has considered royalty income received from Mobis, commission / discount income and insurance claim received by the assessee as non-operating. The TPO has given his own reasons for reaching to a conclusion that all these incomes are non-operating in nature. We have given our thoughtful consideration to the reasons given by the TPO in light of various arguments advanced by the assessee and we ourselves do not subscribe to the reasons given by the TPO for the simple reason that the assessee right from financial year 2007-08 onwards appointed Mobis Ltd to take up after sales service activities carried on by the assessee by transferring its business to Mobis. As per the agreement between the assessee and Mobis, Mobis agreed to pay license fee at 8.5% on the domestic sales value. The assessee has considered royalty income received from Mobis as operating in nature, because revenue received from Mobis for after sales service business in inextricably linked with car sales made by the assessee. Further, the assessee has paid royalty to its parent company HMC, Korea for sharing technology and know-how and same has been treated as operating expenses by the TPO. The assessee has received royalty income from Mobis under similar agreement for sharing technology and know-how, but the same has been considered as non-operating by the TPO. When the TPO has considered royalty payment by the assessee to its parent company as operating in nature, then there is no reason for the TPO to consider royalty income received from Mobis as non-operating income. Therefore, we are of the considered view that the ld.TPO was erred in considering royalty received from Mobis as non-operating. Hence, we direct the ld. TPO to consider Royalty income as operating income for computing operating margin.

52. As regards commission / discount income, incentives and insurance claim income, we find that all these incomes are generated from main business activity of the assessee of manufacturing and sales of cars. The assessee has received commission / discount on procurement of raw materials and insurance claim is received towards damaged cars manufactured by the assessee. When the assessee is recognizing income from sale of cars as operating in nature, then insurance claim received towards damaged cars is also operating in nature and hence, we are of the considered view that the ld. TPO has erred in considering commission / discount income, incentives and insurance income as non-operating income. Hence, we direct the ld. TPO to consider commission / discount income, incentives and insurance claim as operating income for the purpose of computing operating margin.

53. As regards forex loss, the assessee has treated it as non-operating income. The main reason given by the assessee to treat forex gain / loss as non-operating in nature that most of the loss / gain is arised from repayment of External Commercial Borrowings, which is a finance activity and not related to business activity of the assessee. The assessee further claimed that, it had consistently recognizing gain / loss as non-operating in nature and the same has been accepted by the Department for earlier assessment years. We have considered reasons given by the ld.TPO in light of arguments advanced by the *ld.AR for the assessee and find that there is no merit in arguments of the ld.AR of the assessee for the simple reason that mere treatment of the assessee in its books of accounts is not a sufficient reason for treating a particular item of expenditure / income is operating or non-operating in nature. But, what is to be seen is the nature of income. In this case, the assessee has derived forex loss on account of fluctuation in foreign currency and said loss is arised during the course of business of the assessee, either for import of raw materials or export of goods or borrowings from external sources. Further, loss arised on account of fluctuation in foreign currency for payment made to suppliers of materials or receipts from buyers of assessee product is also arised out of main business activity of the assessee and thus, the same cannot be considered as non-operating in nature. As regards, the claim of the assessee in light of principle of consistency, we find that although the AO requires to follow principles of consistency in giving treatment of particular item of income or expenditure, but res judicata is not applicable to Income-tax proceedings. Moreover, the law is evolving day by day, based on various factors including amendment to the Act and judgments of various courts and tribunals, as per which it is difficult for the AO to give a particular treatment for any item of income or expenditure, when the law has been substantially changed in subsequent assessment years. Further, it is a well settled principle of law that forex gain or loss is revenue in nature and operating income/expenditure. Therefore, we are of the considered view that there is no merit in the arguments taken by the ld.AR for the assessee that forex loss should be considered as non-operating in nature. Hence, we reject arguments taken by the assessee.*

54. As regards working capital adjustment claimed by the assessee by filing additional ground, we find that the issue is now settled by various decisions including the decision f ITAT, Chennai in the case of Doosan Power Systems India Pvt. Ltd., in ITA No.581/Mds/2016, where myself is one of the party to the decision held that working capital adjustment needs to be given while computing operating margin of the assessee. Therefore, there is merit in additional ground taken by the assessee requesting working capital adjustment. But, fact remains that since assessee has taken additional ground, the facts with regard to claim of the assessee was not before the TPO. Hence, this issue needs to go back to the file of the TPO to examine the claim of the assessee in light of facts related to working capital adjustment.

