IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND
SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

ITA No. 3718/Del/2006
AY: 2003-04

ITA No. 3045/Del/2007
AY: 2004-05

ITA No. 2162/Del/2008
AY: 2005-06

ITA No. 3701/Del/2010
AY: 2006-07

ITA No. 3342/Del/2011
AY: 2007-08

ITA No. 1822/Del/2012
AY: 2008-09

ITA No. 1823/Del/2012
AY: 2008-09

Bharat Sanchar Nigam Ltd. Taxation Section, 1st floor Bharat Sanchar Bhavan Janpath New Delhi	vs.	ACIT, Range 2 New Delhi

ITA No.3440/Del/2006
AY: 2003-04

ITA No. 1901/Del/2012
AY: 2008-09

ITA No. 2176/Del/2008
AY: 2005-06

ITA No. 4275/Del/2010
AY: 2006-07

ITA No. 2879/Del/2010
AY: 2007-08

ACIT, Circle 2(1) New Delhi	vs.	Bharat Sanchar Nigam Ltd. New Delhi
(Appellant)		**(Respondent)**

Appellant by : Shri Tarandeep Singh, Adv.

Respondent by : Smt. Anuradha Misra, CIT, D.R.

ORDER

PER BENCH

All these appeals are directed against separate orders of the Ld.CIT(A). ITA 3718/Del/06, ITA 3045/Del/07, ITA 3304/Del/2010, ITA 2162/Del/08, ITA 3701/Del/10, ITA 3342/Del/11 and ITA 1822/Del/12, ITA 1823/Del/2012 are filed by the assessee for the A.Ys 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09 respectively.

1.1. The Cross Appeals have been filed for the A.Y. 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09.

1.2. As the issues arising in all these appeals are common and belong to the same assessee, for the sake of convenience they are heard together and disposed of by way of this common order.

2. Facts in brief:- The assessee is a Government Company and was incorporated on 15.09.2000 under the Companies Act, 1956. Prior to the incorporation of the assessee company, the telecommunication services were being provided by Government of India, Ministry of Communication through its two departments namely Department of Telecom Services ('DTS') and Department of Telecom Operations ('DTO'). The assessee company was incorporated pursuant to the policy of the Government of India (National Telecom Policy 1999) to hive off its business of providing telecom services and operate the same though a corporate entity. The assessee company was constituted as a wholly owned Government of India enterprise for taking over the business of providing telecommunication services from DTO and DTS. The assessee company started functioning w.e.f. 01.10.2000.

2.1. The Assessing Officer passed the assessment order by making a

number of additions and disallowances. The Ld.CIT(A) in his appellate order granted part relief to the assessee. Aggrieved with the order of the Ld.CIT(A), both the assessee as well as the revenue filed these appeals before us. As there are a number of issues that arise in these appeals, we dispose off the appeals issue wise for the sake of convenience.

3. We have heard Mr.Taran Deep Singh, Ld.Counsel for the assessee and Smt.Anuradha Mishra, Ld.CIT, D.R. on behalf of Revenue.

3.1. Paper books and detailed submissions were filed by the Ld.Counsel for the assessee. Issue wise charts and contentions were also filed. The Ld.D.R. also filed written submissions on some issues.

3.2. On a careful consideration of the facts and circumstances of the case and on perusal of papers on record and orders of the authorities below and case laws cited, as well as the arguments by both sides, we hold as follows. As already stated we dispose off this case issue wise.

4. Allowability of License Fee: We first take up the assessee's ground which is against the disallowance of license fees and spectrum charges by the A.O.

4.1. This issue arises in the assessee's appeal as ground no.2 for the A.Y. 2003-04 and as ground no.1 for the A.Y. 2005-06 to 2007-08, as ground no.4 for the A.Y. 2008-09. This issie also arises in the revenue's appeals.

4.2. The A.O. disallowed the amount on the ground that the expenditure incurred on license fee was not allowable u/s 37 of the Act. He noted that for the earlier years the Ld.CIT(A) allowed the claim of the assessee on the basis of an ITAT decision in the case of MTNL, but as the Revenue has not accepted this decision, the addition is being made. Alternatively he held that license fee and spectrum fee were statutory liabilities and had to be paid by the assessee without any option before the due date specified for such payment. He held that the amount cannot be allowed in view of S.43B of the Act, for the reason that, the amount of Rs.1,332.05 crores was paid

after the due date of filing of the return and as a difference of Rs.85.05 crores remained unpaid.

4.3. On appeal the First Appellate Authority held that as far as spectrum charges and national long distance license fee are concerned, there is a categorical qualification made by the auditors of the assessee company in their audited report, that the amount in question was not in line with the agreement and that the effect there of could not be determined and that such claim ;was made merely based on estimates without any specific scientific method adopted by the assessee and therefore in view of these facts and in the absence of such details, the claim of the assessee that the entire amount should be allowed as deduction cannot be accepted. He further held that the assessee company does not have specific details by which deviation of estimated license fee in respect of NLD could be determined with reference to the actual amount of license fee available and that it is not possible to determine the NLD revenues earned during the year, which forms part of the AGR. He restricted the disallowance to 15% of the total amount claimed under this head on adhoc basis. On the alternative ground of disallowance made by the AO u/s 43B of the Act, he followed the decision of Hon'ble Calcutta High Court in the case of CIT vs. Vares International Pvt. Ltd. 225 ITR 831 and held that, the license fee in question cannot be treated as tax, duty, cess or fees as has been envisaged u/s 43B of the Act and hence a disallowance cannot be made under this Section. Aggrieved with this order both the assessee as well as the Revenue have filed appeals.

4.4. After hearing rival contentions we find that the issue in question is no more res integra. The ITAT Mumbai "D" Bench in the case of Videsh Sanchar Nigam Ltd. vs. JCIT (2002) reported in 81 ITD 456 (Mumbai) vide order dt. 14th September, 2000 held as follows.

"Section 37(1) of the Income-tax Act, 1961 - Business -expenditure - Allowable as - Assessment year 1995-96 - Assessee, a Government-company, was incorporated in 1986 for entire management, control, operation and

maintenance of overseas communication service of Department of Telecommunications (DOT) – Nominal license fee and DOT levy paid by assessee were initially allowed as deduction in .assessment years 1988-89 to 1991-92 - In assessment years 1992-93 and 1993-94 CBDT opined that DOT levy was not revenue expenditure which assessee accepted and filed revised returns - From assessment year 1994-95, DOT levy was abolished and licence fee was substantially increased linking it to business done – Rs.282.60 crores paid by assessee as licence fee in assessment year under consideration and debited to profit and loss account was disallowed by Assessing Officer holding that it was nothing but -substitute of DOT levy in revised revenue sharing formula – Whether payment made by assessee, by whatever name called, was for making use of network owned by DOT and for services utilised for purpose of business and, hence, could never be considered as non-business expenditure -

Held, yes - Whether, therefore, DOT levy, irrespective of opinion of CBDT, was allowable and rightly allowed in assessment years 1988-89 to 1991-92 as business expenditure - Held, yes - Whether, similarly, licence fee was undisputedly paid for use of facilities provided by DOT and payment was inextricably bound up with very business of assessee and directly related to actual utilisation of network facilities and, therefore, licence fee paid by assessee was anallowable expenditure under section 37(1) - Held, yes

4.5. The above decision has been followed by Delhi F Bench of ITAT in the case of MTNL vs. JCIT in ITA No.377/Del/2001 for the A.Y. 1997-98 and in ITA Nos. 3448, 3449 and 3450/Del/2003 and 2919/Del/2004 for the AY 1998-99 to 2002-03 vide order dt. 3rd Feb., 2006.

4.6. Further the AO himself for the A.Y. 2004-05 did not make any disallowance of licence fee paid by following the opinion given by the Attorney General of India who had given an opinion in favour of the assessee.

4.7. The contentions of the Ld.D.R. that he amount of license fee is not ascertainable has been answered by the assessee by giving an affidavit

before this Bench, wherein it is stated that the amount paid to the government as license fee and debited by the BSNL in its Profit and Loss a/c has not been disputed till date and that the quantification by B.S.N.L. has been accepted by the government. When a particular amount of license fee is calculated and paid as a full and final payment by the assessee to the government and when the government has not disputed the same till date, the question of holding that the amount is not ascertainable at this length of timedoes not arise. As regards invoking the provisions of S.43B of the Act, we uphold the findings of the First Appellate Authority. The quantum of the license fee paid is neither tax, duty, cess or fees. The Ld.CIT(A) has rightly relied on the decision of Hon'ble Calcutta High Court in the case of CIT vs. Varas International Pvt.Ltd. reported in 225 ITR 831. The 'license fees' being a charge received by the government for parting with rights, is neither a tax, nor a duty, nor a fees, nor a cess within the meaning of S.43B of the Act. Hence this Sec.43B cannot be applied.

4.8. In view of the above discussion we allow the appeal of the assessee and dismiss the appeal of the Revenue on this issue. As we have held so, the alternative contentions raised by the assessee need not be adjudicated as it would be an academic exercise.

5. The next issue is with regarding to the addition made on account of license fee and spectrum charges while computing book profits u/s 115 JB of the Act.

5.1. This issue appears as : Ground no.8 for the A.Y. 2005-06, as Ground no.12 for the A.Y. 2007-08 in assesses appeals, and as ground no.7 for the AY 2003-04, ground no.8 in appeal for AY 2006-07 and ground no.5 for AY 2008-09 in revenue's appeals.

5.2. In view of our finding that the license fee and spectrum charges have to be allowed in full, we delete this adjustment made to the book profit u/s 115 JB of the Act to the extent sustained by the First Appellate Authority. In the result, consistent with the view taken on the issue of allowability of

license fee and spectrum charges, we allow the ground of the assessee and dismiss the ground of revenue.

6. The next issue is claim of depreciation. This issue arises in assessee's appeal : as ground no.5 for the AY 2003-04, as ground no.1 for the A.Y. 2004-05, as ground no.2 for the A.Y. 2005-06 and the A.Y. 2007-08 and as Ground no.3 for the A.Y. 2008-09.

6.1. During the year under consideration the assessee had claimed depreciation on the original written down value (WDV) as against the re-worked WDV consequent to the assessed figures. The Assessing Officer (A.O.) allowed the depreciation on the reworked WDV and disallowed part of the claim of depreciation of the assessee. On appeal, the First Appellate Authority held that the disallowance of depreciation is consequential, and therefore, if the actual amount is later confirmed, the relief in this regard would be automatically allowed to the assessee.

6.2. On hearing the rival submissions, we find that this issue is no more res integra. The issue stands settled in favour of BSNL by way of order dated May 9, 2013, passed by the Hon'ble Delhi High Court for AY 2001-02 reported in 355 ITR 188(Del) , wherein the following observations were made:

The Assessing Officer seems to have proceeded on an assumption that whereas the value of share capital, issued to the Government as part consideration for the transfer of business to the petitioner company, is limited only to the face value of the shares, the reserves represent a subsidy, grant or reimbursement for meeting the cost of assets transferred. We find no basis for such an assumption. We are hard pressed to imagine as to how free reserves and surpluses of a company can be considered anything but as part of shareholders funds.

The Assessing Officer erred in completely ignoring that reserves and surpluses of a company are a part of shareholders funds and the book value of equity share consists of not only the paid up capital but also the reserves and surpluses of the company. The format of the balance sheet as

prescribed under Schedule VI of the Companies Act, 1956 also clearly indicates that reserves and surpluses are a part of shareholders fund. The balance sheet of the petitioners company also reflects the reserves and surpluses as a part of shareholders' funds. The relevant portion of the balance sheet of the petitioner company as on 31.03.2001 is quoted below:-

"Shareholders' Funds	
Capital A	50,000,000
Preference Capital pending allotment	
(Refer Note 2.3 on T)	75,000,000
Reserves & Surplus B	339,079,523
Loan Funds	
Secured Loan C	5,100,000
Unsecured Loans D	107,983,258
Total	577,162,781

The scheme of hiving off the business of telecom services by Government of India to a corporate entity entailed incorporation of a wholly owned government company (i. e, the petitioner company) and the transfer of the business as a going concern along with all its assets and liabilities to the company. The net assets were transferred at book value, which was agreed to be at least Rs 63,000/- Crores and in consideration of this the petitioner company accepted a liability of Rs 7500 Crores and issued both equity and preference share capital of the face value of Rs 5000 Crores and Rs 7,500 Crores, respectively. The balancing figure was reflected as reserves which is an integral part of the shareholders funds. The Government of India has transferred the assets to the petitioner company at their book value i.e., the value at which the said assets are reflected in the books of DTS and DTO and the book value of the Government of India's holding in the petitioner company as shareholder and a creditor aggregates the book value of the assets transferred. The configuration of the capital structure of the petitioner has no impact on the value of the Government's holding in the petitioner company as reserves of a company are subsumed in the book value of its capital. We find no basis, at all, for the Assessing Officer to

surmise that reserves represent a subsidy, grant or reimbursement from which the cost of assets of the petitioner company are met and the whole consideration received by the Government of India for transfer of business is limited to the value of loans and the face value of the shares issued to the Government of India. A reserve represents the shareholders' fund and may be utilized in various ways including to declare dividends or for issuing bonus shares. There is no plausible reason to assume that the value of shareholders' holding in a company is limited to the face value of the issued and paid up sharecapital and the reserves represent a subsidy or a grant or a reimbursement by the shareholders from which directly or indirectly the cost of the assets in the hands of a company are met. We are thus of the view that the reasons as furnished by the Assessing Officer for reopening the assessments could not possibly give rise to any belief that income of the petitioner had escaped assessment and proceedings initiated on the basis of such reasons are liable to be quashed. "

The above decision of the Hon'ble High Court has been accepted by the Income Tax Department and no appeal has been preferred before the Hon'ble Supreme Court. The appellant therefore submitted that since the issue has attained finality, tax depreciation should be allowed to the appellant on the written down value of the assets as reported in the Income Tax return of the respective year. Thus this issue stands settled in favour of the assessee.

6.3. Respectfully following the above decision, the A.O. is directed to allow the depreciation as claimed by the assessee.

6.4. In the result these grounds of the assessee is allowed.

7. The next issue is with respect to the adjustment made on account of excess claim of depreciation, while computing book profits u/s 115 JB of the Act. This issue arises in the following grounds :

(a) in assessee's appeals ground no.10 for the A.Y. 2003-04, ground no.7 for the A.Y. 2004-05, ground no.9 for the A.Y. 2005-06, ground no.13 for the A.Y. 2007-08;

(b) in departmental appeals as ground no.9 for the A.Y. 2006-07, as ground no.3 for the A.Y. 2008-09.

7.1. After hearing rival contentions, in view of our decision in the ground against part disallowance of depreciation, the addition made to the book profits u/s 115 JB of the Act on the ground that there is excess claim of depreciation is hereby deleted. In the result we allow all the grounds of the assessee on this issue and dismiss the revenue's ground on this issue.

8. The next issue is the ground taken against the action of the AO adding an amount of Rs.720 crores to the income of the assessee on the ground that the loan granted by the Government of India to the assessee, is a revenue receipt. This issue arises as ground no.3 in assessee's appeal for the A.Y. 2003-04.

8.1. The assessee has received a loan in perpetuity from Govt. Of India. The loan sanction documents describes the same as "perpetual loan with no liability of repayment of principal and payment of interest". The assessee has shown this receipt in its balance sheet and Notes to accounts separately as "deferred government account".

8.2. The A.O. observes that the loan sanctioned letter does not specify the purposes for which the amount should be utilised and that the utilisation certificate from DOT was not filed by the assessee. The AO gave a finding that no evidence whatsoever was filed by the assessee to prove its contention that the amount so received was utilised for purchase of capital assets. He pointed out that the assessee has claimed depreciation on the actual cost of capital assets purchased, without reducing this amount of loan which proves that the amount is not for capital purposes. He concluded that the financial package received by the assessee for VPT programme were utilised for revenue items and thus includible in income.

8.3. On appeal the First Appellate Authority upheld the order of the AO. Further aggrieved the assessee is before us.

8.4. After hearing rival contentions, we find that the assessee has not demonstrated before us, that the amount in question, which is a perpetual loan with no liability for repayment of principal or interest, was in fact utilised for acquisition of capital assets. The purpose of the loan is to establish telephone services in rural areas. As no evidence is produced, we uphold the order of the revenue authorities on this issue. The contention of the assessee that the A.O. for the A.Y. 2011-12 has treated a similar amount as received on capital account does not persuade us to reverse the order of the Ld.CIT(A) for the reason that, the addition is based on the fact of non filing of the required evidences. Hence we dismiss this ground of the assessee i.e. ground no.3 for the A.Y. 2003-04.

9. The next ground is ground no.9 in appeal for the A.Y. 2003-04 which is an adjustment made by adding the above said loan granted by the Government of India while computing book profits u/s 115 JB of the Act. In our view no such adjustment can be made to the profits determined under Schedule VI of the Companies Act, as the item in question i.e. loan received from government is not that which is specified in Explanation II to S.115 JB of the Act. In our view reliance placed by the assessee on the judgement of Hon'ble Apex Court in the case of Apollo Tyres reported in 255 ITR 273 (S.C.) applies in this case. In the result ground no.9 of the assessee's appeal for the A.Y. 2003-04 is allowed.

10. The next issue is disallowance of interest on MTNL Bonds. This ground appears as ground no.5 in the departmental appeal for the A.Y. 2003-04. The addition was made by the A.O. by following the orders of his predecessors. The loan in question was raised by DOT through MTNL for capital outlay of Telecom resources. Telecom infrastructure built from the MTNL Bonds were transferred to BSNL at the time of take over and accordingly the loan liability was also taken over by the BSNL. This fact is clear from the MOU between BSNL and Govt. Of India. As the amount was

raised through MTNL, interest has been paid through them. The issue is whether such interest expenditure is allowable or not.

10.1. After hearing rival contentions, in view of the MOU between the BSNL and Govt. Of India, the genuineness of the expenditure cannot be doubted. The expenditure incurred is for the business of the assessee and hence the same was rightly directed to be allowed by the First Appellate Authority. In the result we uphold the order of the First Appellate Authority and dismiss this ground of the Revenue.

11 The next ground is on the issue of allowability of expenses on issue of MTNL bonds. This issue is ground no.6 in the Revenue's appeal for the A.Y. 2003-04.

11.1. After hearing rival contentions, in view of our findings that the interest on MTNL bonds have to be allowed, we uphold the findings of the First Appellate Authority that the expenditure incurred on issual of MTNL Bonds is for the purpose of business and hence has to be allowed. We uphold the order of the Ld.CIT(A) and dismiss this ground of Revenue.

12. The next issue is on the addition of Rs.435.38 lakhs made by the A.O. on the ground that the reversal of excess income booked in earlier years cannot be reversed this year. This issue appears as ground no.4 of the departmental appeal for the A.Y. 2003-04. The assessee had booked certain income in the earlier A.Ys and offered the same to tax. Due to certain reasons, such booking of income in the earlier years were considered to be excessive and the same was reversed during the year. The A.O. was of the view that each year is a self contained period and a credit entry made in the earlier year cannot be claimed as a deduction in the current A.Y. He held that the assessee had an option on filing a revised return for the earlier A.Y. and hence no deduction can be allowed in this A.Y. On appeal the Ld.First Appellate Authority gave a factual finding that it is not in dispute that this excess provision of income was not recoverable any more. He held that the assessee had no option but to write off the same in the accounts as not

recoverable and hence such losses are allowable expenditure and allowed the claim of the assessee. Aggrieved the Revenue is in appeal.

12.1. After hearing rival contentions, we are of the view that as the fact that the income in question is not recoverable and that i is written off is not in dispute. The Ld.CIT(A) was right in allowing the claim of deduction of reversal of income. Hence this ground of the Revenue is dismissed.

13. The next issue is regarding the adjustment made to book profits u/s 115 JB of the Act with respect to reversal of excess income booked. This ground is taken by the assessee in its appeals as ground no.8 for the A.Y. 2003-04, as ground no.5 for the A.Y. 2004-05, as ground no.7 for the A.Y. 2005-06 to 2006-07, as ground no.11 for A.Y. 2007-08 and as ground no.5 for the A.Y. 2008-09. The assessee has debited an amount of Rs.484,63,13,000 as provision for doubtful debts and bills. The amount was added back by the assessee in its computation of income, but no adjustment was made while computing book profits u/s 115 JB of the Act. The AO added the amount to the book profits computed u/s 115 JB of the Act.

13.1. On appeal the First Appellate Authority upheld the order of the A.O. on the ground that the amount was not an ascertained bad debt but was merely a provision based on estimate.

13.2. The Ld.Counsel for the assessee did not press this ground in view of the retrospective effect to the Income Tax Act. Hence this ground is dismissed as not pressed.

14. The next ground is against the disallowance made by the A.O. u/s 43B of the Act, on account of provision made for gratuity. This is ground no.4 and 4.1 in assessee's appeal for the A.Y. 2004-05.

14.1. After hearing rival contentions we find that in the tax audit report the auditors have categorically stated that the amount of Rs.42.16 lakhs was debited to the Profit & Loss a/c as a provision for expenses on gratuity account. The assessee had submitted before the revenue authorities that

there is no liability for gratuity payable by the assessee company and hence there is no question of providing for such expenses. The Ld.CIT(A) held that such submission does not have any sanctity, unless the same is verified. The Ld.CIT(A) refused to admit additional evidence produced by the assessee on the ground that the assessee failed to rectify the error found during the course of assessment. In our view the First Appellate Authority should have admitted the additional evidence and verified the claim of the assessee that there was an error in the tax audit report. When the assessee has not been put to notice about this particular disallowance, the question of the assessee replying to the allegation during the course of assessment proceedings does not arise. In the result this ground is set aside to the file of the AO for fresh adjudication.

15. The next ground is on disallowance of expenses on the ground that they are capital in nature. The tax auditor has reported that the assessee has debited expenses of an amount of Rs.113.26 crores as revenue expenditure when the same was incurred in the capital filed. The AO disallowed the same. Before the Ld.CIT(A), the assessee contended that the actual figure is Rs.11.32 lakhs and moved an application under Rule 46A. The same was rejected by the Ld.CIT(A). The Ld.CIT(A) rejected the contention of the assessee on the ground that the tax auditor has verified the figures and no contrary evidence is produced.

15.1. On consideration of the facts, we are of the considered opinion, that the Ld.CIT(A) should have admitted the additional evidence under Rule 46A, as the assessee was not put to notice of this disallowance to be made by the A.O. When the assessee has pointed out that in the tax audit report the actual figure is Rs.11.32 lakhs, it is not correct on the part of the Ld.CIT(A) to confirm the disallowance made by the A.O. of Rs.113.26 crores. In view of the above discussion, we set aside the matter to the file of the AO for fresh adjudication, in accordance with law, after considering the evidence to be produced by the assessee.

15.2. In the result this ground of the assessee is allowed for statistical purposes.

16. The next issue is on disallowance of Rs.15,17,400/-. The assessee's claim is that, this was expenditure incurred on partitions in the office premises and hence allowable as a deduction. The A.O. relied on the tax auditor's report and held that the expenditure is capital in nature.

16.1. The other issue in this ground is disallowance of Rs.2,56,00,981/-. The assessee's contention is that the same is added back suo moto by it in the computation of income and hence it is a double addition. Further the assessee disputes confirmation of addition of Rs.5,00,343/- by the Ld.CIT(A) on the ground that it is a capital expense.

16.2. We find that the First Appellate Authority has held that the expenditure incurred on partitions are in the capital field and cannot be allowed as revenue expenditure. The Ld.Counsel for the assessee has not seriously disputed this finding. Thus we find no infirmity in the disallowance of Rs.15,71,000/-. The assessee shall be eligible for depreciation on the same at the applicable rates. Similar is our decision on interest on capital assets of value less than Rs.5 lakhs as the Ld.Counsel for the assessee has not disputed the same. The disallowance to the extent amounting to Rs.5,00,343/- is confirmed.

17. The next issue is on disallowance of Rs.2,56,00,891/-: The assessee in our view should not have any grievance as the Ld.CIT(A) has directed the A.O. to verify the same and delete the addition in case it is a double addition.

17.1. The AO shall carry out the necessary verification. In the result this ground of the assessee is dismissed.

18. The next issue is the adhoc disallowance of expenditure incurred on gifts. This appears as ground no.5 in assessee's appeal for the A.Y. 2005-06.

18.1. The A.O. disallowed an amount of Rs.5.4 crores. The AO during the scrutiny proceedings noticed that an amount of Rs.27,06,17,634/- has been debited towards gifts. The entire amount was disallowed on the ground that it has not been expended wholly and exclusively for the purpose of business.

18.2. On appeal the First Appellate Authority upheld the disallowance on an adhoc basis to an extent of 20% of the total expenditure on the ground that the assessee has not furnished specific details regarding gifts. The Revenue has accepted the finding of the Ld.CIT(A) that the expenditure on gifts was business expenditure and that gifts can be given during the course of business promotion expenses. The Ld.CIT(A) has also recorded a finding of fact that the AO has not brought on record any fact or evidence to support his conclusion, that the expenditure was not for business purposes. These factual findings are not disputed.

18.3. Under these circumstances, we are unable to uphold the adhoc disallowance of 20% of the total expenditure by the Ld.CIT(A). The Ld.CIT(A) should have allowed the entire expenditure for the reason that he recorded that the assessee's accounts were subject to CAG audit, statutory audit, internal audit, tax audit etc. and that there was no adverse observation in any of these audits etc. As there is no justification for the Ld.CIT(A) to retain disallowance of 20%, we delete this disallowance and allow this ground of the assessee.

19. The next issue is with respect to write off of assets. This issue arises in assessee's appeal as ground no.4 for the A.Y. 2003-04, ground no.2 for the A.Y. 2004-05, ground no.3 for the A.Y. 2005-06. In the departmental appeals, this ground appears as ground no.1 for the A.Y. 2006-07, 2007-08 and as ground no.2 for the A.Y. 2008-09.

19.1. After considering rival submissions, and perusing the papers on record, we find that there is no dispute on the issue as to whether the amounts in question written off, could be disallowed or not. The assessee claims that it has suo motto disallowed these amounts and the

disallowances made by the A.O. results in double disallowance. The Ld.CIT(A) for the A.Y. 2003-04, 2004-05, 2005-06 directed the A.O. to verify as to whether it is a case of double disallowance and rectify the assessment. We find no infirmity in the order of the Ld.CIT(A).

19.2. In any event we direct the A.O. if he has not passed consequential orders, to verify the claims of the assessee and pass the necessary order. In the result these grounds of the assessee are set aside for statistical purposes.

19.3. Coming to the departmental grounds for the A.Y. 2006-07, 2007-08, the First Appellate Authority has given a finding that this is a case of double disallowance. The Ld.D.R could not demonstrate that such a factual finding of the Ld.CIT(A) was wrong. Thus these grounds of Revenue for the A.Y. 2006-07, 2007-08, 2008-09 are hereby dismissed.

19.4. For the A.Y. 2006-07 there is a ground on the issue of disallowance of administrative, operative and other expenses, to the extent of Rs.86,401/- under the head ' write off of losses other than bad debts' . Further the assessee is aggrieved with the Ld.CIT(A)'s order for not deleting the addition of Rs.1,82,21,726/- on account of foreign exchange fluctuation loss.

19.5. After considering rival submissions as far as the issue of disallowance of Rs.86,401/- is concerned, the disallowance is upheld as the Ld.A.R. was unable to furnish necessary details before the revenue authorities.

19.6. On the issue of disallowance loss on account of foreign exchange fluctuations, the First Appellate Authority has directed the A.O. to verify whether such loss in question is on revenue account or capital account and in case if it is found to be on revenue account, the disallowance was directed to be reduced to that extent. We find no infirmity in this order. In any event we set aside this issue to the file of AO for fresh adjudication in accordance with law. In the result this ground is allowed for statistical purposes.

20. The next issue is on disallowance u/s 14A of the Act r.w.Rule 8D. This ground is raised by the Revenue as ground no.4 in the appeal for the A.Y. 2008-09. Admittedly the assessee has no exempt income during the year. Hence no disallowance can be made u/s 14A of the act as held by the Hon'ble Delhi High Court in CIT vs. Holecim India reported in 272 CTR 282 and Cheminvest Ltd. in ITA 747/2014 judgement dated 2nd December,2015. In the result this ground of Revenue is dismissed.

21. The last issue is on disallowance made u/s 80IA of the Act for the A.Y. 2005-06 to the A.Y. 2008-09.

21.1. This Bench of the Tribunal in ITA 3304/Del/2010 and ITA 3386/Del/10 for the A.Y. 2004-05 in assessee's own case, vide order dt. 31st December, 2015 had adjudicated the issue in favour of the assessee. Consistent with the view taken therein, we direct the A.O. to allow the claim of the assessee.

21.2. Thus, respectfully following the decision of the Coordinate Bench, we allow this ground of the assessee for the A.Y. 2005-06 to the A.Y. 2008-09.

22. In the result the appeals of the assessee as well as the Revenue are allowed in part.

Order pronounced in the Open Court on 22nd January, 2016.

Sd/-	**Sd/-**
(DIVA SINGH)	**(J. SUDHAKAR REDDY)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: the 22nd January, 2016

- *Manga*

Copy of the Order forwarded to:

1. Appellant;
2.Respondent;
3.CIT;
4.CIT(A);
5.DR;
6.Guard File

By Order

Asst. Registrar