IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK

BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 132/CTK/2016: Asst. Year 2011-12
C.O.No.15/CTK/2016 (in ITA No.201/CTK/2016)
Assessment Year: 2012-13

Subhalaxmi Agencies Pvt Ltd., At: Gopinathpur Sahi, PO: Rajsunakhala, Dist: Nayagarh.	Vs.	Joint Commissioner of Income Tax, Raagne-2, 3rd floor, Aayakar Bhavan, Rajaswa Vihar, Bhubaneswar.
PAN/GIR No.AAJCS 7772 D		
(Appellant)	..	(**Respondent**)

ITA No. 174 & 201/CTK/2016
Assessment Years : 2011-2012 & 2012-13

Joint Commissioner of Income Tax, Raagne-2, 3rd floor, Aayakar Bhavan, Rajaswa Vihar, Bhubaneswar	Vs.	Subhalaxmi Agencies Pvt Ltd., At: Gopinathpur Sahi, PO: Rajsunakhala, Dist: Nayagarh.
PAN/GIR No.AAJCS 7772 D		
(Appellant)	..	(**Respondent**)

Assessee by : Shri S.K.Agarwal, AR
Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 08/11/ 2017
Date of Pronouncement : 21/11/ 2017

O R D E R

Per N.S.Saini, AM

The cross appeals filed by the assessee and the revenue against the order of the CIT(A)- 3, Bhubaneswar dated 5.1.2016 for the assessment year 2011-2012 and the appeal filed by the revenue and cross objection

filed by the assessee are directed against the order dated 1.2.2016 of the CIT(A)-1, Bhubaneswar for the assessment year 2012-2013.

First, we take up the appeals for the assessment year 2011-12

2. Ground No.1 of Revenue's appeal is directed against the order of the CIT(A) in deleting the addition of Rs.26,597/- made by the Assessing Officer u/s.40(a)(ia) of the Act. Ground No.1 of the assessee's appeal is directed against the order of the CIT(A) in disallowing interest of Rs.1,49,144/- paid to NBFC and audit fees of Rs.1,35,300/- u/s.40(a)(ia) of the Act.

3. The brief facts of the case are that the Assessing Officer observed that the assessee has paid interest of Rs.1,49,144/- to Non-banking finance company (NBFC) and also Rs.1,35,300/- to auditor as audit fees without deducting of tax at source u/s.194A and u/s.194J of the Act. In reply to show cause notice, the assessee submitted that there is no liability to deduct tax at source on payment of interest to NBFC, being a financial corporation, that nothing was payable as interest or audit fees by the end of the year and, therefore, placing reliance on the decision of ITAT Visakhapatnam in the case of Merilyn Shipping & Transports vs ACIT, 146 TTJ (Vis) 1, Hon'ble Allahabad High Court in the case of CIT vs. Vector Shipping Service (P) Ltd., 262 CTR (All) 545 and ITAT Mumbai benches in the case of ACIT vs. Rishti Stock & Shares (P) Ltd., 97 DTR 92 submitted that provisions of section 40(a)(ia) are not attracted. The Assessing Officer did not accept the above submission of the assessee

and rejected the explanation of the assessee relying on the decision of Hon'ble Kolkata High Court in the case of CIT vs. Crescent Export Syndicates, 216 Taxman 258 and Hon'ble Gujarat High Court in the case of CIT vs. Sikandar Khan N. Tunva, 357 ITR 312 (Guj), wherein, it was held that section 40(a)(ia) would cover not only the amounts which are payable at the end of the previous year but also which payable at any time during the year.

4. Being aggrieved against the said order of the Assessing Officer, the assessee filed appeal before the CIT(A).

5. The CIT(A) relying on the decisions stated in his order as well as the decision of Hon'ble H.P. High Court in the case of Palam Gas Service vs CIT, (2014) 47 taxmann.com 310 (HP) confirmed the disallowance observing that the assessee is required to deduct tax at source u/s.194A of the Act and having failed to do so, the Assessing Officer is justified in invoking provisions of section 40(a)(ia) of the Act and adding back interest of Rs.1,22,547/- paid to NBFC and Rs.1,35,300/- as audit fees for failure of the assessee to deduct tax at source u/s.194C of the Act. Accordingly, he confirmed the addition of Rs.2,57,847/- giving relief of Rs.26,597/- being interest paid to Axis Bank for which tax was not liable to be deducted in accordance with the provisions of section 194A (3)(iii)(a) of the Act.

6. Ld Authorised Representative of the assessee submitted that the CIT(A) was not justified in confirming the disallowance of interest

payment of Rs.1,22,547/- and audit fees of Rs.1,35,300/- as there are contrary decisions of different Hon'ble High Court on the issue that if there is no amount outstanding payable at the end of the financial year, then no TDS was to be deducted, then the decision favourable to the assessee should have been followed in view of the decision of Hon'ble Supreme Court in the case of CIT vs. Vegetable Products Ltd., 88 ITR 192 (SC).

7. On the other hand, ld Departmental Representative relied on the decision of Hon'ble Supreme Court in the case of Palam Gas Service VS CIT, (TS-170-SC-2017] wherein, the Hon'ble Supreme Court held that the amount payable includes the amount paid as well as payable during the financial year and confirmed the order of the decision of Hon'ble H.P.High Court in the case of Palam Gas Service (supra).

8. In the above facts and circumstances of the case, in view of the decision of Hon'ble Supreme Court in the case of Palam Gas Service (supra), wherein, it has been held that the amount payable includes the amount paid as well as payable during the financial year, we find no error in the order of the CIT(A), which is hereby confirmed and ground No.1 of appeal of the assessee is dismissed.

9. Ld Departmental Representative during the course of hearing could not point out any error in the order of the CIT(A) in deleting the interest of Rs.26,597/- paid to Axis Bank Ltd., on which, the assessee was not required to deduct tax at source under the provisions of section

194A(3)(iii)(a) of the Act. Therefore, Ground No.1 of appeal of the revenue is also dismissed.

10. In Ground No.2 of the appeal of the assessee, the grievance is that the CIT(A) was not justified in confirming the disallowance of Rs.3,07,744/- made u/s.36(1)(va) of the Act in view of the fact that same had been paid before the filing of return u/s.139(1) of the Act and was allowable u/s.43B of the Act.

11. The brief facts of the case ae that the Assessing Officer observed that out of employee's contribution to the Provident Fund of Rs.4,61,616/-, an amount of Rs.3,07,744/- was not paid within the stipulated time provided under the PF Act and, therefore, he show caused the assessee as to why same should not be disallowed u/s.43B of the Act. The assessee submitted that Hon'ble Supreme Court in the case of CIT vs. Alom Extrusions Ltd., 227 CTR 417 and Hon'ble Rajasthan High Court in the case of Jaipur Vidyut Vitaran Nigam ltd., vs CIT, 98 DTR 105 (Raj) have held that as per provisions of section 43B of the Act, if the amount is paid before the due date of filing of return of income, Section 36(1)(va) is not applicable. It was also submitted that in the case of the assessee itself for the assessment year 2008-09, the disallowance made u/s.36(1)(va) was deleted by the CIT(A) and the Tribunal. Therefore, no contrary view should be drawn and expenditure should be allowed. The Assessing Officer did not accept the contention of the assessee and made disallowance of employee's contribution to PF u/s.36(1)(va)/43B r.w.s.

