आयकर अपीलीय अधिकरण, पुणे न्यायपीठ **"ए"** पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

श्री **डी. करुणाकरा राव** , लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI D.KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No. 548/PUN/2016
निर्धारण वर्ष / Assessment Year: 2010-11

Serum Institute of India Ltd.
Sarosh Bhavan,
16-B/1, Dr. Ambedkar Road,
Pune-411 001
PAN : AABCS4225M ....अपीलार्थी/Appellant

Vs.

The Deputy Commissioner of Income Tax,
Central Circle- 1(1), Pune ....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 606/PUN/2016
निर्धारण वर्ष / Assessment Year: 2010-11

The Deputy Commissioner of Income Tax,
Central Circle- 1(1), Pune ....अपीलार्थी/Appellant

Vs.

Serum Institute of India Ltd.
212/2, Hadapsar,
Pune-411 028.
PAN : AABCS4225M ....प्रत्यर्थी / Respondent

Assessee by : Shri R.S. Abhyankar
Revenue by : Shri Rajeev Kumar, CIT

सुनवाई की तारीख / **Date of Hearing : 20.08.2018**		घोषणा की तारीख / **Date of Pronouncement: 02.11.2018**

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

These are cross appeals filed by the Assessee and the Revenue against the order of CIT (Appeals)-11, Pune, dated 29-01-2016 for the Assessment year 2010-11.

2. Background facts of the assessee include that the assessee is a company engaged in the business of manufacture and sale of life saving drugs, vaccines etc. The cases of Poonawalla Group include two sub-groups (1) includes family members of Shri Cyprus Soli Poonawalla (in short CSP) and the group concerns under his control and management (with M/s. Serum Institute of India Ltd. as the flagship company; and (2) other sub-group includes family members of Shri Zavareh Soli Poonawalla (in short ZSP) and the group concerns under his control and management, which is mainly engaged in stud farm activities.

There was search and seizure action u/s 132 of the Act on the assessee's group of cases on 21-06-2011. In response to notice u/s.153A of the Act, assessee filed the return of income on 15-10-2010 declaring total income of Rs.42,12,57,021/-. During the said search action, various incriminating documents were found and seized/ by the Department in respect of entities connected with the group. Cash was also seized by the Department.

During the assessment proceedings u/s.143(3) of the Act for the A.Y.2010-11, AO made various disallowances i.e. additions u/s.14A of the Act, EDP expenses, Foreign Travel Expenses, depreciation on plant and machinery, freight and insurance expense pertains to EOU unit, provision for leave encashment, repairs to building, plant and machinery and product development expenses, etc., apart from others. AO assessed the income of the assessee for the year under consideration at Rs.158,31,61,728/-. CIT(A) partly allowed the appeal of the assessee relying on the decisions of his predecessor/Tribunal.

3. Aggrieved with the part relief given by the CIT(A), the Revenue is in appeal before the Tribunal. Further, aggrieved with the confirmation of additions, the assessee is in appeal before us.

4. Before us, at the outset, Ld. Counsel for the assessee submitted that most of the grounds raised by the Revenue and the Assessee are covered issues in favour of the assessee. Ld. Counsel for the assessee submitted that the facts, issue are same as that of earlier assessment years and the orders of the Tribunal in the assessee's own case for the A.Yrs. 2008-09 and 2009-10. Therefore, we proceed to decide the issues raised in these appeals based on the said information.

We shall first take up the appeal of the Assessee.

ITA No.548/PUN/2016 – By Assessee
A Y. 2010-11

5. Grounds raised by the assessee read as under :

"*On the facts and in the circumstances of the case and in law the learned CIT(A) erred in :*

1a. in confirmi g the disallowance u/s.14A amounting to Rs.3,18,85,207/- as per rule 8D.

2. in confirming the disallowance of foreign travel expenses of employees amounting to Rs.6,77,682/- who travelled abroad.

3a. in directing the AO to classify items of fixed assets of Rs.40,60,897/- like stainless steel tables stools, racks etc. located in manufacturing unit into 'Furniture and Fixtures' and 'Plant and Machinery'

b. in not applying correctly the functional test to the facts of the case while deciding whether certain items like stainless steel table, stools, trolleys etc. constituted 'plant' or not.

4. in confirming the disallowance of the 'provision for Leave Encashment' amounting to Rs.18,16,795/- pertaining to 'DTA' unit ascertained on the basis of actuarial valuation for the specific employees of the Appellant Company.

5. in confirming the disallowance of 'demat charges' amounting to Rs.4,01,453/- made by the Assessing Officer.

6. in not treating the expenditure on laying of water pipeline amounting to Rs.31,39,226 as 'revenue expenditure' which has been laid down in the vicinity area of the factory to fulfil the water requirement of its manufacturing process.

7. in confirming disallowance of Selling and Distribution expenses of Rs.1,11,64,214/- (Gross Disallowance Rs.2,21,01,193/- less set off against the amount declared as Non business. Expenditure in search action- Rs.1,09,36,979/-).

8. in confirming disallowance of rent paid of Rs.30,00,000/- for bungalow located at 70, Koregaon Park, Pune taken on lease (belonging to M/s.Poonawalla Finvest & Agro Pvt. Ltd. ZSP Group company) for office of Director of appellant company and depreciation of Rs.15,26,708/- on the assets placed thereat.

9. in upholding the disallowance of purchases of Rs.7,78,950/- by treating the same as 'Bogus purchases'.

10. in confirming the action of A.O. for not directing the AO to reduce Wealth Tax paid of Rs.21,40,955/- for computing book profit u/s.115JB.

11. The appellant craves leave to add/alter/withdraw any of the 'Grounds of Appeal' at the time of appeal proceedings. Your appellant further submits that the grounds of appeal are, save as otherwise specified, notwithstanding and without prejudice to each other."

5.1 Assessee also filed modified grounds and the same read as under:

"1a. The Ld.CIT(A) ought to have held that no disallowance u/s.14A(2) r.w.r.8D can be sustained in the absence of a specific recording of satisfaction by the A.O. based on cogent material and having regard to the accounts of the assessee, to the effect that the claim of the assessee is not correct.

b. The Ld.CIT(A) failed to appreciate that the A.O. made the disallowance merely on the basis of observation that "salaries and other administrative expenses are debited to P&L A/c for both taxable and tax free incomes, therefore it is difficult to accept that ***tax free incomes*** *are earned without incurring these expenses."*

Supplementary Ground to Ground -10.

10. "Disallowance of Selling & Distribution expenses have been partly set off against contingency offered, if the disallowance is deleted by Hon. ITAT, as a corollary, the addition of contingency may also be deleted in view of decisions of earlier years."

6. After going through the facts of the case and hearing both the counsels, we find the issues are covered ones by virtue of order of Tribunal in the assessee's own case in the earlier A.Y. 2009-10. Further, we find there is no issue which needs separate adjudication in the cross appeals. Therefore, we proceed to extract the issue wise findings of the Tribunal in the following paragraphs.

7. **Ground Nos. 1 & Modified Grounds (a) & (b)** by the assessee relates to the issue of invoking the provisions of section 14A r.w. Rule 8D of the I.T. Rules, 1962. The said grounds and modified grounds raises the issue of satisfaction of the AO and also relate to the merits of the disallowance u/s.14A r.w.Rule 8D of the Act/Rules. In the assessment, AO disallowed sum of Rs.3.19 crores (rounded off). CIT(A) partly allowed the appeal directing the AO to exclude the investments made in Debt linked Mutual Funds. Debt-linked Mutual Funds yield taxable income. In the modified grounds, assessee raised the issue of recording of satisfaction before invoking the provisions of section 14A & Rule 8D.

7.1 Before us, assessee filed a chart stating the following :

> *"1. AO should comply with mandatory requirement of sec.14A(2) r.w.r 8D (1)(a) and record his satisfaction as required thereunder.*
>
> *2. This issue is covered in favour of assessee vide order of A.Y.2009-10 dt.08-06-2018 (ITA No.1184/PUN/2015 – Serum Institute of India Pvt. Ltd. Vs. DCIT, CC-1(1), Pune) given in assessee's own case.*
>
> *Please refer Para No. 20-25, Page No.10 to 15 of the above order."*

7.2 On hearing the Ld. Counsel for the assessee, we find the facts are identical. Therefore, our decision in the appeal for A.Y. 2009-10 apply to the issue relating to the satisfaction issue. For the sake of completeness, the said paras are extracted as follows :

> *"22. After hearing both the sides on this issue and on perusing the orders of the Revenue, we find the AO did not give the satisfaction having regard to the book of account of the assessee. Further, with similar kind of satisfaction in the case of Poonawalla Investment and Industries Pvt. Ltd. (supra), we hold that the same falls short of the requirement. For the sake of completeness, relevant paras are extracted as follows :*
>
> > *"27. In connection with Ground No.1, Ld. Counsel for the assessee submitted that AO failed to record satisfaction which is required while invoking the provisions of section 14A of the Act r.w. Rule 8D of the I.T. Rules, 1962. Bringing our attention to the contents of Para No.5.1 of the assessment order, Ld. Counsel submitted that the AO failed to record the satisfaction before invoking the provisions u/s.14A of the*

Act. Further, Ld. AR read out the relevant lines from the said para of the assessment order. For the sake of completeness, we proceed to extract the same as under :

> *"5.1. . . . . .*
>
> *It is difficult to accept the proposition that all the tax free income has been earned without incurring these expenditures and these expenditure were incurred only for earning taxable income. Therefore, I am satisfied that the assessee has not made adequate disallowance as mandated u/s.14A of the I.T. Act and therefore, the case of the assessee is a fit case for computation of the said disallowance u/s.14A of the I.T. Act."*

28. Further, Ld. AR for the assessee submitted that the above recorded satisfaction , is extremely general and it falls short of the legal requirement as provided in the judgement of Hon'ble Apex Court in the case of Godrej and Boyce Manufacturing Company Ltd vs. DCIT 394 ITR 448 (SC). Contents of Para No.37 of the said judgment is relied heavily and prayed for deletion of the addition made by the AO invoking the provisions of section 14A of the Act.

29. Ld. DR for the Revenue relied on the orders of the AO/CIT(A).

30. We heard both the parties on the issue relating to the issue of recording of satisfaction and perused the above extracted satisfaction recorded by the AO on this issue. We find the legal position was explained by the Hon ble Apex Court and the Para No.37 of the judgment of Hon'ble Apex Court in the case of Godrej and Boyce Manufacturing Company Ltd. (supra) are relevant. Hon'ble Supreme Court explained the provisions of sub-section (2) and (3) of section 14A of the Act. For the sake of completeness, we proceed the extract the same here as unde :

> *"37. We do not see how in the aforesaid fact situation a d fferent view could have been taken for the assessment year 2002-03. Sub-sections (2) and (3) of section 14A of the Act read with rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under rule 8D or in the best judgment of the Assessing Officer, <u>what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee</u>. It is only thereafter that the provisions of section 14A(2) and (3) read with rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable." (emphasis supplied).*

31. The above ratio was adopted by the Pune Bench of the Tribunal in the case of Capgemini Technology Services India Limited, (in the matter of iGate Computer Systems Limited, (formerly Patni Computer systems Limited amalgamated with iGate Global Solutions Limited and name changed) Vs. DCIT vide ITA Nos. 216 and 360/PUN/2015, order dated 25-01-2018 and allowed the issue in favour of the assessee.

For the sake of completeness, relevant operational paras are extracted here as under :

> *"34. We have heard the rival contentions and perused the record. The Assessing Officer while passing the assessment order in para 10 had observed that the assessee had earned significant amount of tax free dividends and in the computation of income, the assessee has disallowed sum of Rs.50 lakhs under section 14A of the Act. Then, reference is made to the Note filed by the assessee on expenditure disallowable under section 14A of the Act. The Assessing Officer thereafter, takes note of the contents of said explanation and observed as under:-*
>
> *"I have gone through the submissions made by the assessee. It is observed that apart from investments in the overseas subsidiaries (where there is no tax-free income since the dividend is also taxable) the investments made by the assessee are in mutual funds. The entire investment in mutual fund is in non-equity scheme. In respect of investment in mutual funds, except for growth funds, the company receives tax free dividend. The amount of dividend received by the company is substantial. This is a clear case for application of Rule 8D. Hence, the contention of the assessee cannot be accepted. The disallowance u/s 14A is required to be made by applying Rule 8D. As per the working of disallowance u/s 14A as per Rule 8D, the amount of disallowance comes to Rs.5,68,32,323/-. The assessee has already disallowed Rs.50,00,000/- in the computation of income."*
>
> *35. The requirement of section 14(2) of the Act is that the Assessing Officer is to record as to why the disallowance made by the assessee i.e. Rs.50 lakhs under section 14A of the Act is not correct. The Assessing Officer takes note of the disallowance, considers the explanation of assessee and holds that the contention of assessee cannot be accepted. The preliminary satisfaction to be recorded by Assessing Officer, before making disallowance under section 14A of the Act read with Rule 8D of the Rules, is missing in the case; in the absence of the same, there is no merit in the disallowance made by the Assessing Officer. We find support from the ratio laid down by the Hon'ble Supreme Court in Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT & Anr. (2017) 394 ITR 449 (SC).*
>
> *"37. We do not see how in the aforesaid fact situation a different view could have been taken for the assessment year 2002-03. Sub-sections (2) and (3) of section 14A of the Act read with rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under rule 8D or in the best judgment of the Assessing Officer, <u>what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee</u>. It is only thereafter that the provisions of section 14A(2) and (3) read with rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable."*
>
> *(underline provided by us for emphasis)*

36. The ratio laid down by the Hon'ble High Court of Delhi in Indiabulls Financial Services Ltd. Vs. DCIT (supra) is thus, not applicable. The ground of appeal No.3 raised by the Revenue is thus, dismissed."

32. From the above, we are of the view that the satisfaction recorded by the AO in Para No.5.1 is extremely based on the suspicion and surmises. The satisfaction arrived at by the AO with reference to the entries in the books of account of the assessee and also having regard to the correctness of the claim of the assessee. In that sense of the matter, the satisfaction recorded by the AO is extremely generic and which falls short of the legal requirement for assuming jurisdiction u/s.14A of the Act.

Considering the above position, we are of the view that the AO failed to record the ***sustainable satisfaction before invoking the provisions of section 14A of the Act. Therefore, the disallowance made by the AO is unsustainable technically****. Accordingly, this part of the argument of Ground No.1 is allowed. We find adjudication of the other issues of the said ground relating to merits becomes an academic exercise. Therefore, the same are dismissed as academic."*

Therefore, on the technical grounds, the Ground No.1(a) raised by the assessee on the issue of satisfaction stands allowed in favour of the assessee.

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25. In response to ground No. 1(a), on the issue of satisfaction, we have already granted relief to the assessee. Therefore, the Ground No.1(b) which relates to merits of disallowance, its adjudication becomes an academic exercise. Thus, this ground No.1(b) is dismissed as academic."

7.3 In this case, the satisfaction recorded by the AO is same on that of the one recorded in the cases decided and referred to above. Considering the above legal proposition on one side and the facts of the present case on hand on the other, we find the assessee is entitled to relief on the issue of 'satisfaction' raised in the addition Ground (1a). Accordingly, the said ground is allowed. Consequently, the other ground raised on the merits is dismissed as academic. Accordingly, the said grounds adjudicated as above.

8. **Ground No.2** by the assessee relates to **Foreign Travel Expenses of Employees** amounting to Rs.6,77,682/-. In the assessment, AO held the

said expenses as capital in nature. CIT(A) confirmed the same. Aggrieved with the order of CIT(A) assessee filed the present appeal with Ground No.2.

8.1 Before us, Ld. Counsel filed a chart giving the following background facts and arguments. We proceed to extract the same below :

> *"1. In this regard detailed submissions were made before the CIT(A).*
>
> *2. Without prejudice to claim as Revenue expenditure, AO has not allowed depreciation on the same.*
>
> *3. However considering the facts we would like to contend that these expenses are incurred under normal course of business.*
>
> *4. We are submitting travel reports of the employees whose expenses are disallowed. These travelling expenses do not include expenses of Travelling of Directors and their wives, but it is purely incurred by employees who have travelled for business purpose.*
>
> *5. The issue has been decided in favour of assessee in its own case vide order for A.Y. 2009-10 (ITA No.1184/PUN/2015 – Serum Institute of India Pvt. Ltd. Vs. DCIT, CC-(1), Pune), wherein issue has been remanded back to the file of AO for verification of facts of expenses incurred other than the purchase of machinery."*

8.2 On noting the fact, a similar issue was adjudicated, we proceed to extract relevant Para No 30 onwards from the order of Tribunal for the A.Y. 2009-10. The same reads as follows :

> *"30 On hearing both the sides on this issue, we find the Tribunal in the assessee's own case vide ITA No.931/PUN/2013, dated 22-07-2016 for the A.Y.2008-09 has decided the issue against the assessee and the said finding is extracted here as under for the sake of completeness :*
>
> > "*26. The seventh ground raised in the appeal by the assessee is against disallowance of foreign travel expenses of employees Rs.25,77,069/-. The assessee had claimed the expenditure as revenue expenditure. The ld. AR of the assessee fairly admitted that in the earlier assessment year 2005-06 under identical circumstances the Tribunal has disallowed the capitalization of foreign travel expenditure of employees. The ld. AR placed on record a copy of the order of Tribunal in assessee's own case in ITA No. 1383/PN/2011 for assessment year 2006-07 decided on 22-02-2013. The Assessing Officer disallowed the foreign travel expenditure incurred on employees for finalizing the proposal of purchasing the plant and machinery. The assessee had claimed expenditure as revenue in nature. The Assessing Officer held expenditure to be capital expenditure and allowed depreciation on the same. Therefore, Assessing Officer rectified his order u/s. 154 and disallowed Rs.25,77,069/-. In first appeal, the Commissioner of Income Tax (Appeals) upheld the findings of Assessing Officer.*

27. The ld. DR vehemently defended the order of Commissioner of Income Tax (Appeals) in upholding the expenditure incurred towards foreign travel of employees as capital in nature.