55. As regards proportionate adjustment, we find that the ld.TPO has made TP adjustment in respect of international transactions pertains to domestic car sale segment, whereas the ld.DRP has enhanced said adjustment by adjusting the margins to entire transactions of the assessee, which predominantly consist of third party cost. We find that as per the provisions of Section 92 of the Act and Rule 10B(1)(e) of the Rules, it is very clear that any income arising from an international transaction shall be computed having regard to arm's length price, that means, very purpose of said provisions is to establish arm's length nature of the international transactions only. The transactions with non AE's has to be presumed to be at arm's length, because there is no relationship which is likely to influence pricing. It is also a settled principle of law by the decision of Hon'ble High Court of Madras in assessee's own case for assessment year 2012-13 in W.A No.1344 of 2017, where it was clearly held that transfer pricing adjustment can be done only in respect of international transactions and cannot be done on the basis of entity level values. Therefore, we are of the considered view that the ld.DRP is erred in making TP adjustment at entity level and hence, we direct the TPO to restrict TP adjustment only to international transactions pertain to domestic car sales segment.

> *56. In this view of the matter and considering facts and circumstance of this case, we are of the considered view that the whole issue of transfer pricing adjustment in respect of import of goods pertains to domestic car sales segment needs to go back to the file of the TPO to reconsider the issue in light of our discussions given herein above in preceding paragraphs. Hence, we set aside the issue to the file of the TPO and direct him to reconsider the issue after affording reasonable opportunity of hearing to the assessee.*

15.5. In this view of the matter and consistent with view taken by the co-ordinate Bench, we set aside the order of the TPO/AO and restore the issue back to the file of the AO/TPO to re-consider the TP adjustment towards international transactions of the assessee with reference to import of raw materials related to domestic car sale segment and decide the issue in accordance with direction given in the assessee's own case for earlier assessment years.

16. The next issue that came up for our consideration from **Ground No.13** of the assessee's appeal is excess levy of interest u/s.234C of the Act. Computation of interest u/s.234C of the Act,is directory and consequential in nature, which depends upon total income computed for the relevant assessment year. In case, calculation errors, if any, then same needs to be rectified by the AO by considering relevant pre-paid taxes paid by the assessee including TDS credit as per records. Therefore, we direct the AO to re-examine the contention of the assessee with regard to computation of interest u/s.234 of the Act, and decide the issue in accordance with law.

17. The next issue that came up for our consideration from **Ground No.14** of the assessee's appeal is short credit of TDS and relief u/s.90 of the Act. The Ld. Counsel for the assessee submitted that a direction may be given to the AO to verify the claim of TDS available as per records and adjust against tax demand. The Ld. Counsel for the assessee had also prayed to give a direction to the AO to allow relief u/s.90 of the Act, in accordance with law. We find that credit for TDS should be given as per Form No.26AS and also other relevant details filed by the assessee. Similarly, if assessee is entitled for any relief u/s.90 of the Act, then same needs to be allowed in accordance with law. Therefore, we direct the AO to consider the contentions of the assessee and decide the issue in accordance with law.

18. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 27th day of September, 2023, in Chennai.

Sd/-
(वी. दुर्गा राव**)**
(V. DURGA RAO)
न्यायिकसदस्य**/JUDICIAL MEMBER**

Sd/-
(मंजूनाथा.जी**)**
(MANJUNATHA.G)
लेखासदस्य**/ACCOUNTANT MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 27th September, 2023.
TLN

आदेशकीप्रतिलिपिअग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF