IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF MAY, 2025

PRESENT

THE HON'BLE MR JUSTICE V KAMESWAR RAO

AND

THE HON'BLE MR JUSTICE S RACHAIAH

ITA NO. 433 OF 2018

BETWEEN:

HERBALIFE INTERNATIONAL INDIA PVT. LTD.,
RMZ PINNACLE, NO.15,
COMMISSARIAT ROAD,
BENGLAURU-560 025.
REPRESENTED BY ITS
AUTHORISED SIGNATORY,
MR. SHANKAR M.S.

…APPELLANT

(BY SRI. PERCY PARDIWALA, SR. ADVOCATE FOR
SMT. TANMAYEE RAJKUMAR, ADVOCATE)

AND:

1. THE COMMISSIONER OF INCOME-TAX-I,
BENGALURU, BMTC BUILDING,
80 FEET ROAD, KORAMANGALA,
BENGLAURU-560 095.

2. PRINCIPAL COMMISSIONER OF
INCOME-TAX, BENGALURU,
BMTC BUILDING,
80 FEET ROAD, KORAMANGALA,
BENGALURU-560 095.

…RESPONDENTS

(BY SRI.Y.V. RAVIRAJ, ADVOCATE)

THIS ITA IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE ORDER DATED 02.02.2018 PASSED IN ITA NO.611/BANG/2014 (ANNEXURE-G) AND PASS SUCH OTHER OR SUITABLE ORDERS AS THIS HON'BLE COURT DEEMS FIT TO PASS ON THE FACTS AND IN THE CIRCUMSTANCES OF THE CASE, ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 28.10.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, **V KAMESWAR RAO J**., DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR JUSTICE V KAMESWAR RAO
AND
THE HON'BLE MR JUSTICE S RACHAIAH

CAV JUDGMENT

(PER: THE HON'BLE MR JUSTICE V KAMESWAR RAO)

The present appeal has been filed by the Assessee- Appellant challenging the order dated 02.02.2018 passed by the Appellate Income Tax Tribunal, Bengaluru Bench-C, in ITA No.611/Bang/14 ('Tribunal' in short), whereby the Tribunal has dismissed the appeal of the Appellant-Assessee for the Assessment Year ('AY' in short) 2008-09 challenging the order of the Commissioner of Income Tax, Bengaluru-1.

2. The appeal in ITA No.611/Bang/2014 was filed by the Appellant/Assessee before the Tribunal against the order in F.No.CIT/BLR-1/123/u/s263/2012-13 of the Commissioner of Income Tax, Bengaluru-1 passed under Section 263 of the Income Tax Act, 1961 ('IT Act' in short) vide order dated 17.03.2014 for the AY:2008-09.

3. The facts to be noted for the purpose of this order are, the appellant is a Private Limited Company incorporated on 08.10.1998, which is engaged in the business of manufacturing through contract manufacturers and distributing the Advanced Weight Management, Inner and Outer Nutritional Products and trading of Cosmetic Products, which it operates through direct selling net work. The appellant, for the AY:2008-09, filed its return of income on 13.09.2008 declaring a total loss of Rs.3,03,76,816/-. The said return was subsequently revised and the appellant filed a revised return on 31.03.2010 declaring a total loss of Rs.3,67,17,524/-. According to the appellant, during

the impugned Assessment Year it carried-out the following Leasehold Improvements at its leasehold office premises at Bengaluru, Kolkata, Mumbai and Guwahati.

Particulars	**Location**	**Total**
Interior and other related works	Bangalore	1,50,68,567
Herbalife Logo & Letters Re-fabrication on Wall surface	Kolkata	11,17,125
Interior and other related works (including partitions, false ceilings, sign board, display units, etc.)	Kolkata	29,12,000
Leasehold Equipment	Mumbai	24,78,074
Interior & other related works	Guwahati	12,75,451
Total		**2,28,51,221**

