

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 3261/Del/2015 (AY: 2010-11)

ITA No. 3262/Del/2015 (AY: 2011-12)

Housing & Urban Development Corporation Ltd (HUDCO), HUDCO Bhawan, Lodhi Road, New Delhi (Appellant) PAN:AAACH0632A	Vs.	Addl CIT, Range-12, New Delhi (Respondent)
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ITA No. 7625/Del/2018 (AY: 2004-05)

Housing & Urban Development Corporation Ltd (HUDCO), HUDCO Bhawan, Lodhi Road, New Delhi (Appellant) PAN:AAACH0632A	Vs.	Addl CIT, Range-4, New Delhi (Respondent)
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**ITA Nos. 3904 & 3905/Del/2015
(Assessment Year: 2010-11 & 2011-12)**

DCIT, Circle-11(2), New Delhi (Appellant) PAN:AAACH0632A	Vs.	Housing & Urban Development Corporation Ltd (HUDCO), HUDCO Bhawan, Lodhi Road, New Delhi (Respondent)
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Assessee by :	Shri Gagan Kumar, Adv Shri Varun Gandhi, Adv
Revenue by:	Shri Waseem Arshad, CIT DR & Shri Bhogenderr Prasad, Sr. DR

Date of Hearing	19/03/2024 & 09/09/2024
Date of pronouncement	04/11/2024

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ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.3261/Del/2015 for AY 2010-11, arises out of the order of the Commissioner of Income Tax (Appeals)-XV, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 153/13-14/CIT(A)-XV dated 24.03.2015 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.03.2013 by the Assessing Officer, Addl. CIT, New Delhi (hereinafter referred to as 'Id. AO').

2. With the consent of the both the parties, the appeal of the assessee for AY 2010-11 in ITA No. 3261/Del/2015 is taken up first.

3. The Ground No. 1 raised by the assessee is challenging the confirmation of disallowance of Rs. 3 lakhs on account of prior period expenses.

3.1. We have heard the rival submissions and perused the material available on record. The return of income for AY 2010-11 was filed by the assessee company on 28.09.2010 declaring total income of Rs. 789,09,90,414/-. The assessee company is engaged in the business of providing finance for development of housing and infrastructure projects. During the course of assessment proceedings, the assessee claimed expenditure pertaining to earlier years amounting to Rs. 3 lakhs as deduction. The assessee was asked to explain why those expenditure of Rs. 3 lakhs not pertaining to the year under consideration be not disallowed in the assessment. In response, the assessee submitted that the entire expenditure have been crystallized during the year under consideration ; that the assessee is a massive organization and located in multiple locations

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and that the exercise of collation of data does not get completed before the time of finalization of annual accounts. Hence, there would be always certain delays in receiving the data from multiple locations and the same would be received by the head office only after the completion of audited financial statements. Accordingly, the details which were received after the completion of audit were booked as prior period expenditure and also where the expenditure stood crystallized during the year under consideration, even though the assessee pertains to earlier years were also booked under prior period expenditure. As per the mandate of Companies Act to show prior period items separately in the financial statements, this sum of Rs. 3 lakhs was reflected by the assessee separately in the profit and loss account. The assessee gave the details of the said expenditure before the Id AO as under:-

	Rs. In thousand
Office Rent	Rs. 149
Water and Electricity	Rs. 16
Interest in investment	Rs. 130
Other expenditure	Rs. 5
Total	Rs. 300

3.2. The Id AO however did not heed to the contentions of the assessee and proceeded to disallow this sum of Rs. 3 lakhs as expenditure not pertaining to the year under consideration. This action of the Id AO was upheld by the Id CIT(A).

3.3. The Id AR before us fairly submitted that let the details given by the assessee be examined by the Id AO as no finding whatsoever has been given by the Id AO with regard to each of such expenditure. It was always

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the case of the assessee that this expenditure get crystallized during the year or the details of the incurrence of the said expenditure were received after the completion of the audit of the earlier years. Both these categories of the expenditure were booked by the assessee as prior period expenditure. We find that the genuineness of the said expenditure is not doubted by the lower authorities. The prayer made by the Id AR before us is very fair and hence we deem it fit and appropriate to restore this issue to the file of the Id AO for verification of the fact as to whether the assessee had not claimed the very same expenditure in earlier years. Once it is proved that the said expenditure is not claimed as deduction in earlier years, then the same would be squarely allowable as deduction during the year under consideration. With these directions, the Ground No. 1 raised by the assessee is allowed for statistical purposes.

4. Ground No. 2 raised by the assessee is challenging the confirmation of addition of Rs. 18,06,443/- on account of depreciation on estimated increase in cost of properties.

4.1. We have heard the rival submissions and perused the material available on record. The Id AO observed that the assessee has accounted for estimated cost of 10% towards stamp duty/ registration charges in respect of properties where lease/ sub lease is yet to be executed and has provided depreciation on this addition. The assessee submitted chart showing the amount capitalized on this account. The Id AO on going through the said chart found that the assessee had claimed excess depreciation of Rs. 18,06,443/- by following the similar disallowance made in the earlier years. This action of the Id AO was upheld by the Id CIT(A).

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4.2. We find that the issue is no longer res integra in view of the decision of the *Hon'ble Jurisdictional High Court in assessee's own case where the very same issue has been remitted back to the file of the Id AO for de novo verification in ITA No. 207/2015 dated 17.05.2015 for AY 2003-04*. We find that the Hon'ble Jurisdictional High Court had restored the issue for verification by the Id AO. The Id AR made a statement from the bar that no addition was made by the Id AO up to AY 2009-10 thereof. However, in the interest of justice, we feel it appropriate to restore this issue to the file of the Id AO in the light of the directions given by the Hon'ble Delhi High Court in AY 2003-04. Accordingly, Ground No. 2 raised by the assessee is allowed for statistical purposes.

5. Ground No. 3 raised by the assessee is challenging the confirmation of addition made by the Id AO in the sum of Rs. 3,75,67,456/- on account of revenue de-recognition in the books of the assessee.

5.1. We have heard the rival submissions and perused the material available on record. The assessee being a public finance institution and a housing finance company is governed by the National Housing Bank Act, 1987. As per the mandate of NHB Act, revenue shall be recognized only on the standard assets on accrual basis. In respect of non-performing assets, interest income is to be recognized only on receipt basis. The assessee de-recognized interest income of Rs. 3,75,67,456/- in its books of account on the basis of National Housing Bank (NHB) guidelines since the said interest income arose on Non Performing Assets (NPA). It is pertinent to note that the corresponding assets were classified as NPA on the basis of NHB guidelines which is mandatorily to be followed by the assessee. To put it

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simply, this sum of Rs. 3,75,67,456/- represents interest income accrued to the assessee but the same is not recognized as revenue by the assessee on the basis of NHB guidelines since the corresponding asset had turned NPA. Accordingly, interest income and other related incomes arising out of NPA's are to be accounted only on receipt basis and not on accrual basis as per NHB guidelines. The Id AO observed that since the assessee is following mercantile system of accounting and the guidelines issued by NHB are not binding on the income tax department for the purpose of computation of income under the Act, he proceeded to bring to tax the interest income of Rs. 3,75,67,456/- on accrual basis. Reliance in this regard was placed by the lower authorities on the decision of the *Hon'ble Supreme Court in the case of Southern Technologies Ltd Vs. ACIT reported 320 ITR 577 (SC)* . Accordingly, the very same issue was decided against the assessee by the Hon'ble Jurisdictional High Court for AYs 2005-06 to 2009-10 and the said *decision of Hon'ble Jurisdictional High Court has been stayed by the Hon'ble Supreme Court vide its order dated 06.08.2018*. Hence, the said issue is sub judice before the Hon'ble Supreme Court in assessee's own case. Meanwhile, the very same issue of taxability of interest income on accrual basis in respect of non performing assets was subject matter of consideration in yet another decision of the *Hon'ble Jurisdictional High Court in the case of CIT Vs. Vashisht Chay Vyapar reported in 330 ITR 440 (Del)* and the same was decided in favour of the assessee stating that the interest income is to be taxed only on receipt basis in respect of NPA. We find that this decision of Hon'ble Jurisdictional High Court in 330 ITR 440 (Del) has been approved by the *Hon'ble Supreme Court reported in 410 ITR 244 (SC)*. Hence, we are in a situation where the issue in dispute has been actually settled in favour of the assessee by the decision of the Hon'ble Supreme

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Court in 410 ITR 244 (SC), but in assessee's own case, the same issue has been decided against the assessee by the Hon'ble Jurisdictional High Court. The said decision of Hon'ble Delhi High Court in assessee's own case has been stayed by the Hon'ble Supreme Court. In these circumstances, the assessee before us had filed a petition in terms of section 158A(1) of the Act in Form 8 read with Rule 16 of the Income Tax Rules. The Id DR vehemently argued before us that the issue is settled in favour of the revenue by the decision of the Hon'ble Jurisdictional High Court in assessee's own case and also by the decision of the Hon'ble Supreme Court in the case of Southern Technologies Ltd reported in 320 ITR 577 (SC). Hence he vehemently argued that this ground raised by the assessee should be dismissed.

