

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" NEW DELHI

BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER  
AND  
SHRI C.M. GARG : JUDICIAL MEMBER

ITA no. 50/Del/2014

Asstt. Yrs: 2010-11

Dy. CIT, Circle 14(1),  
New Delhi.

Vs. PEC Ltd.,  
Hansalaya, 9<sup>th</sup> Floor,  
New Delhi-110001.

( Appellant )

(Respondent)

Appellant by : Ms. Rakhi Bimal Sr. DR  
Assessee by : Shri Sanjay Agrawal CA

Date of hearing : 11/05/2016.

Date of order : 13/05/2016.

**ORDER**

**PER S.V. MEHROTRA, A.M:**

This is revenue's appeal, assailing the order dated 28.10.2013 of the  
ld. CIT(A)-XVII, New Delhi in appeal no. 100/ 12-13 relating to AY 2010-  
11.

2. Sole effective ground raised in this appeal is as under:

“On the facts & in the circumstances of the case the Ld. CIT(A)  
has erred in deleting the addition amounting to Rs.  
1,38,92,020/- made under the head of ‘post retirement benefits’  
ignoring the fact that the Revenue is in Hon’ble ITAT in the  
previous year on the same issue..”

3. Brief facts, relating to the issue in question, are that during the year under consideration the assessee had debited an amount of 1,38,92,020/- in its P&L a/c under the head Post Retirement Medical Benefits. The AO required the assessee to explain as to how this liability was paid. In response, the AR of the assessee, on 15.1.2013, submitted written reply, inter alia, as under:

*“Post Retirement Benefits :-*

*The company is a public sector undertaking under the Ministry of Commerce & Industry. The company has a Post Retirement Medi~al Benefits Scheme (PRMB) for its employees, in accordance with the guidelines issued by Department of Public Enterprises. Ministry of Heavy Industries & Public Enterprises. During the financial year 2009-10 PEC has debited Rs.2,66,96,841/- to profit and loss account Rs.1,28,04,821/- is by way of actual payments and Rs.1,38,92,020/- is provided for liability of Post Retirement Medical Benefit.*

*As per Notes to Accounts, it has been stated in Para 4.2 that "Other liabilities under the head current liabilities includes -*

	<u>31-03-2010</u>	<u>31-03-2009</u>
<i>Post Retirement Medical Benefit</i>	<i>11,49,50,012</i>	<i>10,10,57,992</i>

*Thus the liability for PRMB has increased by Rs.1.38.92.020/- for the year. The increase in liability is calculated as the difference in liability based on actuarial valuation as at the end of the respective financial years.*

*The company has been charging the expenses for the year and liability for PRMB on accrual basis in the books of accounts. The provision of liability on the basis of actuarial valuation 'is in accordance with section 211(3A) of the Companies Act, 1956 which requires that "Every profit and loss account and balance*

*sheet of the company shall comply with the Accounting Standards".*

*Further, section 211(3C) of the Companies Act, 1956 states that "for the purpose of this section, the expression "Accounting Standards" means standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949) as may be prescribed by the Central Government in consultation with National Accounting Committee on Accounting Standards established under sub-section 1 of section 210A.*

*The companies are also required to keep their accounting books by following accrual system of accounting as prescribed under section 209(3) of the Companies Act. 1956.*

*The Institute of Chartered Accountants of India (ICAI) had issued Accounting Standard 15 (AS-IS) titled as "Employee Benefits". Amongst other retirement benefits, the standard provide for making provisions in respect of Gratuity. Leave Encashment and Post Retirement Health and Welfare Schemes.*

*It is also stated in the Para 2 of the AS-IS as under:-*

*"This statement does not apply to those retirement benefits for which employer's obligations cannot be reasonably estimated e.g. adhoc ex- gratia, payment made to employees on retirement."*

*From the above it is apparent that to give a true and fair view of the statement of affairs of the company, the has to maintain the account on accrual basis as well as to follow Accounting Standards including AS-IS pursuant to which, we had debited Rs.1,38,92,020/-based on actuarial valuation.*