28. Both sides heard. The assessee has assailed the order of Commissioner of Income Tax (Appeals) in upholding the disallowance made by the Assessing Officer amounting to Rs.25,77,069/- in order dated 04-02-2011 passed u/s. 154 of the Act. We find that the assessee had claimed the expenditure as revenue in nature. However, in an alternate submission before the Assessing Officer, the assessee prayed for treating the foreign travel cost as part of cost of machinery and allow depreciation on the same. The Assessing Officer allowed the capitalization of expenditure and also allowed depreciation on the same as admissible to the plant and machinery. Subsequently in rectification order u/s. 154 the Assessing Officer disallowed Rs.25,77,069/-. In first appeal before the Commissioner of Income Tax (Appeals) upheld the findings of Assessing Officer. We find that the issues relating to capitalization of foreign travel expenditure of employees in connection with the finalizing the purchase of machinery had come before the Tribunal in assessee's own case in ITA No. 679/PN/2009. The Tribunal upheld the action of Assessing Officer in treating the expenditure as capital in nature and disallowed unrelated expenditure. The relevant extract of the findings of Tribunal are as under :

> *"24. We have carefully considered the rival submissions. We find that in response to a specific query from the Assessing Officer as to the details of employees who made foreign tours for the purpose of purchase of machinery, assessee furnished details vide letter dated 27-11-2008 which has been reproduced by the Assessing Officer in para 7 of the assessment order. In the said para, the Assessing Officer has also referred to a letter of the assessee dated 12-11-2008 wherein it was pointed out that the machinery was purchased in the subsequent year. In this background, the point to be decided as to whether the impugned expenditure of Rs. 7,91,197/- on the foreign travel was to be allowed as a revenue expenditure or not. Quite clearly, the plea of the assessee has been that such expenditure has been incurred on foreign tours of the employees for the purpose of purchase of machinery. Since the purpose of travel admittedly, is purchase of machinery, the CIT(A), in our view, made no mistake in holding that the cost of such foreign travel was liable to be treated as part of cost of machinery. Ostensibly, the purchase of the machinery was not finalized in the particular year but the same has been purchased in subsequent year, as adverted by the assessee before the Assessing Officer. Therefore, it would be in the fitness of things that such expenditure would form part of cost of purchase of machinery as and when in the year in which the machinery is capitalized. On facts, therefore, the claim of the assessee for allowability of such expenditure as revenue expenditure is liable to be negated and on this aspect, we affirm the order of the Assessing Officer. In so far as the reliance placed by the assessee on the decision of the Tribunal for A.Y. 2002-03 is concerned, we find it appropriate to reproduce operative part of the order of the Tribunal contained in para 13, which is as under:-*

> > *"We find that Revenue has not made out a case to demonstrate that the said foreign travel expenditure was incurred in connection with any capital asset. Therefore,*

> *Assessing Officer failed to discharge the onus successfully. When allegation is made by AO, it is expected that he should demonstrate with evidence against the assessee. In our opinion, the said judgments are relevant and applicable to the facts of the case. Accordingly, the grounds raised by the assessee should be allowed in his favour."*
>
> *25. A perusal of the aforesaid clearly shows that in the assessment year 2002-03, the Tribunal allowed the foreign travel expenses as revenue expenditure primarily for the reason that Revenue did not make out a case that the foreign travel expenditure was incurred in connection with any capital asset. However, the factual position in the instant year is quite different, inasmuch as we have noted earlier that the assessee itself submitted before the Assessing Officer vide letter dated 27-11-2008 that the expenditure on foreign travel in question was undertaken for purchase of machinery, though the purchase of such machinery was finalized in subsequent year. Therefore, the decision of the Tribunal in the case of the assessee for A.Y. 2002-03 does not help the assessee in the instant year and thus on this Ground, assessee has to fail."*
>
> *29. The ld. AR of the assessee has admitted that the issue in the present appeal is identical to one adjudi ated by the Tribunal in 19 ITA Nos. 914 & 931/PN/2013 assessment year 2005-06. Therefore, in view of the decision of Coordinate Bench this ground of appeal is dismissed."*
>
> *31. However, on the issue of capitalization of the expenditure, in view of the assessee's submission that the expenses incurred for the purpose other than the purchase of machinery, needs to be verified by the AO, we find this issue needs to be remitted back to the file of AO for verification of correctness of the facts relating to this claim. AO is directed to verify the expenses in this regard after granting reasonable opportunity of being heard to the assessee. Assessee is directed to produce relevant documents to substantiate his claim. Accordingly, Ground No. 2 raised by the assessee is allowed for statistical purposes."*

8.3 From the above, it is evident that the similar issue has been the bone of contention over the assessment years 2008-09 & 2009-10 too. Following the principle of consistency, we proceed to remit the issue to the file of AO with identical direction. Accordingly, the Ground No.2 is allowed for statistical purposes.

9. **Ground No.3** relates to **classification issues qua the depreciation rates.** At the outset, Ld. Counsel for the assessee submitted that this issue stands covered by the order of Tribunal in the assessee's own case for the A.Yrs. 2008-09 and 2009-10. The following is the write up given by the Ld. Counsel for the assessee in the chart mentioned above:

"The issue has been decided in favour of assessee in assessee's own case vide ITAT order of A.Y. 2009-10, dt. 08-06-2018 (Appeal No.1184/PUN/2015).

"Please refer Page Nos.19-20, Para No.32-34 of the above order.

9.1 On hearing both the sides, we perused the relevant paragraphs 32 to 34 of the order of Tribunal for the A.Y. 2009-10 and find it appropriate to extract the same below :

*"32. **Third issue:** Ground No.3 raised by the assessee relates to classification of items of fixed assets amounting to Rs.22,94,455/-.*

33. Relevant facts of this issue include that the AO classified certain items as Furniture and allowed depreciation at the rate applicable to Furniture and certain items as Plant and Machinery and allowed depreciation at the rate applicable to them by applying functional test. Eventually, in the assessment made u/s.143(3) r.w.s. 153A of the Act the AO made addition of Rs.1,44,126/- being difference in depreciation @10% and 15% on some items under block of Plant and Machinery treating the same as Furniture. Before the CIT(A), the assessee submitted that this issue has been decided in favour of the assessee for the A.Yrs. 2006-07, 2007-08 and 2008-09. The CIT(A) after considering the submissions of the assessee and the order of CIT(A) for the A.Y. 2008-09 partly allowed the appeal of the assessee. Contents of Para No.13.3.3 of the order of CIT(A) are relevant.

34. After hearing both the sides, we find this issue has already been adjudicated by us against the Revenue and in favour of the assessee while dealing with the appeal of the Revenue. Considering the same, this ground raised by the assessee is allowed."

9.2 From the above, it is evident that similar issue now stands in favour of the assessee vide the decision of the Tribunal in the assessee's own case for the A.Y. 2009-10. Considering the same, Ground No.3 raised by the assessee stands allowed.

10. **Ground No.4** by the assessee relates to disallowance of **'Provision for Leave Encashment."**

10.1 Before us, Ld. Counsel for the assessee submitted that the issue has been decided against the assessee in the assessee's own case for the A.Y. 2009-10.

10.2 On hearing both the sides, we find this issue stands decided against the assessee by virtue of the order of Tribunal in the assessee's own case for the A.Y. 2009-10. We therefore proceed to reproduce the relevant paragraphs from the order of Tribunal (supra) and the same read as under :

> *"35. **Fourth issue:** Ground No.4 raised by the assessee relates to disallowance made by the AO on account of 'provision for Leave Encashment' amounting to Rs.96,47,634/-.*
>
> *36. Before us, Ld. Counsel for the assessee submitted that the issue stands decided against the assessee by the order of Tribunal in assessee's own case in ITA No.931/PN/2013, dated 22-07-2016 for the A.Y.2008-09.*
>
> *"37. After hearing both the sides on this issue, we find the Tribunal vide the discussion given at Para No.18 has decided the issue against the assessee relying on the order of Tribunal for the A.Y. 2002 03 wherein the Tribunal relied on the judgment of Hon'ble Calcutta High Court in the case of Exide Industries Ltd. and Another Vs. Union of India 292 ITR 470 and the judgment of Hon'ble Bombay High Court in the ase of Universal medicate Private Limited 324 ITR 263. For the sake of completeness, we proceed to extract the relevant finding given by the Tribunal (supra) and the same reads as under :*
>
> > *"18. We have heard the submissions made by the ld. AR of the assessee and have peru ed the order of the Co-ordinate Bench in assessee's own case in ITA No.413/PN/2006 for assessment year 2002-03 decided on 24-02-2012. We find that the Co-ordinate Bench of the Tribunal has observed that this issue has been decided against the assessee by the Hon'ble Calcutta High Court in the case of Exide Industries Ltd. & ANR Vs. Union of India reported as 292 ITR470 and Hon'ble Bombay High Court in the case of Universal Medicare Private Limited eported as 324 ITR 263. The ld. AR of the assessee in the preceding assessment years has not pressed this ground. The ld. AR has fairly conceded that the issue may be decided in line with the earlier order of the Tribunal. Accordingly, ground No. 4 raised in the appeal by the assessee is dismissed."*
>
> *Considering the same, the Ground No.4 raised by the assessee is accordingly dismissed."*

10.3 From the above, it is evident that the issue relating to Provision for Leave Encashment stands decided against the assessee. Considering the same, this Ground No.4 raised by the assessee is dismissed.

11. **Ground No.5** raised by the assessee relates to disallowance of **Demat charges** amounting to Rs.4,01,453/-.