2(24)(x) of the Act and added Rs.3,07,744/- to the income of the assessee.

12. On appeal, the CIT(A) confirmed the action of the Assessing Officer on the ground that the assessee has not deposited the employee's contribution to PF account on due date specified in section 36(1)(va).

13. Hence, the assessee is in appeal before us.

14. Before us, ld A.R. of the assessee submitted that no disallowance of employee's contribution to PF u/s.36(1)(va) was warranted where payments have been made by the assessee before the due date of filing the return of income u/s.139(1) of the Act and relied on following decisions:

i) CIT vs Alom Extrusions Ltd., (2009) 227 CTR 417 (SC)

ii) CIT vs. Jaipur Vidyut Vitran Nigam ltd., 98 DTR 105 (Raj)

iii) CIT vs. Hemla Embroidery Mills (P) Ltd., 366 ITR (P&H) 167

iv) CIT vs. Udaipur Dugdh Utpakak Sahakari Sangh ltd., 356 ITR (Raj)163.

He also submitted that in the case of the assessee itself for the assessment year 2008-09, on similar facts, the Tribunal has confirmed the order of the CIT(A) deleting the disallowance.

15. Ld Departmental Representative supported the orders of lower authorities.

16. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the Assessing Officer has disallowed the claim of deduction u/s.36(1)(va) of the Act as the employee's contribution was not paid within the due date specified under the PF Act, which was confirmed in appeal by the CIT(A) by following various judicial pronouncements as stated in his order.

17. We find that the Hon'ble Karnataka High Court in the case of Essae Teraoka (P) Ltd.vs DCIT, (2014) 366 ITR 408 vide judgment dated 4.2.2014 held that the word contribution would mean in EPF and ESI Act refers to both employees and employers contribution to PF and, therefore, no disallowance is to be made under section 43B. Therefore, deduction is also available to employee's contribution to PF u/s.43B of the Act. Further, the Hon'ble Rajasthan High Court in the case of CIT Vs. State Bank of Bikaner and jaipur (2014) 363 ITR 70 (Raj) (HC) and Jaipur Vidyut Vitaran Nigam Ltd., (2014) 363 ITR 307 (Raj) held that section 43B overrides section 36(1)(va) and deduction is available for employee's contribution u/s.43B of the Act To same effect is the decision of Hon'ble Uttarakhand High Court in the case of CIT vs.Kichha Sugar Company Ltd . **(2013) 356 ITR 351 (Uttarakhand–H**C) order dated 20.5.2013. To the same effect is also the decision of Hon'ble Rajasthan High court in the case of CIT vs. Udaipur Dugdh Utpadak Sahakari Sangh Ltd (2013) 35 taxmann.com 616 (Raj). The contrary view is that of Hon'ble Gujarat High Court in the case of CIT vs Gujarat State Road Transport Corpn. (2014) 366 ITR 170 (Guj) order dated 26.12.2013, wherein, it was held

that 43B does not apply to employee's contribution and only section 2(24)(x) read with section 36(1)(va) is applicable. Therefore, employee's contribution is disallowed if not paid within the due date as per EPF/ESI Act. The said decision was rendered after considering the decision of Hon'ble Supreme Court in the case of Alom Extrusions (supra). The Hon'ble Calcutta High Court in the case of CIT vs Vijaya Shree Ltd., (2011) TMI 30 held that employees contribution to PF/ESI is also covered by section 43B and is allowable as deduction if paid before due date of filing the return of income. The Hon'ble Bombay High Court in the case of CIT Vs. Ghatge Patil Transports Ltd., (2014), 368 ITR 749 has held that employees contribution to PF and ESI is allowable if the same is deposited before the due date of filing of return of income u/s.39(1) of the Act. The Hon'ble Delhi High Court in *CIT Vs. AIMIL Limited [2010] 321 ITR 508 (DEL)* has held that the employees' contribution towards EPF and ESI etc. deposited after the due date but before the time allowed for filing the return u/s.139(1) will not call for any disallowance u/s.36(1)(va). The Hon'ble Patna High Court in the case of Bihar State Warehousing Corporation Ltd vs CIT, (2016) 71 taxmann.com 247(Patna) after considering the decision of Hon'ble Bombay High Court in the case of Ghatge Patil Transports Ltd and P&H High Court in the case of CIT vs. Hemla Embroidery Mills (P) Ltd., 2014) 366 ITR 167 (P&H) and the decision of Hon'ble Supreme Court in the case of Alom Extrusion Ltd., (supra) has held as under:

"9.On further appeal both by the Department and the Assessee, the appeal of the Department was dismissed as also that of the assessee. Aggrieved by the same, the present appeal has been filed by the assessee. The appeal was admitted on the following substantial questions of law:—

> "(i) Whether on the facts and in the circumstances of the case the Tribunal is justified in upholding the addition of Rs.8,32,507/- made under Section 2 (24)(x) read with Section 36(l)(va) of the Income-tax Act?
>
> *(ii)* Whether on the facts and in the circumstances of the case the Tribunal is correct in holding that the provision for gratuity was not made towards approved gratuity fund and that the gratuity has not become payable during the financial year and that the provision has not been made on actuarial valuation basis?"

10. Learned counsel for the assessee submits that the Tribunal was not justified in not following its earlier order dated 20.12.2001 passed in the case of *M/s. Sintra Ltd.* v. *ACIT* I.T.Appeal No. 497/Pat/1996 in which under similar circumstances, it was held that the treatment meted out to the employees' contribution by disallowing the same was also on the basis, i.e., the delay in credit to the appropriate authorities, which was condoned by the appropriate authorities and thus the contention of the Department was found to be without force and it was held that there was no reason to consider the amount as income from other sources of the assessee and the addition was deleted. It is submitted that the present matter is practically on the same footing as the employees' contributions were paid within due date of filing of return and as a matter of fact some of the amounts of employees' contribution was deposited well within the financial year 1.4 2002 to 31.03.2003 itself. It is further submitted by learned counsel that there was no reason to treat/consider the said delayed payment in a different manner from the employer's contribution to the Provident Fund and both should have been dealt with under Section 43B of the Act and there was no justification for invoking sub-section (2) of Section 24 (x) read with Section 36 (1) (va) of the Act for disallowing the same.

11. In support of the aforesaid stand, learned counsel for the appellant relies upon a decision of the Supreme Court in the case of *CIT* v. *Alom Extrusions Ltd.* [20091 319 ITR 306/185 Taxman 416. following which the Bombay High Court in the case of *CIT* v. *Ghatge Patil Transports Ltd.* [2014] 368 ITR 749/228 Taxman 340/53 taxmaim.com 141 and Punjab and Haryana High Court in the case of *CIT* v. *Hernia Embroidery Mills (P.) Ltd.* [20141 366 ITR 167/217 Taxman 207/37 taxmann.com 160 (Puni. & Har.) have held that both the employees' and employer's contributions are covered under the amendment to Section 43B of the Income Tax Act and the Alom Extrusions judgment of the Supreme Court and therefore the Tribunal was right in holding that the payments thereof were subject to benefits of Section 43B of the Act.

12. Learned counsel for the Income-tax Department, on the other hand submits that the Tribunal has rightly made a distinction in the matter with regard to delay in payment of employees' contribution to the Provident Fund and delayed payment of employer's contribution to Provident Fund. It is submitted that the appeal of the Department has been rejected by the Tribunal making a distinction between the two provisions which appear to be justified. It is urged that only the payment of employer's contribution to Provident Fund is covered by the provision of Section 43B of the Act and employees' contribution is squarely covered by the provisions of Section (2) (24) (x) read with Section 36(l)(va) of the Act. It is, thus, submitted that the Tribunal has rightly decided the present matter and was not obliged to follow a wrong decision earlier rendered in *Ms. Sintra's* case *{supra).*

13. In the case *of Alom Extrusions Ltd. {supra),* the Apex Court has dealt with the history of Section 43 B of the Act along with its proviso and referred to the fact that the amendments were made therein on account of difficulties felt in complying, with the provisions of the said section vis-a-vis the period prescribed under the Employees Provident Fund Act. Earlier by way of the first proviso the benefit of deduction was restricted only to tax, duty, cess or fee paid after the closing of the accounting year but before the date of filing of the return of income under Section 139 (1) but not to labour welfare funds. The second proviso was then inserted

to allow deduction of contribution to, inter alia, any provident fund if made before the due date as per the Employees Provident Fund Act during the previous year. This again resulted in implementation problems as a result of which the second proviso was deleted and the first proviso was amended bringing about uniformity by equating tax, duty and fee with contribution to labour welfare funds. It was made clear that the benefit of deduction would be applicable, provided the payments are made before the due date for filing of the return.

14. From a perusal of the aforesaid decision, it is evident that it does not specifically refer to the employees' contribution or employer's contribution and both have been treated on the same footing. So far as difficulties in complying with the due date under the EPF Act vis-a-vis the previous year of the Income-tax is concerned, there can be no distinction between the payment of employees or employer's contribution and the same difficulties would be faced for both. In Alom Extrusions' case, the Court has broadly dealt with contribution to be made by the employers to the Labour Welfare Fund without making any distinction between employees and employer's contributions, as the deposits have to be made by the employer of both type of contributions.

15. The issue as to whether a distinction can be made between the employees' contribution and employer's contribution with regard to applicability of Section 43B of the Act was squarely raised before the Bombay High Court in *Ghatge Patil Transports* case *{supra)* and before the Punjab and Haryana High Court in *Hernia Embroidery Mills'* case *{supra)* and both the High Courts have answered the same holding that both the employees' and employer's contributions are covered by the amendment of Section 43B of the Act after considering *Alom Extrusions'case {supra).*

16. Although technical reading of Section 43B and the provisions of sub-section (2) of Section 24 (x) read with Section 36 (1) (va) of the Act creates the impression that the employees' contribution would continue to be treated differently under a different head of deduction, as the head of deduction is separate under Section 43 B and Section 36 of the Act but on a broader reading of the amendments made to Section 43B repeatedly and the intention of Parliament, there appears to be sufficient justification for taking the view that the employees' and the employer's contribution ought to

> be treated in the same manner. In *Alom Extrusions'case (supra)*, as pointed out earlier, the Supreme Court has not made any distinction between the two as similar problem of implementation would arise in both the cases, although specific issue was not raised therein; but both the Bombay High Court and the Punjab and Haryana High Court in the above referred cases after considering *Alom Extrusions'* case *(supra)* have answered the question treating the two contributions on the same footing.
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> 17. Thus, I am inclined to respectfully agree with the view taken by the Bombay High Court and the Punjab and Haryana High Court."

18. It is also settled position of law that if there are contrary views of different High Courts and none of them is the Hon'ble Jurisdictional High Court, then the decision favourable to the assessee should be followed. This view is supported by the decision of Hon'ble Supreme Court in the case of CIT vs. Vegetables Product Ltd., 88 ITR 192 (SC). Therefore, respectfully following the decision of Hon'ble Karnataka High Court in the case of Essae Teraoka (P) Ltd. vs DCIT (supra) and other decisions referred above (supra), we hold that employee's contribution to PF is allowable deduction to the assessee if deposited before due date of filing of return u/s.139(1)of the Act. Therefore, we set aside the orders of lower authorities and delete the disallowance of employee's contribution to PF of Rs.3,07,744/- and allow this ground of appeal of the assessee. Hence, this ground of appeal of the assessee is allowed.

19. In Ground No.3 of the appeal, the grievance of the assessee is that the CIT(A) was not justified in confirming addition of Rs.4,00,000/- for suppression of bran productions. In Ground No.2 of the appeal, the

grievance of the revenue is that the CIT(A) was not justified in deleting the addition of Rs.48,31,475/- on account of suppression of bran products.

20. The brief facts of the case are that the Assessing Officer observed that as per information furnished by the assessee, percentage of product of rice, broken rice, rice bran and husk in custom milling of paddy of OSCSC ltd., NEFED, LEAVY was 68%, 2%, 4% and 26%, respectively. The Assessing Officer collected the information from Indian Institute of Crop Processing Technology and Central Rice Research Institute regarding the percentage of yield and as per the information furnished by CRRI, Government of India has specified yield of rice from parboiled paddy and raw paddy at 68% and 67% respectively and yield of bran at 8%, husk at 21% , small broken rice at 2% and rice husk small at 1 to 2%. From the above information, the Assessing Officer inferred that yield of bran should have been at least 8% in assessee's case as against 4% and estimated the understated product of bran at Rs.52,27,475/- on the basis of average rate taken by the assessee and total quantity of bran produced. The Assessing Officer issued show cause to explain as to why 4% of bran shown less should not be treated suppressed yield of bran. In reply, the assessee submitted that CRRI is a research institute which carries on research based on the best quality of paddy produced from all over India, that percentage of output depends upon many factors like quality of paddy, quality machinery used, voltage fluctuation, type skilled labour etc, and therefore, the yardstick cannot be applied to the assessee. It

was further submitted that percentage of yield given by the assessee is better than the yield given by other rice mills operating in Nayagarh District. The Assessing Officer found that the rate of yield informed by CRRI is based on information gathered from yield shown by local paddy manufacturers of State of Orissa and the assessee has no concrete evidence to prove the correctness of percentage of yield shown by it or to disprove the correctness of claim of CRRI. Therefore, the Assessing Officer held that the assessee has suppressed yield of bran by 4% and estimating the value of suppressed bran at Rs.52,27,475/-, he added it to the total income. He also noticed short delivery of rice of Rs.196 kg. and estimating the value of short supply at Rs.4,000/-, total addition on this count was made at Rs.52,31,475/-.