4. It is the case of the appellant that the leasehold improvements made by the appellant during the impugned Assessment Year consisting of dismantling and disposal of existing brick wall, demolition of existing toilets, dismantling of false ceiling, fabricating and fixing work of temporary partition walls, cabin doors with gypsum board/wooden boards, fabricating and fixing work of temporary storage units and modular workstation fixing of vitrified tiles for

flooring and fixing cabin doors. Since the additions were in the nature of dismantling and temporary erection based on the depreciation rates prescribed under Rule-5 of Income Tax Rules, 1962, the appellant claimed 100% depreciation on the aforesaid additions for the impugned Assessment Year. A revised return filed on 31.03.2010 was taken-up for scrutiny by the Assessing Officer, which was concluded by the order dated 29.10.2012 passed under Section 143(3) r/w. Section 144C of the IT Act. The Assessing Officer in the assessment order determined the total income of the appellant as Rs.4,42,53,130/- after making adjustments to the returned loss by the appellant in the revised return dated 31.03.2010. The Assessing Officer thereafter issued a notice dated 19.08.2013 under Section 154 of the IT Act proposing to rectify the assessment order on the premise that the excess depreciation was allowed in the assessment order dated 29.10.2012. The appellant filed its reply to the said notice issued, on 11.11.2013 and contended that the

additions to the Leasehold Improvements were temporary in nature and therefore eligible for depreciation at 100%. The appellant also contended that the Assessing Officer had accepted its claim for granting 100% depreciation on leasehold improvements in the Assessment Order dated 29.10.2012 and did not constitute a mistake apparent from the record within the meaning of Section 154 of the IT Act. It appears the Assessing Officer considered the reply of the appellant and accepted the contention of the appellant that the aforesaid issue was not a mistake apparent from record and therefore he did not carry-out rectification under Section-154 of the IT Act. The Respondent No.1 thereafter initiated revisionary proceedings under Section 263 of the IT Act by issuing a show-cause notice dated 26.02.2014. The Respondent No.1 was of the opinion that the appellant's claim for 100% depreciation of Leasehold Improvements being allowed by the Assessing Officer, was erroneous and prejudicial to the interest of the Revenue as in his

opinion, the appellant was entitled to depreciation thereon at 10% as per the Rules. The appellant filed its reply to the show-cause notice and objected to the proposal made by the Respondent No.1 and claimed that the Assessing Officer had examined the issue and applied his mind to allow the claim of the appellant of depreciation @100% on leasehold improvements.

5. The Respondent No.1 passed a revisionary order dated 17.03.2014 under Section 263 of the IT Act and held that the order of assessment for the subject AY-2008-09 was erroneous and prejudicial to the interest of the Revenue. The Respondent No.1 therefore, directed the Assessing Officer to re-do the assessment afresh and in case the depreciation of Leasehold Improvements was to be restricted, the excess depreciation claimed may be disallowed.

6. Aggrieved by the order of Respondent No.1, the appellant preferred an appeal before the Tribunal challenging the jurisdiction of Respondent No.1 to initiate Revisionary Proceedings under Section 263 of

the IT Act. The said appeal being the appeal in ITA No.611/Bang/2014, the Tribunal vide its impugned order dated 02.02.2018, dismissed the appeal filed by the appellant.

7. The submission of Mr. Percy Pardiwala, the learned Senior Counsel for the appellant challenging the order passed by the Tribunal is that, the Tribunal has erred in up-holding the order of Respondent No.1, which held that the Assessing Officer had not examined the issue of claim of depreciation on Leasehold Improvements and had not applied its mind regarding the issue during the regular Assessment Proceedings. According to him, the Tribunal has erred in not appreciating the details of depreciation claimed in respect of the Leasehold Improvements, which were appropriately disclosed by the appellant in the Tax Audit Report and Financial Statements. The appellant has filed these documents before the Assessing Officer and the same were available with the Assessing Officer during the course of Assessment Proceedings.

8. According to Mr. Pardiwala, the Tribunal erred in not appreciating the matter regarding Leasehold Improvements, which were the subject matter of litigation in the appellant's own case in past and no adjustment having been made by the Assessing Officer in the regular Assessment Proceedings amounted to the Assessing Officer taken a conscious view on the subject matter. He lays stress on the fact that the Tribunal has erred in disregarding the favourable order of the appellant by the Tribunal in the appellant's own case for the AY: 2001-02 on the matter pertaining to Leasehold Improvements and merely stating that the Tribunal order only upholds the principle and facts for each case needs to be examined, without considering that such examination of facts had already been completed by the Assessing Officer during the assessment proceedings.

9. He stated that, the Tribunal having considered the submission and the notice issued under Section 154 of the IT Act, has erred in stating that

Assessment Order 29.10.2012 is completely silent on the issue, which is in contrast to the decision of the Bengaluru Bench of the Tribunal in ***ICICI Venture Funds Management Co. Ltd. Vs. CIT (ITA No.66/Bang/2010),*** wherein it has been held that merely because there has been no elaborate discussion on the issue by the Assessing Officer, that cannot by itself lead to conclusion that, there is no application of mind by the Assessing Officer concerned. He placed reliance on the decision of the Bengaluru Bench of the Tribunal in ***IBM India Private Limited (ITA No.598/Bang/2011)*** in this regard.

10. It was also his submission that the Tribunal erred in disregarding the favourable order of the Commissioner of Income Tax (Appeals)-12, Bengaluru, in the appellant's own case for the AY:2002-03 on the matter pertaining to Leasehold Improvements. That apart, it was his submission that the Tribunal erred in upholding the revision proceedings initiated by the Respondent No.1 under Section 263 of the IT Act on the

basis of an objection raised by the Audit Department and without application of mind by the Respondent No.1 himself. He contested the revisional proceedings by stating that the same were without appreciating that, the order of the Assessing Officer was neither erroneous nor prejudicial to the interest of the Revenue. That apart, without prejudice it was his submission that the Tribunal erred in not considering the rectification proceedings initiated by the Assessing Officer on the issue of claim of depreciation on Leasehold Improvements, when the same were initiated by the Assessing Officer and the Assessing Officer had allowed the claim after verification of the evidence.

11. According to Mr. Pardiwala, the Tribunal erred in not appreciating that the Assessing Officer had not made any rectification to the assessment order and as such admitted that the issue of claim of depreciation on Leasehold Iprovements was a debatable issue and was not a mistake apparent on record. He also stated that the Tribunal failed to appreciate the material in

relation to the rectification proceedings on the very same issue and instead erred in brushing aside the same for the reason that the rectification proceedings were not before it. The Tribunal also erred in merely relying on the admission of the authorized representative as highlighted in the revisional order passed by the Respondent No.1 in coming to a conclusion that no enquiry was conducted by the Assessing Officer without appreciating the facts that the relevant data was available before the Assessing Officer. In substance, it is his submission that the Tribunal erred in not looking at the issue in a holistic manner and examining other factors placed before it in deciding whether or not an enquiry was conducted by the Assessing Officer on the said issue. He stated that the impugned order of the Tribunal is liable to the set aside.

12. Mr. Pardiwala, in support of his submissions, has relied upon the following judgments:

i) The Commissioner of Income Tax, Bengaluru Vs. Sun Mictrosystems India Pvt. Ltd. [ITA No.203/2009 decided on 06.04.2015]

ii) Commissioner of Income-tax (Central), Ludhiana Vs. Max India Ltd. [(2009) 166 Taxman 188 (SC)]

iii) CIT-III, Bengaluru Vs. NCR Corporation Pvt. Limited [(2020) 117 Taxman.Com 252]

iv) CIT Vs. Excel Industries Limited [(2013) 38 Taxman.Com 100 (SC)]

v) Herbalife International India Pvt. Ltd. Vs. Additional C.I.T., Range-12, New Delhi (ITA 3098 & 2664/Del/2004 dated 30.08.2005)

vi) CIT Vs. Infosys Technologies Ltd. [(2012) 21 Taxmann.com 532 (Karnataka)]

13. On the other hand, Mr. Y.V. Raviraj, the counsel for the Respondent-Assessee would justify the order of the CIT (Appeals) and the Tribunal. According to him, perusal of both the order of assessment and the submissions put-forth by the assessee, vide letter dated 15.07.2011 in the course of assessment proceedings, on the basis of the details/documents called for by the Assessing Officer would go to show that, neither the details were called for by the Assessing Officer in respect to the issue of the assessee's claim for 100% depreciation nor there was even a whisper of this issue

in the order of assessment for the AY:2008-09 dated 29.10.2012. In other words, it is his submission that in the order dated 29.10.2012, various other issues were considered, such as capitalization of 25% of royalty paid to Herbalife International Inc., Transfer Pricing Adjustment of ALP, Doubtful Debts Written Off, Administrative Fees. According to him, no enquiry in the matter of Assessee's claim for 100% depreciation on leasehold improvements was conducted by the Assessing Officer is established by the admission of the AR of the Assessee before the learned CIT on 13.12.2014 in the course of revisionary proceedings.

14. According to Mr. Raviraj, it was held that, no enquiry whatsoever was conducted by the Assessing Officer on this issue and therefore since the learned CIT had correctly invoked the revisionary proceedings, the impugned order under Section 263 of the Act dated 17.03.2014 for AY: 2008-09 is to be upheld. He placed reliance on the judgment of this Court in the case of ***CIT Vs. Infosys Technologies Limited [(2012) 341***

ITR 293] wherein the issue in question was the claim of deduction under the DTAA with Canada and Thailand were not examined by the Assessing Officer, as in the issue before us, in the case on hand. He stated, in such circumstances, the conclusion drawn by the Tribunal and CIT (Appeals) cannot be interfered and the present petition is without any merit and is liable to be dismissed.

15. Having heard the counsel for the parties, at the outset, it may be stated here that the appeal was admitted on 18.10.2019 on the following substantial question of law:-

> "*Whether on the facts and circumstances of the case, the Tribunal was correct in upholding the revisonary proceedings initiated by the respondent No.1 under Section 263 of the Act on the basis that the AO had not examined the issue of claim of depreciation on leasehold improvements when the details of the depreciation claimed in respect of the leasehold improvements were appropriately disclosed by the appellant in the tax audit report, financial statements and in assessment submissions?*"

16. The submission of Mr. Pardiwala is primarily that the Tribunal has erred in upholding the order of the CIT (Appeals)(Respondent No.1), which held that, the Assessing Officer has not examined the issue of claim of depreciation on leasehold improvements, which according to him is, by not appreciating the details of the depreciation claimed in respect of the leasehold improvements, which were appropriately disclosed by the appellant in Tax Audit Report and Financial Statements. His other submission was that, the Tribunal has also erred in not appreciating that the matter regarding leasehold improvements was at litigation in the appellant's own case in the past and no adjustment being made by the Assessing Officer in the regular Assessment Proceedings amounted to the Assessing Officer having taken a conscious view on the subject matter. It was also stated that the favourable order by the ITAT in the appellant's own case of the AY:2000-01 and AY:2001-02 on the matter pertaining to

leasehold improvements and as such, there was no reason for not to allow the depreciation @100%.

17. We are not in agreement with the submissions made by Mr. Pardiwala. This we say so in view of the appellant's own case through its authorized representative, which has been noted by the CIT (Appeals), wherein the CIT (Appeals) has in unequivocal terms stated that, wherein the authorized representative of the assessee in the course of reviosional proceedings before the CIT (Appeals), vide order sheet dated 13.03.1994 admitted that, no enquiry was conducted by the Assessing Officer in the Assessment Proceedings in respect of the issue of depreciation on leasehold improvements. In fact, such a submission was not controverted by the Appellant-Assessee before the Tribunal also. So, the issue is, when the issue of depreciation at 100% was a non-issue before the Assessing Officer, which means, the Assessing Officer has not examined nor applied his mind in respect of the available rate of depreciation on leasehold

improvements and granting the same in terms of the order of assessment for AY:2008-09 dated 29.10.2012 is erroneous prejudicial to the interest of the Revenue.

18. Though Mr. Pardiwala has sought to challenge the revisional proceedings, the fact that the Assessing Officer has considered an aspect which was a non-issue, any determination in that regard, surely will be erroneous and prejudicial to the interest of Revenue.

19. In this regard, we may highlight the findings of the CIT (Appeals) in Paragraphs 5, 5.1, 5.2 and 5.3, till pages 72 and 73, which we re-produced as under:-

> *5. The assessee's contentions are carefully considered and are not acceptable for the following reasons:*
>
> *5.1 On perusal of the assessment records it is noticed that the Assessing Officer has not examined and not applied his mind in respect of allowability of rate of depreciation on lease hold improvements.*
>
> *5.2 Even though in the written submissions it has been stated that the AO has examined and applied his mind in allowing depreciation at the rate of 100% but vide order sheet noting dated*

13.03.2014 it was admitted by the Authorised Representatives of the assessee that this issue was not examined by the AO during the assessment proceedings. By not examining or by non application of mind on the part of the AO, I hold that the assessment order dated 29.10.2012 is not only erroneous but also prejudicial to the interest of revenue. In this connection, reliance is placed on Supreme Court decision in the case of Malabar Industrial Co. vs. CIT reported in 243 ITR 83 wherein the Hon'ble Apex Court has held as under:

> *".....An incorrect assumption of facts and an incorrect application of law will satisfy the requirement of the order being "erroneous". In the same category fall orders passed without applying the principles of natural justice or <u>without application of mind.</u> The phrase "prejudicial to the interests of the revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of vide import and is not confined to loss of tax. The scheme of Act is to levy and collect tax.*

5.3 The assessee's reliance on ITAT decision in its own case is of no consequence as the nature of expenditure on lease hold improvements may be different in each year and the same was not examined by the assessing

officer. Similarly, the other decisions relied upon by the assessee will also be of no consequence as the facts of each case have to be considered separately."

xxx xxx xxx xxx

20. Similarly, even we highlight the findings in the order of the Tribunal from Paragraph 6.1 onwards, which reads as under:-

xxx xxx xxx xxx

"6.1. We have heard the rival contentions, perused and carefully considered the material on record; including the judicial pronouncements cited. The CIT, Bangalore-I, on an examination of the order of assessment passed under Section 143(3) r.w.s. 144C of the Act dt.29.12.2012 and records of assessment, was of the view that the Assessing Officer, while passing the order of assessment, neither made any enquiry nor applied his mind while allowing the assessee's claim for 100% depreciation on leasehold improvements thereby resulting in the order passed being erroneous and prejudicial to the interests of Revenue. Further, we also observe that the statement of the Id. CIT, that the AR of the assessee in the course of revisionary proceedings before him vide order sheet noting on 13.3.2014 admitted that no enquiry was conducted by the Assessing Officer in assessment proceedings in respect of the issue of depreciation

on leasehold improvements, has not been controverted before us.

6.2. In the above context, it would be relevant to extract hereunder the letter dt.15.7.2011 filed by the assessee before the Assessing Officer, to show the details filed in response to the Assessing Officer; requirements during scrutiny proceedings:-.

"July 15, 2011
The Deputy Commissioner of Income Tax,
Circle 11(4), Nrupathunga Road, Bangalore.

Dear Sir,

Sub: Herbalife International India Pvt. Ltd. - Asst. Proceedings u/s. 143(2) of the Income Tax Act, 1961.

Ref: 1) PAN: AAACH 8025R
2) Assessment Year 2008-09.

This has reference to the on-going assessment proceedings in the case of Herbalife International India Pvt. Ltd. initiated by your goodself under Section 143(2) of the Income Tax Act, 1961. We refer to the discussion our authorized representative had with your goodself on June 20, 2011. In this regard, we wish to submit the following documents sought by your goodself.

1. Agreement with Litaka Pharmaceutical Pvt. Ltd.

The copy of agreement with Litaka Pharmaceutical Pvt. Ltd. entered into with the company is enclosed herewith in Annexure-1.

2. Details of Centre wise sales

Particulars of sales made by all the sales centre of the company during the FY 2007-08 detailing the name of the sales centre, quantity sold and the amount of sales is enclosed herewith in Annexure 2.

3. Additions to Fixed Assets.

During the FY 2007-08 additions aggregating to Rs.2,67,99,626 have been made to the Fixed Assets. Details of additions so made during the FY 2007-08, along with sample copy of invoices (high value items above Rs.1 lac) is enclosed herewith in Annexure - 3, for your perusal.

4. Details of Remittance in transit.

A details break up remittances in transit of Rs.15,55,934 appearing in Schedule 6 to Balance Sheet as on March 31, 2008 is enclosed herewith in Annexure-4.

5. Details of Deposits

Party wise details of deposit s amounting Rs.2,47,36,714 appearing in Schedule 7 to Balance Sheet as on March 31, 2008 is enclosed herewith Annexure-5.

6. Rent Agreements

Copy of major rent agreements in respect of rent paid by the company during the FY 2007-08 are enclosed herewith in Annexure-6, for your reference.

7. Employee stock compensation expenses

The company has participated in the Employee Stock Option (ESOP) scheme of the Herbalife Group and has offered ESOP to its employees. As per the arrangement of the company with its parent company, the compensation expense relatable to the stock compensation grants had to be reimbursed by the company to its parent company on exercise of such options by the employees.

The company during the relevant year has recorded an compensation expense of Rs.1,29,540 on account of exercise of ESOPs by the employee. The said amount has been cross charged by the parent company to the company.

We are in the process of collating the balance information / details sought by your goodself and would submit the same in the next hearing. We request your goodself to grant us two weeks time to furnish the same. Should your goodself require any further information/documents, we shall be glad to provide the same upon hearing from you.

Yours faithfully,

For Herbalife International
India Private Limited.

Sd/-

Authrised Signatory

Enclosure: As above."

6.3 A perusal of the assessee's letter dt.15.7.2011 to the Assessing Officer (supra) establishes that the assessee filed reply / details in respect of the 7 issues listed therein. It is also apparent from a perusal thereof that the seven items on which details were admittedly called for were certainly not with respect to an examination on enquiry with regard to the assessee's claim for 100% depreciation on leasehold improvements. We find that the order of assessment for Assessment Year 2008-09 dt.29.10.2012 is also completely silent on this issue. Therefore, in our considered view, it is amply clear that the Assessing Officer has neither made any enquiry nor applied his mind in respect of the issue before us. All the averments to the contrary by the learned Authorised Representative of the assessee are mere claims which are bereft of any corroborative evidence whatsoever. The averments of the learned Authorised Representative to rectificatory proceedings are not material as the same is not before us, as the records of the subject matter before us are the

order of assessment dt.27.10.2012 for Assessment Year 2008-09 and the impugned order under Section 263 of the Act dt.17.3.2014.

6.3 We, therefore, concur with the views and finding of the Id. CIT that the Assessing Officer did not cause any enquiry to be made in the course of assessment proceedings in respect of the assessee's claim for 100% depreciation on leasehold improvements as there is neither whisper nor mention of this issue either in the assessee's submissions before the Assessing Officer vide letter dt.15.7.2011 nor in the order of assessment dt.27.10.2012 for Assessment Year 2008-09. In this context, it is pertinent to note that passing of an order of assessment is the prerogative of the Assessing Officer. The assessee has no control over the Assessing Officer for passing the order of assessment in a particular / specific manner, but if the discussion is not discernible from the order of assessment, then in order to ascertain whether the Assessing Officer has applied his mind or not, the higher forums can go through the show cause notice; if issued by the Assessing Officer and the reply given by the assessee. That would indicate that though the order of assessment is silent, but the issue must have been discussed and considered in the course of assessment proceedings. In our considered view, the factual matrix of the case clearly established that there is no such material on records to show that either such material was

called for and examined by the Assessing Officer or filed vide assessee's letter dt.15.7.2011 and therefore the order of the Assessing Officer on this issue is both erroneous and prejudicial to the interests of revenue. As observed by the Id. CIT, the assessee's reliance on the decision of the Delhi Bench, ITAT for Assessment Year 2000-01 lays down the principle on this issue, but the actual nature of the items of expenditure on leasehold improvements may be different in each year and the factual aspects of this issue, whether the expenditure falls in the capital or revenue field have definitely not been examined by the Assessing Officer in this year i.e.; Assessment Year 2008-09. Drawing support from the ratio of the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Infosys Technologies Ltd. (supra), we uphold the impugned order of the Id. CIT who has considered all factual aspects of the matter before taking action under Section 263 of the Act on the grounds that there was no enquiry or application of mind by the Assessing Officer while allowing the assessee 100% depreciation on leasehold improvements. Consequently, finding no merit in the grounds raised by the assessee, the same are dismissed.

7. In the result, the assessee's appeal for Assessment Year 2008-09 is dismissed

21. The conclusion drawn both by the CIT (Appeals) and the Tribunal are justified. In fact the submissions of Mr. Pardiwala before us are reiteration of the submissions as advanced before the Authorities below, which we have not accepted. In view of our finding that, depreciation was a non-issue before the Assessing Officer, the reliance placed by Mr. Pardiwala on the aforesaid judgments have no relevancy as they are not applicable to the facts of this case.

22. In view our above discussion, we dismiss the appeal, as no substantial question of law arises in this appeal against the appellant and in favour of the Revenue.

No costs.

Sd/-
(V KAMESWAR RAO)
JUDGE

Sd/-
(S RACHAIAH)
JUDGE

KGR*