*We may further submit as under:-*

- i) *The liability is made in accordance with Accounting Standards, statutorily required to be followed to keep the account on accrual basis as prescribed by the Companies Act. 1956.*
- ii) *The liability has been accounted based upon a certificate issued by the Actuary, who is a specialised authority to evaluate such liabilities. Accordingly the same is determined with reasonable accuracy. It will be appreciated that liabilities in respect of provisions for Leave Encashment and Gratuity have been held to be an allowable deduction if the same are scientifically valued by the Actuary as held in the case of Metal Box Company of the India limited Vs. Their workmen (73-ITR-53) in respect of Gratuity and Bharat Earth Movers Ltd. Vs CIT (245-ITR-428) in respect of provision for Leave Encashment.*

*Department has allowed the liability in ,respect of (Gratuity and Leave encashment based on actuarial valuation.*

- (iii) *The liability is incurred and accounted in respect of the business of the assessee company.*

*The liability created by the is in respect of employees who are either in service or have retired from the service. Since the services are rendered by the employees during the period of their active employment with the employer, the future cost, post retirement, is expected to be evenly charged on scientific method to the current period so that the profits are determined for taxation purposes. If such a liability is not accounted and provided for a future year would be saddled with huge expenditure in respect of the service of the employees which were rendered during active employment i.e. pre-retirement.*

*The expenditure on PRIMS has been allowed in past by the Commissioner of Income Tax (Appeals) to the assessee company in the Assessment Year 2008- 09.”*

4. The AO rejected the assessee's claim, observing, inter alia, in para 4.5 as under:

*“4.5 In earlier years, on account of additions made by the Assessing Officers, relief was allowed by the CIT(A). Revenue has challenged the findings of CIT(A), before the Hon'ble ITAT. As such to hold the validity of issue, the expense on account of provisions for post retirement benefits is not allowed as an eligible expense. In view of the above, amount of Rs. 13892020/- debited to the profit and loss account is not allowed and is hereby disallowed while computing total income of the assessee company.”*

5. In appeal, the Id. CIT(A) allowed the assessee's claim by observing as under:

*“6.3. On the same issue the AO in the previous year had also disallowed the claim of the appellant. The Ld. CIT(A) had allowed the claim stating as under:*

*“The main issue to be decided in this appeal is whether the provision of Rs.1,15,45,360/- is an ascertained liability or contingent liability. "Since the appellant had already filed a copy of actuarial valuation as on 31.03.2008 before the AO on 24.12.2010, the AO's stand that this is not an ascertained liability is not correct. The Supreme Court decision mentioned above in the case of M/s Bharat Earthmovers is clearly applicable to the facts of this case, while the case laws mentioned by the AO are clearly distinguishable. It was also pointed out by the appellant's AR in his letter dated 15.09.2011 that the AO had allowed in this assessment year itself similar liabilities based on*

*actuarial valuation on gratuity and leave encashment provisions: Further it was pointed out that on the principle of consistency this provision needs to be allowed as similar provision for post retirement medical benefits was allowed in scrutiny assessments for A.Y. 2006-07 and 2007-08. Therefore, this provision of Rs.1,15,45,360/- towards post retirement medical benefits is also an allowable deduction u/s 37(1) of the I.T. Act, 1961 and hence is allowed and thus the ground No.2 is fully allowed.”*

*6.4. I am of the view that the appellant has correctly claimed the amount of Rs. 1,38,92,020/- as an expense. The liability is an ascertained liability and therefore allowable. The addition of Rs. 1,38,92,020/- is deleted.”*

6. We have heard rival submissions and perused the record. We find that the ITAT Delhi Bench “F” vide its order dated 10.5.2016 rendered in ITA no. 5523/Del/2011 has allowed the assessee’s claim, by upholding the CIT(A)’s order, on the issue in question for AY 2008-09, observing as under:

*“3. After hearing both the parties, keeping in view the decision of Hon’ble Supreme Court in the case of Bharat Earthmovers and the provision being made on actuarial valuation, we do not find any reason to interfere in the finding of ld. CIT(A) on the issue in question and uphold the same. In the result, revenue’s appeal is dismissed.”*

7. Facts of the case for the assessment year in question remaining the same, respectfully following the Tribunal’s order in assessee’s own case for AY 2008-09, we do not find any reason to interfere in the finding of ld.

CIT(A) on the issue in question and uphold the same. In the result, revenue's appeal is dismissed

8. In the result revenue's appeal is dismissed.

Order pronouncement in open court on 13/05/2016.

Sd/-  
(C.M. GARG)  
JUDICIAL MEMBER  
Dated: 13/05/2016.

Sd/-  
(S.V. MEHROTRA)  
ACCOUNTANT MEMBER

**\*MP\***

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.