21. On appeal, the CIT(A) observed that in clause No.9 of audit report in Form 3CD, the assessee has maintained cash book, ledger, purchase register, sales register, stock register, quantitative details of paddy mill and rice, rice bran, broken rice and husk are not appearing in clause 28 of the tax audit report. Like-wise, break up of sales of different items manufactured by the assessee and break up of other income are not available in Schedule 14 and Schedule 15. Though stock register is maintained but it is not maintained even on broader classification of milling and manufacture of rice, etc of raw paddy and parboiled paddy, what to speak of stock on quality-wise details of paddy and rice or quality-wise details of by -products bran, broken rice and husk. The annexure-3 filed alongwith paper book is not part of the Form 3CD and

even in Annexure-3, complete information regarding yield of by-products and sale are not available. Therefore, no information is available regarding husk as by product, though it is salable item.

22. He observed that Bilaspur Bench of the Tribunal in the case of Rajesh Kumar Agarwal, Prop. Rajesh Trading Co. Raipur vs ITO in ITA No.32/Blp/2011 for assessment year 2005-06 order dated 24.12.2014 has held as under:

> "5. *We have heard the rival submissions and perused the material before us. Undisputed facts of the case are that the assessee had not shown any sale of husk during the year under appeal. It cannot be believed that he did not sell a commodity like hush that* *__is__* *in great demand. Argument goes against the normal human behavior. No businessman will leave any chance of earning money. So, to say that the assessee did not sell husk will be like accepting the improbable proposition. However, considering the argument made by the assessee that the addition was on higher side, in the interest of justice, we are restricting it to Rs. One lakhs only. Effective ground is allowed in favour of the assessee, in part.*"

23. The CIT(A) further observed that ld A.R. of the assessee submitted before him that husk is not accounted for in the books of account since it is used as fuel in course of manufacturing activities of the assessee. The CIT(A) further observed that Schedules against expenses are broadly classified and no reference of expense, if any, can be inferred from such Schedules.

24. The CIT(A) further observed that it is true that the percentage of yield of rice, rice bran and husk depend upon various factors like internal or genetic / factors like dwarfness, disease. resistance flavor, fine grain characteristic, cooking qualities etc, and external or environmental factors

like climate, soil, water supply, supply of plant nutrients, skilled labour, but yield of rice in normal standard is between 67% to 68%, broken rice is between 2%. to 4% , rice bran is between 7% to 8% and the balance is 20% to 24% as husk. In assessee's case, yield of rice, broken rice, bran, and husk is 68%, 2%, 4% and 26% from milling of paddy of all custom millers and there should have .been variance in yield as yield depends upon various factors discussed above. Therefore, information supplied by the assessee was not only deficient in material particulars but also better particulars are not made available on record. He observed that it is clear that record of the assessee lacks probity and transparency so far as material information is concerned. He referred the decision of Hon'ble Punjab & Haryana High Court in the case of G.V.(God Vishnu) Rice Unit vs CIT, 210 Taxman 358. Thereafter, the CIT(A) observed that in the facts and circumstances of the case of the assessee, reference made by the Assessing Officer to CRRI and application of the information received from CRRI to assessee's case is not altogether irrelevant. The information furnished by the CRRI indicates something wrong in the books of account like for example, percentage of yield being, constant from milling of paddy of different millers, percentage of yield of husk at higher side indicating probability of suppression of actual yield of rice, broken rice or bran and in order to establish the probabilities to demonstrable facts, the Assessing Officer was required to make some more exercise like identifying defects in purchases and sales. This has not been done and hence, simply on the basis of the information,

percentage of yield cannot be reduced and the percentage of bran cannot be increased correspondingly and addition cannot be made by presuming suppressed bran yielded as sold. Keeping in overall facts- and circumstances of the case of the assessee, he held that all is not well with the books of account of the assessee, and, therefore, addition to the extent of Rs. 4,00,000/- on ad hoc basis is confirmed to pluck possible leakage of revenue and allowed partial relief to the assessee.

25. Ld A.R. submitted that the Assessing Officer was not justified in comparing yield of CRRI with yield of the assessee's by-product bran and making addition of Rs.52,31,475/- and the CIT(A) was not justified in confirming the addition of Rs.4 lakhs out of the same.

26. Ld D.,R. supported the order of the Assessing Officer.

27. After considering the rival submissions and perusing the materials available on record, we find that the finding of the CIT(A) is that the percentage of yield of rice as per CRRI is between 67% to 68%, broken rice is between 2 to 4%, rice bran is between 7% to 8% and the balance is 20% to 24% as husk cannot be applied to the facts of the assessee without making more exercise like defects in purchase and sales could not be controverted by ld D.R.

28. Ld A.R. of the assessee also could not controvert the findings of the CIT(A) that the books of account of the assessee were defective and, therefore, the addition of Rs.4 lakhs was justified in the given facts and circumstances of the case. No material was brought on record by ld D.R. to show that the assessee has shown suppressed production of bran and

has sold them outside books of account. Therefore, the findings of the CIT(A) does not call for any interference by us. Similarly, no material was brought on record by ld A.R. to show that the disallowance of Rs.4 lakhs made by the CIT(A) was to pluck possible leakage of revenue. Hence, we find no good reason to interfere with the order of the CIT(A), which is hereby confirmed and Ground No.3 of the assessee as well as Ground No.2 of the revenue's are dismissed.

29. Ground No.3 of the appeal of the revenue is directed against the order of the CIT(A) in deleting the addition of Rs.2,217/- made by the Assessing Officer on account of disallowance of donation.

30. The brief facts of the case are that the Assessing Officer disallowed donation of Rs.2,217/- debited under the head "donation" since the expenses was not allowable under the Act.

31. On appeal, the CIT(A) observed that the assessee is carrying on business in rural area and had donated a sum of Rs.2,217/- to local people for organizing the different pujas To keep the good relationship with local people and for smooth operation of the business, it has to donate to different puja or programmes organized by local people. The CIT(A) observed that looking to the turnover of the assessee, donation to local people for puja organized by them in different occasions is quite reasonable and hence, directed the Assessing Officer to allow the expenses as admissible u/s.37(1) of the Act.

32. Ld D.R. relied on the order of the Assessing Officer whereas ld A.R. supported the order of the CIT(A).

33. After considering the rival submissions and perusing the materials available on record, we find that no specific error could be pointed by ld D.R. in the order of the CIT(A) and hence, we find no good reason to interfere with the order of the CIT(A), which is hereby confirmed and Ground No.3 of appeal of the revenue is dismissed.

