IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI SONJOY SARMA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.795/PUN/2017
निर्धारण वर्ष / Assessment Year: 2012-13

Mahle Behr India Pvt. Ltd., (Formerly Known as Behr India Ltd.), Gat No.626/1/2 – 622/1/0, 29 Milestone, Pune – Nashik Highway, Village- Kuruli, Taluka: Khed, Pune- 410501. PAN : AABCB2186L	Vs.	DCIT, Circle-8, Pune.
Appellant		Respondent

Assessee by	:	Shri R. D. Onkar
Revenue by	:	Shri Sunil Kumar
Date of hearing	:	01.04.2022
Date of pronouncement	:	18.05.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM :

This is an appeal filed by the assessee directed against the final assessment order dated 19.01.2017 passed u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 ('the Act') for the assessment year 2012-13.

2. At the outset, the there is a delay of 11 days in filing the present appeal. The ld. AR for the assessee filed an affidavit stating that the delay in filing the present appeal was not intentional and

beyond the control of the assessee. The relevant part of the said affidavit is reproduced hereunder :-

> *".....*
>
> *3. The impugned order of assessment passed by the assessing officer u/s 143(3) r.w.s. 144C(13) for the A.Y. 2012-13 was served on the assessee company on 23rd January 2017 and accordingly the due date for filing of appeal before Hon ITAT was 22nd March 2017.*
>
> *The only female employee looking after taxation matters of the assessee company fell ill and was unwell from 9th March 2017 until 24th March 2017 and proceeded on leave. The CFO of the company had to travel to Germany to attend to some important and urgent matter in relation to the company restructuring and legal matters. Assessee company being corporate entity has to necessarily act only through human agency. In the midst of flurry of activities and the absence of the concerned staff looking after the taxation matters the due date for filing the appeal before the Hon'ble ITAT came to be lost sight of and the appeal papers came to be not filed within the stipulated period. If the concerned employee single handedly looking after the tax matters and working under aforesaid overwhelming circumstances inadvertently overlooks the last date of filing the appeal it would amount to a reasonable cause so far as the assessee company is concerned.*
>
> *On the backdrop of the aforesaid facts and circumstances it is manifest that there was just and sufficient cause for the delay due to an inadvertent error and there was no negligence or deliberate inaction on our part.*
>
> *....."*

3. Considering the above submissions of the ld. AR and no objection from the side of ld. DR for condoning the delay, we find it is a fit case to condone the delay of 11 days and admit the appeal for adjudication.

4. The appellant raised the following grounds of appeal :-

> *"Being aggrieved by the assessment order passed u/s 143(3) r.w.s 144C(13) of the Income Tax Act,1961 finalised by the learned Deputy Commissioner of Income Tax, Circle 8, Akurdi, Pune (AO) as per the directions of the learned Dispute Resolution Panel-3,Mumbai(DRP) in the case of MAHLE Behr India Private Limited (the appellant), the*

appellant submits following grounds which are without prejudice to each other for Your due and sympathetic consideration:

I. TP issues:

1. *The learned DRP and AO erred in making upward adjustment of Rs. 2,86,90,000/- to the export prices charged by the appellant in respect of appellant's international transactions viz. rendering of IT enabled design engineering services to its associated enterprise/s (AE).*

Against thrusting of and inclusion of so called external comparables in the peer set

2. *The learned DRP and the AO/TPO, in making the upward adjustment to the ALP erred in disregarding appellant's objections to the thrusting of external entities as comparables.*

3. *The learned DRP and the AO erred in imposing upon the appellant eClerx Services Ltd., Pentamedia Graphics Ltd., Tata Elxi Ltd. and Genesys International Corporation Ltd. as so called external comparables companies for benchmarking purposes when none of the said comparables satisfied the basic comparability criteria laid down in Rule 10 B (2) viz. functions performed, risks assumed and assets employed and the size of the comparables vis-a-vis the appellant. The learned authorities erred in forcing the said companies as comparables, by putting them under the category of KPO, without appreciating the fact that the appellant was not a KPO company and was only a restricted scope service provider of design engineering services for car air conditioners and components thereof in automotive segment.*

Against exclusion of external comparables selected consistently by the appellant

4. *The learned DRP and the AO further erred as follows in excluding the external uncontrolled comparables selected by the appellant*

    - *In rejecting Onward Technologies Ltd. the learned AO and the DRP erred in confirming the mechanical application of the filter of 75% export sales by the TPO without appreciating the fact that the said comparable was carrying out the activity predominantly in off shore mode like the appellant and therefore the applicable basic criteria of functions performed, assets/ resources deployed and risks borne were satisfied being similar in nature and therefore comparable.*

      The learned TPO and the DRP erred in not appreciating the fact that export incentives were not taken as operating income of the appellant's design engineering segment and the export filter of 75% was therefore not required to be

applied in such a case . The learned DRP and the AO further erred in drawing an incorrect inference that merely because the exports sales figure of Onward Technologies Limited in the relevant previous year was less than that of the preceding year it was not a comparable.

- *In rejecting Cades Digitech Pvt. Ltd. as a comparable the learned DRP and the AO erred in drawing an incorrect inference that the said comparable carried its major activities on-site as against off shore operations of the appellant company.*

II. Non TP Issues

1. The learned DRP and the AO erred in confirming the disallowance of the weighted deduction of Rs.3,38,82,341/- claimed under Section 35(2AB) of the Income Tax Act,1961 in relation to in-house Research and Development (R&D) activity of the appellant by drawing an incorrect inference that such expenditure namely product testing, validation and prototyping represented capital asset and therefore such capital expenditure was perforce allowable u/s 35 (2AB) only if it was incurred on in-house Research & Development (R&D) facility approved by the DSIR.

The learned DRP and AO failed to appreciate that on a proper construction of the provisions of Section 35 (2AB) and the Rules there under deduction is contemplated in two distinctive parts viz. revenue expenditure and capital expenditure on in house R&D facility and the restriction contemplated u/s 35(2AB) is only in respect of the expenditure representing capital asset incurred on in house R&D facility.

Further, the learned DRP and the AO failed to appreciate that the said disallowance related to expenses on testing outside the in house R&D center were an intrinsic part of R&D activity undertaken by the appellant and that they were not the capital expenditure in the nature of intangible assets.

2. Without prejudice to the above, the learned DRP erred in law and on facts in enhancing the disallowance of claim made u/s 35(2AB) of the R&D expenditure for the reason that the appellant is not eligible to claim deduction u/s 35(2AB) for the amount which is in excess of the amount approved by DSIR.

3. Without prejudice to the above, after having denied weighted deduction claimed u/s 35 (2AB) in respect of the said expenditure on scientific research the learned DRP and the AO erred in law and on facts, in not allowing the deduction of the same under the provisions of Section 35(1) (iv) Income Tax Act, 1961 at least to the extent of One hundred percent.

4. The learned DRP and the AO erred in law and on facts in disallowing revenue expenses of Rs. 1,46,47,500/- (net) on product quality testing and validation incurred by the appellant in the ordinary course of and wholly and exclusively for the purposes of its business.

The learned DRP and the AO failed to appreciate that the said expenses incurred by the appellant have not resulted into creation or acquisition of any asset, right or property or interest in any property in the hands of the assessee. The learned DRP and the AO failed to appreciate that the said expenses were not incurred in connection with development of a new product prior to commencement of business but were incurred on an ongoing basis every year for improvisation in existing products manufactured by it by making changes to remain price competitive and technically improvised in tune with the markets requirement.

The learned AO merely followed orders passed for the preceding years and came to hold that the expenses represent capital expenditure in the nature of capital asset.

5. The learned DRP and AO erred in confirming disallowance of provision towards cost of software Rs. 14,28,021/- on the inference that the said amount represented excess provision, inspite of the fact that the said expenses included in the total amount of Rs.2,43,57,884/- had suo motu been disallowed by the appellant u/s 40(a)(i) and therefore no separate disallowance/addition was called for. The learned DRP and AO further failed to appreciate that the said provision had been reversed and had been offered to tax in the subsequent year, and therefore the disallowance in the impugned assessment year resulted in the same amount suffering tax twice.

The appellant craves leave to add to, alter, amend or withdraw the grounds of Appeal."

5. Briefly, the facts of the case are as under :

The appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacture and sale of air conditioning systems and its part and also components thereof for its customers viz. Indica Car of Tata Motors Limited and Mahindra and Mahindra since 1999. The

return of income for the assessment year 2012-13 was filed on 30.11.2012 disclosing total income of Rs.9,58,15,960/-. The appellant company also reported the following international transactions :-

Sr. No.	*Nature of Transactions*	*Amount of Transactions*	*Method Adopted*
1	*Import of raw material, Consumables and other supplies*	*19,30,80,760*	*TNMM*
2	*Export/Resale of manufactured goods*	*27,70,83,652*	*TNMM*
3	*Import of tangible capital assets*	*4,24,57,263*	*CUP*
4	*Import of intangible assets viz. Development expenditure capitalized (allocation at actual)*	*3,77,28,257*	*At actual*
5	*Product development and testing services availed*	*96,31,650*	*At actual*
6	*Payment of Royalty*	*8,73,86,720*	*Internal CUP*
7	*Export of design engineering services*	*41,36,28,503*	*TNMM*
8	*Interest paid on ECB loan*	*62,26,945*	*CUP*
9	*Software License Fees*	*7,04,59,511*	*TNMM*
10	*Reimbursement of actual expenses*	*9,92,16,906*	*At actual*
	Total	*123,69,00,168*	

6. The appellant company also submitted transfer pricing study report wherein, the appellant had adopted TNM Method as most appropriate method in respect of Item No.1, 2, 7 and 9 and CUP Method as the most appropriate method in respect of Item No.3 & 8, etc. The appellant also computed the margins of the company by adopting Operating Profit/Operating Cost (OP/OC) as Profit Level Indicator (PLI). On noticing of the above international transactions, the Assessing Officer referred the matter to the TPO for the purpose of benchmarking the above international transactions u/s 92CA(1) of the Act.

On receipt of the reference from the Assessing Officer, the TPO had proceeded with benchmarking of the international transactions. In the process, the TPO had called upon the assessee to furnish the segment-wise profitability of the appellant company. In compliance, the appellant submitted the segment-wise profitability, which reads as under :- :-

Particulars	*Mfg. Activity*	*Trading Export*	*Engg. Services*	*Total (Rs. Crores)*
Income from Operations	*498.525*	*12.729*	*39.483*	*550.737*
Add Other Operating Income	*2.448*	*0.290*	*0.000*	*2.738*
Operating Income (OR)	*500.973*	*13.019*	*39.483*	*553.475*
Total Expenditure	*493.448*	*12.335*	*33.716*	*539.499*
Less Interest	*13.209*	*0.187*	*0.245*	*13.641*
Less Forex Loss	*6.136*	*-0.180*	*-0.936*	*5.020*
Less Donation	*0.0078*	*0.0002*	*0.000*	*0.008*
Less Provisions	*0.425*	*0.000*	*0.000*	*0.425*
Operating Cost (OC)	*473.6702*	*12.3278*	*34.407*	*520.405*
Operating Profit	*27.3028*	*0.6912*	*5.076*	*33.07*
OP/OR	*5.45%*	*5.31%*		*5.97%*
	5.45%			
OP/OC			*14.75%*	

7. However, the TPO found that in respect of design engineering services segment and payment of software license fees, the TP study report submitted by the assessee is found to be incorrect and, accordingly, he proceeded with benchmarking of the above international transactions by searching new set of comparables.

