

**आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI  
BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.1570/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2010-11)

Alfa Distilleries Pvt. Ltd. Alfa House,5, Ground floor, Varma Chambers, Homji Street, Fort, Mumbai 400001	<b>बनाम/</b>  v.	ITO 2(1)(1), Mumbai
स्थायी लेखा सं./ PAN : AAACA5488K		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )
Assessee by:	Shri. K. Shivaram & Neelam Jadhav	
Revenue by :	Shri. Rajesh Kumar Yadav,DR	

सुनवाई की तारीख /**Date of Hearing** : **20.09.2017**

घोषणा की तारीख /**Date of Pronouncement** : **24.11.2017**

**आदेश / ORDER**

**PER RAMIT KOCHAR, Accountant Member**

This appeal, filed by the assessee, being ITA No. 1570/Mum/2015, is directed against the appellate order dated 22.12.2014 passed by learned Commissioner of Income Tax (Appeals)-4, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2010-11, appellate proceedings had arisen before learned CIT(A) from the assessment order dated 14.03.2013 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

**"I. Disallowance of interest of Rs.2,14,640/-**

1. The learned CIT(A) erred in confirming the disallowance of interest paid of Rs.2,14,640/ - being difference of bank interest of Rs.6,31,235/ - paid to Bharat Co - Op. Bank and interest received from sister concern of Rs.4,16,595/- without appreciating that the fund were

*advanced out of own funds, further the total funds were advanced in earlier financial years and not during the years, therefore disallowance made was not sustainable.*

2. *The learned CIT(A) erred in confirming the action of the A.O. for determining the rate of interest @ 24% instead of rate @ 18 % has been paid by the assessee to the Bharat Co-Op Bank. Hence, the observation of A.O confirmed by the CIT(A) was not correct.*

**II. License fee of Rs.22,96,200/-**

3. *The learned CIT(A) erred in confirming the disallowance of license fees of Rs.22,96,200/ - by misinterpreting the letter dated 30-1-2013, without considering the submission of assessee.*

4. *The learned CIT(A) erred in disallowing the amount of Rs. 22,96,200/ - as a licence fees u/s. 43B without considering the submissions, evidence and correspondence done by the assessee with the excise department for PLL License & RS II License.*

**III. Addition u/s. 41(1) of the Act Rs.1,20,25,559/-.**

5. *The learned CIT (A) erred in confirming the addition of Rs.1,20,25,559/- (Rs.1,25,91,600/- - Rs.5,66,041/-) u/s. 41(1) being outstanding liability shown by assessee as payable to State Excise Aurangabad on account of PLL and RS II License fee without appreciating the correct facts.*

**IV. Addition of sundry creditor u/s. 41(1) of Rs.33,02,000/-.**

6. *The learned CIT (A) erred in sustaining the addition of Rs.33,02,000/ - u/s 41(1) of the Act without appreciating the explanation of the assessee and merely because of the party has not replied to the notice of the A.O. u/s. 133 (6) the disallowance cannot be sustained.*

7. *The learned CIT(A) failed to appreciate that the Assessee Company was in litigation where the said party in an Arbitration Petition No. 50 of 2004 and therefore, the party had not responded to the notice of the A.O.*

8. *The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.”*

3. At the outset , learned counsel for the assessee submitted that ground no. 6 and 7 raised by the assessee in memo of appeal filed with the tribunal are not pressed and he prayed that the same may be dismissed as not been pressed. It is also submitted by learned counsel for the assessee that ground no 8 being general in nature be also dismissed. The Ld. DR has not raised any objection to the dismissal of ground no 6 and 7 as not been pressed and also to dismissal of ground no. 8 as being general in nature. After hearing both the parties, we dismiss ground no. 6 and 7 raised by the assessee in

memo of appeal filed with the tribunal as being not pressed. We also dismiss ground no. 8 as being general in nature. We order accordingly.

4. The first issue in this appeal is with respect to the disallowance of the interest paid of Rs.2,14,640/- being difference of interest paid on bank loans to the tune of Rs. 6,31,235/- being excessive vis-a-vis interest received on loans advanced to sister concerns to the tune of Rs. 4,16,595/- , which led to net disallowance of interest paid of Rs.2,14,640/-.

The assessee is manufacture of Indian made Foreign Liquor and distilled water. The assessee received interest of Rs.4,16,599/- from following three parties as under:

a. Alfa Sai Mineral P. Ltd.	Rs.3,50,767/-
b. Alfa Consumers Products P.Ltd.	Rs. 21,229/-
c. State bank of Hyderabad FD	Rs. 44599/-
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Total	Rs.4,16,595/-
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It was observed by the A.O that the assessee has paid bank interest of Rs.6,31,235/- to Bharat Co-operative Bank Limited . It was observed by the AO from the Balance Sheet of the assessee , that the assessee has taken secured loan from Bharat Cooperative Bank Ltd. of Rs 26,41,687/- on which interest has been paid of Rs.6,31,234/- . It was observed by the AO that the opening and closing balance of the said loan was stagnant at Rs. 26,41,687/- . It was observed by the AO that the assessee has advanced loans and advances amounting to Rs.1,75,66,151/- , out of which the assessee has charged interest from two parties as under:-

(In Rs.)

Name	Op. Amt.	Addition	Reduction	Balance	Rat of Interest
Alfa Consumer Products Pvt. Ltd.	3,92,916	16,678	1,50,000	2,59,595	6%
Alfa Sai Minerals Pvt. Ltd.	68,26,696	3,23,245	13,95,450	57,54,491	6%

Thus it was observed by the A.O. that the assessee has obtained secured loan of Rs.26,41,687/- on which the assessee has paid interest @ 24% and

the assessee has given loans of Rs.60,14,086/- on which interest at the rate of 6% was earned . The AO observed that it is not acceptable as in the opinion of the A.O. that borrowing was at a very excessive rate of interest as compared to interest charged on loans to the sister concerns which were at a lower rate , which in the opinion of the AO no prudent businessmen will do , which led to the disallowance of Rs.2,14,640/- which was added to the income of the assessee by the AO , vide assessment order dated 14-03-2013 passed by the AO u/s 143(3) .

Further , it was observed by the A.O that the assessee has shown income from sales of Rs. 36,000/- and other income of Rs. 12,64,860/- against which expenses were debited to the tune of purchases of Rs. 28,720/- , payment and provisions for employees Rs. 2,66,681/- etc. . It was also observed by the AO that the assessee has also debited expenses being licence fee to the tune of Rs.22,96,200/- . The assessee was asked to explain about these expenses. The A.O also wrote a letter to the Superintendent, State Excise Department , Aurangabad to confirm the license fee payable by the assessee wherein the State Excise Department wrote to the AO in reply vide letter dated 30.01.2013 that the outstanding liability as on date payable by the assessee is only Rs.5,66,041/- which is still not paid by the assessee. The assessee could not explain the same satisfactorily before the AO. The A.O disallowed expenses debited by the assessee to P & L A/c on account of licence fee payable to State Excise Department of Rs.22,96,200/- which was added to the income of the assessee , vide assessment order dated 14-03-2013 passed by the AO u/s 143(3) .

Further , the A.O observed that there is an outstanding liabilities of Rs.1,29,33,018/- as on the date of Balance Sheet , out of which an amount of Rs.1,25,91,600/- was shown as payable to State Excise Department, Aurangabad on account of PLL and RS II licence fee. The assessee submitted letter issued by Inspector of State Excise wherein an amount of Rs.1,25,91,600/- is shown as payable by the assessee to the State Government . The A.O wrote a letter to the Superintendent, State Excise Department , Aurangabad wherein vide letter dated 30.01.2013 State Excise department wrote to the AO that the amount payable by the assessee is only

Rs. 5,66,041/- . The assessee was asked to explain the same and the assessee submitted as under:

*" .... this amount pertains to F.Y.2002-03, which has been subsequently paid in 2005-06. The state excise department has stated the amount outstanding, for which the PLL Licence was renewed. They have not stated the amount of Licence fees payable as on 31.03.2010 for renewal of licence along with interest. The record maintained by them pertains to any short payment towards application for renewal of licence. It is pertinent to note that if the assessee goes for renewal of licence today, then he is liable to pay licence fees for each year for which he has not deposited the same.*

*Licence fees accounted in the books for each year is as per the state excise department's circular. We attach herewith statement and copies of the circulars for each year from F.Y.2003-04, for which the licence fees has to be deposited as on 31.03.2010.*

*As a confirmation of the liability we are enclosing the copies of state government circular stating PLL Licence fees payable for same period. The same amount have been provided in the books and are reflected under the head current liability.*

*The amount debited to Profit and Loss account is Rs.22,96,200/- under the head Licence fees, for which find attached extract of ledger from books. It includes Rs.22,14,300 towards PLL Licence fee as explained above and balance towards other Licence fees.*