34. Ground No.4 of appeal of the revenue is directed against the order of the CIT(A) in deleting addition of Rs.46,97,330/- made by the Assessing Officer on account of carriage and freight expenses u/s.40(a)(ia) of the Act. Ground No.6 of the appeal of the assessee is directed against the order of the CIT(A) in confirming the disallowance of Rs.6,29,325/- u/s.40(a)(ia) of the Act for expenses incurred under the head carriage and freight.

35. The brief facts of the case are that the Assessing Officer observed that the assessee has claimed carriage and freight expenses of Rs.53,26,655/- and noticed that most of the payments were made in cash without deducting tax at source from such payments as per provisions of section 194C of the Act and, therefore, the assessee was show caused as to why the deduction should not be disallowed u/s.40(a)(ia) of the Act. The assessee submitted that as per provisions of section 194C of the Act, TDS was required to be made from the transporters if transportation was carried out under a contract and no deduction was required to be made from the amount of any sum credited or paid or likely to be credited or paid to the account of or to the contractor if such sum did not exceed Rs.30,000/- and since the assessee had no contract with the transporters

and as the payment did not exceed Rs.30,000/-, TDS provisions were not applicable to the case of the assessee. The Assessing Officer did not accept the explanation of the assessee since the assessee did not furnish any corroborative evidence in support of its claim that payment to each transporter was less than Rs.30,000/- and, therefore, by invoking the provisions of section 40(a)(ia) of the Act, he disallowed deduction of Rs.53,26,655/- to the assessee.

36. On appeal, the CIT(A) observed that there was no deduction of tax at source from the payment of Rs.53,26,655/- on the ground that nothing was payable by the end of the year. He observed that the submission was not acceptable in view of the decision of Hon'ble H.P. High Court in the case of Palam Gas Service vs CIT, (2014) 47 taxmann.com 310 (HP) and observed that the assessee is required to deduct tax at source u/s.194C of the Act and having failed to do so, the Assessing Officer is justified in invoking provisions of section 40(a)(ia) of the Act. He further observed that even the submission that nothing was payable was not correct as per the facts of the case and this view was supported from the submission of the assessee at page 32 of the paper book, wherein, out of payment of Rs.6,29,325/- due to Srikakulam Lorry Transport, Shree Hanuman Industries, Raj Laxmi Road Carrier, Maheswari Freight Carrier, New Multani Freight Carrier, Cuttack Fast Carrier, Raj Mastan Roadway, payment outstanding by the end of the year was Rs.3,22,805/-. He observed that on perusal of material available on record with reference to claim of the assessee that it had obtained PAN from all the transporters

before paying carriage & freight charges was misplaced since the assessee has simply filed certain cash vouchers on freight charges and nowhere even PAN of the recipient has been kept on record. He noted that sub-section (6) of section 194C of the Act was inserted by Finance Act, 2015 w.e.f. 1.6.2015 and accordingly, no deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less good carriages at any time during the previous year and furnishes a declaration to that effect alongwith his PAN to the person paying or crediting such sum. Therefore, newly inserted provisions of section 194C is not applicable in the assessment year under appeal. The CIT(A) further observed that annexure-5 filed with the paper book is ledger account of carriage & freight expenses and on perusal of the same, it appears that in most cases payments were made in cash payment to each transporter being less than Rs.75,000/- with no individual payment exceeding Rs.30,000/- except in the case of Srikakulam Lorry Transport, Shree Hanuman Industries, Raj Laxmi Road Carrier, Maheswari Freight Carrier, New Multani Freight Carrier, Cuttack Fast Carrier and Raj Mastan Roadway. He observed that it was evident from record that in some cases the transportation and freight charges were reimbursed from the suppliers/purchasers like from Shree Krishna Supply Agency and in most cases, the assessee incurred the transportation and freight charges. Since the goods were transported at assessee's risk, the assessee had to

deduct tax at source on payments to transporters as per provisions of law and for that even oral contract with the transporters was enough. Keeping in view the overall facts and circumstances of the case, he found that it was only in case of payments to Srikakulam Lorry Transport, Shree Hanuman Industries, Raj Laxmi Road Carrier, Maheswari Freight Carrier, New Multani Freight Carrier, Cuttack Fast Carrier, Raj Mastan Roadway as submitted by ld A.R. at page 31 of paper book, the assessee had the liability to deduct at source on payment of Rs.6,29,325/- only and, therefore, for the failure of the assessee to deduct the tax at source on such payment to transporters u/s.194C, addition to the total income by invoking provisions of section 40(a)(ia) is restricted to Rs.6,29,325/- and allowed partial relief to the assessee.

37. Being aggrieved by this order of the CIT(A), both the revenue as well as assessee are in appeal before us.

38. Ld Departmental Representative relied on the order of the Assessing Officer whereas ld A.R. of the assessee submitted that the CIT(A) was not justified in sustaining the addition of Rs.6,29,325/- on the ground of non-deduction of tax from the payments made.

39. We find that ld Departmental Representative during the course of hearing could not controvert the findings of the CIT(A) that from verification of Annexure-5 filed in the paper book, which was the ledger account of carriage and freight expenses, it was observed by the CIT(A) that in most cases payments were made in cash to the transporters was less than Rs.75,000/- during the year and no individual payment

exceeded Rs.30,000/- except in the case of Srikakulam Lorry Transport, Shree Hanuman Industries, Raj Laxmi Road Carrier, Maheswari Freight Carrier, New Multani Freight Carrier, Cuttack Fast Carrier, Raj Mastan Roadway and, therefore, he deleted the addition of Rs.46,97,330/- in view of the provisions of section 194C(5) of the Act, which provides that in such cases no TDS was to be deducted from the payments made for transportation of goods and, therefore, no disallowance can be made u/s.40(a)(ia) of the Act for non-deduction of TDS from such payments. We find that the assessee before the CIT(A) relied on the decision of ITAT Visakhapatnam Bench in the case of Merilyn Shipping & Transports vs ACIT, 146 TTJ 1, Hon'ble Allahabad High Court in the case of CIT vs. Vector Shipping Services (P) Ltd.,262 CTR 545 that where no amount was outstanding and payable as at the end of the year, no TDS was required to be deducted from the payments made for transportation charges. The CIT(A) has found that in the case of Srikakulam Lorry Transport, Shree Hanuman Industries, Raj Laxmi Road Carrier, Maheswari Freight Carrier, New Multani Freight Carrier, Cuttack Fast Carrier, Raj Mastan Roadway the amount outstanding and payable to them was Rs.3,22,805/- and, therefore, opined that the assessee should have deducted TDS from payment of Rs.6,29,325/- made to those parties and hence, confirmed the addition for non-deduction of TDS u/s.40(a)(ia) of the Act. We find that Hon'ble Supreme Court in the case of Palam Gas Service VS CIT, (TS-170-SC-2017] has held that the amount payable includes the amount paid as well as payable during the financial year. Therefore, we find that

the order of the CIT(A) in confirming the addition of Rs.6,29,325/- is in conformity with the decision of the Hon'ble Supreme Court in the case of Palam Gas Service (supra). Hence, we find no good reason to interfere with the order of the CIT(A) on this count. Hence, Ground No.4 of the revenue as well as Ground No.6 of the appeal of the assessee, both are dismissed.