In respect of Design Engineering Services, the appellant submitted the TP study report adopting TNM Method as the most appropriate method for the purpose of benchmarking of the international transactions. The appellant also adopted the Operating

Profit to total cost as Profit Level Indicator (PLI) calculated at 14.75%. The appellant had chosen four comparables whose average PLI was computed at 11.83%. Thus, the appellant company sought that the above international transactions are at arm's length as the PLI of the assessee company is much more than the average PLI which was selected by the assessee company. However, the TPO had not accepted the TP study report submitted by the appellant by rejecting all the comparables selected by the assessee company. The TPO rejected the comparables Onwards Technologies Ltd. on the ground that the company fails to meet the filter 75% exports to total sales, as exports are less than 75% of total sales.

As regards to the Infotech Enterprises, the same was rejected by the TPO by stating that the Related Party Transactions are more than 41.26%. The TPO also rejected Autoline Design Software Ltd. on the ground that no Annual Report was filed by the assessee company. The TPO also rejected Cades Digitech Pvt. Ltd. on the ground that the said comparable was merged with Axis Aerospace and Technology Ltd. on 12.09.2011. The appellant has aggrieved by the exclusion of two comparables i.e. (i) Onwards Technologies and (ii) Cades Digitech Pvt. Ltd. Then, the TPO had proceeded with identifying different set of comparables by applying the filters mentioned at page no.4 of the TPO's order and finally selected

following comparables whose average PLI was 24.87%, which are as under :-

Sr. No.	*Name of the Company*	*PLI%*
1	*XS Cad India Pvt. Ltd. (Transcend Design)*	*20.93*
2	*Pentamedia Graphics Ltd.*	*12.20*
3	*Genesys International Corporation Ltd.*	*29.93*
4	*Acropetal Technolofies Ltd.*	*15.12*
5	*Tata Elxi Ltd.*	*12.62*
6	*E Clerx Services Ltd.*	*58.40*
	Average	*24.87*

8. Before the TPO, the appellant company had objected the exclusion of comparable 'Onwards Technologies Ltd.' chosen by the assessee on the ground that by applying the filter of export to total sales of 75% is not appropriate. However, the TPO rejected the contention of the appellant by holding that the filter of export to total sales of 75% is not appropriate placing reliance on the provisions of Rule 10B(2) of the Rules as well as contents of para 4.43 of the OECD Transfer Pricing Guidelines 2010, it provides 'foreign sales/total sales' as one of the quantitative filter.

Similarly, the appellant company also objected before the TPO exclusion of comparable 'Cades Digitech Pvt. Ltd.' on the ground that the said company had not been merged with Axis Aerospace and Technology Ltd. in financial year 2011-12. However, the TPO rejected the same by holding that the decision of merger was taken

in the year 2011 and the process of merger must have been going on much before that date.

The appellant company also objected the inclusion of (a) Pentamedia Graphics Ltd., (b) Genesys International Corporation Ltd., (c) Acropetal Technologies Ltd., (d) Tata Elxi Ltd., (e) E Clerx Services Ltd. on the ground of functionality differences. However, the TPO had rejected the contention of the appellant placing reliance on the definition given in Rule 10TA(g) of the Rules in the context of Safe Harbour Rules and classified the comparables as Knowledge Process Outsourcing (KPO) and finally chosen the following comparables whose average PLI was computed at 24.87% after adjusting working capital adjustments arrived at average PLI of the comparable at 23.09%, which reads as under :-

Sr. No.	*Name of the Company*	*PLI = OP/OC%*	*After Working Capital Adjt.*
1	*XS Cad India Pvt. Ltd. (Transcend Design)*	*20.93*	*20.20*
2	*Pentamedia Graphics Ltd.*	*12.20*	*7.71*
3	*Genesys International Corporation Ltd.*	*29.93*	*24.47*
4	*Acropetal Technolofies Ltd.*	*15.12*	*15.12*
5	*Tata Elxi Ltd.*	*12.62*	*12.62*
6	*E Clerx Services Ltd.*	*58.40*	*58.44*
	Average	*24.87*	*23.09*