11.1 As seen from the chart furnished by the Ld. Counsel for the assessee, we find this issue is also a decided issue in favour of the assessee by virtue of the order of Tribunal in the assessee' own case for the A.Y. 2009-10. On hearing both the sides on this issue, we find it relevant to extract the relevant paras from the order of Tribunal (supra) and the same reads as under :

> *"43.* ***Sixth issue :*** *Ground No.6 raised by the assessee relates to addition of Rs.1,10,605/- u/s.48 of the Act made on account of* ***demat charges*** *which was claimed as expenditure incurred for earning income from capital gains.*
>
> *44. Relevant facts on this issue include that assessee debited the said sum to the profit and loss account and claimed that the same should be allowed while computing the capital gains. Assessee relied on the decision of Bangalore Bench of the Tribunal in the case of Infosys Technologies Vs. JCIT 109 TTJ 631 (Bang.). Assessee contended that the said expenses has been incurred in the normal course of business and the dematerialization helped the assessee significantly in reducing the administrative costs. AO opined that the expenditure incurred for maintenance of share transactions from demat account is not to be allowed u/s.48 of the Act since the expenditure was not incurred wholly and exclusively in connection with such transfer or as the cost of acquisition and cost of improvement thereto and thus made the disallowance of sum of Rs.1,10,605/-. The CIT(A) defined the expression 'wholly' and 'exclusively' in his order. The CIT(A) also distinguished the decision of Bangalore Bench of the Tribunal in the case of Infosys Technologies Limited (supra) and held that the said decision is not applicable to the facts of the present case and upheld the disallowance made by the AO on account of demat charges. Aggrieved with the order of CIT(A), the assessee is in appeal before us.*
>
> *45. Ld counsel for the assessee at the outset submitted that the issue stands decided in favour of the assessee by the decision of the Pune Bench of the T ibunal in the case of KRA Holding and Trading Pvt. Ltd. Vs. DCIT and vice-versa vide ITA No.703/PN/2012 & ITA No.665/PN/2012 order dated 19-09-2013 for A.Y. 2008-09 wherein it has been held that the claim of Portfolio Management Fees is an allowable expenditure from such capital gain.*
>
> *46. Ld. DR for the Revenue relied heavily on the orders of the AO/CIT(A).*
>
> *47. After hearing both the sides on this issue and on perusing the orders of the Revenue, we find this issue has to be decided in favour of the assessee by virtue of the decision of Pune Bench of the Tribunal in the case of KRA Holding and Trading Pvt. Ltd. (Supra) wherein the Tribunal observed as under:*
>
> > *"9. In the appeal of the assessee, the solitary issue is with regard to the action of the CIT(A) in confirming the stand of the Assessing Officer that fees paid to ENAM Asset Management Company Pvt. Ltd. was not an allowable expenditure in computing appellant's income whether under the head 'business' or under the head 'capital gains'.*
> >
> > *10. In this regard, the Assessing Officer noticed that assessee had incurred expenditure of Rs.2,79,31,009/- representing payments to ENAM Asset Management Company Pvt. Ltd. as portfolio management fees in terms of an Investment Management Agreement dated 01.01.2005. Following his decision for the earlier assessment years*

i.e. assessment year 2004-05 to 2007-08, the Assessing Officer disallowed the expense against which assessee went in appeal before the CIT(A). The CIT(A) noted that similar issue for assessment years 2004-05 to 2006-07 was adjudicated by the Tribunal in the assessee's own case in favour of the assessee and against the Revenue vide order dated 31st May, 2011 (supra). However, the CIT(A) noticed that subsequently Mumbai Bench of the Tribunal in the case of one Shri Homi K. Bhabha vs. ITO in ITA No. 3287/Mum/2009 decided a similar issue against the assessee and therefore he held the issue against the assessee. In view of the aforesaid, assessee is in further appeal before us.

11. At the time of hearing, the learned counsel for the assessee submitted that similar stand of the CIT(A) in the assessee's own case for assessment year 2007-08 came up before the Tribunal in ITA No. 356 & 240/PN/2011 dated 25.07.2012 and after considering the divergent view of the Mumbai Bench of the Tribunal in the case of Shri Homi K. Bhabha (supra) which has been relied upon by the CIT(A), the issue has been decided in favour of the assessee. It was, therefore, contended that the issue is accordingly liable to be decided in favour of the assessee.

12. The learned CIT(DR) appearing for the Revenue has not controverted the factual matrix brought out by the learned counsel so however she has relied upon the order of the CIT(A) in support of the case of the Revenue.

13. We have carefully considered the rival submissions and also the precedent in the assessee's own case by way of the order of the Tribunal dated 25.07.2012 (supra). In the said case, the Tribunal considered the allowability of expenditure incurred by way of payment of fees of ENAM Asset Management Company Pvt. Ltd. in terms of the investment agreement dated 01.01.2005, which is precisely the issue before us also. The Tribunal referred to its earlier decision in the assessee's own case for assessment year 2004-05 vide order dated 31st May, 2011 (supra) and noticed that the issue has been decided in favour of the assessee. Thereafter, the Tribunal noted that against the decision of the Tribunal dated 31st May, 2011 (supra), Revenue preferred an appeal before the Hon'ble Supreme Court only on the issue treatment of income from the sale of shares as 'capital gain' or 'business income' and that the Revenue had not preferred any appeal against the order of the Tribunal allowing the claim of deduction of expenditure by way of Portfolio Management Fee representing payments to ENAM Asset Management Company Pvt. Ltd. while computing the income under the head 'Capital Gains'. After noticing the aforesaid the Tribunal concluded as under in para 11 of its order dated 25.07.2012 :

> *"11. The decision of the Mumbai Bench of the Tribunal in the case of Homi K. Bhabha vs. ITO was brought to our notice by the learned DR wherein it was held that Portfolio Management Scheme fees is not deductible against capital gains. The decision of the Pune Bench of the Tribunal in the case of KRA Holding & Trading was not followed by the Mumbai Bench in the above cited decision. The Mumbai Bench following other decisions of the coordinate Benches of the Tribunal declined to follow the decision in the case of KRA Holding & Trading (supra). It is the settled proposition of law that when two view are possible on the same issue the view which is favourable to the assessee has to be followed. [CIT vs. Vegetable Products 88 ITR 192 (SC)]. Further, in the instant case the Tribunal in*

assessee's own case has already taken a view in favour of the assessee. Since the AO & CIT(A) have followed the order for earlier year in the case of the assessee and since the order of CIT(A) for earlier year has been reversed by the Tribunal, therefore, unless and until the decision of the Tribunal is reversed by a higher court, the same in our opinion should be followed. In this view of the matter, we respectfully following the order of the Tribunal in assessee's own case for A.Y. 2004-05 allow the claim of the Portfolio Management fees as an allowable expenditure. The ground raised by the assessee is accordingly allowed."

14. Following the aforesaid precedent, which has considered the similar objections of the CIT(A), in our considered opinion, the order of the CIT(A) in the present case is untenable and we accordingly set-aside the same and direct the Assessing Officer to delete the impugned addition."

Respectfully following the above decision of the Tribunal, we reverse the order of CIT(A). The Demat expenditure of Rs.1,10,605/- is allowable u/s.48 of the Act. The ground No.6 raised by the assessee. Accordingly, Ground No.6 raised by the assessee is allowed."

11.2 On perusing the finding given by the Tribunal, it is apparent that this ground relating to demat expenditure stands decided in favour of the assessee. Considering the abov as well as the commonality of the facts of the case in hand, we allow the Ground No.5 raised by the assessee.

12. **Ground No.6** by the assessee relates to disallowance of expenditure relating to **laying of water pipelines** amounting to Rs.31,39,226/-.

12.1 Relevant facts on this issue include that the assessee claimed the said expenditure as revenue expenditure. Assessee explained that the expenditure has been booked under Schedule-6 addition to fixed assets in respect of Building totalling to Rs.2,20,19,566/-. Assessee also explained that assessee entered into leave and license agreement with the Executive Engineer, Khadakwasla Irrigation Division on 11-02-2008 for laying the pipeline at a stretch of 6 kilometres from the company location. Details of breakup of the said expenditure are also given by the assessee. Assessee relied on the decision in the case of CIT Vs. Chowgule Chemicals Pvt. Ltd. 216 ITR 234. Assessee contended that assessee is engaged in the business

of vaccine production and purified water is the main ingredient for running the business and hence the expenditure is to maintain the business and not to create an asset. Rejecting the explanations given by the assessee the AO treated the expenditure as capital expenditure and allowed depreciation @10%, as applicable to the intangible assets. Thus, the AO made net addition of Rs.31,39,226. In the First Appellate proceedings, the CIT(A) upheld the addition made by the AO. While doing so, the CIT(A) distinguished the decision relied on by the assessee and held that the expenditure was incurred for laying a new water pipeline to the factory premises which belongs to the assessee, unlike in the case of CIT Vs. Chowgule Chemicals Pvt. Ltd. and such expenditure provides enduring benefit to the assessee over a period of time. Aggrieved with the order of CIT(A) the assessee is in appeal before us

12.2 Before us, Ld. Counsel for the assessee drew the attention to the chart and submitted that this issue was the subject matter in the assessee's own case for the A.Y. 2009-10 and the Tribunal decided this issue in favour of the assessee. Therefore, Ld. Counsel prayed for allowing this ground in favour of the assessee.