40. Ground No.4 of the assessee is directed against the order of the CIT(A) in confirming the disallowance of penalty of Rs.92,200/- paid to CESU.

41. The Assessing Officer observed that on verification of total electricity bills of Rs.67,77,580/-, penalty of Rs.92,200/- was debited alongwith the electricity bill. In response to show cause notice, the assessee submitted that penalty of Rs.92,200/- was imposed by CESU for over drawal of powers and not for violation of law. The Assessing Officer opined that the penalty is not allowable expenses and, therefore, he disallowed the same and added to the total income of the assessee.

42. Before the CIT(A), it was stated by the assessee that since the assessee is operating in rural areas and due to frequent of power fluctuation, at certain point of time, there is over drawal of power and, the CESU charges penalty for the same. Reference was made on the decision of Hon'ble Calcutta High Court in the case of CIT vs. Todi Tea Company Ltd., 239 ITR 28(Cal), wherein, it was held that the

compensation paid for the breach of contract is revenue expenditure and allowable in the year it had been incurred by the assessee.

43. The CIT(A) after considering the submission of the assessee observed that if an assessee is penalised under one Act, he cannot claim that the amount is deductible against his income under another Act. He also observed that deduction will not be permitted of the amounts paid as penalty or fine as expenditure incurred wholly and exclusively for the purpose of business. He further observed that the assessee paid penalty of Rs.92,200/- to CESU and it was the duty of the assessee to explain the nature of penalty imposed on it with proper evidence, but this has not been done. Therefore, in view of the assessee's failure to disclose fully the nature of offence committed by it, the CIT(A) confirmed the penalty imposed by the Assessing Officer.

44. Ld A.R. of the assessee reiterated the submissions made before the lower authorities.

45. Ld Departmental Representative supported the orders of lower authorities.

46. We find that it is not in dispute that the amount paid to CESU was penalty levied by it for overdrawal of power than the sanctioned limit. No material was brought on record by ld A.R. of the assessee to show that the amount paid to CESU of Rs.92,200/- was not penalty but compensation for overdrawal of power. Hence, we find no good reason to

interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of the assessee is dismissed.

47. Ground No.5 of the appeal of the assessee is directed against the order of the CIT(A) in confirming the adhoc disallowance of 10% of the amount debited under the loading and unloading charges of Rs.24,00,633/-.

48. The Assessing Officer, on verification of bills and vouchers of loading and unloading charges of Rs.24,00,633/-, found that all the expenses were supported by self-made vouchers. Since the genuineness of the vouchers cannot be accepted on account of unverifiable nature of expenditure, the Assessing Officer made adhoc disallowance of Rs.2,40,063/- being 10% of total expenses of Rs.24,00,633/-.

49. Before the CIT(A), it was submitted that the assessee was carrying on the business of rice mill and for the rice under PDS scheme, it had to lift the paddy from the Mandi and while delivering the rice to OSCSC or NAFED, it had to deliver the rice at the godown of the OSCSC/NAFED. Therefore, the assessee had incurred expenditure of Rs.24,00,633/-. However, OSCSC reimbursed only the loading and unloading charges to the assessee as per the rates prescribed by the Government and the assessee debits the whole of expenditure in its profit and loss account and part of reimbursement is shown as other income in the profit and loss account.

50. The CIT(A)observed that as the records were stated to be voluminous, the Assessing Officer test checked the vouchers of two months and found that the details were not complete and, therefore, the Assessing Officer is justified in making partial disallowance to plug the possible revenue leakage.

51. Ld A.R. of the assessee submitted that the CIT(A) was not justified in confirming the adhoc disallowance of expenses incurred under the head "loading and unloading charges" without pointing for which of the expenditure incurred, complete details were not available.

52. Ld Departmental Representative supported the orders of lower authorities.

53. After hearing the rival submissions and perusing the materials available on record, we find that the Assessing Officer disallowed 10% of the expenses of Rs.24,00,633/- claimed by the assessee under the head "loading and unloading charges" on the ground that complete details were not available.

54. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

55. The contention of ld A.R. of the assessee is that without pointing out for which of the expenses, complete details were not available to the Assessing Officer, the Assessing Officer was not justified in making adhoc disallowance of 10% out of total expenses of Rs.24,00,633/- claimed by

the assessee under the head "loading and unloading charges" and the CIT(A) was not justified in confirming the same.

56. We find force in the submission of ld A.R. of the assessee. The Assessing Officer while making the addition to the income of the assessee by disallowing expenditure genuinely claimed by the assessee incurred for the business purpose of the assessee has to give complete details and reasons as to why he is making the disallowance. We find that the reasons given by the Assessing Officer while making the disallowance is vague. He has not pointed out in his order which details are not available for the bills and vouchers produced by the assessee and how the expenditures claimed by the assessee are not available. In absence of the same in our considered view, the disallowance made is not sustainable under the law. Hence, we set aside the orders of lower authorities and vacate the disallowance of Rs.2,40,063/- and allow this ground of appeal of the assessee.

57. Ground No.7 of the appeal of the assessee is directed against the order of the CIT(A) in confirming the addition of Rs.20,996/- on account of undisclosed TDS under the head "commission" based on 26AS statement.

58. The Assessing Officer observed that the assessee has not disclosed receipt of Rs.20,996/- as commission from Shri Mahadev Edible Products Ltd., and Good Health Agro Tech Ltd. Before the Assessing Officer, it was

submitted by the assessee that the books of account were finalised on the basis of 26AS statement but while taking the print out of 26AS statement on 4th March, 2014, the excess credit of commission payment of Rs.20,996/- was found. The commission was not recorded due to non-receipt of credit notes from the concerned parties till date of finalisation of account and even TDS of Rs.2,100/- was not claimed. Therefore, the Assessing Officer added Rs.20,996/- to the total income of the assessee.

59. On appeal, the CIT(A) confirmed the action of the Assessing Officer observing as under:

> "The appellant had trading relationship with Shri Mahadev Edible Products Limited and Good Health Agro Tech Ltd. and the parties paid th< alleged sum in the financial year relevant to the assessment year under appeal The appellant is regularly following mercantile system of accounting and therefore, the alleged receipts ought to have been shown as income of the year under consideration. This has not been done simply for the reason that the appellant was not aware of the credit notes at the time of finalization of accounts. But the facts remain undisputed that the payments were genuine,
>
> Similar fact came up for decision of the Hon'ble High Court of Karnataka in the case of *Smt. J. Rama Vs. C1T reported in (2010) 194 Taxman 37.* In the instant case, the assessee was maintaining the books of account on mercantile basis. During the assessment proceedings, the AO noticed that the amount of TDS certificates enclosed with the return was more than receipts disclosed in the income and expenditure account. The TDS certificates enclosed with the return amounted to Rs. 1,70,89,004/- whereas the receipt disclosed was Rs. 1,64,06,036/-. The AO assessed the differential amount. The Hon'ble High Court, in para 9 of the order, has held thus;
>
> "9. *Insofar as the second substantial question of law is concerned, the facts are not in dispute. The TDS certificates enclosed with the return amounted to Rs.1,70,89,004/- whereas the receipt disclosed in the income and expenditure amount, was Rs. 1,64,06,036/-. This discrepancy is admitted. The explanation offered is that a portion*

of the said TDS deductions are claimed in the subsequent year. The amount of Rs. 6,82,968/- was received by the assessee in following year. As rightly pointed out by the authorities, when the assessee is following the maintenance of books of account on mercantile basis, accounting and reflecting on receipt basis is not proper and therefore, rightly they have upheld the deduction made."