5.2. We have gone through the judgment of the Hon'ble Supreme Court in the case of Southern Technologies Ltd referred (supra). In our considered opinion, the said decision would have the effect only for allowability of deduction in respect of provision made for non performing assets (i.e. provision of bad and doubtful debts), which was made as per RBI Prudential Norms for income recognition and classification of assets and as to whether the provision of Section 45Q of RBI Act, 1934 would override the provisions of the Income Tax Act or not. In our considered opinion, the said decision of Southern Technologies Ltd referred supra did not decide on the de-recognition of income on NPA Accounts. Hence, the reliance placed on the said decision of the Id DR does not advance the case of the revenue. On the contrary, the issue in dispute has been decided in favour of the assessee by the Hon'ble Supreme Court in the case of Vashisht Chay Vyapar reported in 410 ITR 244 (SC). But considering the application preferred by the assessee u/s 158A(1) of the Act dated 08.07.2020 in Form 8 which is

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maintainable, we deem it fit and appropriate to restore this issue to the file of the Id AO to decide based on the final outcome of Hon'ble Supreme Court in assessee's own case on the said issue. In our considered opinion, this would keep the interest of both the parties alive. Accordingly, Ground No. 3 raised by the assessee is allowed for statistical purposes.

6. Ground No. 4 raised by the assessee is challenging the confirmation of addition of Rs. 12,486/- on account of administrative charges of Andrews Ganj Project.

6.1. We have heard the rival submissions and perused the material available on record. The Id AO observed that during the year under consideration, the assessee has not shown any income on account of administrative charges of Andrews Ganj Project. The amount of work done at Andrews Ganj Project during the year was Rs. 8,32,427/-. As per the terms on which the project was allotted to the assessee, the assessee was to be reimbursed the cost of project, interest on the funds utilized in the project and 1.5% of project cost as administrative charges. In the earlier years, the assessee was accounting for administrative charges. However, in AY 2001-02, the assessee reversed the administrative charges on the basis that on completion of the commercial portion of the complex, no further administrative charges were payable to it by the Ministry of Urban Development. This stand of the assessee was rejected AY 2008-09. Accordingly, the AO made an estimated addition of Rs. 12,486/- on account administrative charges income calculated @1.5 of project cost during year of Rs. 8,32,427/-. This action of the Id AO was upheld by the Id CIT(A).

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6.2. We find that the issue is subject matter of consideration by the *Hon'ble Jurisdictional High Court in Income Tax Appeal No. 339/2014 dated 27.10.2014 in assessee's own case for AY 2002-03*. This issue has been decided in favour of the assessee by observing as under:-

"6. Along with the grounds of appeal, the appellant before us has filed copy of minutes of the meeting held on 7th September, 1995 and after making reference to the same has pointed out that the said minutes have been misread and misunderstood by the Assessing Officer and the appellate authorities, including the Tribunal. The said minutes specifically make reference to the community centre complex at Andrews Ganj, New Delhi as is clear from the very first paragraph. The subsequent paragraphs, including the paragraph quoted by the Assessing Officer entailing payment of administrative expenses @ 1.5% relate to the development of community centre complex at Andrews Ganj, New Delhi and not to residential quarters which was not the subject matter of the said meeting and the recorded memorandum.

7. Having read the said record of minutes of meeting, we felt that there was merit in the submission made as the recorded minutes specifically refer to the position with reference to development of community centre complex at Andrews Ganj, New Delhi and not to the residential quarters under construction at Andrews Ganj.

8. In light of the aforesaid submissions and noting the minutes of the meeting, while issuing notice on 11th July, 2014, we had asked the counsel for the Revenue to verify the factual position and inform the Court whether the assessee had at any time received administrative expenses @ 1.5% in relation to the residential quarters from the Government of India. We had also recorded the submission of the assessee that the assessee never received 1.5% as administrative expenses for construction of the residential quarters.

9. During the hearing today, learned counsel for the respondent- Revenue has filed before us a letter dated 25th September, 2014 of the Assessing Officer, accepting and admitting that on verification it has been ascertained that overhead charges were leviable by the assessee only in respect of Andrews Ganj community centre and not on the development of residential flats at the Andrews Ganj project. The said letter has been kept on record.

10. Normally, we would have remanded the case to the Tribunal for fresh decision in the light of the minutes of meeting held on 7th September, 1995, but in view of the facts now elucidated and accepted by the Revenue,

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we are not inclined to pass an order of remit. It would be a formality. It is an accepted position that the appellant-assessee had never received 1.5% administrative expenses in respect of the residential quarters in Andrews Ganj project. Clearly, therefore, the stand of the appellant-assessee that the notes of the meeting held on 7th September, 1995 related to the development of community centre complex at Andrews Ganj, New Delhi and not to residential quarters is correct. The aforesaid document has been misread. There was no accrual of income in case the Government of India had not agreed to pay any overhead expenses or administrative charges @ 1.5% in respect of residential quarters at Andrews Ganj Complex, New Delhi.

11. The question of law is accordingly answered in favour of the appellant-assessee and against the Revenue. Addition of Rs. 35,57,615/- is deleted. The appeal is disposed of. In the facts of the case, there is order as to costs."

6.3. Respectfully following the same, the ground no. 4 raised by the assessee is allowed.

7. Ground No. 5 raised by the assessee is challenging the confirmation of addition made by the Id AO in the sum of ₹1,69,91,000/- on account of expenditure on grants- in-aid.

7.1. We have heard the rival submissions and perused the material available on record. The Id AO observed that the assessee has claimed to have spent an amount of ₹1,69,91,000/- as grant-in-aid . The assessee furnished the ledger account of this expenditure during the course of assessment proceedings. The Id AO observed that these expenditures are merely provisions made by the assessee. Hence, the same cannot be allowed as deduction in the assessment. The main contention of the Id AO is that expenditure incurred towards grant-in-aid are akin to donation paid by the

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assessee. Hence, the same cannot be treated as having been incurred wholly and exclusively for the purpose of business of the assessee, and hence not allowable as deduction. When the matter travelled to Id CIT(A), the assessee submitted that such grants were paid to HUDCO Chair program with the object of capacity building in the housing and urban development sector and in order to strengthen the research and capacity building in the housing and urban development sector. It was submitted that HUDCO Chair provides financial support to institutions for conducting training activities. Since, the assessee company is engaged in the business of financing for housing and urban development project, the amount of grant-in-aid expended by it contributes to promotion of its business activity and hence would be allowable as deduction. The assessee also filed various action plan of the of the activities of HUDCO Chair during the relevant financial year, which included the action plan of HUDCO Chair activity in Kerala Institute of Local Administration, Jammu and Kashmir Institute of Management, public administration and rural development, National Institute of Urban Affairs and Institute for Research and Rural Industrial Development and CRRID. It was submitted that all these training programmes are supported by Central or the State Government Departments/ Ministries.

7.2. The Id CIT(A) however approached this issue in an tangential way by stating that the assessee is only disbursing grants/ subsidies received from the Central Government Departments/ Ministries for the purpose of capacity building in the Housing and Urban Development sector by various institutions in collaboration with HUDCO Chair. The Id CIT(A) also observed that the assessee does not recognize the grants received from Central or State Government Departments / Ministries as its income and as it is merely

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a pass through entity in respect of such grants/ subsidies. Hence, it cannot claim expenditure as deduction while computing its business income.

7.3. We find that the issue in dispute is only with regard to claim of deduction in respect of grant-in-aid expended by the assessee. Out of sum of ₹1,69,91,000/-, a sum of ₹85,38,247/- was unpaid before the end of the previous year and the remaining sum was duly paid by the assessee. We find that the Id CIT(A) had approached the entire issue in a completely tangential way that the assessee had not shown the grants and subsidies received as its income. Factually, no grants/ subsidies were received by the assessee at all. Pursuant to the payment made by the assessee, it is given ex officio position in the payee institutions. The payee institution's predominant activities is to ensure capacity building in housing and urban development sector and assessee's main activity is financing in housing and urban development sector. Hence, the business nexus of the expenditure incurred in the form of grant- in-aid vis-à-vis the payee institutions stand clearly established. We find a sum of ₹1,69,91,000/- is debited to profit and loss account and the outstanding (i.e. unpaid balance) is reflected as other liabilities in the balance sheet. The entire approach as stated earlier by the Id CIT(A) is tangential and hence no serious thought need to be given to the observation made by the Id CIT(A) qua this ground. Hence the same is hereby ignored as it is not germane to the issue in dispute. We find that the Id AR relied on the decision of the *Hon'ble Madras High Court in the case of CIT Vs. Madras Refineries reported in 266 ITR 170 (Mad)* wherein, it was held that even a remote nexus to a business of the assessee is allowable revenue expenditure. The relevant observation is reproduced herein below:-

"5. The concept of business is not static. It has evolved over a period of time to include within its fold the concrete expression of care and concern for the society

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at large and the people of the locality in which the business is located in particular. Being known as a good corporate citizen brings goodwill of the local community, as also with the regulatory agencies and the society at large, thereby creating an atmosphere in which the business can succeed in a greater measure with the aid of such goodwill. Monies spent for bringing drinking water as also for establishing or Improving the school meant for the residents of the locality in which the business is situated cannot be regarded as being wholly outside the ambit of the business concerns of the assessee, especially where the undertaking owned by the assessee is one which is to some extent a polluting industry."

7.4. Further, we find that the *Hon'ble Karnataka High Court in the case of Kanhaiyalal Dudheriya Vs. JCIT reported in 418 ITR 410 (Kar)* had taken a similar view qua the issue in dispute before us. The relevant operative portion of the said order is reproduced herein below:-

"29. In the facts on hand, it requires to be noticed that assessee is carrying of business of iron ore and also trading in iron ore. Thus, day in and day out the assessee would be approaching the appropriate Government and its authorities for grant of permits, licenses and as such the assessee in its wisdom and as prudent business decision has entered into MOU with the Government of Karnataka and incurred the expenditure towards construction of houses for the needy persons, not only as a social responsibility but also keeping in mind the goodwill and benefit it would yield in the long run in earning profit which is the ultimate object of conducting business and as such, expenditure incurred by the assessee would be in the realm of "business expenditure". Hence, the orders passed by the authorities would not stand the test of law and is liable to be set aside.

30. However, it requires to be noticed that while examining the claim for deduction under Section 37(1) of the Act the assessing officer would not blindly or only on the say of the assessee accept the claim. In other words, assessing officer would be required to scrutinise and examine as to whether said deduction claimed for having incurred the expenditure has been incurred and only on being satisfied that expenditure so incurred is relatable to the work undertaken by the assessee namely, only on nexus being established, assessing officer would be required to allow such expenditure under Section 37(1) of the Act and not otherwise."

7.5. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we hold that assessee would be entitled for deduction in respect of grant-in-aid expended by it on the ground that same are to be construed as wholly and exclusively incurred for

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the purpose of business of the assessee. Accordingly, ground No. 5 raised by the assessee is allowed.

8. Ground No. 6 raised by the assessee is challenging the confirmation of addition of ₹1.50 crores on account of revenue recognition on realization basis in respect of loan application fees, front-end fees, administrative fee and processing fees of loans as against accrual basis.

8.1. We have heard the rival submissions and perused the material available on record. The Id AO had sought to tax income on account of application fees, front-end fees, administrative fees and processing fees of loans as against actual basis which was recognized as income upon realization. The Id AO failed to appreciate that as per the accrual system of accounting, the income is recognized only when there is reasonable certainty of its collection. The Ld. AO considered such recognition of processing fee, etc, on cash basis of accounting to be in violation of provisions of section 145 of the Act and therefore, made an adhoc addition of Rs.1,50,00,000/-. The Ld. CIT(A) also failed to appreciate that these revenues could only be recovered when the borrower draws the disbursement of the loan. Therefore, in cases where no disbursement took place, the recovery of such revenue remained uncertain. The Ld. CIT(A) also ignored the fact that the Government Auditor also pointed this to the assessee. The Id CIT(A) however, did not heed to the contention of the assessee and upheld the action of the Id AO.

8.2. First of all loan processing/ front-end fees becomes payable to the company only when the loan is actually disbursed and not when the loan is sanctioned. There is no certainty as to when the concerned borrower would

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draw the loan amount from the assessee. Hence, taxing the loan processing fee, front-end fee etc on accrual basis would be wrong as there is no certainty of its realization. Further, C&AG had also directed the assessee to recognize income respect of these services on realization basis instead of accrual basis by duly appreciating the fact that there is no certainty of its realization. Further, this is done only for Government borrowers by the assessee because the Government may choose not to draw the disbursement from the assessee, even though the loan is sanctioned to it. Depending upon the political climate, financial need and the financial strain that could be managed or tolerated by the particular Government, the decision to draw the sanctioned amount from the assessee company would be taken by the respective Government borrowers. All these factors are certainly beyond the reach and control of the assessee company. Hence, it could be safely concluded that there is no certainty of realization of the fees in the form of loan processing fees, application fee, front-end fee etc. Hence, we find that C&AG had directly directed the assessee to recognize income on receipt basis in respect of these services qua Government borrowers. Further, we find that the issue in dispute is no longer *res integra* in view of the decision of the *Hon'ble Jurisdictional High Court in assessee's own case for Assessment Year 2007-08 reported in 421 ITR 599 (Del)*. The relevant operative portion of the said order are reproduced herein below:-

"QUESTION III:

20. The next question pertains to addition of Rs. 1.28 crores on account of financial impact due to change in accounting policy in respect of revenue recognition of application fee, front end fees, administrative fee and processing fee of loans (hereinafter collectively referred as 'fees') from the date of signing of the loan agreement to the date of realization. The background of the aforesaid addition is that the appellant was following accrual/mercantile system of accounting and was accounting the 'fees' as

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its revenue from the date of signing of the loan agreement. The amount was finally deducted/realized from the loan amount, when it was actually disbursed to the borrower. There were instances when the loan agreement was signed and the borrower would not take the disbursement and, accordingly, fees would not be realized. The CAG objected to the same on the ground that the accounting treatment was not in accordance with Accounting Standards (hereinafter referred as 'AS-9'), issued by ICAI which provides guidance for determination of income on accrual basis. Appellant, vide letter dated 6th November, 2006, assured the CAG that the accounting policy shall be reviewed for FY 2006-07 and, accordingly, the Board approved the change in accounting policy in its meeting held on 27th September, 2007. The revised accounting policy recognized the aforementioned fees as on the date of its realization, instead of date of signing of the loan agreement. The AO made an addition of Rs. 1.28 crores on the ground that the change had resulted in under-statement of profits and also because the change was introduced after the closing of the financial year.

21. The CIT (A) confirmed the addition holding that change in accounting policy was not in accordance with the provisions of the Act. The relevant finding of the CIT (A) on this issue is as under:

'Regarding the Ground No.2 of the appeal relating to disallowance of Rs. 1.28 crores on account of under-statement of profit due to change in accounting policy of revenue recognition in respect of processing fees of loans etc., I find that the appellant was regularly following the accounting practice upto 31-3-2007 by which such incomes were accounted for on accrual basis. Subsequently, in view of its Board's decision in the meeting dated 27-9-2007, the appellant company revised its accounts in the light of the advice from the statutory auditors and thereby changed the accounting policy and recognized the revenue in respect thereof on receipt basis. I find that the CAG audit party had raised the observation that accounting of such receipts at the time of signing of loan agreement was not in conformity with the Accounting Standard 9 to which the appellant company had assured vide letter dated 06-11-2006 that the accounting policy shall be reviewed in F. Y.2006-07. Subsequently, in the Board meeting of the appellant company of September, 2007, the following resolution was passed:

"Resolved that the changes in accounting policy from the year 2006-07 be and are hereby approved as detailed in the agenda item"

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The detailed note for comparing existing policy and the revised policy shows that the Board of the company took this decision by assuming that there was no financial impact and there was only change in language. However, the very basis of this decision that there was no financial impact was incorrect, as the proposed change had resulted in reduction in the taxable profit under the Income-tax Act, 1961. Further, AO's observation that the decision was taken only after the F. Y. is over was also note-worthy, even though such decision was taken with retrospective effect.

Evidently, the appellant is a company incorporated under Companies Act 1956. As per Accounting Standards, it follows mercantile system of accounting. Therefore, even though the company may have changed the accounting policy, which as mentioned was on a faulty premise that it did not have financial impact, in line with the Accounting Standards as per Section 145 A of the Act, it could have added back the amount of Rs. 1.28 crores on account of such receipts in the computation of income. This would have ensured compliance with the CAG objections as also compliance with the provisions of the Act. Moreover, the decision of the Company's Board cannot override the provisions of the statute. Keeping in view the above, the addition made on this ground is upheld and this ground is accordingly dismissed.'

22. The ITAT upheld the addition holding as under:

"(4.1.1) The Assessee is now in appeal against the aforesaid order dated 28-8-2014 of the Ld. CIT(A). At the time of hearing before us, the Ld. AR of the Assessee submitted that the change in the Accounting Policy was made in order to comply with objection/observation of the Audit Party of Comptroller & Auditor General. The Ld. CIT(DR) relied on the orders of the AO and the Ld. CIT(A).

(4.2) The position in law is unambiguous. U/s 145(1) of I.T. Act, it is provided that income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. The Assessee is not permitted to follow cash system of accounting for some of the items while following mercantile system of accounting for rest of the items in computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" as the

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mixed system of accounting has lost statutory mandate w.e.f. AY 1989-90 in view of the amendment to section 145 of I.T. Act. Thus, the Assessee was in clear error of law in changing the method of accounting to selectively adopt cash system of accounting for certain items, while following mercantile system of accounting for rest of the items. Even if the accounting policy was changed in pursuance of observation of Audit Party of Comptroller & Auditor General ("CAG" for short), even then, statutory provisions under I.T. Act will prevail over any observation/objection/remark of Audit Party of CAG. Moreover, despite having changed the accounting policy, in pursuance of observation of Audit Party & CAG, the Assessee would have added back the aforesaid amount of Rs. 1.28 crores in the computation of Total Income for Income-tax purposes. That would have ensured compliance with statutory provisions under I.T. Act, as well as with observation of Audit Party & CAG. The Assessee is a company incorporated under the Companies Act, 1956 and follows mercantile system of accounting. An Assessee company registered under the Companies Act, 1956 is required to maintain accounts in accordance with provisions of The Companies Act, 1956. However, the profits computed in this manner need not necessarily be the same as Total Income for the purposes of I.T. Act. The computation of Total Income for the purposes of Income-tax Act requires giving effect to statutory provisions under I.T. Act, by making necessary adjustments/modifications/alterations/variations to profits compounded in accordance with provisions of the Companies Act, 1956. In view of this, the Assessee was in clear error of law by not adding back the aforesaid amount of Rs. 1.28 crores in the computation of Total Income for the purposes of I.T. Act. This error of law is further aggravated by the error of fact, in that the change of accounting policy was based on faulty premise (ie, error of fact) that there was no financial impact. The fact is, there was financial impact to the extent of aforesaid amount of Rs. 1.28 crores. In view of the foregoing discussion and unambiguous position in law; and the clear error of law and fact on the part of the Assessee, we uphold the addition of aforesaid amount of Rs. 1.28 crores. The Ld. AR of the Assessee failed to bring to our notice any specific provisions of law or any judicial precedents to support this ground of appeal. We find that the order of the Ld. CIT(A) is well reasoned and in accordance with law in the facts and circumstances of this case. The Assessee has failed to make any case for inference with the impugned order of the Ld. CIT(A) on this issue. Therefore, the second ground of appeal in the appeal filed by the Assessee in the ITA No. 5705/Del/2014 is dismissed and the impugned order of the

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Ld. CIT(A) on this issue, sustaining the aforesaid addition of Rs. 1,28,00,000."

[Emphasis Supplied]

23. Learned counsel for the appellant has argued that the appellant follows mercantile system of accounting and under the said system of accounting, unless there is a reasonable certainty of its realization, income cannot be said to have accrued. The Tribunal erred in confirming the addition without appreciating AS-9, issued by ICAI which provides for recognition of income on accrual basis only when there is a certainty of its realization. The change in accounting policy had been duly reflected in detailed note for comparing the existing and revised policy and the financial impact due to the said change was shown in 'Schedule T' of the financial statements. It was also urged that the change is revenue neutral and there is no loss to the Department as the same has been realized in the Financial year 2008-09, and has been offered to tax in the AY 2009-10. In support of his submission, counsel has relied upon the decisions in CIT v. Shriram Investments Ltd. [2015] 62 taxmann.com 298/234 Taxman 868/378 ITR 533 (Mad.); CIT v. Bharat Aluminium Co. Ltd. [2010] 187 Taxman 111(Delhi); CIT v. Virtual Soft Systems Ltd. [2018] 92 taxmann.com 370/255 Taxman 352/404 ITR 409 (SC); CIT v. Woodward Governor India (P.) Ltd. [2007] 162 Taxman 60/294 ITR 451 (Delhi) and CIT v. Excel Industries Ltd. [2013] 38 taxmann.com 100/219 Taxman 379/358 ITR 295 (SC).

24. Mr. Zoheb Hossain and Mr. Deepak Anand, learned counsels for the revenue, on the other hand urged that the assessee was required to make the book of accounts in accordance with the provisions of the Companies Act, 1956. However, profits computed as per the provisions of the Companies Act need not necessarily be the same as Total Income for the purposes of Income-tax Act. The computation of total income requires giving effect to statutory provisions under the Act by making necessary adjustments. Appellant has erred by not adding back the amount of Rs. 1.28 crores and therefore, the findings of the tax authorities are in consonance with the provisions of the Act and the judicial pronouncements on this issue.

25. We will first reflect on the decisions and viewpoints expressed by the courts on this issue. The appellant has relied upon the judgment of the Supreme Court in Excel Industries Limited (supra). The observations made in Paragraph Nos. 18 and 19 of the said case are of relevance, and the same read as

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17. *"First of all, it is now well settled that income tax cannot be levied on hypothetical income. In CIT v. Shoorji Vallabhdas & Co. [1962]46 ITR 144(SC) it was held as follows:—*

Income-tax is a levy on income. No doubt, the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a "hypothetical income", which does not materialize. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account. "

18. *"The above passage was cited with approval in Morvi Industries Ltd. v. CIT (Central), [1971] 82 ITR 835 (SC) in which this Court also considered the dictionary meaning of the word "accrue" and held that income can be said to accrue when it becomes due. It was then observed that:the date of paymentdoes not affect the accrual of income. The moment the income accrues, the assessee get vested with the right to claim that amount even though it may not be immediately."*

19. *"This court further held, and in our opinion more importantly, that income accrues when there arises a corresponding liability of the other party from whom the income becomes due to pay that amount "*

20. *"It follows from these decisions that income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then can it be said that for the purposes of taxability that the income is not hypothetical and it has really accrued to the assessee."*

21. *"In so far as the present case is concerned, even if it is assumed that the assessee was entitled to the benefits under the advance licenses as well as under the duty entitlement pass book, there was no corresponding liability on the customs authorities to pass on the benefit of duty free imports to the assessee until the goods are actually imported and made available for clearance. The benefits*

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represent, at best, a hypothetical income which may or may not materialize and its money value is therefore not the income of the assessee."

[Emphasis Supplied]"

26. The factual situation in the said case is quite similar to the case in hand. In the aforementioned case, the question was with respect to assessee's entitlement to benefits under the „advance license" as well as under the 'duty entitlement passbook'. The Court observed that there was no corresponding liability on the customs authority to pass the benefit of duty-free imports to the assessee until the goods are actually imported and made available for clearance; the benefits represent a hypothetical income which may or may not materialize and its money value is not the income of the assessee.

27. In CIT v. Annamalai Finance Ltd. [2010] 186 Taxman 296/[2009] 319 ITR 196 (Mad.) judgment relied upon by the appellant, the following observations are essential to note:

"4. The assessee had submitted that in respect of overdue charges, the assessee-company, keeping in line with the norms of the Reserve Bank of India as well as the credit rating agency, has been assessee is admitting income only on cash basis. The assessee-company has also placed reliance upon the Accounting Standard 9 of ICAI which lays down that when uncertainties exist regarding hence shall not be recognised until collection.

5. The recognition of revenue on accrual basis presupposes the satisfaction of two conditions viz., the revenue is measurable and that the revenue is collectable without any uncertainty. Taking into account these standards also, the assessee submitted that the overdue on financial charges on hire purchase and lease had been admitted only on cash basis. Rejecting the said submission, the Assessing Officer passed the assessment order.

In the instant case, learned counsel for the Revenue is not in a position to demonstrate or satisfy us that due to the change of accounting method adopted by the respondent/assessee, which is permissible in law as per the ratio laid down in 1) CIT v. Matchwell Electricals (I.) Ltd. [2003]. 263 ITR 227 (Bom.) and (ii) Hela Holdings (P.) Ltd. v. CIT [2003/ 263 ITR 129 (Cal.), the Revenue suffered any loss or such a change of methodology attracts tax evasion. Concededly, there is no finding to that effect in the assessment order

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or in the order of the Commissioner of Income-tax (Appeals). The change of method of accounting of overdue charges from the mercantile basis to cash system, method of accounting, as followed by an assessee, does not create any income; but the method of accounting only recognizes income. Therefore, either to apply the accrual system or cash system, recognition of income is a paramount factor. In the present case, the disputed amount is the overdue charges receivable by the assessee from various parties on the basis of hire-purchase and lease agreements. As per the terms of the agreements, overdue charges are payable by the parties concerned to the assessee when they make defaults in paying the installments as per the schedule of payments. When the installment itself is overdue is not collected, there is no basis for making out a case that the additional overdue charges payable by the parties would be collectible with certainty. The terms of the agreements which enable the assessee-company to demand overdue charges is only an enabling provision and that enabling provision does not guarantee the collection of overdue charges. It only gives a cause of action to the assessee. In such cases it is very difficult to recognize income against overdue charges.

We are, therefore, of the considered opinion that the Tribunal has rightly deleted the additions made towards overdue charges, acknowledging the change of method of accounting of overdue interest alone on cash basis."

[Emphasis Supplied]

28. The Court in the above noted case was considering the question regarding the overdue charges payable by parties concerned to the assessee when they make defaults in paying the installment as per the schedule of payments. It was held that the clause in the agreement which allows the assessee to demand such charges is only an enabling Clause, and does not guarantee the collection of the overdue charges and when the installment itself is overdue and not collected/realised, there is no basis for making out a case that the additional overdue charges payable by the parties would be collectable with certainty. Similarly, the Supreme Court in its decision in Virtual Soft System Ltd. (supra), considered the question as to whether the deduction on account of lease equalization charges from the leasing rental income can be allowed under Income-tax Act on the basis of guidance note issued by the ICAI. Answering this question, it was held that the Court may take help of external aids such as the ICAI guidelines and standards if the Act is silent, and there exists no internal aid for the interpretation of the same. The relevant portion of the decision reads as under:

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"16. The method of accounting followed, as derived from the ICAI's Guidance Note, is a valid method of capturing real income based on the substance of finance lease transaction. The rule of substance over form is a fundamental principle of accounting, and is in fact, incorporated in the ICAI's Accounting Standards on Disclosure of Accounting Policies being accounting standards which is a kind of guidelines for accounting periods starting from 1-4-1991. It is a cardinal principle of law that the difference between capital recovery and interest or finance income is essential for accounting for such a transaction with reference to its substance. If the same was not carried out, the respondent would be assessed for income tax not merely on revenue receipts but also on non-revenue items which is completely contrary to the principles of the IT Act and to its scheme and spirit.

18. Without a doubt, in a catena of cases, this Court has discussed the relevancy of the Guidance Note. While dealing with one of such matters, this Court, in CIT v. Punjab Stainless Steel Industries [CIT v. Punjab Stainless Steel Industries, (2014) 15 SCC 129] held as under: (SCC p.134, para 17)

"17. So as to be more accurate about the word "turnover", one can either refer to dictionaries or to material which are published by bodies of accountants. The Institute of Chartered Accountants of India (hereinafter referred to as "ICAI") has published some material under the head "Guidance Note on Tax Audit under section 44-B of the Income-tax Act". The said material has been published so as to guide the members of ICAI. In our opinion, when a recognised body of Accountants, after due deliberation and consideration publishes certain materials for its members, one can rely upon the same."

19. In the present case, the relevant assessment year is 1999-2000. The main contention of the Revenue is that the respondent cannot be allowed to claim deduction regarding lease equalisation charges since as such there is no express provision regarding such deduction in the IT Act. However, it is apt to note here that the respondent can be charged only on real income which can be calculated only after applying the prescribed method. The IT Act is silent on such deduction. For such calculation, it is obvious that the respondent has to take course of Guidance Note prescribed by the ICAI if it is available. Only after applying such method which is prescribed in the

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Guidance Note, the respondent can show fair and real income which is liable to tax under the IT Act. Therefore, it is wrong to say that the respondent claimed deduction by virtue of Guidance Note rather it only applied the method of bifurcation as prescribed by the expert team of ICAI. Further, a conjoint reading of section 145 of the IT Act read with section 211 (unamended) of the Companies Act makes it clear that the respondent is entitled to do such bifurcation and in our view there is no illegality in such bifurcation as it is according to the principles of law. Moreover, the rule of interpretation says that when internal aid is not available then for the proper interpretation of the statute, the court may take the help of external aid. If a term is not defined in a statute then its meaning can be taken as is prevalent in ordinary or commercial parlance. Hence, we do not find any force in the contentions of the Revenue that the accounting standards prescribed by the Guidance Note cannot be used to bifurcate the lease rental to reach the real income for the purpose of tax under the IT Act.

20. To sum up, we are of the view that the respondent is entitled for bifurcation of lease rental as per the accounting standards prescribed by the ICAI. Moreover, there is no express bar in the IT Act regarding the application of such accounting standards."

(Emphasis Supplied]

29. The Supreme Court has held that accounting process is to ensure the real income from the transactions in the form of revenue receipts is accounted for the purpose of income tax. The application of accounting standard is to show fair and real income which is liable to tax under the Act. The accounting standards of ICAI lays down that when uncertainties exist regarding determination of the amount in its collectability, the revenue shall not be treated as accrued and shall not be recognized until collection. It would be apposite to extract the relevant portion of the AS-9, issued by ICAI with regards to the effect of uncertainties on revenue recognition. The same reads as under:

"9.1 Recognition of revenue requires that revenue is measurable and that at the time of sale or the rendering of the service it would not be unreasonable to expect ultimate collection.

9.2 Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, e.g., for escalation. of price, export incentives, interest etc., revenue recognition is postponed to the extent of uncertainty involved. In such cases, it may be appropriate to recognise revenue only when it

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is reasonably certain that the ultimate collection will be made Where there is no uncertainty as to ultimate collection, revenue is recognised at the time of sale or rendering of service even though payments are made by installments.

9.3 When the uncertainty relating to collectability arises subsequent to the time of sale or the rendering of the service, it is more appropriate to make a separate provision to reflect the uncertainty rather than to adjust the amount of revenue originally recorded.

9.4 An essential criterion for the recognition of revenue is that the consideration receivable for the sale of goods, the rendering of services or from the use by others of enterprise resources is reasonably determinable. When such consideration is not determinable within reasonable limits, the recognition of revenue is postponed.

9.5 When recognition of revenue is postponed due to the effect of uncertainties, it is considered as revenue of the period in which it is properly recognised."

30. Let's now advert to the facts of the case, before we express our views. The appellant's income on account of the fees did not accrue with certainty on the date of signing of the loan agreement. The income fell due only when the loan was disbursed, as the fee was to be collected at that stage. It cannot be said that on the date of signing, the income accrued in conformity with the mercantile system and AS-9 adopted by the appellant. The contention of the Appellant is in line with the settled position of law as laid down by the Supreme Court and other High Courts as well as the AS-9. There was no reasonable certainty of the realization of the amount of Rs 1.28 crores, and that since it follows the mercantile system of accounting, the same can be treated as an income only if it had convincingly accrued. The amount here is not determinable and there is no certainty about the same, since it remains uncertain whether the borrower -who has signed the loan agreement, would, eventually, avail of the loan, or not. Merely because the appellant may have signed the agreement with the borrower, that, by itself, does not lead to the "certainty" of income accruing to the Appellant, so as to bring it within the ambit of "income". Here, the addition has resulted on account of change in accounting policy by recognizing the realised revenue, instead of the assumed revenue on the date of signing of loan agreement. The tax authorities fell in error by laying emphasis on the impressibility of change in accounting in the context of section 145 of the Act. The conspectus of the case law cited by both parties is that, even for an income to be recognized under mercantile law, it is necessary that

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income should have accrued with certainty. It is trite law that there can be no liability to pay Income-tax on hypothetical income. The regular method of accounting determines only the mode of computing the taxable income and the particular stage at which the tax liability arises. If there is no income, then merely because the assessee had followed the mercantile system of accounting and has in his books of account reflected certain receipt or credits or debits in a particular way, it cannot be said that income has accrued. The position of law on "accrual of income" is well settled. Income accrues only when there is a right to receive such income, regardless of the fact if it is actually received or not. To decide this crucial question, one would have to examine, whether, there is a legal right vested in favour of the assessee to claim the same. This is the crux of the matter and the tax authorities seem to have lost sight of the same. The tax authorities should have proceeded to determine and ascertain as to whether, the income has in reality accrued to the assessee, or not, notwithstanding the change in accounting policy. If the income had indeed accrued, the addition would have been permissible. However, to determine this, in our opinion, the treatment given in the assessee's books of account would not be necessary, but would be dependent on the answer to the question as to whether the income has indeed accrued, having regard to the test as discussed hereinabove. The question whether real income has materialized or not has to be scrutinized, having regard to the commercial and business certainties and realities of the situation in which the assessee is positioned, and not with reference to system of accounting. The answer to such decision would then relate to the chargeable accounting year in which such profits actually arose and assessee would be liable to tax accordingly. Applying this yardstick, we do not find that any income accrued at the point of mere execution of the agreement and, thus, the income did not accrue in the relevant AY. The financial impact has since been factored in the subsequent year.

31. We also find merit in the submissions of the appellant that the change in accounting policy is a result of the audit objection raised by CAG on 10th October, 2006. The appellant has claimed deduction in profits in the computation of the total income, and added it as income in the subsequent assessment year, which has been accepted by the AO. The change is, thus, revenue neutral. The reliance placed by the Revenue upon the decision of the Supreme Court in CIT v. United Provinces Electric Supply Co. [2000] 110 Taxman 134/244 ITR 764, is misplaced. The dispute in the said case was with respect to the interpretation of the provisions of the Electricity Act, and the additions made in the income as per the provision of section 41 of the Act. The factual scenario in the said case is clearly distinguishable from the facts of the present case."

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8.3. Further, we find that there is no absolutely no basis at all for the revenue to tax a sum of ₹1.50 crores as it is made purely only on ad hoc basis. In view of the above observations and respectfully following the decisions of the Hon'ble Jurisdictional High Court referred supra, the ground No. 6 raised by the assessee is hereby allowed.

9. Ground No. 7 raised by the assessee is challenging the confirmation of disallowance of Rs. ₹26,40,710/- u/s 14A of the Act.

9.1. We have heard the rival submissions and perused the material available on record. We find that the assessee had derived exempt income of ₹1,46,000/- and had duly offered the same to tax in the return of income itself. Hence, there was no exempt income claimed by the assessee at all warranting application of application of provision of Section 14A of the Act. Reliance in this regard is placed on the decision of the *Hon'ble Jurisdictional High Court in the case of PCIT Vs Era Infrastructure (India) Ltd reported in 141 taxmann.com 289 (Del HC)*. Accordingly Ground No. 7 raised by the assessee is allowed.

10. Ground No. 8 raised by the assessee is seeking correct TDS credit. This matter requires factual verification by the Id AO and accordingly the Id AO is directed to decide this issue in accordance with law after considering all the explanations and documents submitted by the assessee in support of its contention. Accordingly, Ground No. 8 is allowed for statistical purposes.

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11. Ground No. 9 is raised by the assessee for not giving the benefit of incremental Special Reserve on the additions/ disallowances made by the AO. This issue is consequential in nature which has to be decided pursuant to final income being determined by the Id AO post this Tribunal order. Accordingly, ground No. 9 is restored to the file of the Id AO and allowed for statistical purposes.

12. Ground No. 10 raised by the assessee was stated to be not pressed by the Id AR at the time of hearing. The same is reckoned as a statement made from the Bar and accordingly dismissed as not pressed.

13. Ground No. 11 is general in nature and does not require any specific adjudication.

14. In the result, the appeal of the assessee in ITA No. 3261/Del/2015 is partly allowed for statistical purposes.

ITA No. 3904/Del/2015 for AY 2010-11(Revenue' appeal)

15. The appeal in ITA No.3904/Del/2015 for AY 2010-11, arises out of the order of the Commissioner of Income Tax (Appeals)-XV, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 153/13-14/CIT(A)-XV dated 24.03.2015 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act')

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dated 30.03.2013 by the Assessing Officer, Addl. CIT, New Delhi (hereinafter referred to as 'Id. AO').

16. Ground No. 2 raised by the revenue is identical with ground No. 7 of the appeal raised by the assessee in ITA No. 3261/Del/2015 for AY 2010-11, the decision rendered by us for ground No. 7 in assessee's appeal shall apply with equal force for ground No. 2 in revenue appeal. Hence, ground No. 2 raised by the assessee is dismissed.

17. Ground No. 1 is challenging the deletion of addition on account of capitalization of financial charges written off.

17.1. We have heard the rival submissions and perused the material available on record. The Id AO observed that the assessee has claimed deduction of ₹2,47,66,000/- as financial expenses paid during the year. He observed that the assessee has debited financial charges of ₹22,87,32,000/- in its books of account which has been added back in the computation. Accordingly, the Id AO show caused the assessee to explain why the other financial expenses of Rs. 2,47,66,000/- should also not be disallowed. The assessee submitted that these financial expenses were incurred by it on account of deferred expenditure on the issue of bonds and term loans in its books of account whereas, the same were fully claimed as deduction in the year on incurrance for the purpose of computing the taxable income. The break up of claim of assessee towards financial expenses is enclosed in page 176 of the Paper Book. The issue in dispute is squarely covered by the decision of the *Hon'ble Jurisdictional High Court in case of CIT Vs. IRFC Ltd reported in 362 ITR 548 (Del)* as under:-

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"16. The respondent-assessee had incurred expenditure of Rs. 10,09,92,445 towards bond issue expenses of different series during the year in question. The Tribunal referred to their earlier order in the case of the respondent-assessee for the assessment years 1997-98 to 2000-01 and held that the expenses incurred were revenue expenditure. Reliance was placed upon decision of the Delhi High Court in the case of CIT v. Thirani Chemicals Ltd. [2007] 290 ITR 196/[2006] 155 Taxman 233 wherein it has been held that issue of debentures on rights basis to the existing shareholders was revenue expenditure and it was not mandatory to amortise the said amount under section 35D of the Act in view of the Circular No. 52, dated March 19, 1971, issued by the Central Board of Direct Taxes.

17. While dealing with a similar issue in CIT v. Havells India Ltd. [2013] 352 ITR 376/[2012] 208 Taxman 114/21 taxmann.com 476 (Delhi), it has been held as under (page 392):

"It is well settled that expenditure incurred in connection with the issue of debentures or obtaining loan is revenue expenditure. Reference in this connection may be made to the leading judgment of the Supreme Court in India Cements Ltd. v. CIT [1966] 60 ITR 52 (SC). The question before us, however, is whether it is a debenture issue or an issue of share capital involving the strengthening of the capital base of the company. Though it prima facie appears that there are sufficient facts to indicate that what was contemplated was an issue of shares to the Mauritius company under the investor agreement which would result in strengthening of the assessee's capital base, having regard to the judgments cited on behalf of the assessee, in which it has been held that despite indications to the effect that the debentures are to be converted in the near future into equity shares, the expenditure incurred should be allowed as revenue expenditure on the basis of the factual position obtaining at the time of the debenture issue, we are not inclined to take a different view. The following cases have been cited on behalf of the assessee in support of the view that even in such a situation the expenditure is allowable as revenue expenditure:

- (1) CIT v. East India Hotels Ltd. [2001] 252 ITR 860 (Cal);*
- (ii) CIT v. ITC Hotels Ltd. [2011] 334 ITR 109 (Karn);*
- (iii) CIT v. South India Corporation (Agencies) Ltd. [2007] 290 ITR 217 (Mad); and*
- (iv) CIT v. First Leasing Co. of India Ltd. [2008] 304 ITR 67 (Mad).*

In addition to the above judgments, we also have the judgment of the Rajasthan High Court in CIT v. Secure Meters Ltd. [2010] 321 ITR 611 (Raj) against which the special leave petition filed by the Revenue was dismissed.

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ITA No. 3262/Del/2015 (AY: 2011-12)

ITA No. 7625/Del/2018 (AY: 2004-05)

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Having regard to the predominant view taken in the above judgments, in which the judgment of the Supreme Court in India Cements Ltd. [1966] 60 ITR 52 (SC) has been noticed, we are inclined to uphold the view taken by the Tribunal that the expenditure is revenue in nature."

18. The respondent-assessee was/is a Government of India undertaking and was engaged in the business of leasing and financing to Indian Railways. It procured funds from various sources and acquired rolling stock which was leased to Indian Railways. The expenditure which was incurred on bonds was for ensuring finance and availability of funds for carrying out the business of finance and leasing. To procure and get funds in the form of bonds etc, some expenditure had to be incurred. These funds, when procured, were used for the business activities to earn income. It is not a case wherein the respondent-assessee was yet to set up or commence their business. The business, it is accepted, had commenced much earlier and not during the year in question.

17.2. This aspect has been duly appreciated by the Id CIT(A) and granted relief to the assessee on which we do not find any infirmity. Accordingly, Ground No. 1 raised by the revenue is dismissed.

18. In the result, the appeal of the revenue is dismissed.

ITA No. 7625/Del/2018 for AY 2004-05

19. The appeal in ITA No. 7625/Del/2018 for AY 2004-05, arises out of the order of the Commissioner of Income Tax (Appeals)-35, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 05/17-18 dated 19.09.2018 against the order of assessment passed u/s 154 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 24.03.2017 by the Assessing Officer, Addl CIT, Range-04, New Delhi (hereinafter referred to as 'Id. AO').

20. Ground No. 1 raised by the assessee challenging the confirmation of disallowance made by the Id AO on account of prior period expenses.

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ITA No. 3262/Del/2015 (AY: 2011-12)

ITA No. 7625/Del/2018 (AY: 2004-05)

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20.1. We have heard the rival submissions and perused the material available on record. A sum of ₹8,13,00,000/- stood claimed as deduction on account of prior period expenses by the assessee which was sought to be disallowed by the Id AO on the ground that assessee had not submitted any evidence to prove that these expenses had crystallized during the year. This action of the Id AO was upheld by the Id CIT(A). The Id AR before us submitted additional evidences in terms of Rule 29 of the ITAT Rules, vide letter dated 22.03.2024 giving the complete break up of the prior period expenses together with an affidavit supporting the Rule 29 petition. The assessee is a multi-locational and a massive organization, having multiple regional offices. During the financial year 2001-02, the public deposit scheme of the assessee was decentralized. However, post decentralization, the regional offices did not make any provisions for any such interest or brokerage payable on 1st April. Consequently, as per the advice from the statutory auditor, necessary provision for such interest and brokerage payment had been booked for the previous years. Significant sum of the above prior period expenses arose from the said deduction being interest on public deposit scheme of Rs. 7.35 crore and brokerage on public deposit scheme of Rs. 0.36 crore (approximately $7.35+0.36=7.71$ crore). Reference may be made to the letter of the statutory auditors dated 11.8.2004 in the application for additional evidence and the internal noting referring the same at page 1-3 of the said document.

20.2. Though the Id DR vehemently argued that these additional evidences do not suggest that the liabilities had crystallized during the year and that the same represents only provisions made for expenses, on perusal of the additional evidences, we find that these additional evidences at the first instance are required to be admitted as it would be relevant for adjudication

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of the appeal and moreover we find that all these correspondences are pertaining to year 2007 i.e. the additional evidences submitted by the assessee constitutes internal correspondences between officers of the assessee company giving certain authorization to book certain expenses. But we find that these authorization dates are in the year 2007 whereas the appeal before us pertains to AY 2004-05. Hence, it is very clear that the authorization were indeed obtained by the assessee company after the claim of deduction was made. Hence, there is no evidence has rightly pointed out by the Id DR that the liabilities had indeed crystallized during the year. Hence, the disallowance made by the Id AO on account of prior period expenses and confirmed by the Id CIT(A) is in order. Accordingly, ground No. 1 raised by the assessee is dismissed.

21. Ground No. 2 challenging the disallowance made u/s 14A of the Act.

21.1. We have heard the rival submissions and perused the material available on record. The assessee had declared exempt dividend of Rs. 18,20,000/- in the return. The Id AO estimated 25% of the dividend income and made a disallowance of Rs. 4,55,000/- u/s 14A of the Act on the assumption that it was the expenditure incurred by the assessee for the purpose of earning income. We find that the year under consideration is prior to the introduction of Rule 8D of the Income Tax Rules, hence the computation mechanism provided in Rule 8D cannot be applied in the instant case. We find that the Hon'ble Calcutta High Court in the case of *CIT vs M/s R.R.Sen & Brothers P Ltd in GA No. 3019 of 2012 in ITAT NO. 243 of 2012 dated 4.1.2013* had held as under:-

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" The assessee did not show any expenditure incurred by him for the purpose of earning the money which is exempted under income tax. The tribunal has computed expenditure at 1% of such dividend income, which, according to them, is the thumb rule applied consistently. We find no reason to interfere.

The appeal is dismissed."

21.2. Respectfully following the said decision, we direct the Id AO to disallow 1% of the dividend income as expenditure u/s 14A of the Act. Accordingly, Ground No. 2 raised by the assessee is partly allowed.

22. Ground No. 3 raised by the assessee is similar to ground No. 1 raised for Assessment year 2010-11. Hence, the issue is set aside to the file of Id AO by considering it as consequential as was done in AY 2010-11.

23. In the result, the appeal of the assessee in ITA No. 7625/Del/2018 for Assessment Year 2004-05 is partly allowed for statistical purposes.

ITA No. 3262/Del/2015 for AY 2011-12 (Assessee's appeal)

24. The appeal in ITA No.3262/Del/2015 for AY 2011-12, arises out of the order of the Commissioner of Income Tax (Appeals)-4, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 367/13-14/CIT(A)-4 dated 26.03.2015 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 11.02.2014 by the Assessing Officer, Addl. CIT, Range-12, New Delhi (hereinafter referred to as 'Id. AO').

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25. Ground No. 1 raised by the assessee is challenging the confirmation of disallowance of Rs. 4,98,75,665/- on account of expenses on Corporate Social Responsibilities (CSR).

25.1. We have heard the rival submissions and perused the material available on record. During the year under consideration, the assessee company had debited in its profit and loss account a sum of Rs. 4,98,75,665/- under the head CSR, details of which were called for and provided by the assessee company. The assessee explained as under:-

"The Mission of HUDCO's Corporate Social Responsibility is to Promote, facilitate and, support inclusive human settlement development with focus on sustainability and marginalized communities. The focus is on two distinct thrust areas viz, sustainability and/or issues related to marginalized community. Disaster rehabilitation is of the components of the HUDCO CSR Policy. The intention is to identify and associates with projects/ interventions that would help to achieve environmental sustainability or help improving the conditions of the weaker sections of the community in urban society. HUDCO sets apart 3% of its annual net profit for CSR activities.

On 6th August, 2010, Ladakh was struck by a cloud burst that washed away houses across Ladakh region and resulted in the loss of 191 civilians and 26 army personnel. HUDCO officials alongwith representatives of Hindustan Prefab Limited (HPL) and

Building Material and Technology Promotion Council (BMPTC) visited the affected areas to assess the damage and to provide housing solutions to the families left homeless by the calamity.

HUDCO decided to make available Rs.4,98,75,665/- from its Corporate Social Responsibility Fund for construction of 133 houses in Solar, Leh. The construction of 133 houses in the Solar Colony at Leh for rehabilitation of cloud burst affected households was entirely funded by HUDCO at a cost of Rs.4,98,75,665/- under the CSR policy"

25.2. The Id AO observed that assessee's business is only to provide finance for development of housing and infrastructure project and to earn interest

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income thereon and not to disburse finance free of cost/ house free of cost. Accordingly, he held that the said expenditure cannot be construed as having being incurred wholly and exclusively for the purpose of business of the assessee and proceeded to disallow the entire CSR expenditure in the assessment. It is pertinent to note that CSR is mandated by regulatory agency, Department of Public Enterprises. Hence, an expenditure which is incurred as per the mandate of the regulatory authority by a particular assessee cannot be construed as not incurred wholly and exclusively for the purpose of the business. The assessee has sought to follow the dictates of regulatory authority mandating the assessee to incur certain expenses on account of CSR for a particular purpose. What is required to be seen here is whether that expenditure incurred by the assessee result in overall welfare of the society at large. It is pertinent to note that the assessment year involved herein is AY 2011-12. We are conscious of the fact that Explanation 2 to section 37(1) of the Act specifically prohibits allowability of deduction of expenditure incurred by an assessee on the activity relating to CSR referred to section 135 of the Companies Act, 2013. But we find that this Explanation 2 was introduced by Finance (No.2) Act, 2014 w.e.f. 01.04.2015 and hence cannot be made applicable for the year under consideration. Hence, the allowability of the expenditure should be determined based on the fact whether it had resulted in overall welfare / benefit of the society at large. Reliance in this regard is placed on the decision of Hon'ble Madras High Court in the case of CIT Vs. Madras Refineries reported 266 ITR 170 (Mad) wherein, it was held that even a remote nexus to a business of the assessee is allowable revenue expenditure. The relevant observation is reproduced herein below:-

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"5. The concept of business is not static. It has evolved over a period of time to include within its fold the concrete expression of care and concern for the society at large and the people of the locality in which the business is located in particular. Being known as a good corporate citizen brings goodwill of the local community, as also with the regulatory agencies and the society at large, thereby creating an atmosphere in which the business can succeed in a greater measure with the aid of such goodwill. Monies spent for bringing drinking water as also for establishing or Improving the school meant for the residents of the locality in which the business is situated cannot be regarded as being wholly outside the ambit of the business concerns of the assessee, especially where the undertaking owned by the assessee is one which is to some extent a polluting industry."

25.3. Further, we find that the Hon'ble Karnataka High Court in the case of Kanhaiyalal Dudheriya Vs. JCIT reported in 418 ITR 410 (Kar) had taken a similar view qua the issue in dispute before us. The relevant operative portion of the said order is reproduced herein below:-

"29. In the facts on hand, it requires to be noticed that assessee is carrying of business of iron ore and also trading in iron ore. Thus, day in and day out the assessee would be approaching the appropriate Government and its authorities for grant of permits, licenses and as such the assessee in its wisdom and as prudent business decision has entered into MOU with the Government of Karnataka and incurred the expenditure towards construction of houses for the needy persons, not only as a social responsibility but also keeping in mind the goodwill and benefit it would yield in the long run in earning profit which is the ultimate object of conducting business and as such, expenditure incurred by the assessee would be in the realm of "business expenditure". Hence, the orders passed by the authorities would not stand the test of law and is liable to be set aside.

30. However, it requires to be noticed that while examining the claim for deduction under Section 37(1) of the Act the assessing officer would not blindly or only on the say of the assessee accept the claim. In other words, assessing officer would be required to scrutinise and examine as to whether said deduction claimed for having incurred the expenditure has been incurred and only on being satisfied that expenditure so incurred is relatable to the work undertaken by the assessee namely, only on nexus being established, assessing officer would be required to allow such expenditure under Section 37(1) of the Act and not otherwise."

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25.4. The issue in dispute is clearly covered by the decision of the *Hon'ble Jurisdictional High Court in case of PCIT Vs. PEC Ltd reported in 451 ITR 136 (Delhi)* wherein, it was held that amendment by way of Explanation 2 to section 37(1) of the Act w.e.f. 01.04.2015 was prospective in nature and thus CSR expenditure incurred prior 01.04.2015 was to be allowed.

25.5. In view of the aforesaid observations, the ground No. 1 raised by the assessee is allowed.

26. Ground No. 2 raised by the assessee is challenging the disallowance of prior period expenditure of Rs. 4,26,772/-.

26.1. We have heard the rival submissions and perused the material available on record. The Id AO had disallowed this prior period expenditure as the assessee had not proved with cogent evidence with the said expenditure had been crystallized during the year so as to make it eligible for claiming deduction. This action was upheld by the Id CIT(A). Before us, no arguments were advanced by the Id AR on the said issue. Hence, we hold that there is no further submission that is required to be made by the assessee with regard to this issue. Hence, we do not deem it fit to interfere in the order of the Id CIT(A) in this regard. Accordingly, ground No. 2 raised by the assessee is dismissed.

27. Following grounds are identical with grounds raised by the assessee in AY 2010-11 in ITA No. 3261/Del/2015 and hence the decision rendered

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thereon by us hereinabove for AY 2010-11 shall apply mutatis mutandis for this Assessment Year also:-

Ground in AY 2011-12	Ground in AY 2010-11	Result
3	2	Set aside to AO
4	3	Set aside to AO
5	4	Allowed
6	5	Allowed
8	6	Allowed
10	8	Set aside to AO
11	9	Set aside to AO

28. Ground No. 7 raised by the assessee is challenging the disallowance of expenses of Rs. 25,56,653/- u/s 14A of the Act.

28.1. We have heard the rival submissions and perused the material available on record. The assessee has derived exempt income of Rs. 21,06,000/-. The Id AO show caused the assessee as to why the disallowance of expenditure was not to be made u/s 14A of the Act for the purpose of the earning aforesaid exempt income by the assessee. The assessee pleaded that it had not incurred any expenditure and there was no change in investments. The Id AO however, disregarded the aforesaid contentions and proceeded to make disallowance u/s 14A of the Act read with Rule 8D(2) of the Income Tax Rules applying 2nd and 3rd limb thereon and made disallowance of Rs. 86,52,12,831/-. The Id CIT(A) observed that the Id AO had also considered investment in bonds averaging to Rs. 1407.50 which had fetched interest income of Rs. 137.01 crores which is taxable interest income in the hands of the assessee. Accordingly, the Id CIT(A) directed the Id AO to exclude Rs. 1407.50 crores while computing the

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average value of investments and recompute the disallowance thereon which worked out to Rs. 25,56,653/-. Against this action of the Id CIT(A), both assessee as well as revenue are in appeal before us. The law is very well settled by the decision of the *Hon'ble Supreme Court in case of Maxopp Investments Ltd Vs. CIT 402 ITR 640 (SC)* wherein, it has been held that the disallowance cannot be exceed exempt income. Since, the exempt income is only Rs. 21,06,000/-, the disallowance of expenditure cannot exceed the same. We direct the Id AO accordingly. Accordingly, ground No. 7 is partly allowed.

29. Ground No. 9 raised by the assessee is challenging the addition of Rs. 2.15 crores on account of accrued interest receivables on account of advance paid on property tax to MCD.

29.1. We have heard the rival submissions and perused the material available on record. The Id AO observed that there is dispute between MCD and assessee company in respect of charging of property tax on a property admeasuring 17.6 acres developed by the assessee at Andrews Ganj, New Delhi on behalf of Govt. of India in terms of purported lease deed executed between Land Development Officer (LDO), Ministry of Urban Development and HUDCO dated 04.07.1997. MCD raised various bills for levy of property tax from the date of possession and the reply by the LDO to MCD was that the said land was allotted to the assessee for development of community centre on behalf of the Government and, therefore, no property tax should have been levied thereon. A. writ petition was filed by the assessee before the Hon'ble Delhi High Court which was decided against the assessee, after which the assessee had filed a Special Leave Petition (SLP) before the

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Hon'ble Supreme Court. While considering the SLP, the Hon'ble Supreme Court, vide interim order dated 21.02.2000 directed the assessee to deposit 50% of the disputed amount with the MCD with a rider that in case the assessee succeeds in the SLP finally, the amount paid by it shall be refunded by MCD with the interest @ 12%. Finally, the Hon'ble Supreme Court vide order dated 13.12.2000 decided that the assessee was not liable to pay property tax on the said Andrews Ganj project and gave a specific direction to MCD to repay the amount of deposit along with 12% interest thereon. In pursuance to the same, the assessee received refund of an amount of Rs. 11,45,69,541/- on 06.10.2005. This amount was taxed in the hands of assessee for the AY 2005-06. This addition has been confirmed by the CIT(A) in his appellate order for AY 2005-06. Since, the assessee was not showing any such interest income on the deposit of advance property tax given to MCD, in the course of assessment proceedings, the AR was requested to furnish the details of year breakup of interest income receivable from MCD on account of refund of disputed property tax till the year under consideration and was also required to explain as to why such accrued income should not be added to the total income. The main issue involved herein is whether the interest is taxable in assessee's hands or in the hands of Delhi Development Authority (DDA). The Id AO observed that the interest income had accrued to the assessee and hence, the assessee had to suffer taxation on the interest income and made an addition of Rs. 2.15 crores in the hands of the assessee. Before the Id CIT(A), the assessee furnished the details of deposits made with MCD in terms of directions of Hon'ble Supreme Court as under:-

<u>Date of Release</u>	<u>Amount (In Rs.)</u>
21/05/1999	3,00,00,000.00

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11/10/1999	4,00,00,000.00
12/11/1999	4,00,00,000.00
31/03/2000	6,98,40,809.00
Total	17,98,40,809.00

29.2. The Id CIT(A) held that the assessee is a agency of the Govt of India and was held not liable to pay property tax in respect of community centre developed by the Govt and therefore, the interest recoverable from the property tax from the MCD becomes the assessee's income. The Id CIT(A) observed that land on which the project was developed was transferred in the name of the assessee by the Govt and exemption from property tax was given by Hon'ble Supreme Court on the ground that such project was for the Govt. Accordingly, he upheld the action of the Id AO.

29.3. Before us, the Id AR stated that in AY 2006-07 the very same addition was deleted by the Id CIT(A) and the revenue did not prefer any appeal before this Tribunal. Having accepted this situation in AY 2006-07 the revenue cannot have any grievance on the same issue in the year under consideration. Applying the principles of consistency as decided by the *Hon'ble Supreme Court in the case of PCIT Vs. Maruti Suzuki India Ltd reported in 416 ITR 613 (SC)*, we hold that the interest income cannot be brought to tax in the sum of Rs. 2.15 cores in the hands of the assessee. Accordingly, ground No. 9 raised by the assessee is allowed.

30. In the result, the appeal of the assessee in ITA No. 3262/Del/20115 for AY 2011-12 is partly allowed for statistical purposes.

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ITA No. 3905/Del/2015 for AY 2011-12 (Revenue's appeal)

31. The appeal in ITA No. 3905/Del/2015 for AY 2011-12, arises out of the order of the Commissioner of Income Tax (Appeals)-4, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 367/13-14/CIT(A)-4 dated 26.03.2015 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 11.02.2014 by the Assessing Officer, Addl CIT, Range-12, New Delhi (hereinafter referred to as 'Id. AO').

32. The only issue to be decided in the appeal of the revenue is challenging the deletion of disallowance of expenses u/s 14A of the Act read with Rule 8D of the Rules, with regard to investment in bonds.

33. We have heard the rival submissions and perused the material available on record. We find that the Id CIT(A) had directed the Id AO to consider only those investments which yielded exempt income while computing the disallowance in terms of Rule 8D(2) of the Income Tax Rules, 1962. Admittedly the investment in bonds made by the assessee had yielded interest income to the assessee which is taxable receipt. Hence, the provisions of section 14A per se cannot be made applicable for the same. The error committed by the Id AO in this regard has been duly rectified by the Id CIT(A) in his order. Hence, we do not find any infirmity in the order of the Id CIT(A). Accordingly, the ground raised by the revenue is dismissed.

34. In the result, the appeal of the revenue in ITA No. 3905/Del/2015 is dismissed.

35. To sum up

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ITA No.	Appeal by	AY	Result
3261/Del/2015	Assessee	2010-11	Partly allowed for statistical purposes.
3904/Del/2015	Revenue	2010-11	Dismissed
3262/Del/2015	Assessee	2011-12	Partly allowed for statistical purposes
3905/Del/2015	Revenue	2011-12	Dismissed
7625/Del/2018	Assessee	2004-05	Partly allowed for statistical purposes

Order pronounced in the open court on 04/11/2024.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 04/11/2024
 A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR: ITAT

ASSISTANT REGISTRAR
 ITAT, New Delhi