*Thus we submit that above explanation pertaining to licence fees doesn't call for disallowance u/s.41 (1). "*

The A.O observed that the assessee is debiting license fee every year to P&L A/c against income from house property and income from other sources to reduce income and consequently tax liability. The AO observed that the assessee has created liability in its books to the tune of Rs.1,25,91,600/- since financial year 2002-03, which is not allowable. It was also observed by the AO that as per State Excise Department , the liability outstanding to be payable by the assessee is Rs. 5,66,041/- as of the date , while the assessee is claiming the amount of outstanding liability payable to be of Rs. 1,25,91,600/- and hence the net amount of Rs.1,20,25,559/- was brought to tax by the AO u/s. 41(1) of the Act , vide assessment order dated 14-03-2013 passed by the AO u/s 143(3) .

5. Aggrieved by the assessment order dated 14-03-2013 passed by learned AO u/s 143(3), the assessee carried the matter in appeal before the learned

CIT(A), wherein the assessee contended w.r.t. first issue that disallowance of interest to the tune of Rs.2,14,640/- was made by the AO and that the assessee has its own interest-free funds available which were used for advancing loans to sister concerns . It was also submitted rent income was adjusted against interest on loans. It was submitted rate of interest payable to the bank is 18% and not 24% as is contended by the AO . it was also submitted that own funds are to the tune of 52,22,296/- . It was also submitted by the assessee before learned CIT(A) that borrowed funds were utilised for business purposes. It was observed by learned CIT(A) rejecting this ground that the assessee has some of its own funds while there was repayment of fund also. It was observed that the assessee has a common hotch potch of funds which are of mixed used of which the assessee gave funds to its sister concerns at a very low rate of interest @6%. The learned CIT(A) after hearing the assessee held that interest of Rs.2,14,640/- was not being incurred wholly and exclusively for the purpose of assessee's business and the disallowance of Rs.2,14,640/- was confirmed by learned CIT(A) , vide appellate order dated 22-12-2014.

With respect to the second and third issue , it was submitted that licence fee payable to Excise Department is debited to P&L Account based on circulars issued by State Government, from year to year. The assessee submitted copies of circular and statement for each year from financial year 2003-04 onwards . The correspondence with the State Excise Department was enclosed. The assessee submitted that the claim of the license fee for current year is Rs. 22,96,200/- and the total amount payable as at year end was Rs.1,25,91,600/- as confirmed by the inspector of State Excise which was on account of PLL and RS II licence fee . It was submitted that Superintendent, State Excise has confirmed liability of Rs.5,66,041/- as on date and it was submitted that this amount pertained to financial year 2002-03 which was paid in 2005-06. Thus it was submitted that these liabilities are payable and no disallowance can be made . It was also submitted that the assessee is carrying out manufacturing of IMFL(Indian made Foreign Liquor) from the year 1975 . It was submitted that the assessee has license for manufacturing of liquor dated 24-12-1975 and to keep the licence active, licence fee is paid to the State Government. The latest correspondence from the State Excise Department dated 12-12-2013 was enclosed which showed

that the renewal fees payable by the assessee as on 31-03-2014 is Rs. 2,22,08,700/-. With respect to the second addition made by the A.O , the Ld. CIT(A) held that assessee has not paid disputed PLL and RS II licence fees to the Maharashtra State Excise Department during the relevant previous year or even till the date of furnishing of return of income for A.Y 2010-11 . Thus, it was observed by learned CIT(A) that the said unpaid license fees not paid to State Government is hit by provisions of Section 43B and hence disallowance of Rs.22,96,200/- was confirmed by learned CIT(A) , vide appellate order dated 22-12-2014.

With respect to the licence fee of Rs.1,25,91,600/- shown to be payable to the Maharashtra State Excise Department as at year end, wherein the Superintendent of State Excise Department has confirmed that Rs.5,66,041/- was receivable from the assessee in response to the enquiry made by the AO, the learned CIT(A) observed that the assessee has not submitted any material to prove genuineness of the said liability. The learned CIT(A) held that the AO has correctly allowed the relief to the tune of Rs. 5,66,041/- while the balance stood disallowed being unascertained liability. It was held by learned CIT(A) that the said remaining liability of Rs.1,20,25,559/- has not arisen during the previous year relevant to A.Y 2010-11 and was not debited to P & L during the previous year relevant to AY 2010-11 in its entirety. It was also observed by learned CIT(A) that the assessee has also not written back during the year under consideration as cessation of liability is not proved in this previous year relevant to AY 2010-11 . Thus it was observed by learned CIT(A) that the said licence fee payable will be disallowed in each of the assessment year in which it was debited to P & L account , vide appellate order dated 22-12-2014.

6. Aggrieved by the appellate order dated 22-12-2013 passed by learned CIT(A) , the assessee has come in appeal before the Tribunal.

With regard to the ground no. 1 and 2 raised by the assessee in memo of appeal filed with the tribunal, it was submitted by learned counsel for the assessee that loans were obtained from Bharat Cooperative Bank in the year 1996 . Our attention was drawn to page 164/pb wherein assessment order for assessment year 2009-10 is placed wherein no such addition has been

made by Revenue towards disallowance of interest on loans on differential between interest paid on bank loans and interest on loans earned being given to sister concerns at lower rate of interest. Further our attention was drawn to page 216 to 217 wherein the accounts of Alfa Consumer Products P. Ltd and also Alfa Sai Minerals P. Ltd. are placed for the period 1<sup>st</sup> April, 2000 to 31<sup>st</sup> March, 2010 . Our attention was also drawn to page no. 215 of the paper book wherein the certificate from Bharat Cooperative Bank(Mumbai) Ltd. dated 31-07-2000 is placed wherein it is specified that they have sanctioned loan of Rs.24,84,216/- to the assessee on 16<sup>th</sup> July, 1996 and interest of Rs. 6,31,234.80 was received by them from the assessee and rent of Rs. 7,45,264.80 was paid by them to the assessee for the period from 01.04.2009 to 31.03.2010. These documents placed in paper book at page 215-217 are additional evidences filed before the tribunal for the first time and it is claimed that documents are part of the books of accounts. Our attention was also drawn to page no. 131 and 132 wherein the Balance sheet of the assessee as at 31<sup>st</sup> March, 2004 is placed and it was submitted loans were advanced in the earlier years. It was also submitted by learned counsel for the assessee that borrowings were also made in earlier years in 1996 for business purposes and the said loans were actually utilised for business purposes . It is claimed that no borrowed interest bearing funds were utilised for granting loans to sister concern. It is also claimed that the assessee has its own funds higher than the amount advanced to sister concern and hence presumption will apply that the assessee utilised its own funds for the purposes of advancing money to sister concern. It is claimed that the AO did not look into all these aspects before fastening tax liability on the assessee. The learned counsel for the assessee submitted that the matter can be restored to the file of A.O to look into these facts and then AO can decide the issue on merits in accordance with law. The learned counsel for the assessee placed reliance on decision of Hon'ble Bombay High Court in the case of HDFC Bank Ltd. v. DCIT reported in (2016) 383 ITR 529(Bom HC) , CIT v. Reliance Utilities and Power Ltd. (2009) 313 ITR 340(Bom HC) and decision CIT v. Reliance Communications Infrastructure Ltd.(2012) 207 taxman 219(Bom HC).

With respect to the second issue ,it was submitted that the A.O applied wrong provisions of the 1961 Act . It is claimed that the assessee is engaged

in the business of Manufacturing of IMFL from the year 1975 and the assessee holds the licence for manufacturing of liquor dated 24-12-1975 and to keep the licence active, the assessee has made provisions for the license fees payable to the State Government. It was submitted that the licence fees is payable to Government which was disallowed by the A.O and it was submitted that if disallowance is to be made , it is by way of invoking provisions of Section 43B of the 1961 Act as the assessee did not made this payment to Government before the end of financial year and also it was not paid till the due date of filing of return of income u/s 139(1). It is claimed that Section 43B is applicable and the appellate order of learned CIT(A) be confirmed.

With respect to the next ground wherein Rs.1,20,25,559/- was disallowed under 41(1) of the Act, It was submitted by learned counsel for the assessee that the matter is pending before Hon'ble Bombay High Court . It was also submitted by learned counsel for the assessee that it has led to the double addition as the amounts were disallowed on yearly basis in the year of making provision for license fee , while again it is now disallowed by invoking provisions of Section 41(1). Our attention was drawn to page no. 219 and it is submitted that the licence fees is disallowed on year to year basis for which a chart is prepared by the assessee for assessment year 2006-07 to 2013-14. Our attention was also drawn to page no. 96-97/paper book wherein the decision of Hon'ble Bombay High court dated 12.10.2001 is placed wherein the execution , implementation and operation of the order of the State Excise order bearing no. MPL-5290/1745/EXC-3 dated 26.09.2001 by Hon'ble Bombay High Court is placed. On direction of the Bench, the assessee has supplied copy of the said order dated 26-09-2011 passed by the State. The assessee has also filed written submissions before the tribunal.