12.3 Ld. DR for the Revenue relied on the orders of AO/CIT(A).

12.4 We heard both the sides and perused the orders of the Revenue and the order of the Tribunal in the assessee's own case for the A.Y. 2009-10. We proceed to extract the observation made by the Tribunal and the same reads as under :

> *"51. We heard both the sides and perused the orders of the Revenue as well as the cited binding judgment in the case of CIT Vs. Chowgule Chemicals Pvt. Ltd. 216 ITR 234. There is no dispute on the facts that the assessee spent Rs.72.96 lakhs (rounded off) on the project of laying water pipeline to carry the water from the source-Pond/Reservoir to the factory premises for continuous supply of water to the company for its business purposes. The whole of the project involves a number of obligations or undertakings given to*

the Irrigation Department of Maharashtra Government It involves number of controls and discretion of Government of Maharashtra in matters pertaining to supply of water, rights on land used for canal and also the entire continuation of the project. As such, the assessee is not the owner of the land through which the water is carried to the factory premises but only has the leased rights. Assessee is also under obligation to provide water to the surrounding villages as a condition for obtaining the permission of the Maharashtra Government. Water is an essential raw material for the Serum Institute and the quality of water is specified. There is no dispute on these facts. From this point of view, assessee is not the owner of the land/water under any law. On the above facts, we have to decide what law shown in the case of Chowgule Chemicals Pvt. Ltd. (supra). On perusal of the said judgment of jurisdictional High Court, we find the said assessee also incurred expenditure for laying a new pipeline for supplying water to the factory premises of the assessee during the year 1978-1979. On the issue of capital/revenue nature of the said expenditure, the Hon'ble High Court held in favour of the assessee relying on its own judgment in the case of CIT Vs. Tata Engineering and Locomotive Company Ltd. 201 ITR 1036. Contents of Para 4 of the said judgment are relevant and therefore, the same are extracted as under :

> *"4. On a careful consideration of the facts of the present case, we find it difficult to accept the above contention. The various tests evolved from time to time by courts to determine whether an expenditure is a revenue expenditure or capital expenditure are too well known to need reiteration. Equally well known is the legal position that no test can be laid down for the purpose of universal application. The Supreme Court has also given a note of caution against indiscriminate appl cation of the oft repeated tests like "once for all payments" and "enduring benefit test", and made it clear that these tests are not to be treated as something akin to statutory conditions. Whether an expenditure is revenue or capital will depend on the facts and ci cumstances of each case and on the application of the proper principles of law. As observed by this court in CIT v. Tata Engineering and Locomotive Co. Ltd. [1993] 201 ITR 1036 :*
>
> *".. ..One of the guiding factors should be the aim and object of the expenditure. The question, however, will have to be decided by looking at the overall facts and circumstances of the case from the point of view of a practical and prudent businessman rather than from the angle of a tax gatherer upon strict juristic classification of the legal rights, if any, secured in the process. In other words, in order to arrive at a just and proper conclusion, one must look at the type, nature and character of the advantage in a commercial sense (without giving undue emphasis to the form thereof or the terminology used) in the light of the surrounding circumstances and in the larger context of necessity and expediency. If the expenditure is so related to the carrying on or conduct of the business that it may be regarded as an integral part of the profit making process and not for acquisition of an asset or a right of permanent character, the expenditure may be regarded as revenue expenditure even though the advantage may endure for some indefinite future. What is relevant is the purpose of the outlay and its intended object and effect, considered in a commonsense way, having regard to the business realities. In a given case, the test of 'enduring benefit' might break down....."*
>
> *5. It was held in the above case :*
>
> *"The 'purpose of the outlay', 'its intended object and effect', considered in a commonsense way, having regard to the business realities, are more relevant factors for determining whether a particular outlay is*

capital or revenue. In a given case, if the situation so requires, the test of 'enduring benefit' might even break down under the weight of these considerations."

6. Applying the above principles to the facts of the present case, we are of the clear opinion that the expenditure incurred by the assessee was a revenue expenditure and not an expenditure of capital nature and the Tribunal was justified in holding so and allowing the deduction to the assessee in the computation of its income on account thereof."

From the above, it is evident that the Hon'ble High Court has categorically held under the weight of other business considerations, the test of enduring benefit might even break down. The said view has strength of the Supreme Court judgment in the case of Dalmia Jain and Company Ltd. Vs. CIT 81 ITR 754 as well which is relevant for the proposition that certain litigation expenditure relating to the leasehold rights constitute Revenue expenditure. Therefore, ***we are of the opinion that the expenditure incurred on laying of the water pipeline involving the land owned by Maharashtra Government constitutes Revenue expenditure.*** *Acco dingly, Ground No.7 raised by the assessee is allowed in favour of the assessee."*

12.5 On the facts as well as on law, the issue is linked to the ones decided by us in A.Y.2009-10. Considering the settled nature of the issue and following the rule of consistency, we allow Ground No.6 in favour of the assessee.

13. **Ground No.7** raised by the assessee relates to disallowance on account of **selling and distribution expenses** at Rs.1,11,64,214/-.

13.1 Relevant facts on this issue include that, assessee during the year under consideration, launched various schemes for the doctors. On being asked as to why the expenditure on these schemes should not be disallowed u/s.37(1) of the Act, assessee furnished the reply. The AO rejected the submissions given by the assessee relying on the CBDT Circular No.5/2012, dated 01-08-2012. Eventually, the AO disallowed an amount of Rs.2,21,01,193/- u/s.37(1) of the Act. However, the AO allowed the set off of the same against the additional income disclosed by the assessee on non-business expenditure/other expenses/contingency at Rs.2.25 crores. The CIT(A) confirmed the disallowance made by the AO.

13.2 Aggrieved with the confirmation of disallowance by the CIT(A) on this issue, the assessee is in appeal before us.

13.3 Before us, Ld. Counsel for the assessee submitted that the CIT(A) failed to appreciate the fact that the assessee company is one of the largest vaccine manufacturing company. During the year, assessee company launched various new products, such as Hibpro & Pentavac. In order to make the doctors aware of this innovation, assessee company conducted a campaign involving private doctors for encouraging the doctors to conduct vaccination on infants. In the process, a scheme was formulated offering discount on the basis of purchases made by them. He submitted that the AO failed in placing relying on the Notificat on issued by Medical Council of India dated 14-09-2009. The said circular prohibits medical practitioners, professional associates from taking any gift, travel facility, hospitality etc. AO failed to appreciate that he Pharma companies are not the members of Medical Council and hence, the notification is not applicable to them. AO failed to appreciate the facts on records that the expenditure incurred by the assessee company by giving discounts as incentive to the doctors are wholly & exclusively for the purpose of business. Passing of the discounts is a post-facto step, which cannot be equated with freebies, which are prohibited by the notification of Medical Council of India. Since discounts on purchase of vaccines given to doctors do not violate any laws and hence, are not covered by Explanation u/s.37(1) of the Act. AO failed to appreciate that the Circular issued by CBDT No.5/2015 enlarges the scope of disallowance in the hands of Pharma Companies without any enabling Notification or circular of Medical Council of India. In support of its claim, Ld. Counsel relied on the following decisions :

1. *M/s. Solvay Pharma India Ltd. VS. PCIT 89 taxmann.com 249 (Mum. ITAT)*

2. DCIT Vs. PHL Pharma Pvt. Ltd. 78 taxmann.com 36 (Mum. ITAT)
3. Emcure Pharmaceuticals Ltd. Vs. DCIT – ITA No.1532/PUN/2015

13.4 On the other hand, Ld. DR for the Revenue relied on the orders of the AO/CIT(A).

13.5 On hearing both the parties and the orders of the Revenue. We find identical issue was the subject matter in the assessee's own case in ITA No.549/PUN/2016, dated 12-10-2018 for the A.Y. 2011-12 has been allowed in favour of the assessee. We therefore proceed to extract the finding given by the Tribunal here as under:

"15.5 We heard both the sides and perused the orders of the Revenue and the decisions relied on by the Ld. Counsel f r the assessee. We perused the decision of ***Pune Bench of the Tribunal in the case of Emcure Pharmaceuticals Ltd. decided on 29-01-2018 (supra)*** *had an occasion to decide an identical issue in favour of the assessee. We proceed to extract the findings given by the Tribunal here as under for the sake of completeness :*

"8. We heard both the part es on the issue of requirement of making disallowance u/s.37(1) of the Act in respect of the companies, the giver of the gifts and the articles and others to the medical professionals. There is no dispute on the fact that claim of Rs.76,28,622/ was by the assessee on the gifts and other benefits passed on to the medical professionals. There is also no dispute on the taxability of the same in the hands of the said medical professionals. The only dispute relates to the correct legal position with regard to disallowability of the same u/s.37(1) of the Act in the cases of Pharmaceutical companies. We find this issue is now squarely covered by the decisions of Mumbai Bench of the Tribunal in the case of DCIT Vs PHL Pharma Pvt. Ltd.decided on 12-01-2017 and in the case of M/s. Solvay Pharma India Ltd. Vs. Pr.CIT decided on 11-01-2018. For the sake of completeness of the order, we proceed to extract the operational finding from the aforesaid orders of the Tribunal.

