

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**

**BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM**

**ITA No.4589 & 4656/Mum/2004**

(A.Y:1998-99 & 1999-2000)

ICICI Bank Ltd, (erstwhile ICICI Ltd.), ICICI Bank Towers, Bandra Kurla Complex, Bandra (East), Mumbai -51 <b>PAN: AAAC T 1398K</b>	Vs.	D.C.I.T, Range 3 (1), Aayakar Bhavan, Mumbai-20
<b>Appellant</b>	..	<b>Respondent</b>

**ITA No.4824 & 4825/Mum/2004**

(A.Y:1998-99 & 1999-2000)

D.C.I.T, Range 3 (1), Aayakar Bhavan, Mumbai-20	Vs.	ICICI Bank Ltd, (erstwhile ICICI Ltd.), ICICI Bank Towers, Bandra Kurla Complex, Bandra (East), Mumbai -51. <b>PAN: AAAC T 1398K</b>
<b>Appellant</b>	..	<b>Respondent</b>

<b>Assessee by</b>	..	<b>Ms.Arati Visanji, AR</b>
<b>Revenue by</b>	..	<b>Shri A. K. Srivastava, CIT DR</b>

<b>Date of hearing</b>	..	<b>06-09-2016</b>
<b>Date of pronouncement</b>	..	<b>06-09-2016</b>

**ORDER**

**PER MAHAVIR SINGH, JM:**

Out of these cross appeals, the assessee's appeal in ITA No.4589/Mum/2004 and the Revenue's appeal in ITA No.4824/Mum/2004, are arising out of the common order of the CIT (Appeals)-XII, Mumbai dated 26-03-2004 for assessment year 1998-99 passed in Appeal No.CIT (A)XII/AC.3(1)/IT17/00-01. The assessee's appeal in ITA No.4656/Mum/2004 and the Revenue's appeal in ITA No. 4825/Mum/2004 are arising out of the common order of the CIT (Appeals)-XII, Mumbai passed in Appeal No. CIT (A) XII/AC.3 (1)/IT-13/01-02 both dated 24-03-2004 for the assessment year 1999-2000 respectively.

2. The first common issue in these two appeals of the assessee in ITA No.4589/Mum/2004 for assessment year 1998-99 and ITA No.4656/Mum/2004 for assessment year 1999-2000 and these two appeals of the Revenue in ITA No.4824/Mum/2004 for assessment year 1998-99 and ITA No.4825/Mum/2004 for assessment year 1999-2000 is as regards to the claim of deduction of write off of investments. For this issue, in both the appeals of the assessee and the Revenue, the facts and circumstances are exactly identical as admitted by both the sides. Hence, we take up the ground No.2 of assessee's appeal for assessment year 1998-99. The relevant ground No.2 reads as under:-

*“[2] On the facts and circumstances of the case and in law, the CIT (A) erred in not assessing Rs.63,44,04,198/- as long term capital in respect of write-off of shares and debentures made in certain companies”.*

Similarly, the ground No. 4 from Revenue's appeal reads as under:-

*“4. On the facts and circumstances of the case and in law, the learned CIT (A) erred in holding that the write off of investment on conversion of loan arrears amounting to Rs.12,09,03,673/- can be allowed as business loss.”*

3. At the outset, the learned Counsel for the assessee stated that an identical issue has been decided by the Tribunal in favour of the assessee in assessee's own case in ITA No.5424/Mum/2001 wherein vide Para 7.2 and 7.3 of the order dated 13-07-20016.

4. We find that the AO noticed from the accounts of the assessee that profit on sale of investments was arrived at after providing for write off of investments of Rs.75,53,07,871/- and this was claimed as deduction in the computation of filed along with the return of income on account of diminution in the value consequent to write off of investments. The CIT (A) partly allowed the claim of the assessee by observing in Para 6.3 of his Order as under:-

*“6.3 I have carefully considered the facts of the case and the submissions made before me. I find that in the instant case, the AO for the detailed reasons given by him was fully justified in rejecting the claim. However, in so far as the write-off of investments on conversion of loan arrears amounting to Rs.12,09,03,673/- is concerned, the same can be allowed as business loss in view of the decision of Hon'ble ITAT in the Appellant's own case for A. Y. 1981-82 decided in ITA Nos. 6038*

*to 6040/Mum/95. The Appellant thus succeeds in ground no.12 while the other grounds are decided against the Appellant”.*

5. We find that the AO disallowed the claim of business loss of 12,09,03,673/- on the basis that the same can be allowed as instrument in the nature of investments but not as loan. We also find that the CIT (A) confirmed the disallowance following earlier years decision of the Tribunal in assessee's own case for assessment year 1981-82 and 1982-83. She admitted that write off of investment claimed as capital loss is covered against the assessee in earlier assessment year , but business loss as allowed by the CIT (A) on account of investment on conversion of loan arrears is allowable i.e. assessment year 1997-98 wherein the Tribunal vide Para 7.2 and 7.3 has dealt the issue as under:-

*“7.2. We have gone through the facts of this case and order of the Tribunal of earlier years. It was fairly submitted by the ld. Counsel, write-off of the investment claimed as capital loss is covered against the assessee in earlier assessment years. Therefore, following the orders of earlier years, this issue is decided against the assessee and the AO is directed to follow the orders of the Tribunal for earlier years.*

*7.3 It is noted that out of the total write off, a sum of Rs.10,47,95,551, is on account of write-off of the loan which has been alternatively claimed to be business loss. It is noted that the Tribunal in assessee's own case for A. Y. 1982-83 allowed it as business loss. No distinction has been brought in facts or legal position by Ld. CIT-DR. Therefore, respectfully following the orders of earlier years, the A O is directed to follow the orders of the earlier years and allow a sum of Rs.10,47,95,551 as business loss and the balance amount on account of write-off of investment as capital loss should be disallowed, as held above also. Thus, assessee gets part relief. This ground is partly allowed.*

Respectfully following the decision of the Coordinate Bench of the Tribunal in assessee's own case as above, we direct the AO to partly allow relief as above. This common issue of assessee's appeal is dismissed and that of the Revenue is also dismissed.

6. The next common issue in these two appeals of the assessee and two of Revenue is as regards to the order of the CIT (A) partly confirming the interest expenses of Rs.150,39,30,857/- incurred for earning interest free income from bonds instead of Rs.5,04,68,381/- being only direct expenses thereby allowing

only part expenses u/s 10(23G) of the Act. For this, the assessee has raised following grounds No.3 and 4:-

*“[3] On the facts and circumstances of the case and in law, the CIT (A) erred in partly confirming the interest expenses at Rs.1,50,39,30,857 incurred for earning interest on tax free bonds instead of Rs.5,04,68,381 being only direct expenses viz. interest on borrowings made for infrastructure financing and thereby allowing only part exemption under section 10(23G).*

*[4] The CIT (A) also erred in not specifically dealing with the ground regarding guarantee commission excluded by the assessing officer while considering income exempt under section 10(23G) of the Act”.*

The Revenue has raised following ground No.5:-

*“5(a). On the facts and circumstances of the case and in law, the learned CIT (A) erred in holding that computation made by the Assessing Officer in respect of exemption u/s. 10(23G) has to be modified.*

*5(b). On the facts and circumstances of the case and in law, the learned CIT (A) failed to appreciate that interest and other expenditure relatable to earning of infrastructure income was correctly computed in the assessment order.*

*5(c). On the facts and circumstances of the case and in law, the learned CIT (A) erred in devising a formula without appreciating that the same will not give the correct figure of interest and other expenses, attributable to earning of such income.”*

7. Both the parties admitted that the facts and circumstances are exactly identical in assessment year 1999-2000 also. Hence, we will take up the issue from assessment year 1998-1999 and decide the same. Before us, the learned Counsel for the assessee stated that identical issue was decided in assessment year 1997-98 in ITA No.5424/Mum/2001 wherein the Tribunal has set aside the issue to the file of the AO vide Para 8.3 and 8.4 by observing as under:-

*“8.3 We have gone through the facts of this case and find that the order passed by the Ld. CIT (A) is not a speaking order on various aspects of computation of income on net basis as were raised by the assessee in its statement of facts filed before the Ld. CIT(A). Before us, the assessee has submitted detailed working sheet so as to calculate correctly, the amount of net income available for exemption u/s 10(23G). For the sake of ready reference, the said work sheet submitted by the ld. Counsel is reproduced below:*

		(Amount in Crores)	
		Rs.	
<i>Ratio of borrowed funds to total funds:</i>			
<i>Share capital</i>			550.53
			<u>3,900.21</u>
<i>Reserves and surplus</i>	<i>I</i>	4,450.74	
		<u>29,393.86</u>	
<i>Interest bearing funds:</i>			
	(I + II)	3,844.59	
<i>Ratio of borrowed funds to total funds (29,393.86/33844.59*100) 86.85%</i>			
2. <i>Ratio of allocable expenses</i>			
		4,439.67	
		56.38%	
3. <i>Calculation of income exempt u/s 10(23G)</i>			
	A		1,371,052.701
<i>Proportion of income out of borrowed funds</i>			
	B		1,190,752.329
<i>(137,10,52,701*86.85%)</i>			
<i>Less: Expenses allowable (proportionate)</i>			
	C		671,303.899
			1,190,752,329*56.38%
<i>Net income exempt u/s. 10(23G) related to</i>			
	D (B-C)		519,448.430
<i>Borrowed bunds</i>			
<i>Add: Gross income exempt u/s.10 (23G)</i>			
	E(A-B)		180,300.372
<i>Relating to owned fund</i>			
			(137,10,52,710 – 119,07,329)
	D+E		699,748,802
<i>Net income exempt u/s 10(23G)</i>			
<i>Less: Administrative expenses @1% of</i>			
			13,710,527
			income received u/s 10(23G)
			<u>686,038.275</u>
			<i>Net income exempt u/s 10(23G)</i>

8.4 These facts have not been analysed by either of the lower authorities. In principle, we agree with the contention of the ld. Counsel that only those expenses which are relatable to earning of the exempt income can be deducted for computing net income available for exemption u/s 10(23G). Under these circumstances, we send this issue back to the file of the Assessing Officer, who shall decide this issue afresh after giving adequate opportunity of hearing to the assessee to submit requisite details and documents in support of claim made by the assessee. The assessee shall also extend requisite cooperation to the Assessing Officer. The Assessing Officer shall consider aforesaid circular of the Board as well as judgments relied upon by both the parties before us. The assessee is also free to place on record any other judgment in its support as may be available at the time of passing of fresh assessment order. The assessee is free to raise all legal and factual issues in this regard. The Assessing Officer is also at liberty to taken into account latest position of law as may be available at the time of deciding this issue afresh. The Assessing Officer shall

*consider all the submissions and evidences as may be placed by the assessee on objective basis and shall decide all the issues as may be raised by the assessee before him. Thus, this issue is sent back to the Assessing Officer with our direction as given above and these grounds may be treated as partially allowed for statistical purposes”.*

According to the learned Counsel for the assessee, the AO has disallowed exemption u/s 10(23G) of the Act on account of receipts of financing to infrastructure sector and not the gross receipt. The assessee filed revised computation during assessment claiming exemption of entire amount of gross receipt of Rs.259,55,82,797/-. The AO allowed the claim of exemption at Rs.49,42,75,309/- relating to income computed on account of infrastructure sector eligible for claim of deduction u/s 10(23G) of the Act. The CIT (A) further allowed relief partly modifying the order of the AO. Aggrieved, now the assessee as well as the Revenue, both are in appeal before the Tribunal.

8. Before us now, as narrated above, the assessee relied on the decision of the Coordinate Bench of the Tribunal for assessment year 1997-98 wherein no interest expense was disallowed by the assessee by claiming that it was the gross income to be allowed as exempt u/s 10(23G) of the Act. As in the earlier year, now, the assessee before us also filed alternative working of expenses, which was not before the lower authorities. Before us now, as per the working of the expenses, the same was not analyzed by the lower authorities. Hence, we remit the matter back to the file of the AO for fresh consideration. The only differential fact in the present case is that the assessee itself has disallowed direct expenses of Rs.504,68,381/- by way of interest expenses for earning of income u/s 10(23G) of the Act, which has been offered for disallowance. We also agree that only those expenses which are relatable to earning of exempt income can be claimed as deduction for computing net income u/s 10(23G) of the Act. In term of the above and in term of the direction of the Coordinate Bench of the Tribunal in assessment year 1997-98 in assessee's own case in ITA No.5424/Mum/2001, the AO will decide the issue. Accordingly, this issue of assessee's appeal in both the

years is allowed for statistical purposes. The issue of Revenue's appeal in both the years is dismissed.

9. The next common issue in these two appeals of the assessee is as regards to the order of the CIT (A) upholding the disallowance of depreciation claimed on assets leased during the year amounting to Rs.451,47,71,600/-. For this, the assessee has raised the following ground No.5:-

*“[5] On the facts and circumstances of the case and in law, the CIT (A) erred in upholding the disallowance of depreciation on all those assets which were purchased and leased during the previous year after excluding the principle component of lease rentals”.*

Both the parties admitted that the facts and circumstances are exactly identical in both the years and hence, the facts can be taken from assessment year 1997-98 and the issue can be decided.

10. We find that the Tribunal in assessment year 1997-98 in ITA No.5424/Mum/2001 vide order dated 13-07-2016 had restored the matter back to the file of the AO to decide the same in favour of the assessee following the order of the assessment year 1995-96 by observing in Para 9.2 as under:-

*“9.2 With the assistance of the parties, it is noted by us that in A.Ys. 1995-96 and 1996-97 this issue has already been decided by the Tribunal. In A.Y. 1995-96, the Tribunal decided this issue vide its order dated 15-09-2007 reported in 115 ITD 25 (Mum). It is further noticed by us that in A.Y.1996-97 in ITA No.4109/Mum/2001 vide order dt. September 9, 2015 the Tribunal decided this issue in favour of the assessee following the order for A. Y. 1995-96 and also following the order for A. Y. 1998-99. No distinction has been made before us in the facts or legal position with regard to the issue under consideration. Under these circumstances, we direct the AO to follow the orders of the Tribunal for earlier years and decide this ground accordingly in favour of the assessee, after verifying the requisites facts. This ground is accordingly allowed for statistical purposes”.*

11. We also find that the Tribunal in assessee's own case for assessment year 1995-96 i. e. in ICICI Bank Ltd. Vs JCIT, SR-28, Mumbai (2008) 115 ITD 25 (Mumbai) has directed the AO to allow depreciation on all items claimed by the

assessee. Respectfully following the said decision of the Tribunal in earlier year in assessee's own case, we direct the AO to allow the claim of the assessee after verifying the facts and figures. This issue of the assessee's appeal is thus allowed in both the years.

12. The next common issue in these two appeals of the assessee and of the Revenue is as regards to the order of the CIT (A) in partly confirming the disallowance of interest expenses of Rs.32,72,33,318/- and 1% of managerial and administrative expenses. For this, the assessee has raised the following ground No.6:-

*"[6] On the facts and circumstances of the case and in law, the CIT(A) erred in partly confirming the interest expenses at Rs.32,72,22,218 and managerial and administrative expenses @1% at Rs.54,24,285 instead of Rs. Nil as declared by the Appellant."*

The Revenue has raised following ground No.6:-

*"6(a). On the facts and circumstances of the case and in law, the CIT(A) erred in holding that the computation of exemption u/s. 10(33) of the I. T. Act made by the Assessing Officer deserves to be modified applying the formula as devised by him.*

*6(b). On the facts and circumstances of the case and in law, the CIT(A) failed to appreciate that the Assessing Officer had worked out the interest cost attributable to investment in shares in a correct and logical manner".*

13. Both the parties conceded that the facts and circumstances are exactly identical in both the years and hence, taking the facts from assessment year 1998-99, we are deciding the issue. We find that the assessee claimed exemption u/s 10(33) of the Act but the AO disallowed interest expenses and managerial & administrative expenses at Rs.180.51 lacs and Rs.70,43,373/- respectively and disallowed exemption u/s 10(33) of the Act as against the claim of the assessee of Rs.54,24,28,451/-. The CIT (A) partly confirmed the disallowance of interest expenses at Rs.32,72,22,218/- and managerial and administrative expenses at 1%. The assessee before us now claimed that no interest expenses to be allocated as the investment is made out of assessee's own funds. For this, the learned Counsel for the assessee relied upon the decision of the Hon'ble Bombay High Court in

the case of CIT Vs. HDFC Bank Ltd. 366 ITR 505 (Bom.) and also in the case of CIT Vs. Reliance Utilities & Power Ltd. 313 ITR 314 (Bom.). It was contended by the learned Counsel for the assessee that the entire interest expenses are to be allowed as expenses and no interest expenses to be allocated as the investment is made out of assessee's own funds. She referred to the Tribunal's decision in assessee's own case in assessment year 1997-98 in ITA No.5424/Mum/2001 wherein the issue is decided vide Para 10.3 by observing as under:-

*“10.3 It is noted that in earlier years, this issue has been decided in favour of the assessee, after considering the judgment of Hon'ble Bombay High Court in the case of Emerald Co. Ltd. (supra). It is noted that in assessment year 1995-96 (order dt. 09.09.2015), the Tribunal decided this issue after considering not only the judgment of Hon'ble Bombay High Court in the case of Emerald Co. Ltd. (supra) but after considering section 14A as well. Therefore, respectfully following the orders of earlier years, this ground is principally decided in favour of the assessee, subject to verification of facts of this year. Thus, A O is directed to follow the orders of earlier years and decide this ground after verification of facts of this year, and compute the deduction allowable to the assessee taking guidance from tribunal's orders of earlier years. This ground is treated as allowed for statistical purposes”.*

14. After hearing both the sides, we find that the AO while examining the assessee's own funds vis-à-vis investments in shares will follow the decision of the Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (supra) and Reliance Utilities & Power Ltd. (supra). In case, the investment is made out of assessee's funds, then, no interest expenses is to be allocated to the interest income. Accordingly, we set aside this issue to the file of the AO to verify the facts. This issue in both the appeals of the assessee is allowed for statistical purposes. The issue in Revenue's appeals is dismissed.

15. The next two issues in these two appeals of the assessee and that of Revenue are in regard to (i) deduction of share issue expenses and (ii) calculation for deduction u/s 36(1)(viii) of the Act. For this, the assessee has raised following grounds No.7 to 10:-

*“[7] The CIT(A) erred in confirming the disallowance of expenses incurred for issue of shares on the ground that they are capital in nature”.*

*[8] On the facts and circumstances of the case and in law, the CIT (A) erred in not accepting the working of special reserve in accordance with the method submitted by the Appellant in absence of a format/formula prescribed under section 36(1)(viii).*

*[9] The CIT (A) ought to have accepted the Appellant’s scientific method of calculation of special reserves as under:*

- a. That due to the nature of business carried on by the Appellant is a difficult to identify expenses attributable to long term finance and hence the working has been made by segregating items of finance and applying the ratio to derive profits from long term finance;*
- b. That expenses that are directly attributable to non-finance are allocated while working out profits from long term finance.*

*[10] The CIT (A) erred on the facts and circumstances of the case and in law, in not accepting the appellant’s without prejudice working by (a) treating commission and fees as fund based and (b) reducing bad debts pertaining to non-finance income”.*

The revenue has raised following ground No.7:-

*“7. On the facts and circumstances of the case and in law, the learned CIT (A) erred in holding that for the computation u/s. 36(1) (viii) of the I. T. Act, the Assessing Officer will also take into account the interest cost attributable to non-finance income, in addition to administrative overheads estimated by him at 10%”.*

16. At the outset, the learned Counsel for the assessee stated that she has instructions from the assessee not to press these two issues. On this, the Revenue has not objected. Accordingly, these two issues of assessee’s appeals are dismissed. Similar are the issue in assessee’s appeal for assessment year 1999-2000 in appeal No.4656/Mum/2004, hence, taking a consistence view these two issues in this year also dismissed.

17. As regards to Revenue’s appeals it was claimed that the CIT (A) directed the A O to take into account interest costs attributable to non-fiancé income in addition to administrative costs estimated at 10% while working out the computation u/s 36 (1) (viii) of the Act by following the order for assessment

year 1996-97. The learned Counsel for the assessee that this issue was in assessment year 2000-01 and the A O himself allowed the claim of the assessee. She referred to Para 12.7 of the assessment order and the relevant finding is as under:-

*“However, considering that the assessee incurred administrative cost, 10% of the non-fund-based income is treated as the expenditure incurred to earn such income. Certain income like interest on Government securities, as well as hire purchase operation do involves fund cost but they are not in the nature of finance business. For income from securities loans and advances, stock of hire, etc., the interest cost is allowed at 71% of such income. The assessee’s arguments mentioned in its submissions are not of any relevance to the matter of computation of the eligible deduction. In case of the assessee, the major cost is the interest cost which works out to about 80% of its total cost of operations”.*

When this was confronted to the learned CIT DR, he fairly conceded the position. In view of this, we confirm the order of the CIT (A) and this issue of Revenue’s appeal is dismissed.

18. The next issue in this appeal of the assessee in ITA No.4589/Mum/2004 for assessment year 1998-99 is as regards to prior period expenditure of ITC Classic Finance Ltd. amounting to Rs.5,45,30,000/- disallowed by AO and confirmed by CIT (A). For this, the assessee has raised following ground No.11:-

*“[11] On the facts and circumstances of the case and in law, the CIT (A) erred in confirming the disallowance of expenses amounting to Rs.5,45,30,000 pertaining to prior period expenditure of erstwhile ITC Classic Finance Limited.”*

19. Brief facts leading to the above issue are that ITC Classic Finance Ltd. got amalgamated with the assessee Company. According to the assessee, ITC was having prior period expenses of earlier years at Rs.5,45,30,000/-. The assessee claimed these as debit in the profit & loss account for achieving uniformity with the accounting policies of the assessee Company and consequently, recasting of accounts resulted in debit of Rs.7,55,30,000/- to the profit & loss account including this amount of Rs.5,45,30,000/-. The assessee explained that these expenses relates to earlier years but cannot be classified as prior period expenses because they arose in the current year on account of extra ordinary event of

merger of ITC into assessee and accounting policies were recasted to bring it in line with those followed by the assessee. The A O was not convinced for the reason that both the parties are following mercantile system of accounting and hence, he disallowed. The CIT (A) confirmed the action of the AO by observing in Para 13.3 as under:-

*“13.3 I have carefully considered the submissions made by the Appellant. The A O has rightly pointed out that when both the amalgamating and amalgamated companies were following the mercantile system of accounting and if it had been correctly followed as per the accounting in practice, there could not have been any scope for adjustment which could give rise to the said prior period expenses of Rs.5,45,30,000/-. I entirely agree with the view and I hold that these expenses cannot be allowed in the Appellant's case. The nature of expenses or their liability in the earlier year would have been dependent on the admissibility of expenses in the earlier years and therefore the fact that they have been allowed in the earlier year in the Appellant's own case for A. Y. 1996-97 and in earlier years would not justify the allowability of these expenses which related to the amalgamating company in the year under consideration in the hands of the Appellant. Ground no. 36, 37 and 38 are thus held against the Appellant.*

Aggrieved, the assessee is in appeal before the Tribunal.

20. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the assessee has claimed these expenses incurred in the extra ordinary event such as merger of ITC with the assessee and according to the assessee, these expenses cannot be classified as prior period expenses quo the assessee. The assessee explained that as a result of merger of books of accounts, these prior period expenses, which in fact, was the result of recast of accounts for achieving uniformity and these are not exactly prior period expenses, because they arose in current year on account of the event of the merger. We find that Revenue has not contested that any objection was raised before Hon'ble High Court before approving the scheme of merger of ITC with the assessee. Accordingly, we are of the view that the character of expenses became the expenses of the current year and are allowable. We allow this issue of assessee's appeal.

21. The next common issue in these two appeals of the assessee is as regards to charging of interest u/s 234B of the Act. The learned Counsel for the assessee as well as learned CIT DR fairly conceded that charging of interest u/s 234B of the Act in the present case is consequential in nature, hence, needs no adjudication. Accordingly, this common issue is infructuous and hence, dismissed.

22. The first common issue in these two appeals of the Revenue is as regards to the order of the CIT (A) deleting the disallowance of earlier years expenditure. For assessment year 1998-99, the deletion was to the extent of Rs.15,38,098/- and for assessment year 1999-2000 Rs.4,75,311/-. At the outset, the learned Counsel for the assessee as well as learned CIT DR conceded that the Tribunal in assessee's own case for assessment year 1996-97 and 1997-98 in ITA No.3782 & 5339/Mum/2001 order dated 28-10-2005 and 24-05-2006 has decided this issue in favour of the assessee, wherein exactly on identical facts vide Para 9 as under:-

*“9. Having heard both the parties we find that this issues stands covered in favour of the assessee by the aforesaid decisions of t he Tribunal for assessment year 1991-92, 1994-95 and 1996-97 passed in assessee's own case. The relevant para No.10 of the Tribunal order dt. 29.3.2004 reads as under:*

*“We find that it is an undisputed position that it is not a case of double deduction in as much as the deduction was not also allowed in the year to which according to the revenue, these expenses pertain. We also find that the revenue has not disputed assessee's claim about the accounting policies of booking the expenditure in the year in which liability is crystallized and paid, and not in the year to which strictly speaking, these expenses pertain. This practice, in any case has the approval of Hon'ble Gujarat High Court in the case of Saurashtra Cement Vs. CIT (213 ITR 523). No doubt the assessee is following mercantile method of accounting but as is the settled legal position, even the expenses, liability in respect of which has crystallized in the relevant previous year, have to be allowed as deduction. It was not the case of the revenue. Nor is t here any material to establish so, that the liability did not crystallize in the relevant previous year. The disallowance was based only on a mention in the tax audit report which at best indicated that the expenses pertain to the earlier years but this fact per se cannot be a reason enough for disallowance. Keeping all these factors in mind as also entirety of the case, we deem it fit and proper to*

*direct the Assessing Officer to delete the impugned disallowance of Rs.8,27,339/-. We order accordingly”.*

23. After hearing both the sides and going through the Tribunal's order in earlier year, we confirm the order of the CIT (A) deleting the disallowance. We order accordingly.

24. The next issue in Revenue's appeal in ITA No.4824/Mum/2004 for assessment year 1998-99 is as regards to the order of CIT (A) deleting the disallowance of expenditure u/s 40A (9) of the Act made by the AO.

25. At the outset, the learned Counsel for the assessee as well as the learned CIT DR conceded that the Tribunal in assessee's own case for assessment year 1996-97 and 1997-98 in ITA No.3782 & 5339/Mum/2001 order dated 28-10-2005 and 24-05-2006, wherein exactly on identical facts vide Para 18 has decided the issue in favour of the assessee as under:-

*“18. Having heard both the parties we find that for assessment year 1996-97 the Tribunal Mumbai Bench “D” vide its order dt. 28.10.2005 in ITA No.3782/M/01 (copy available at pages 30 to 33 of paper book) had restored the issue to the file of the Assessing Officer for deciding the issue afresh in accordance with law available at the relevant point of time. In line with the Tribunal's order for the assessment year 1996-97, we set aside the order of the Ld. CIT (A) on this issue and restore the matter to the file of the Assessing Officer with the direction to decide the issue afresh in the light of the Tribunal's directions for the assessment year 1996-97 This ground of the revenue is allowed for statistical purposes”.*

Respectfully following Tribunal's decision in earlier year, we exactly on same directions, restore the matter back to the file of the A O for fresh adjudication. This issue of Revenue's appeal is set aside.

26. The next common issue in Revenue's appeal in ITA No.4824/Mum/2004 for assessment year 1998-99 and in ITA No.4825/Mum/2004 for assessment year 1999-2000 is against the order of the CIT (A) deleting the disallowance of claim of the assessee of write back of non-cash.

27. At the outset, the learned Counsel for the assessee as well as the learned CIT DR conceded that the Tribunal in assessee's own case for assessment year 1996-97 and 1997-98 in ITA No.4109 & 5424/Mum/2001 order dated 09-09-2015 and 31-07-2016, wherein exactly on identical facts following assessee's own case for assessment year 1987-88 in ITA No.8958/Bom/90 decided the issue and the matter back to the file of the A O. The Tribunal in assessment year 1987-88 restored the matter back to the file of the A O by observing as under in Para 9 by following Hon'ble Supreme Court decision in the case of CIT Vs United Provinces Electric Supply Co. 110 Taxman 134 as under:-

*“We find that for the asst. year 1986-87 also similar issue came up before the CIT (A) and he had set aside the matter to the file of A O with similar direction. When the matter came before the Tribunal, the Tribunal vide its order in ITA No.1224/Bom/90, sustained the direction of the CIT (A). However, for the year under consideration, at the time of hearing before us, the learned counsel for the assessee made an additional argument that since the amount is not received by the assessee, it cannot be charged as profit u/s. 41. In support of this contention, she relied upon the decision of Hon'ble Apex Court in the case of United Provinces Electric Supply Co. (supra). However, as this claim was not made before the AO, he had not examined this aspect, i.e. whether the money is actually received by the assessee. As the matter has already been set aside by the CIT (A) back to the file of the AO, in our opinion, the assessee should raised this plea before the AO. We accordingly, while upholding the setting aside of this matter back to the file of AO, direct him to examine the assessee's claim in the light of the decision of Hon'ble Apex Court in the case of United Provinces Electric Supply Co. (supra). He will also allow opportunity of being heard to the assessee”.*

28. Respectfully following Tribunal's decision in earlier year, we exactly on same directions, restore the matter back to the file of the AO for fresh adjudication. This issue of Revenue's appeal is set aside.

29. The last common issue in these two appeals of the Revenue is as regards to the order of the CIT (A) deleting charging of interest u/s 234 B read with section 143(4) of the Act.

30. After hearing both the sides, we find that the CIT (A) has rightly observed that no interest is payable u/s 234 B of the Act on deemed tax payable u/s 143(4) of the Act. The CIT (A) in Para 15.2 observed as under:-

*“ 15.2 I have carefully considered the facts of the case and the submissions made before me. I find that the charge of interest u/s 234B is consequential and there was no discretion with the AO in levy of the same. The AO was fully justified in charging interest u/s 234B. However, in so far as the levy of interest on the deemed tax payable amounting to Rs.28,79,44,919/- as per section 143(4) is concerned, I find that the assessed tax for the purposes of Section 234B is clearly defined under the Act. This definition does not include the deemed tax payable as per Section 143(4). I find that such interest has been deleted in appeal for A. Y. 1996-97. Following the same, while the charging of interest u/s 234B is upheld and is subject to consequent relief in view of my findings above on various grounds, the AO is directed to exclude 234B levy in regard to the deemed tax payable u/s 143(4) of the Act. The Appellant succeeds in regard to 41 to 45”.*

We find no infirmity in the order of the CIT (A) and hence, this issue of Revenue's appeal is dismissed.

**31. In the result, assessee's appeals as well as Revenue's appeals, all are allowed partly for statistical purposes as indicated above.**

Order pronounced in the open court on 06-09-2016

Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Mumbai, Dated:06-09-2016

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Assistant Registrar  
ITAT, MUMBAI

Sr.No.	Particulars	Date	Initials	Member Concerned
1	Dictation given on	08/09/16		JM
2	Draft placed before author	08/09/16		
3	Draft proposed/placed before The second Member			
4	Draft discussed/approved by Second member			
5	Approved Draft comes to the Sr.PS			
6	Kept for pronouncement on			
7	File sent to the Bench Clerk			
8	Date on which file goes to the Head Clerk			
9	Date of dispatch of Order			