Ld. DR on the other hand drew our attention to order of learned CIT(A)/ page no. 16 /para 5.5 , wherein it is mentioned that enquiries were made by the AO to come to the conclusion that no license fee is payable by the assessee to the State Government . Our attention was also drawn by learned DR to page no 103-106 /paper book wherein order dated 16-10-2002 passed by Hon'ble Bombay High Court is placed, wherein directions were

given by Hon'ble Bombay High Court to the assessee & other respondents to clear outstanding payment of entire license fee within three months of the order otherwise the stay granted by Hon'ble Bombay High Court on 12-10-2001 will stand vacated.

6. We have considered rival contention and have perused the material on record including orders of authorities below and cited case laws. The assessee is manufacture of Indian made Foreign Liquor and distilled water.

The first issue in this appeal is with respect to the disallowance of the interest paid of Rs.2,14,640/- being difference of interest paid on bank loans to the tune of Rs. 6,31,235/- being excessive vis-a-vis interest received on loans advanced to sister concerns to the tune of Rs. 4,16,595/- , which led to net disallowance of interest paid of Rs.2,14,640/-.

The assessee received interest of Rs.4,16,599/- from following three parties as under:

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Total	Rs.4,16,595/-
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It was observed by the A.O that the assessee has paid bank interest of Rs.6,31,235/- to Bharat Co-operative Bank Limited . It was observed by the AO from the Balance Sheet of the assessee , that the assessee has taken secured loan from Bharat Cooperative Bank Ltd. of Rs 26,41,687/- on which interest has been paid of Rs.6,31,234/- . It was observed by the AO that the opening and closing balance of the said loan was stagnant at Rs. 26,41,687/- . It was observed by the AO that the assessee has advanced loans and advances amounting to Rs.1,75,66,151/- , out of which the assessee has charged interest from two parties as under:-

(In Rs.)

Name	Op. Amt.	Addition	Reduction	Balance	Rat of Interest
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Alfa Sai Minerals Pvt. Ltd.	68,26,696	3,23,245	13,95,450	57,54,491	6%

Thus it was observed by the A.O. that the assessee has obtained secured loan of Rs.26,41,687/- on which the assessee has paid interest @ 24% and the assessee has given loans of Rs.60,14,086/- on which interest at the rate of 6% was earned . The AO observed that it is not acceptable as in the opinion of the A.O. that borrowing was at a very excessive rate of interest as compared to interest charged on loans to the sister concerns which were at a lower rate , which in the opinion of the AO no prudent businessmen will do , which led to the disallowance of Rs.2,14,640/- which was added to the income of the assessee by the AO , vide assessment order dated 14-03-2013 passed by the AO u/s 143(3) . The addition so made by the AO was later confirmed by learned CIT(A). It is the contention of the assessee that it has borrowed Rs.26,41,687/- from Bharat Cooperative Bank in the year 1996 . It is the claim of the assessee that the said amount was borrowed with clear intention of acquiring shops which was leased to the lending bank itself and it is claimed that none of the borrowed funds were utilised for the purpose of advancing money to sister concerns. And second bone of contention of assessee is that its own funds and also other interest free funds available with it are more than the loan amount advanced to sister concern. The assessee has relied upon the decision of Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (supra) , Reliance Utilities and Power Ltd. (supra) and Reliance Communications Infrastructure Ltd.(supra). It is claimed by the assessee that presumption will apply that the assessee has used interest free funds available with it for advancing loans to sister concerns. It is fairly conceded and agreed by the learned counsel for the assessee that these contentions raised by the assessee need verification by the AO and matter needed to be restored to the file of the A.O for denovo adjudication of the issue on merits in accordance with law. Thus keeping in view factual matrix of the case , we are inclined to restore this issue to the file of the AO for denovo determination of the issue on merits in accordance with law after verification and examination of all the contentions of the assessee in the light of provisions of the statute and judicial precedents. Needless to say that the AO shall grant proper opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law. We order accordingly.

With regard to the second issue , we have observed that the assessee has made provision towards licence fee to the tune of Rs.22,96,200/- for renewal of Excise licence fee of PLL and RS II payable to the State Excise Department for the previous year relevant to the impugned assessment year . The assessee has claimed to be engaged in the business of Manufacturing of IMFL from the year 1975 and the assessee has claimed that it holds the licence for manufacturing of liquor dated 24-12-1975 and to keep the licence active, the assessee has made provisions for the yearly license fees payable to the State Government. We have observed that the license for manufacturing of IMFL was issued by State Government in the name of one Mr Anant Parshuram Shetye on 24-12-1975 under the provision of Section 15 of Maharashtra Distillation and Spirit and Potable Rules 1966. On 05-06-1976 this license was transferred in the name of M/s Pen Distilleries. Later Mr Anant Parshuram Shetye turned blind and he entered into an MOU on 01-10-1990 with Captain Pramod Salvi to convert license as well as business into a Private Limited company with Captain Pramod Salvi wherein Captain Pramod Salvi to have absolute majority in the newly incorporated Private Limited Company and Mr Anant Parshuram Shetye will be made a permanent Director and Chairman. The license was converted into the name of the company namely Alfa Distilleries Private Limited and it was proposed to shift unit from District Raigarh to District Aurangabad . Some dispute arose between the parties and the State Government through Hon'ble Minister(State Excise) vide order no. MPL-5290/1745/Exc-3 dated 26-09-2001 was pleased to transfer back the license in favour of original licensee namely Mr Anant Parshuram Shetye. The assessee challenged this order by filing writ petition with Hon'ble Bombay High Court under Article 226 of the Constitution of India , bearing w.p. no. 4878 of 2001 and vide orders dated 12-10-2001, Hon'ble Bombay High Court was pleased to stay the execution , implementation and operation of the order passed by Hon'ble Minister (State Excise) dated 26-09-2001 till 05-11-2001. The Hon'ble Bombay High Court vide orders dated 11-06-2002 was pleased to allow ad-interim orders already made to continue till further orders. The State of Maharashtra filed an application under the said writ petition wherein Hon'ble Bombay High Court vide orders dated 16-10-2002 was pleased to direct the assessee, Sh. Anant Parshuram Shetye and/or Captain Parmod Salvi(Respondents) to deposit

license fee with State of Maharashtra within 3 months from the date of order failing which the afore-stated interim orders will stand vacated. We have observed that the provision for licence fee payable to State Government for renewal of licence was made by the assessee for the impugned assessment year while no payment has been made by the assessee to the Government till the due date of filing the return of income u/s 139(1) which has infringed Section 43B of the 1961 Act and the same cannot be allowed as an expenses for the year under consideration. Hence in view of the provisions of Section 43B these expenses claimed by the assessee towards provision for license fee cannot be allowed as no payment has been made till the due date of filing of return of income u/s 139(1) and the appellate order of the learned CIT(A) is confirmed. Hence , assessee fails on this ground and an appeal filed by the assessee on this ground stood dismissed on this ground. We order accordingly.

With respect to the third issue of bringing to tax of Rs.1,20,25,559/- being cessation of liability on account of licence fee payable to the State Excise Department which has been outstanding in its book of accounts as the same is not paid by the assessee to the Government . The background and nature of such provision is discussed by the us in the preceding para of this order. The first contention of the assessee is that the said amount has been disallowed over a period of time by Revenue by not allowing the provision for license fee for IMFL made in the year of making provision itself and its addition u/s 41(1) by the AO in this year of the entire accumulated amount of provision on the ground of cessation of liability has led to double addition i.e. once by not allowing the expense in the year of provision and secondly by treating the entire accumulated amount as cessation of liability u/s 41(1) . We are in agreement that there cannot be double jeopardy and the assessee cannot be prejudiced twice once by disallowing the expenses itself in the year of incurring of the said expense and secondly by treating the same amount accumulated over a period of time by treating the same as income u/s 41(1) on account of cessation of liability . Hence , in our considered view this matter need to be restored back to the file of the A.O for denovo adjudication of the entire issue on merits in accordance with law after conducting such verification as is considered fit by the AO including status of dispute between parties . We order accordingly.

7. In the result, appeal of the Assessee in ITA No. 1570/Mum/2015 for assessment year 2010-11 is partly allowed for statistical purposes.

Order pronounced in the open court on 24.11.2017

आदेश की घोषणा खुले न्यायालय में दिनांक: 24.11.2017 को की गई ।

Sd/-  
(JOGINDER SINGH )  
JUDICIAL MEMBER

Sd/-  
(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

Mumbai, dated: 24.11.2017

*Nishant Verma*  
*Sr. Private Secretary*

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, E
6. Master File

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BY ORDER  
DY/ASSTT. REGISTRAR  
ITAT, MUMBAI