Finding from PHL Pharma Pvt. Ltd.

"6. On a plain reading of the aforesaid notification, which has been heavily relied upon by the department, it is quite apparent that the code of conduct enshrined therein is meant to be followed and adhered by medical practitioners/doctors alone. It illustrates the various kinds of conduct or activities which a medical practitioner should avoid while dealing with pharmaceutical companies and allied health sector industry. It provides guidelines to the medical practitioners of their ethical codes and moral conduct. Nowhere the regulation or the notification mentions that such a regulation or code of conduct will cover pharmaceutical companies or health care sector in any manner. The department has not brought anything on record to show that the aforesaid regulation issued by Medical Council of India is meant for pharmaceutical companies in any manner.....

The aforesaid provision applies to an assessee who is claiming deduction of expenditure while computing his business income. The Explanation provides an embargo upon allowing any expenditure incurred by the assessee for any purpose which is an offence or which is prohibited by law. This means that there should be an offence by an assessee who is claiming the expenditure or there is any kind of prohibition by law which is applicable to the assessee. Here in this case, no such offence of law has been brought on record, which prohibits the pharmaceutical company not to incur any development or sales promotion expenses. A law which is applicable to different class of persons or particular category of assessee, same cannot be made applicable to all. The regulation of 2002 issued by the Medical Council of India (supra), provides limitation/curb/prohibition for medical practitioners only and not for pharmaceutical companies.....

10. From the perusal of the nature of expenditure incurred by the assessee, it is seen that under the head "Customer Relationship Management", the assessee arranges national level seminar and discussion panels of eminent doctors and inviting of other doctors to participate in the seminars on a topic related to therapeutic area. It arranges lectures and sponsors knowledge upgrade course which helps pharmaceutical companies to make awa e of the products and medicines manufactured and launched by it. Under Key Account Management, the assessee makes endeavour to create awareness amongst certain class of key doctors about the products of the assessee and the new developments taking place in the area of medicine and providing correct diagnosis and treatment of the patients. The said activities by the assessee are to make the doctors aware of its products and research work carried out by it for bringing the medicine in the market and its results are based on several levels of tests and approvals Unless the pharmaceutical companies make aware of such kind of products to key doctors or medical practitioners, then only it can successfully launch its products/medicines. This kind of expenditure is definitely in the nature of sales and business promotion, which has to be allowed.....

Finding from M/s. Solvay Pharma India Ltd.

"17 We have considered rival contentions and carefully gone through the orders of the authorities below. We had also deliberated on the judicial pronouncements cited by learned AR and DR during the course of hearing before us as well as referred by CIT in his order passed u/s.263 of the IT Act, in the context of factual matrix of the case. In this case, we found from record that the assessee is engaged in the manufacturing of pharmaceutical products. In the course of its business it has incurred expenditure on advertisement and publicity. While framing the assessment, AO has called for the detail of expenditure so incurred and examined the nature of expenditure and thereafter only AO has allowed the expenditure as having been incurred for the purpose of business. We had also carefully gone through the notification dated 11/03/2002 notifying the regulations issued by the Medical Council of India (MCI). The code of conduct laid down in the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 ('MCI Regulations') issued with effect from 10th December 2009 applies only to doctors and not to Pharmaceutical and Medical device companies. Accordingly, MCI Regulations are not applicable to assessee, the question of assessee incurring expenditure in alleged violation of the regulations does not arise.

18. On the plain and simple reading of the provision of the Indian Medical Council Act, 1956, it is apparent that the ambit of statutory

provisions relating to professional conduct of registered medical practitioners under the Indian Medical Council Act, 1956 is restricted only to persons registered as medical practitioners with the State Medical Council and whose names are entered into the Indian Medical Register maintained u/s 21 of the Act. 'Under the scheme of the Act.

19. Furthermore, there is no ambiguity of any kind in the scheme of the Indian Medical Council Act, 1956 that it neither deals with nor provides for any conduct of any association / society and deals only with the conduct of individual registered medical practitioners. There is no other interpretation, which is possible under the Act.

20. The intent of the applicability of the MCI Regulations was always to cover only individual medical practitioners, and not the pharmaceutical and medical device companies. Whether there is any contravention of the MCI Regulations or not is a matter which can be decided by the MCI itself and not by the Income-tax Department. Furthermore, the MCI has itself admitted that it has no jurisdiction whatsoever over any association/ society etc and its jurisdiction is confined only to the conduct of the registered medical practitioners. Furthermore, since the said MCI Regulations 2002 contains punitive "provisions, it has to be read strictly and consequently it can apply only to Medical Practitioners and Physicians and not to the pharmaceutical companies. Further, MCI Act, 1956 does not apply pharmaceutical companies and consequently MCI Regulations 2002 cannot apply to such companies.

21. CBDT Circular no. 5 of 2012 seeks to disallow expenditure incurred by pharmaceutical companies inter-alia in providing 'freebies' to doctors in violation of the MCI Regulations. The term "freebies' has neither been defined in the Income-tax Act nor in the MCI Regulations'. However, the expenditure so incurred by assessee does not amount to provision of 'freebies' to medical practitioners. The expenditure incurred by it is in the normal course of its business for the purpose of marketing of its products and dissemination of knowledge etc and not with a view to giving something free of charge to the doctors. The act of giving something free of charge is incidental to the main objective of product awareness. Accordingly, it does not amount to provision of freebies. Consequently, there is no question of contravention of the MCI Regulations and applicability of Circular no. 5 of 2012 for disallowance of the expenditure.

22. The department has not brought anything on record to show that the aforesaid regulation issued by Medical Council of India is meant for pharmaceutical companies in any manner. On the contrary, the assessee has brought to the notice of the bench the judgment of the Delhi High Court in the case of Max Hospital v. MCI in [WPC 1334 of 2013, dated 10-1-2014], wherein the Medical Council of India admitted that the Indian Medical Council Regulation of 2002 has jurisdiction to take action only against the medical practitioners and not to health sector industry. From the aforesaid decision, it is ostensibly clear that the Medical Council of India has no jurisdiction to pass any order or regulation against any hospital or any health care sector under its 2002 regulation. So once the Indian Medical Council Regulation does not have any jurisdiction nor has any authority under law upon the pharmaceutical company or any allied health sector industry, then such a regulation cannot have any prohibitory effect on the pharmaceutical company like the assessee. If Medical Council regulation does not have any jurisdiction upon pharmaceutical companies and it is inapplicable upon Pharma companies like assessee then, where is the violation of any of law/regulation? Under

which provision there is any offence or violation in incurring of such kind of expenditure.

23. Now coming to the Explanation to Section 37(1) invoked by the CIT, the Explanation provides an embargo upon allowing any expenditure incurred by the assessee for any purpose which is an offence or which is prohibited by law. This means that there should be an offence by an assessee who is claiming the expenditure or there is any kind of prohibition by law which is applicable to the assessee. Here in this case, no such offence of law has been brought on record, which prohibits the pharmaceutical company not to incur any development or sales promotion expenses. A law which is applicable to different class of persons or particular category of assessee, same cannot be made applicable to all. The regulation of 2002 issued by the Medical Council of India (supra), provides limitation/curb/prohibition for medical practitioners only and not for pharmaceutical companies. Here the maxim of 'Expressio Unius Est Exclusio Alterius' is clearly applicable, that is, if a particular expression in the statute is expressly stated for particular class of assessee then by implication what has not been stated or expressed in the statute has to be excluded for other class of assessee. If the Medical Council regulation is applicable to medical practitioners then it cannot be made applicable to Pharma or allied health care companies. If section 37(1) is applicable to an assessee claiming the expense then by implication, any impairment caused by Explanation 1 will apply to that asse see only. Any impairment or prohibition by any law/regulation on a different class of person/assessee will not impinge upon the assessee claiming the expenditure under this section.

24. We observe that the CBDT Circular dated 1-8-2012 (supra) in its clarification has enlarged the scope and applicability of 'Indian Medical Council Regulation 2002' by making it applicable to the pharmaceutical companies or allied health care sector industries. Such an enlargement of scope of MCI regulation to the pharmaceutical companies by the CBDT is without any enabling provisions either under the provisions of Income Tax Law or by any provisions under the Indian Medical Council Regulations. The CBDT cannot provide casus omissus to a statute or notification or any regulation which has not been expressly provided therein. The CBDT can tone down the rigours of law and ensure a fair enforcement of the provisions by issuing circulars and by clarifying the statutory provisions. CBDT circulars act like 'contemporanea expositio' in interpreting the statutory provisions and to ascertain the true meaning enunciated at the time when statute was enacted. However the CBDT in its power cannot create a new impairment adverse to an assessee or to a class of assessee without any sanction of law. The circular issued by the CBDT must confirm to tax laws and for purpose of giving administrative relief or for clarifying the provisions of law and cannot impose a burden on the assessee, leave alone creating a new burden by enlarging the scope of a different regulation issued under a different act so as to impose any kind of hardship or liability to the assessee. In any case, it is trite law that the CBDT circular which creates a burden or liability or imposes a new kind of imparity, same cannot be reckoned retrospectively. The beneficial circular may apply retrospectively but a circular imposing a burden has to be applied prospectively only. Here in this case the CBDT has enlarged the scope of 'Indian Medical Council Regulation, 2002' and made it applicable for the pharmaceutical companies. Therefore, such a CBDT circular cannot be reckoned to have retrospective effect. The free sample of medicine is only to prove the efficacy and to establish the trust of the doctors on the quality of the drugs. This again cannot be reckoned as freebies given to the doctors but for promotion of its products. The pharmaceutical company, which is engaged in manufacturing and

marketing of pharmaceutical products, can promote its sale and brand only by arranging seminars, conferences and thereby creating awareness amongst doctors about the new research in the medical field and therapeutic areas, etc. Every day there are new developments taking place around the world in the area of medicine and therapeutic, hence in order to provide correct diagnosis and treatment of the patients, it is imperative that the doctors should keep themselves updated with the latest developments in the medicine and the main object of such conferences and seminars is to update the doctors of the latest developments, which is beneficial to the doctors in treating the patients as well as the pharmaceutical companies."

9. The above judgmental laws are relevant for the proposition that the circular issued by the CBDT enlarging the scope of disallowance to the pharmaceutical companies is without any enabling notification or circular of the Medical Council of India. Considering the settled legal position on the issue, we are of the opinion that the issue now stands covered in favour of the assessee. The pharmaceutical company like the assessee is outside the scope of the circulars by the Medical Council of India or the CBDT. Therefore, the conclusions of the AO/CIT(A) in this regard are reversed. Thus, the grounds raised by the assessee are required to be allowed.

From the above, it is evident that the scope of the CBDT Circular cannot be extended to the pharmaceutical companies without having any enabling Notification or Circular for Medical Council of India. Consequently, the present assessee being a pha maceutical company is outside the scope of the said circulars of MCI and the CBDT. Considering the above, we are of the opinion that the Ground No.10/Modified Ground No.10 raised by the assessee should be allowed in favour of the assessee.

13.6 Thus, the above ratio of our decision in A.Y.2009-10 is applicable to this year too. Consequently, the circular of CBDT is in-applicable to the present case as held by us. Considering the settled nature of the issue and following the rule of consistency, this ground raised by the assessee needs to be allowed in favour of the assessee. Accordingly, Ground No.7 raised by the assessee is allowed.

14. **Ground No.8** raised by the assessee relates to disallowance of **rent paid for Bungalow located at 70, Koregaon Park**, Pune.

14.1 Before us, Ld. Counsel for the assessee submitted that Serum Institute paid rent of Rs.30 during the year under consideration. Allowability of the said expenditure incurred the rent and the repairs/renovation was the bone of contention between the assessee and

the Revenue over the years. Eventually, the Tribunal decided the issue in favour of the assessee and held that the said expenditure incurred on repairs and renovation constitutes revenue expenditure and allowable u/s.37(1) of the Act. Ld. Counsel drew our attention to the order of Tribunal in the assessee's own case for the A.Y. 2009-10 to demonstrate the fact of deciding the issue in favour of the assessee.

14.2 We heard both the sides and perused the orders of the Revenue. On going through the order of Tribunal in the assessee' s own case for the A.Y. 2009-10. We find this is a decided issue and therefore, we proceed to extract the finding given by the Tribunal (supra) and the same reads as under :

> *"54. We heard both the sides and perused the orders of the Revenue and the order of the Tribunal in the assessee's own case for the A.Yrs. 2006-07 and 2007-08. On perusal of the said order of the Tribunal (supra), it is evident that the ground raised in this appeal relates to rent as well as expenditure incurred on repairs and renovation. At the end of the proceedings, the Tribunal allowed the ground raised by the assessee. We find it relevant to extract the relevant paras of the Tribunal (supra) and the same reads as under :*
>
> > *"25. On this issue, Ld. Counsel for the assessee submitted that similar issue was adjudicated in assessee's own case for A.Y. 2005-06 n his favour. Bringing our attention to Para Nos. 35 to 37 of the order of the Tribunal in ITA No.1703/PN/2014 dated 30-11-2016, Ld. Counsel for the assessee submitted that the expenditure incurred on Repairs/Renovation of the Bungalow was allowed, as 'business expenditure' of the assessee.*
> >
> > *26. On hearing both the sides on this issue, we perused the said paragraphs of the order of the Tribunal in assessee's own case dated 30-11-2016 and for the sake of completeness, we proceed to extract the relevant lines of the operational para. The same reads as under :*
> >
> > > *"35. In view of the above discussion, we are of the considered opinion that the **expenditure of Rs.1,17,88,000/- incurred on repairs and renovation on bungalow located at 70, Koregaon Park, Pune has to be allowed as a business expenditure in the hands of the assessee company.** We therefore set aside the order of the CIT(A). The ground raised by the assessee is accordingly allowed."*
> >
> > *27. We find that the arguments raised by the Ld. DR for the Revenue are identically raised in the said appeal proceedings for A.Y. 2005-06. Following the decision of the Tribunal in assessee's own case for A.Y. 2005-06 (supra), we are of the opinion that this issue also*

should be allowed in favour of the assessee. Accordingly, Ground no.4 raised by the assessee is allowed."

Although, the above finding did not specify the rent expenditure in fact, the ground is on the rent only. Therefore, the ground raised by the assessee stands allowed in favour of the assessee. Considering the above decision of the Tribunal in assessee's own case, we are of the ***opinion that the expenditure on account of rent paid on the house property is allowable in favour of the assessee.***

55. Regarding the other limb of ground relating to allowability of depreciation of capital expenditure in connection with the said house property at 70, Koregaon Park, it is now settled legal issue that the expenditure by Serum Institute of India Ltd. constitutes an allowable expenditure so long as there are revenue in nature. Regarding the expenditure of capital nature of same analogy, assessee only wanted allowability of depreciation on the said capitalised expenditure considered for business purposes.

56. On hearing both the parties on this issue, we find there is no clarity with reference to the capitalised items of asse s credited to the Serum Institute of India Ltd. in the said house premises occupied by Mr. Z.S. Poonawalla, applicable rate of depreciation and the use of the asset etc. As discussed in the open court, ***we are of the opinion that this limb of the ground should be remanded to the file of AO for fresh adjudication after granting reasonable opportunity of being heard to the assessee in accordance with the set principles of natural justice.*** *Accordingly, this part of the issue is allowed for statistical purposes. Thus, Ground No.8 is partly allowed for statistical purposes.*

14.3 Considering the above and rule of consistency, we allow the expenditure on account of rent paid in favour of the assessee and remit the issue pertaining to depreciation with identical directions. Accordingly, Ground No.8 by the assessee is partly allowed for statistical purposes.

15. Ground No.9 raised by the assessee relates to disallowance of Rs.7,78,950/- on account of bogus purchases.

15.1 Relevant facts on this issue include that AO disallowed Rs.7,78,950/- being purchases made from B.S. Enterprises and the CIT(A) relying on the order of his predecessor for the A.Y. 2009-10 confirmed the disallowance made by the AO. Contract of Para No.16 of the order of CIT(A) are relevant.

15.2 Aggrieved with the order of CIT(A) on this issue, the assessee is in appeal before the Tribunal.

15.3 We heard both the sides and perused the orders of the Revenue. Considering the nature of the issue, we find the Pune Benches of the Tribunal has decided the issue in a series of decisions. We find the decision of the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. and others Vs. DCIT in ITA No.795/PUN/2014, relating to assessment year 2010-11, decided on 28-04-2017 is not available to the AO/CIT(A). In this case, the Tribunal analysed various beneficiaries of such bogus entry operators and depending on the submission of the evidences with regard to the trail of goods, payment etc. the Tribunal identified 4 types of categories. For the sake of completeness, we proceed to extract the said paragraphs from the order of the Tribunal (supra) and the same read as under :

"40. In view of the above said ratios the present issue of bogus purchases is to be decided on the basis of facts of each case. The first aspect is the information received by the Assessing Officer from the Sales Tax Department in respect of alleged hawala dealers. In many cases, the Assessing Officer has not even received the copy of statement recorded or any other evidence from the Sales Tax Department, except the list of hawala dealers and on the basis of the said list, the assessment proceedings have been completed in the hands of assessee, who had made the purchases from the said parties. In case, no such evidence has been received by the Assessing Officer before making addition, then there is no warrant in making aforesaid addition in the hands of assessee merely on the basis of so called list of hawala dealers. There are other cases, where the Assessing Officer had received the statement of the persons who were hawala dealers and who had admitted to have just issued bills of sale without delivery of goods. In such circumstances, there is evidence against the respective assessee that where the seller of the goods, has admitted not to have entered into real transaction of sale of goods. Against such non-transaction, there can be no delivery of goods, then it is case of passing of bills of sale and purchases, against which no VAT has been paid. Such bogus purchases are then to be added in the hands of assessee. Where the Assessing Officer had confronted the assessee with the information received, supplied copies of statements and where the persons have not been traced and no confirmation has been filed by the assessee in this regard, then the addition is to be made in the hands of assessee on account of such bogus purchases. In the facts and circumstances of some cases, the goods have been transferred by such hawala dealers to the respective purchasers, against which the assessee has to discharge onus of establishing the trail of goods which are transferred and further sold by them. Where the assessee is able to produce evidence of purchase of goods by way of weighment bridge receipts, transportation documents, payment of octroi and subsequent sale of goods to the respective parties and / or where the assessee has maintained complete quantitative details of purchase and sale of goods, then total bogus purchases cannot be added in the hands of assessee, but GP rate of 10% is to be applied on bogus purchases. Where the assessee does not establish its case, then the complete bogus purchases are to be added as hawala purchases. Further, in cases, where the statements are recorded and copies of which have been supplied to the assessee and assessee established the case of receipt of goods and its

onward transmission by way of sale bills, then the factum of purchases by the assessee stands established in such circumstances. However, the benefit of purchases being made from grey market, needs estimation in the hands of assessee. The Tribunal has already held that the addition be made by estimating the same @ 10% of the alleged hawala purchases. Accordingly, it is so held. In view thereof, the issues which emerge are as under:-

I. In case no information is received by the Assessing Officer from the Sale Tax Department and no copy of statement recorded or any other evidence is received from the Sales Tax Department, then no addition is to be made on the basis of name of hawala dealer in the list prepared by the Sales Tax Department, where the assessee had asked for the said information during assessment proceedings.