In the case of ***M/s. Pest-O-Kill Shivaji Hagar, Korba*** *Vs. CIT,* ***Bilaspur,*** the gross contract receipts was Rs. 41,73,137/- as per the Certificate enclosed with the return. However, the assessee has shown the gross receipt at Rs. 38,75,298/-. Thus, the difference in gross receipt 2,97,837/- was treated as income of the assessee. The CIT(Appeal), Bilaspur and the Hon'ble Tribunal confirmed the addition. The assessee moved to the Hon'ble High Court, Chhattisgarh against the order of the Tribunal. The counsel of the assessee vehemently argued before the Hon'ble High Court that the AO ought to have computed profit @ 7.2% on above receipts and that amount alone could be added as income of the assessee on this count. The Hon'ble High Court, in para 11 of the order in ITA NO. 02/2006 dated 03-07-2009 has held, thus:

"The law laid down in the judgments cited by the appellants, is that the income tax on a given rate can be applied to the assessee only after assessing the taxable income, meaning thereby that before applying the rate at which tax is to be levied upon the assessee, his income has to be assessed. In the instant case, the assessee filed his return for the assessment year showing gross receipt of Rs. 38,75,298/-. On verification of the documents enclosed with the return and information received from Balco, it revealed that the assessee had suppressed gross receipt of Rs. 2,97,539/-. The appellant had also filed Profit & Loss Account-showing total income of Rs. 7675/-. The appellant was afforded with an opportunity to explain the above discrepancy. The explanation forwarded by the appellant for the aforesaid discrepancy was again forwarded to the AO and remand report was obtained. On receiving the remand report, the CIT(Appeal) forwarded copy of the same alongwith annexure to the appellant for giving his response, however, he failed to give his response. In these circumstances, the 'suppressed receipt amount of Rs. 2,97,639/- has been added in income of the appellant. In our considered opinion, the reasoning assigned by the AO, which has been subsequently confirmed in CIT(Appeal) and ITAT, is proper and addition of the aforesaid amount in income of the assessee has been rightly made. No substantial question of law, as proposed by the appellant, arises for adjudication of this appeal."

Thus, as per the principle of Accounting Standard and in view of the above legal prepositions the entire receipts of Rs. 20,996/- is

required to be assessed as income of the appellant company for the year under reference. There is no infirmity in the order of the A.O. in assessing the same as deemed income and therefore, addition made on this count is **confirmed."**

60. Ld A.R. of the assessee during the course of hearing did not make any submission on this ground of appeal. Hence, the same is dismissed for want of prosecution.

61. In Ground No.8 of appeal, the grievance of the assessee is that the CIT(A) erred in confirming the disallowance of pre-paid insurance of Rs.1,84,871/-.

62. The brief facts of the case are that the Assessing Officer observed that the assessee has claimed insurance expenses of Rs.4,22,623/- in the profit and loss account, which includes prepaid insurance premium of Rs.1,84,871/-. On a show cause notice issued to the assessee, it was submitted that the assessee debits total amount of insurance expenses paid during the year in its profit and loss account and this practice is followed by the assessee since inception. It was submitted that for assessment year 2008-09, assessment was made u/s.143(3) of the Act and no disallowance was made by the Assessing Officer on account of prepaid insurance expenses. Therefore, it was urged that following the rule of consistency, no disallowance should be made and placed reliance on the decision of Ahmedabad Benches of the Tribunal in the case of Arvind Fashions Ltd vs ACIT, 45 DTR (Ahd) 299, wherein, it was held that during the course of assessment, the rule of consistency should be followed. Further, it was held that though the res-judicata as such no application to the income tax proceedings rule of consistency to be

followed on factual matters repeated from year to year-chord of consistency running through the assessments of several years can be cut off only if facts are substantial different from the earlier assessment years capable of leading to different findings. The Assessing Officer was not convinced with the arguments of the assessee. He observed that the assessee was following mercantile system of accounting, according to which, prepaid insurance expenses should have been shown by the assessee on the assets side of the balance sheet and should not have claimed as the expenses. Hence, he disallowed deduction for Rs.1,84,871/-.

63. On appeal, the CIT(A) confirmed the action of the Assessing Officer. While doing so, he relied on the decision of Hon'ble Supreme Court in the case of CIT vs. British Paint India Ltd., 183 ITR 44 (SC), where, it was held that each year being a self contained unit, taxes of a particular year is payable with reference to income of that year in terms of the Act. Therefore, he held that expenditure of subsequent year in case of the assessee cannot be allowed to arrive at the correct income of the year under reference and even if this accounting practice is regularly followed.

64. Ld A.R. reiterated the submissions made before the lower authorities.

65. Ld Departmental Representative supported the orders of lower authorities.

66. We find that in the instant case, it is not in dispute that insurance expenses of Rs.1,84,871/- pertains to subsequent year and is not

expenditure in this year and this fact is not disputed by ld A.R. of the assessee during the course of hearing. It is not in dispute that the assessee is following mercantile system of accounting. As per the mercantile system of accounting, the amount of expenses which is accrued during the year is allowable as deduction to the assessee. Since the prepaid insurance expenses claimed by the assessee of Rs.1,84,871/- is not accrued during the year, therefore, the disallowance has been rightly made by the Assessing Officer while computing the income of the assessee and the CIT(A) is fully justified in confirming the same. Therefore, We find no good reason to interfere with the order of the CIT(A) and dismiss the ground of appeal of the assessee.

67. In the result, the appeal filed by the revenue is dismissed and the appeal filed by the assessee is partly allowed.

Now we take up the appeal filed by the revenue and cross objection filed by the assessee for assessment year 2012-13.

68. In Ground No.1 of the appeal, the grievance of the revenue is that the CIT(A) erred in deleting the disallowance of Rs.2,74,400/- made on account of penalty u/s.40(a)(ii) of the Act.

69. The brief facts of the case are that the Assessing Officer found that the assessee had included an amount of penalty of Rs.2,74,400/- in the total electricity bill of Rs.95,32,877/- debited to the P&L account. The Assessing Officer disallowed the same on the ground that the amount paid as penalty is not allowable expenses.