9. Accordingly, the TPO suggested upward ALP adjustments of Rs.2,86,90,000/- in respect of international transactions and also suggested upward adjustment of Rs.1,80,65,636/- in respect of software license fees as against the total expenditure of

Rs.7,04,59,511/-. Therefore, the TPO suggested upward adjustments of Rs.4,67,55,636/- vide order dated 18.01.2016.

On receipt of the TPO's order, the Assessing Officer passed draft assessment order dated 29.03.2016 passed u/s 143(3) r.w.s. 144C(1) of the Act making addition on account of TP adjustments of Rs.4,67,55,636/-, disallowance of weighted deduction u/s 35(2AB) of Rs.3,38,82,341/- and disallowance on account of Product Development Expenses treated as capital expenditure of Rs.1,74,00,000/-.

10. Being aggrieved by the above disallowances proposed by the Assessing Officer in draft assessment order dated 29.03.2016 passed u/s 143(3) r.w.s. 144C(1) of the Act, the appellant company filed objection before the ld. DRP contesting the exclusion of the comparable 'Onwards Technologies Ltd.' by applying the filter of 75% of export sales and also the exclusion of comparable 'Cades Digitech Pvt. Ltd.' on the ground of merger of the said company with Axis Aerospace and Technology Ltd.. The appellant company further objected the inclusion of the comparables (a) Pentamedia Graphics Ltd., (b) Genesys International Corporation Ltd., (c) Acropetal Technologies Ltd., (d) Tata Elxi Ltd., (e) E Clerx Services Ltd. on the functionality difference.

However, the ld. DRP confirmed the inclusion of the comparable 'Onwards Technologies Ltd.' by holding that the filter of 75% of export to the total turnover is not appropriate. Similarly, the ld. DRP also confirmed the inclusion of 'Cades Digitech Pvt. Ltd.' by holding that the company is primarily engaged in on-site operations taking into consideration the total expenditure incurred in foreign currency and it cannot be compared with the company which is engaged in totally off-shore operations. The ld. DRP also confirmed the inclusion of 5 companies i.e. (a) Pentamedia Graphics Ltd., (b) Genesys International Corporation Ltd., (c) Acropetal Technologies Ltd., (d) Tata Elxi Ltd., (e) E Clerx Services Ltd. as such fell within the definition of software companies as defined under the Safe Harbour Rules.

As regards the software license fees, the ld. DRP considering the fact that during the course of proceedings before him, the assessee could substantiate with supporting evidences for the balance of amount of Rs.1,80,65,636/- and directed the TPO to make addition only to the extent of Rs.14,28,021/-.

11. The appellant also objected the disallowance of 3,38,82,341/- claimed under the provisions of section 35(2AB) incurred in relation to the in-house Research & Development (R&D) activity of the assessee on the ground that the Assessing Officer ought not to

have segregated the expenditure incurred R&D into two parts i.e. incurred within in-house R&D facility and incurred outside the R&D facility placing reliance on the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Cadila Healthcare Ltd., 214 Taxman 672. However, the ld. DRP confirmed the expenditure incurred R&D facility outside India cannot be allowed as "deduction" as the object of the provisions of section 35(2AB) only promote R&D in India. Further, the ld. DRP held that the appellant is not eligible to claim deduction u/s 35(2AB) in respect of amount which is inexcess to the amount approved by the DSIR. Accordingly, the ld. DRP directed the Assessing Officer to restrict the amount of deduction u/s 35(2AB) only to Rs.5.16 crores as against Rs.15.006 crores claimed by the assessee and allowed by Assessing Officer to the extent of Rs.11.626 crores. Accordingly, the ld. DRP made an enhancement of Rs.6.466 crores.

12. The assessee company also objected the disallowance of revenue expenditure of Rs.1,95,30,000/- incurred on product development expenses claimed as "revenue expenditure" on the ground that the said expenditure was incurred actually on ongoing basis to upgrade the existing products as the appellant is engaged in the business of manufacture, assembling and sale of automotive air conditioning systems parts and components etc which is highly

competitive and driven by rapid pace of technological advancements and hence it is required to be keep itself abreast of the latest developments and changes brought in globally in the segment. Accordingly, this expenditure is only incurred on upgrading the existing products and, therefore, claim should be allowed as "revenue expenditure".

However, the ld. DRP confirmed the action of the Assessing Officer by holding it to be capital expenditure and allowed the depreciation thereon.

13. On receipt of the directions of the ld. DRP, the Assessing Officer passed the final assessment order vide order dated 19.01.2017 after making TP adjustments of Rs.3,01,18,021/-, disallowance of weighted deduction u/s 35(2AB) of Rs.3,38,82,341/- and disallowance on account of product development expenses treated as capital expenditure of Rs.1,46,47,500/-.

14. Being aggrieved by the order of final assessment, the appellant is in appeal before us.

15. Ground of appeal no.1 challenges the exclusion/inclusion of the comparables for the purpose of benchmarking the international transactions of IT enabled design engineering services to its Associated Enterprises (AEs) and,

Ground of appeal no.2 and 3 challenges the inclusion of comparables, namely, eClerx Services Ltd., Pentamedia Graphics Ltd., Tata Elxi Ltd. and Genesys International Corporation Ltd. in the list of comparables on the ground of functionality difference.

16. We have carefully gone through the orders of the TPO as well as the ld. DRP, we find that the lower authorities had included this four companies merely because these companies fall under the characterization of software companies as well as KPO companies as defined under Rule 10TA(g) of the Safe Harbour Rules.

At the outset, we find that Safe Harbour Rules are applicable from 18.09.2013, we have serious doubt as to how the definitions given in Safe Harbour Rules can be applied for characterization of a particular company for the purpose of identification of set of comparable entities. Therefore, we are of the considered opinion that the lower authorities fell into serious error in holding these comparables are KPO companies placing reliance on the definition given in Safe Harbour Rules. Therefore, we remand issue back to the file of the Assessing Officer/TPO to examine the comparability of these comparables afresh without placing reliance on the definition given under Safe Harbour Rules. Thus, this issue raised in the respective grounds of appeal stands partly allowed for statistical purposes.

17. As regard to the exclusion of two comparables, namely, Onward Technologies Limited and Cades Digitech Pvt. Ltd., we find from reading of the orders of lower authorities that the company 'Onward Technologies Limited' came to be rejected by the TPO as well as by the ld. DRP on the ground that the said company fails to meet 75% export to total turnover filter. It is settled law that the filter of 75% of the export to total turnover is most appropriate filter. In these circumstances, we confirm the action of the lower authorities from excluding this company from the list of the comparables.

Similarly, the company 'Cades Digitech Pvt. Ltd.' had been excluded the TPO/ld. DRP from the list of comparables by recording a finding that this company is engaged in off shore operations. These findings remain uncontroverted. A company engaged in on-site operations is incomparable with assessee which is engaged in off shore operations as the business model is totally different. Therefore, we uphold the orders of the lower authorities in excluding this company from the list of the comparables.

18. As regards to the issue of disallowance of expenditure incurred on in-house R&D facility, we find that this issue is covered by the decision of the Co-ordinate Bench of this Tribunal in assessee's own case for the earlier assessment year 2011-12 in ITA

No.624/PUN/2018, order dated 31.08.2021, wherein, it was held by the Tribunal as under :-

> *"15. From the above discussion, it is abundantly clear that the total sum of Rs.9.61 crore incurred by the assessee outside India has not been incurred on in-house R&D facility as approved by the prescribed authority. What to talk of in-house R&D facility of the assessee approved by the prescribed authority, here is a case in which the assessee incurred these costs for availing services from the R&D facilities of its AEs. Since the R&D facilities for which the assessee incurred costs outside India are neither of the assessee nor approved by the prescribed authority, there can be no question of granting any weighted deduction on the expenses incurred outside India. To sum up, it is held that the assessee is entitled to weighted deduction u/s.35(2AB) on total amount of expenditure incurred in India amounting to Rs.5,45,58,297/-. Resultantly, no weighted deduction is admissible in respect of expenditure incurred outside India amounting to Rs.9,61,80,237/-."*

19. Respectfully following the decision of the Co-ordinate Bench of this Tribunal in assessee's own case (supra), we uphold the action of the lower authorities in disallowing the expenditure incurred on in-house R&D facility. Accordingly, this issue stands dismissed.

20. The issue raised in Ground of appeal no.4 challenges the decision of the lower authorities in holding that the expenditure incurred on product development expenses is "capital expenditure". This issue is also covered by the Co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 2011-12, wherein, the Co-ordinate Bench of this Tribunal held as under :-

> *"8. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to whether or not the expenditure incurred on testing and validation of the products is capital in nature. During the previous year relevant to the assessment*

year under consideration, the appellant incurred expenditure of Rs.2,45,34,542/- on testing and validation, out of which a sum of Rs.1,02,94,971/- was recovered from the customers and balance of product development expenditure of Rs.1,42,39,571/- was claimed as revenue expenditure. However, the Assessing Officer had treated the same as capital expenditure and allowed the depreciation thereon. The explanation given before the Assessing Officer is that the expenditure was incurred to improve the existing products. The true nature of the expenditure had not been doubted by the Assessing Officer. Undisputedly, the appellant is in the business of manufacturing of automotive components since 1999. As result of this expenditure, no new asset has been created nor new product did actually materialize. The expenditure was only incurred for the purpose of facilitating the existing business of manufacturing of automotive components and enabling the management to conduct the business operations more efficiently and productively. The Hon'ble Supreme Court in the case of (i) Empire Jute Co. Ltd. v. CIT, 124 ITR 1 and (ii) Alembic Chemical Works Co. Ltd. v. CIT, 177 ITR 377 (SC) held that expenditure incurred on the existing business incurred in connection with the existing business. Updating existing products should be allowed as revenue expenditure. Keeping in view the principles laid down by the Hon'ble Karnataka High Court in the case of CIT vs. Tejas Networks India (P.) Ltd., 52 taxmann.com 513 (Kar.), the Hon'ble Supreme Court in the cases referred supra held as under :-

> *"Having regard to the facts of this case, the expenditure that is claimed is for upgrading the existing product. Therefore, the product so upgraded goes on changing as time progresses, keeping in mind the requirement and the competition in the market. The Tribunal rightly held that the expenditure is not in the nature of capital expenditure but is revenue expenditure. Therefore, the first substantial question of law is answered in favour of the assessee and against the revenue."*

9. In the light of legal position discussed above, having regard to the facts of the case that the expenditure was incurred only up-gradation of existing products, we are of the considered opinion that the expenditure is not in the nature of capital but revenue expenditure. Accordingly, we direct the Assessing Officer to allow the expenditure as revenue nature. Accordingly, this ground of appeal no.8 filed by the assessee stands allowed."

21. Respectfully following the decision of the Tribunal in assessee's own case for the assessment year 2011-12, we hold that the expenditure incurred on product development expenses is

"revenue expenditure". Accordingly, this issue raised in ground of appeal no.4 stands allowed.

22. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced on this 18th day of May, 2022.

Sd/-	**Sd/-**
(SONJOY SARMA)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 18th May, 2022.
Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The DRP-3, Mumbai.
4. The CIT (IT & TP), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**C**" बेंच, पुणे / DR, ITAT, "**C**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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