II. Where the Assessing Officer had received the statements of persons who had admitted to have just issued bills of sale without any delivery of goods. In view of such evidence, where the assessee had not entered into real transaction of purchase of goods and in the absence of any delivery of goods, the sales are bogus and the entire sales are to be added in the hands of assessee. Admittedly, the dealer had not even paid VAT against such passing of goods.

III. The case where the Assessing Officer had confronted the information received from the Sales Tax Department and had supplied copies of statements recorded and had also issued notice under section 133(6) of the Act, where hawala dealer was not traceable and in the absence of the assessee failing to file any documentary evidence of delivery of goods, addition is to be upheld in the hands of assessee on account of such bogus purchases.

IV. The next instance is the case of goods which have been admittedly sold by the hawala dealer and has been received by the assessee, who in turn had maintained quantitative details and also evidence of its movement i.e. transportation details and quality control details of consumption of the said material or exact details of sale of the same consignment through same transporter directly to the party, then the total purchases cannot be added in the hands of assessee. However, since the purchases are made from the grey market some estimation needs to be made in the hands of assessee. The Tribunal in M/s. Chetan Enterprises Vs. ACIT (supra) has already held that the addition be made by estimating the same @ 10% of the alleged hawala purchases, over and above the GP shown by the respective assessee.

V. Another set of cases where the statements recorded by the Sales Tax Department have been handed over to the assessee and the copies of same have been supplied to the assessee, then where the assessee established the case of receipt of goods and its onward transmission, then the factum of purchases by the assessee stands established in such circumstances. However, estimation is to be made in the hands of assessee because of purchases from the grey market and following the above said ratio, addition is to be made by estimating the same @ 10% of the alleged hawala purchases, over and above the net profit shown by the assessee.

41. Now, coming to the factual aspects of each of the appeal, which have already been referred to by the learned Authorized Representative for the assessee and also refer to the orders of authorities below, where none has appeared on behalf of the assessee.

42. The lead case is in the case of M/s. Chhabi Electricals Pvt. Ltd., where the grievance of the assessee is that the Assessing Officer before making the addition has not even supplied the copy of statement or any other evidence

recorded by the Sales Tax Department to establish that the purchases made by the assessee were bogus. I have already decided this issue in M/s. Chetan Enterprises Vs. ACIT (supra) and held that in cases where the Assessing Officer has failed to supply such statement recorded by the Sales Tax Department or any other evidence justifying the addition, no addition is to be made in the hands of assessee. The grounds of appeal raised by the assessee are thus, allowed. The learned Authorized Representative for the assessee has further referred to various documents i.e. gate pass, GRN and issue pass establish its case of delivery of goods i.e. purchase from hawala dealer and its onwards consumption in the manufacturing process of the assessee. In such circumstances, where the assessee has established the trail of goods purchased to the final consumption, then there is no merit in the addition made by the Assessing Officer. Thus, the grounds of appeal raised by the assessee are allowed and appeal of the assessee is allowed."

15.4 Considering the above and in all fairness, we are of the opinion that the matter should be remanded to the file of CIT(A) for considering the above decision of the Tribunal in the case of Chhabi Electricals Pvt. Ltd. (supra.) after due verification of the facts of the present case. Accordingly, the ground raised by the assessee on merits is allowed for statistical purposes.

16. Ground No.10 by the assessee relates to disallowance on account of Wealth Tax paid amounting to Rs.21,40,955/-. Relevant facts include that the assessee has not debited the Wealth Tax paid to the profit and loss account. Assessee claims that though the Wealth tax is not debited to the profit and loss account the same is deductible from the book profit for the purpose of section 115JB of the Act. AO denied the same and the CIT(A) confirmed the view of the AO relying the order of his predecessor for the A.Y. 2009-10. Aggrieved with the order of CIT(A), the assessee is in appeal before the Tribunal vide Ground No.10.

16.1 Before us, Ld. Counsel for the assessee submitted that this issue was a decided one in favour of the assessee in the assessee's own case for the A.Y. 2009-10. Per Contra, Ld. DR for the Revenue relied on the orders of the AO/CIT(A). However, he fairly submitted that this issue is covered one in favour of the assessee by virtue of order of the Tribunal.

16.2 Both the sides heard and perused the orders of the Revenue as well as the order of Tribunal in the assessee's own case for the A.Y. 2009-10. We proceed to reproduce the finding given by the Tribunal here as under :

> *"59. On hearing both the sides, we find this issue has to be decided in favour of the assessee in view of the order of Tribunal (supra) in assessee's own case for the A.Y. 2008-09. For the sake of completeness, we proceed to extract the finding given by the Tribunal and the same reads as under :*
>
> > *"26. On hearing both the parties on this issue, we find the decision in the case of Usha Martin Industries Ltd. (supra) helps the assessee. For the sake of completeness, we perused the said decision of the Tribunal and find the discussion given in Para Nos. 7 & 8 are relevant. The Tribunal considered the relevant provisions of section 115JA(2) of the Act and held the provisions of Wealth Tax constitutes an ascertained liability. The relevant portion of the Tribunal order is extracted as under :*
> >
> > > *"7. . . . . .We agree with the contention of the learned authorised representative of the assessee that a provision made for wealth-tax cannot be equated to any liability towards income-tax and acc rdingly, cannot be disallowed while computing the book profit by invoking Clause (a) of the Explanation to Section 115JA(2) of the Act.*
> >
> > *27. In any case thi is the case where no incriminating material was seized by the Revenue during the search action connecting to the disallowability of Wealth Tax payment qua the book profits computation. Therefore, on both counts, the assessee is entitled to relief. Acco dingly, Ground No.9 raised by the assessee is allowed.*
>
> *Thus, the Wealth Tax paid constitutes an allowable deduction as held by the Tribunal in assessee's own case for the A.Y. 2008-09. Considering the settled nature of the issue in favour of the assessee, the Ground No.9 raised by the assessee is allowed.*

16.3 Therefore, the wealth tax payment constitutes an ascertained liability for MAT purposes. Considering the favourable decision in favour of the assessee, we allow Ground No.10 raised by the assessee.

17. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Now we shall take up the appeal of the Revenue.

ITA No.606/PUN/2016 – By Revenue
A.Y. 2010-11

18. Grounds raised by the Revenue are extracted here as under :

"*1. On the facts and the circumstances of the case, the Ld. CIT(A) has erred in directing the AO to exclude investments in Debit Oriented Mutual Funds for the purpose of disallowance u/s.14A r.w.r.8D when no such exclusion has been mandated by the Act.*

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in directing the AO to segregate assets into furniture and Plant and Machinery when both assets are indistinguishable and fall in the category of furniture and not plant and machinery.

3. On the facts and circumstances of the case the Ld. CIT(A) has erred in allowing the appeal by treating "Product Development Expenditure" of Rs.14,42,53,591/- as revenue expenditure, when the said expenditure leads to enduring benefit and should have been treated as Capital Expenditure.

4. The order of the Ld. CIT(A) may be vacated and the assessing officer be restored.

5. The appellant craves leave to add, alter, amend and modify any of the above grounds of appeal."

19. The issues raised by the Revenue in Ground No. 1 have been dealt by us while adjudicating the appeal of the assessee vide Ground Nos. 1 (a) and (b)/modified grounds above. We have decided Ground No.1 in favour of the assessee on the technicalities, i.e. absence of satisfaction of the AO. Ground No.2 being related to classification of the assets into furniture and Plant and Machinery qua the depreciation rates is decided in favour of the assessee relying on the order of Tribunal in the assessee's own case for the A.Y. 2009-10. Ground No.3 relating to product development expenditure is also decided in favour of the assessee while dealing with Ground No.7 raised by the assessee.

Therefore, the adjudication of these grounds becomes an academic. Accordingly, the grounds raised by the Revenue in are dismissed.

20. In the result, the appeal of the Revenue is dismissed.

21. To sum up, the appeal of the assessee is partly allowed for statistical purposes and the appeal of the Revenue is dismissed.

Order pronounced on 02nd November, 2018.

Sd/-	**Sd/-**
(VIKAS AWASTHY)	**(D. KARUNAKARA RAO)**
न्यायिक सदस्य /JUDICIAL MEMBER	लेखा सदस्य **/ ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 02nd November, 2018
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(Appeals), Pune-11.
4. The Pr. CIT(Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **"ए"** "A" Bench" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.