70. On appeal, the CIT(A) deleted the disallowance of Rs.2,74,400/- on the ground that penalty paid to CESU for overdrawal of power cannot be considered to be an expenditure incurred by the assessee for any purpose which is an offence or which is prohibited by law.

71. While adjudicating this issue in the appeal filed by the assessee in the assessment year 2011-12, we have confirmed the order of the CIT(A) upholding the addition made by the Assessing Officer in para 46 of this order. For the reasons given therein, we set aside the order of the CIT(A) and restore back the order of the Assessing Officer being amount paid to CESU as penalty and made addition of Rs.2,74,400/-. Thus, this ground of appeal of the revenue is allowed.

72. In Ground No.2 of the appeal, the grievance of the revenue is that the CIT(A) erred in deleting the addition of Rs.31,44,327/- made by the Assessing Officer on account of suppression of bran products.

73. The brief facts of the case are that the Assessing Officer made an addition of Rs.31,44,327/- on the ground that the yield of rice bran shown by the assessee was much lower than the standard yield arrived at by Indian Institute of Crop Processing Technology and Central Rice Research Institute (CRRI), Cuttack.

74. On appeal, the CIT(A) deleted the addition of Rs.31,44,327/- made on account of suppression of bran products on the ground that the Assessing Officer has not brought any other materials on record to show that the assessee has actually suppressed the yield of bran.

74. While adjudicating this issue in the appeal filed by the revenue for the assessment year 2011-12, we have upheld the action of the CIT(A) in deleting the addition made on account of suppression of bran in paras 21 to 29 of this order. For the detailed reasons given therein, we uphold the order of the CIT(A) and the ground of appeal of the revenue is dismissed.

75. In Ground No.3 of the appeal, the grievance of the revenue is that the CIT(A) was not justified in deleting the addition of Rs.1,88,218/- made by the Assessing Officer on account of disallowance of loading & unloading charges.

76. The brief facts of the case are that the Assessing Officer found that the assessee has debited Rs.18,82,180/- on account of loading and unloading charges. The Assessing Officer observed that the vouchers furnished in respect of such expenditure were self-made and unverifiable and, therefore, disallowed 10% of the same on estimate basis.

77. On appeal, the CIT(A) deleted the adhoc disallowance of Rs.1,88,218/- on the ground that the Assessing Officer has not specified any vouchers which are unverifiable.

78. Similar disallowance was made by the Assessing Officer in the assessment year 2011-12, which was confirmed in appeal by the CIT(A). We have deleted the addition for the reasons given in paras 48 to 56 of this order. We confirm the order of the CIT(A) for the same reasons as given in assessment year 2011-12 and dismiss this ground of appeal of revenue.

79. Ground Nos.1 to 3 of cross objection filed by the assessee are in support of the order of the CIT(A). As the assessee has no grievance against the order of the CIT(A), therefore, these grounds of cross objection of the assessee are infructuous and, accordingly, they are dismissed.

80. In Ground No.4 of cross objection, the grievance of the assessee is that the authorities below were not justified in not allowing the employee's contribution to PF of Rs.17,544/- u/s.36(1)(va) of the Act.

81. After hearing the rival submissions and perusing the orders of lower authorities below, we find that if the employee's contribution to PF is deposited before due date of filing of return u/s.139(1) of the Act, in view of the decision of Hon'ble Karnataka High Court in the case of Essae Teraoka (P) Ltd. (supra), the same is allowable deduction. Similar issue had come up for consideration in the assessment year 2011-12 in the appeal filed by the assessee. For the reasons given therein in paras 11 to 18, we set aside the orders of lower authorities and vacate the disallowance of Rs.17,544/- and allow this ground of cross objection of the assessee.

81. In Ground No.5 of cross objection, the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.14,411/- being the expenses incurred under the head donation.

82. The facts are that the Assessing Officer noticed that the assessee has debited Rs.14,411/- on account of donation. The Assessing Officer

observed that since the amount paid as donation is not allowable expenses, he disallowed for the same.

83. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

84. We find that in the assessment year 2011-12, similar disallowance was made by the Assessing Officer and the CIT(A) has deleted the disallowance made on account of donation. We have upheld the findings of the CIT(A) in deleting the disallowance in paras 30 to 33. For the reasons given therein, we set aside the orders of lower authorities and delete the disallowance of Rs.14,411/- and allow this ground of cross objection of the assessee.

85. In Ground No.6 of cross objection, the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.58,860/- under the head commission merely based on the 26AS statement.

86. The brief facts of the case are that the Assessing Officer made an addition of Rs.58,860/- on the basis of 26AS statement, wherein, certain commission receipts were found which were not disclosed as income. The commission was received from Good Health Agro Tech Ltd., on which TDS of Rs.1,177/- was deducted by the payer as per 26AS statement. The assessee explained before the Assessing Officer that the commission had not been reflected in the books of account due to non-receipt of credit notes from the concerned party till finalisation of accounts. The Assessing Officer did not accept the explanation of the assessee and disallowed Rs.58,860/-.

87. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

88. Ld A.R. of the assessee did not make any submission on this ground of cross objection. Hence, the same is dismissed for want of prosecution.

89. In Ground No.7 of cross objection, the grievance of the assessee is that the CIT(A) was not justified in confirming the disallowance of prepaid insurance of Rs.57,743/-.

90. The facts of the case are that the Assessing Officer found that the assessee has debited an amount of Rs.5,45,882/- which include prepaid insurance of Rs.2,42,614/-. Before the Assessing Officer, it was explained that right from the inception of the company, the same method of accounting was being followed in respect of insurance payment and as a matter of consistency, the amount paid for insurance was claimed as expenditure irrespective of the fact that it related to the subsequent year. The Assessing Officer did not find the explanation of the assessee satisfactory and, disallowed the same.

91. On appeal, the CIT(A) confirmed the action of the Assessing Officer on the ground that the prepaid insurance did not relate to the relevant previous year and as such cannot be allowed in mercantile system of accounting being followed by the assessee.

92. We find that similar issue had come up for consideration in the assessment year 2011-12 in the appeal filed by the assessee. We have upheld the action of the authorities below and dismissed the ground of assessee for the reasons given in paras 62 to 66 of this order. Following

the same, we uphold the action of the lower authorities and dismiss this ground of cross objection of the assessee.

93. In the result, appeal of the revenue is partly allowed and that of cross objection filed by the assessee is partly allowed.

Order pronounced on 21/11/2017.

Sd/- sd/-

(Pavan Kumar Gadale) **(N.S Saini)**
JUDICIALMEMBER **ACCOUNTANT MEMBER**

Cuttack; Dated 21 /11/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant /Assesse: Subhalaxmi Agencies Ptd.,Nayagarh.
2. The Revenue: JCIT, Range-2 Bhubaneswar
3. The CIT(A)- 3, Bhubaneswar
4. Pr.CIT-3, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.

//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack