IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : E : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.3150/Del/2014
Assessment Year: 2006-07

ONGC Videsh Ltd., 601, 6th Floor, Kailash Building, 26, Kasturba Gandhi Marg, New Delhi. PAN: AAACO1230F	Vs	Addl. CIT, Range-13, New Delhi.

ITA No.3208/Del/2014
Assessment Year: 2006-07

DCIT, Circle 13(1), New Delhi	Vs	ONGC Videsh Ltd., 601, 6th Floor, Kailash Building, 26, Kasturba Gandhi Marg, New Delhi. PAN: AAACO1230F
(Appellant)		(Respondent)

Assessee by	:	Shri C.S. Aggarwal, Sr. Advocate, Shri R.P. Mall, Advocate & Shri Madhur Aggarwal, Advocate
Revenue by	:	Ms Pramita M. Biswas, CIT, DR
Date of Hearing	:	02.04.2019
Date of Pronouncement	:	01.07.2019

ORDER

PER R.K. PANDA, AM:

ITA No.3150/Del/2014 filed by the assessee and ITA No.3208/Del/2014 filed by the Revenue are cross appeals and are directed against the order dated 24th February, 2014 of the CIT(A)-16, Delhi, relating to assessment years 2006-07. For

the sake of convenience, these were heard together and are being disposed of by this common order.

2. Ground of appeal No.(i) by the assessee and grounds of appeal No.1 and 2 by the Revenue are as under:-

Ground No.(i) by the assessee

> "(i) Not allowing deduction under section 37 of the Act in respect of acquisition cost of participation interest in oil blocks
>
> - That the Ld. CIT(A) erred in law and on facts of the case in not allowing deduction of 1NR 982.61 million being the acquisition cost paid during the year for acquiring participating interest in oil blocks under section 37 of the Act.
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> - Ld. CIT(A) has failed to appreciate that the cost of acquiring participating interest has been incurred in the normal course of its business and is wholly and exclusively for its business and hence allowable as deduction under section 37 of the Act."

Ground Nos.1 & 2 by the Revenue

> "1. The Ld. CIT(A) has erred in law and on facts by not considering the fact that in the AY 2002-03 the ITAT has erred in granting relief to the assessee by wrongly invoking provisions of Section 32(1)(ii) of the Act.
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> 2. The Ld CIT(A) has erred in law and on facts by ignoring the fact that to acquire a stake in any kind of business would amount to acquiring an intangible asset as the nature of the business or commercial right which is being covered in the section under discussion, is of a narrower scope than what has been envisaged and allowed by the ITAT."

3. Facts of the case, in brief, are that the assessee is a company and is a wholly owned subsidiary of M/s ONGC and is engaged in the business of overseas exploration and production of hydrocarbon and oil and gas through acquiring participating interest in production sharing contracts to supplement the reserves of

the parent company and to augment the national energy security of India. It filed its return of income on 29.11.2006 declaring total income of Rs.6,35,90,39,360/-. During the course of assessment proceedings, the Assessing Officer noted that the assessee has claimed depreciation in the following manner:-

> "(a) Depreciation has been claimed on acquisition cost of participating interests in Sakhalin , Myanmar Block A-l and A-3, Sudan 5A & 5B, Ivory Cost, Egypt, Qatar, Libya Joint Venture the same being a right to carry oil exploration business In the specified block.
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> (b) Depreciation has been also claimed on support equipments/assets of Myanmar Block A-l & A-3, Libya Block NC-188, NC-189, Iran, Sudan 5A & 5B, Syria, Egypt and Qatar (joint venture projects for which commercial production has not yet started.) as these assets have been put to use for exploration and development activities.
>
> (c) Alternatively it has been claimed in its return of income that in case the claim for depreciation on such acquisition cost of participating interest is disallowed the claim for allowability of deduction for the amounts paid for acquiring interest u/s 42 of the Act may be allowed."

4. The Assessing Officer noted that as per the return of income filed, the assessee company has claimed depreciation on acquisition cost of participating interest @ 25% holding them as intangible assets and the total depreciation claim was to the extent of Rs.204,57,99,264/- in the following manner:-

"1.	Sakhalin 1 Project	123, 32,70,024/-
2.	Block A-1, Myanmar	61,89,614/-
3.	Sudan 5A Project	43,75,81,441/-
4.	Sudan 5B Project	19,63,04,039/-
5.	Ivory Coast Project	46,90,237/-
6.	Egypt Project	79,38,840/-
7.	Qatar Project	8,19,37,500/-
8.	A-3, Myanmar Project	4,42,72,569/-

9.	81-1 Libya Project	3,36,15,000/-

5. He, therefore, asked the assessee to justify the above claim in the return of income. Rejecting the various explanations given by the assessee, the Assessing Officer held that such an expenditure incurred could not be treated to be an expenditure incurred to acquire business or commercial rights as contemplated u/s 32(1)(ii) of the IT act. He also held that the nature of payment made by the assessee is that of capital expenditure on which the assessee is not eligible for any depreciation. The Assessing Officer analysed the production sharing contracts and noted that the analysis of the agreements shows that by making the payment the assessee has acquired a right of exploration and development of hydrocarbon, oil and gas. He observed that the rights acquired by the assessee are in the nature of business or commercial rights, but, not in the nature of rights as envisaged in section 32(1)(ii). He accordingly disallowed the claim of depreciation. The Assessing Officer further held that the expenditure incurred also does not fall within the ambit of section 42 of the Act although no such claim was made before him.

6. In appeal, the ld.CIT(A), following the order of the Tribunal in assessee's own case for assessment year 2002-03 held that the participating interest in the products are intangible assets entitled to claim depreciation u/s 32(1)(ii) of the Act. He accordingly allowed the claim of depreciation which was disallowed by the Assessing Officer.

7. Aggrieved with such order of the CIT(A), the assessee as well as the Revenue are in appeal by taking the above grounds.

8. The ld. counsel for the assessee fairly conceded that the ground taken by the assessee has been decided against the assessee by the Tribunal. So far as the ground taken by the Revenue is concerned, he submitted that since the ld.CIT(A) has followed the order of the Tribunal in assessee's own case for assessment year 2002-03 which has been followed by the Tribunal, again, for 2004-05 and the appeal filed by the Revenue has been dismissed by the Hon'ble Delhi High Court, therefore, the grounds raised by the Revenue should be dismissed.

9. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

10. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We find the Tribunal in assessee's own case for assessment year 2002-03 has held that commercial rights of exploration of mineral oils and licences acquired by the assessee, being in the nature of intangible assets are eligible for depreciation @ 25%. We find the Tribunal at para 10 onwards of the order held as under:-

> "10. We have considered the rival contentions of both the parties and perused the material placed on record. From the record, we found that on 5th May, 1965 assessee company was registered as "Hydrocarbons India Private Limited" to take over the rights and interest of its parent company i.e., the estwhile Oil and Natural Gas Commission to formalize the following agreements so as to explore and develop oil fields in Iran:

a) the agreement made and entered into on 26th August, 1964, by and between A.G.I.P., S.p.A., an Italian Corporation, Phillips Petroleum Company, a Delaware USA Corporation and Oil and Natural Gas Commission, read with the agreement made and entered on the 30th July, 1964 by and between the said Phillips Petroleum Company and the A.G.I.P., S.p.A.; and

b) the agreement made and entered into on the 17the January, 1965 by and between National Iranian Oil Company of the One Part and the said A.G.I.P., S.p.A. Phillips Petroleum Company and the Oil and Natural Gas Commission of the Other Part.

11. In early 1970's, the assessee was also engaged in to carry out services and providing training in the international arena. In the year 1975, the assessee company also performed a service contract in Iraq, which due to lack of commercial viability, could not be pursued further after drilling a few wells in a field which still remains undeveloped. In the year 2000, this field was awarded by Iraq government, to the assessee through negotiations, for development and production of oil under new agreements. The assessee also had entered on May 19th, 1988 into a Petroleum Production Sharing Contract with Vietnam Oil and Gas Company. The Production Sharing Contract entered on May 19th, 1988 envisages making available necessary manpower, technical skills and other inputs required for the execution of the Production Sharing Contract in accordance with sound petroleum industry practices. The Production Sharing Contract provided for exploration and exploitation of Petroleum resources in the specified area in the Continental Shelf of Vietnam. The assessee carried out petroleum exploration in the area since 1988 and has the distinction of discovering the largest free gas field of Vietnam. The assessee partnered with British Petroleum and Vietnam Oil and Gas Company in the block and finalized development plans for the development of Natural Gas discovery. The development plan for the discovery was finalized and necessary commercial arrangements entered into in December 2000. The first Phase of the development of Vietnam Project (Block 06.1) was completed in January, 2003. From the above, it is evident that the business of the assessee had already commenced which was set up in the year 1965.

12. From the record, we found that hydrocarbons in their natural habitat embedded in a particular territory are the property of the state government, jurisdiction over such hydrocarbons does not lie with any private person other than state government and a person cannot carry out hydrocarbons operations unless the person had entered into a production sharing agreement with the government. In the instant case, by entering into an agreement called PCA, the government owning the hydrocarbons, granted rights to the assessee company alongwith license for carrying on hydrocarbons operations. The business rights in the license are owned by the assessee entering into PCA and such right and license can be assigned and transferred to other parties subject to the terms and conditions of the PCA and approval of the government. The assessee by virtue

of acquisition of 20% participating interest became the member of the consortium and acquired proportionate share in rights and licenses granted by the Russian state for Sakhalin Block. By acquiring these business rights and production licenses, the assessee became entitled to carry on hydrocarbon operations in the Sakhalin project. The statutory expression of the provision granting depreciation on intangible asset is that -

"know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after 1-4-1988."

13. A reading of the above statutory expression brings home the point that the law has specified items of intangible assets eligible for depreciation in the following categories:-

(i) Know-how
(ii) Patents
(iii) Copyrights
(iv) Trademarks
(v) Licences
(vi) Franchises

(vii) Any other business or commercial rights of similar nature.

14. So far as claim of depreciation in case of intangible assets falling in the category of "any other business or commercial rights of similar nature" are concerned, as per our considered view, all the business or commercial rights are not by themselves assets eligible for depreciation, and that only those rights which are similar in nature with the know-how, patents, copyrights trademarks, licences etc. are eligible for claim of depreciation. In view of principle of ejusdem generis, the expression "any other business or commercial rights" has to be read in the company of the preceding words. This rule of interpretation makes an attempt to reconcile incompatibility between the specific and general words. The first category of words like know-how, patents, copyright, etc., form a distinct genesis or category inasmuch as all those items are specific and elucidated rights of business or commercial nature. In such circumstances, the expression 'any other business or commercial rights of similar nature' also must be in the same genesis or category with specific and elucidated identity of commercial or business nature. Therefore, in the light of the statutory provisions contained in section 32(1)(ii), the commercial rights of exploration of mineral oils, as acquired by the assessee falls under the expression of any other business or commercial rights of the nature similar to one of the category i.e. licenses as stipulated in Section 32(1)(ii). The commercial rights of exploration and licenses acquired by the assessee being in the nature of intangible assets are eligible for

the claim of depreciation at the rate prescribed u/s 32(1)(ii) of the Act. The AO himself in his order had observed that as a result of entering into such an agreement i.e. PCA, the assessee company has been granted licenses by Russian government to explore and produce hydrocarbons in the agreement area. There is no dispute to the fact that assessee has incurred expenditure of Rs.1559.09 crores for obtaining the right and license for exploration of oil. It is not possible to say that such expenditure was neither capital nor revenue in nature. If it is held to be capital, then it is obvious that what the assessee has acquired was a participating right which is in the nature of commercial right of carrying on of business of exploration and production of mineral oil. It also cannot be said that the right so acquired was not an asset. If it is an asset being the right then it is obvious that same is commercial right, therefore in the nature of asset in the form of license. This right had been granted to the assessee by way of license and the assessee became owner of such right i.e. license to have an access and to carry on of business of exploration and development of mineral oil. Accordingly, as per our considered view such an asset fall within the category of asset falling u/s 32(1)(ii) of the Act. Accordingly, we are inclined to agree with the learned senior counsel that the assessee had acquired business and commercial right and license by making payment of Rs.1559.10 crores, which is in the nature of intangible assets entitled to claim of depreciation u/s 32(1)(ii) of the IT Act.

14A. In view of the above discussion asssessee's claim for allowing deduction of entire expenditure of Rs. 1559.10 crores is declined. The stand of CIT(A) in treating the alleged expenditure as deferred revenue expenditure and directing the AO to allow 1/19 of the expenditure during the year is also declined, since there is no concept of deferred revenue expenditure under IT Act.. As we have treated the expenditure as capital in nature the same is eligible for claim of depreciation at the rates prescribed for the assets falling u/s 32(1)(ii) of the Act. We direct accordingly."

11. We find, following the above decision the Tribunal in assessee's own case for assessment year 2003-04, 2004-05 and 2005-06 has allowed depreciation. Since the ld.CIT(A) has followed the order of the Tribunal in assessee's own case for assessment year 2002-03 and the Tribunal has allowed the claim of depreciation in assessment year 2003-04 to assessment year 2005-06 and the appeal filed by the Revenue against order of the Tribunal for A.Y. 2002-03 has been dismissed by the Hon'ble Delhi High Court, therefore, in absence of any contrary material or

distinguishing features, the order of the CIT(A) is upheld and the grounds raised by the Revenue are dismissed.

12. As mentioned earlier, the ground of appeal No.1 by the assessee has been decided against the assessee by the order of the Tribunal, hence, the same is also dismissed.

13. Ground of appeal No.(ii) of the assessee and ground of appeal Nos.6, 7 and 8 by the Revenue read as under:-

Ground No.(ii) of the assessee

> "(ii) Disallowance in respect expenditure incurred on Sudan pipeline
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> • That the Ld. C1T(A) erred in law and on facts of the case in not allowing deduction amounting to INR 1,026.08 million being the claim received from EPC Contractor for additional expenditure incurred in respect of laying of Sudan pipeline.
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> • Ld. C1T(A) has failed to appreciate that the liability in respect of additional expenditure in laying of Sudan pipeline has crystallized as the additional claim for expenses was received and provided in the books during the year.
> The appellant craves for leave to amend, vary, omit or substitute any of the aforesaid grounds of appeal or add any further ground(s) of appeal at any time before or at the time of hearing of the appeal.

Ground Nos.6, 7 & 8 of the Revenue

> "6. The Ld. CIT(A) has erred in law and on facts by ignoring the fact that the project had completed during the year. And according to the mercantile law of accountancy, which the assessee has been following, the total cost of the project and the total revenues shall have been taken into account for calculation of profits-on accrual basis.
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> 7. The Ld. CIT (A) has erred in law and on facts by ignoring the fact that the claim of the revenues amounting to 1493.10 million has been forwarded by the company to MEM during the year which shows that the revenue has not only accrued but crystallized during the year, the same should have been taken in account for calculation of profits.

8. The Ld. CIT(A) has erred in law and on facts by ignoring the fact that the assessee is maintaining its books of accounts on mercantile basis therefore the expenditure which have neither accrued nor incurred in the relevant previous year, is not allowable in this year."

14. Facts of the case, in brief are that during the relevant assessment year, the assessee completed the execution of multi-product pipeline from Khartoum Refinery to Port Sudan for the Ministry of Energy and Mining of the Government of Sudan (MEM). The Project has been implemented in consortium with Oil India Limited, where the Company's share being 90%. The EPC contractor executing the project on behalf of the consortium claimed additional costs aggregating to ' 1,659 million from the assessee and consequently, an amount of ' 1,026.08 million, being the assessee's share out of' 1140.08 million has been provided in the books of accounts and claimed as an expense in the return of income. The assessee forwarded counter claim to its customer, MEM amounting to ' 1,524.20 million (OVL's share being 1,371.78 million) which has not been accepted by MEM till date. Accordingly, the assessee did not consider any revenue on this account in its books of account since according to the assessee it cannot be said to have acquired any right to receive such income till the time the claim is accepted by MEM. The AO held that since the project had been completed in the relevant assessment year, the assessee acquired a certain right to receive such amount from MEM and the same was taxable in its hands on accrual basis and, accordingly, made an addition of ' 149,31,00,000 to the income of the assessee on this account (as against the correct amount of ' 1371.78 million).

15. The Assessing Officer held that since the assessee has failed to offer the accrued revenue as non-taxable on account of it being uncertain is accepted in appeal then the provision made by the assessee for the additional expenses to the extent of Rs.1026.8 million should be disallowed on matching principles on the same logic as per exclusion of revenue.

16. In appeal, the ld.CIT(A) rejected the claim of INR 1,659 million being the claim received from EPC contractor for additional expenditure incurred in respect of laying of Sudan pipeline on the ground that neither the liability has arisen in the hands of the assessee company nor revenue has accrued. The relevant observations of the CIT(A) read as under:-

> "7.4.1 In Ground no. 4 of appeal the plea of the appellant is that AO has erred in making an addition of Rs. 149,31,00,000/- (as against the correct amount of Rs 1,371.78 million) to the income being the appellant's share of amount receivable from its customer, MEM in respect of the Sudan pipeline project without appreciating that the claim made by the appellant has not been accepted by MEM till date and, therefore, the appellant has not acquired any right to receive such income during the relevant previous year. That the AO erred in holding that in case his aforesaid contention were not be accepted, the expense claimed by the appellant in this regard may be disallowed without appreciating that the said expense forms an ascertained liability eligible for revenue deduction in its hands.
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> 7.4.2 During the year, the company completed the execution of a pipeline from Khartoum refinery to Port Sudan for the Ministry of Energy and Mining of the Government of Sudan (MEM). The project has been implemented in consortium with Oil India Limited, Company's share being 90%. The EPC contractor executing the project on behalf of the consortium has claimed additional costs aggregating to Rs. 1026 Million, being the company's share out of Rs.1140.08 Million which has been provided as expenditure during the year. AO observed that the company has forwarded to MEM claims of Rs. 1524.20 Million (company's share being Rs. 1493.10 Million) which have not been accepted by MEM. Accordingly, the company has not considered any revenue in its Profit & Loss Account for the F.Y. 2005-06. AO held that as the project has been completed and the company made a provision for additional

expense of Rs.1026.8 Million being company's share in the consortium, therefore, revenues of the company to the extent of Rs. 1493.10 Million accrued and crystallized on completion of the project should have been recognized on matching principal and paid taxes on it on completion of the project during the year. The assessee company also forwarded its claim of Rs. 1493 Million to MEM. As such, for the year under consideration the income was ascertained and definite and hence should have been returned as taxable income under the principle of matching in accounts. Therefore, the sum of Rs. 1493.10 million is added by the AO to the taxable income of the assessee company. Alternatively, AO held that if in appeal the assessee's claim of treating revenues as non-taxable on account of it being uncertain, is accepted then the provision made by assessee for the additional expense to the extent of Rs. 1026.8 Million should be disallowed on matching principals and on the same logic as for exclusion of revenues.

7.4.3 In this context in schedule 27 of annual report of FY 2005-06 in Point no. 5 of the notes to the Accounts, the auditors certifies :

> "Khartoum-PortSudan Pipeline Project:
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> During the year, the company completed the execution of the 12"X741 Kms multi-product pipeline from Khartoum Refinery to Port Sudan for the Ministry of Energy and Mining of the Government of Sudan (MEM) on Build, Own, Lease and Transfer (BOLT) basis and handed over the same to MEM. The project has been implemented in consortium with Oil India Limited, Company's share being 90%.
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> The EPC Contractor executing the project has claimed additional costs aggregating to Rs. 1,659.00 million (company's share being Rs. 1,493.10 million), which have not been accepted by the company as yet. However, part of the claims has been forwarded to MEM for their approval for an aggregate amount of receivables from MEM of Rs. 1,524.20 million (company's share being Rs. 1,371.78 million), while the balance claims may be forwarded to MEM after further verification. Pending settlement, with the EPC Contractor, an amount of Rs. 1,026.08 Million, being the company's share out of Rs.1,140.08 million has been provided as expenditure during the year based upon the advices received by the company from its consultant. The company's share of the balance amount has been shown as claims not acknowledged as debt. However, no revenue in this respect has been recognized pending final approvals by MEM."

7.4.4 From the submission of the appellant it is also clear that the EPC contractor has initiated arbitration proceedings against the appellant company alleging failure to pay its liability which is ' pending before arbitration tribunal.

7.4.5 From the above it is evident that additional costs Rs. 1,659.00 million (company's share being Rs. 1,493.10 million) claimed by the EPC contractor is pending in arbitration in its entirety. The claim of the EPC contractors has not been accepted by the appellant company. Part of the cost Rs. 1,524.20 million (company's share being Rs. 1,371.78 million) claimed by the contractor has been forwarded to MEM for their approval. During the appellate proceeding the AR was asked whether any payment was made by the appellant company to the EPC contractor towards the additional costs claimed. The AR submitted that no payment has been made by the appellant company to the contractor. From the above it is evident that neither the additional cost claimed by the EPC contractor is accepted nor any part of it is paid. As such the liability towards the additional cost claimed by the EPC contractor has not arisen to the company during the relevant period.

7.4.6 Further, cl. 9.1.4 of agreement dt. 30.06.2004 between appellant company & MEM says:

> "OVL shall not make any variation, unless and until MEM approves a Variation in writing."

In this context the reply of the legal department of MEM says:

> "Referring to the above mentioned subject and after review and study of the contract signed between MEM and OVL and the related documents, I would like to convey to you that the contractor is not entitled to any amount under his claims for additional amounts, as the alleged variations were not approved by the owner before implementation of the works the subject of variations. In addition the required procedures under the contract for both variations approval and claims were not followed. However, the high standard of performance and early completion of the project by the contractor (OVL) is appreciated and high valued and could be a matter of consideration at your company's own discretion and consideration, without any legal obligation to do the same."

7.4.7 In view of the above, it is evident that neither the EPC contractor nor the appellant is legally entitled to claim the additional costs as the alleged variations were not approved by the MEM before implementation of the works. As such the appellant is not legally entitled to the claim of additional cost of Rs. 1,371.78 million which was forwarded by the appellant to MEM for approval. It is an established principal of law that a sum accrues as "income" only when the person acquires a legally vested right in it. Hon'ble Calcutta High Court in CIT Vs. Bharat Petroleum Corporation Limited (68 Taxman 429) held that the amount can accrue or arise to the assessee, if the assessee acquires a legal right to receive the amount. The mere raising of a

claim or bill did not create any legally enforceable right to receive the same. Hence, the mere claim by the assessee without any right to receive the amount could not be treated as the income of the assessee.

7.4.8 In E D Sassoon & Co. Ltd. Vs. CIT (26 ITR 27) Hon'ble Supreme Court held that accrual of income for purposes of taxation does not depend on the question as to when the income becomes payable. It depends only on when a vested right to receive the income arises. The accrual is accordingly complete when the right to the remuneration becomes vested by the occurrence of all the events on which the remuneration depends.

7.4.9 There is no legal entitlement to the claim to the contractor as well as to the appellant. Neither the claim of the EPC contractor has been accepted by the appellant company nor the claim of the appellant company has been accepted by MEM. In view of the above neither revenue is recognizable in the hands of the EPC contractor nor it can be recognized in the hands of the appellant company. The principle which the appellant applied to claim that revenue is not recognizable, by the same principle the liability has not crystallized and has not arisen in its hand. In other words neither the liability has arisen in the hands appellant company nor revenue has accrued.

7.4.10 In view of the above, the additional expense of Rs. 1026.08 million provided as expenditure by the appellant on this account calls for disallowance as no liability as arisen in the hands of the appellant. Further, since revenue did not accrue or arise in the hands of the appellant, therefore, the addition of Rs. 1493.10 million made by the AO cannot be justified. The cause laws relied on by the AR are not applicable in the instant case because the contractor is not legally entitled to the additional claims and liability claimed by the EPC contractors which is pending in arbitration tribunal is not accepted by the appellant. In view of the above, the addition made by the AO is reduced from Rs. 1493.10 million to Rs. 1026.08 million. The appeal is partly allowed in this ground."

17. So far as the additional expenses is concerned, the ld.CIT(A) held that the additional expense of Rs.1026.8 million provided as expenditure by the assessee calls for disallowance as no liability has arisen in the hands of the assessee. He accordingly deleted the addition of Rs.1493.10 million made by the Assessing Officer and simultaneously directed the A.O. to sustain the addition of Rs.1026.08 million being the expenditure claimed by the assessee in respect of Sudan pipeline.

18. Aggrieved with such order of the CIT(A), the assessee as well as the Revenue are in appeal before the Tribunal by raising the above grounds

19. The ld. counsel for the assessee strongly challenged the order of the CIT(A) in sustaining an amount of Rs.1026.08 million. He drew the attention of the Bench to the date-wise sequence of events in respect of the Multiproduct Pipeline from Khartoum Refinery Sudan to Port Sudan on Build, Own, Lease and Transfer (BOLT) basis:-

Date	Events	Page No. of Paper Book
30.06.2004	Relevant extract of Pipeline Contract Agreement (PCA) entered with the Ministry of Energy & Mining of the Government of Sudan (MEM, Sudan)	184-190
17.08.2004	Technical and Administrative Support Agreement (TASA) entered with ONGC Limited (ONGC) for managing the entire project of pipeline execution on its behalf	1388-1401 [Compilation of agreements paper book]
31.08.2004	Relevant extract of agreement entered with M/S Dodsal Pte Ltd. & M/S Dodsal Private Limited (referred as 'Dodsal' or 'EPC contractor') for Engineering, Procurement & Construction of Sudan pipeline	202
10.11.2004	Participation agreement entered with Oil India Limited wherein 10% rights and obligations in relation to this project Have been transferred to Oil India Limited	1164-1202 [Compilation of agreements paper book]
31.08.2005	The project stood completed and the product pipeline system was handed over to MEM, Sudan	As admitted by the AO
1.12.2005 and 09.01. 2006	EPC contractor claimed additional costs amounting to USD 2,69,82,643, USD 12,70,435 and USD 88,94,325 (aggregating to Rs. 1,659 million) on the assessee & forwarded an invoice of USD 88,94,325	196-200
31.03.2006	The assessee admitted the claim of USD 2,54,87,295 (assessee's share USD 2,29,38,566 being 90% of USD 2,54,87,295) out of aforesaid three claims and provided for in the books amounting to Rs.l,026.08 million. Remaining amount was not provided as it had not yet been approved. No amount was claimed in subsequent years. No claim of any income was even made on MEM Sudan in AY 2006-07, claim was made on 17.04.2006.	
17.04.2006	Assessee made a claim of USD 3,41,28,976 on MEM Sudan [equivalent to Rs. 1,524.20 million (Assessee's share being Rs. 1,371.78 million)]. It remain mere claim not yet admitted.	208-211

25.05.2006	ONGC informed the EPC contractor that its first claim has been scrutinized & processed for payment of an amount of USD 2,42,57,643 out of total claim of USD 3,71,47,403 and the other two proposals are still under process	201
06.07.2006	Assessee made additional claims of USD 1,18,78,586 and USD 1,69,147 on MEM Sudan [equivalent to Rs. 523.71 million (Assessee's share being Rs. 471.34 million)]. It remain mere claim not yet admitted.	212-228
09.12.2006	Letter written by Legal department of Ministry of Energy & Mining of the Government of Sudan (MEM) rejecting claimsof the assessee	229-230
05.10.2007	ONGC also approved the second claim of EPC Contractor for an amount of USD 1,229,652 and rejected the claim of USD 8,894,325	Not in paper book
31.07.2008	Assessee written a letter to EPC Contractor that its claims have been assessed quantitatively by ONGC and such claims are now being legally scrutinized in totality for their admissibility	Not in paper book
26.12.2008	EPC Contractor initiated arbitration proceedings against the assessee	Not in paper book
07.01.2014 (corrected on 27.03.2014)	USD 30,00,000 on account of Adjustment claim and USD 3,13,100.35 on account of change order alongwith with interest awarded to EPC Contractor	Not in paper book
30.06.2014	Petition filed by the EPC Contractor before the Delhi High Court against the Arbitral Award - Not yet decided	Not in paper book
03.07.2014	Petition filed by the assessee before the Delhi High Court in respect of Arbitral Award of USD 30,00,000 on account of Adjustment claim - Not yet decided	Not in paper book
31.10.2014	Assessee paid a sum of USD 452,195 to EPC Contractor which comprises USD 313,100.35 along with interest	Not in paper book

20. He submitted that the assessee had entered into a Pipeline Contract Agreement (PCA) with the Ministry of Energy & Mining of the Government of Sudan (MEM) on 30.06.2004 for construction of 12" X 741 Kms. multi-product pipeline system from Khartoum Refinery to Port Sudan on Build, Own, Lease and Transfer (BOLT) basis. The assessee had entered a participation agreement with Oil India Limited on 10.11.2004 wherein 10% rights and obligations in relation to this project have been transferred to Oil India Limited. The project was executed by the assessee through EPC contractor and the same was awarded to consortium of M/S

Dodsal Pte Ltd. & M/S Dodsal Private Limited (referred as 'Dodsal' or 'EPC contractor') vide agreement dated 31.08.2004. The assessee had also appointed ONGC Limited (ONGC) as its consultant vide agreement dated 17.08.2004 for managing the entire project of pipeline execution and had directed Dodsal to directly deal/correspond with the Engineering Services, Division of ONGC on all matters relating to the project. The assessee had completed the project and the product pipeline system was handed over to MEM on 31.08.2005, i.e. before the year end.

21. Subsequently, the EPC contractor claimed additional costs amounting to USD 2,69,82,643, USD 12,70,435 and USD 88,94,325 (aggregating to Rs. 1,659 million) vide its letters and invoice dated 1 December 2005 and 09 January 2006. Such letters/invoice were submitted with ONGC (consultant) for review and approval. Vide its letter dated 25.05.2006, the consultant informed the EPC contractor that its first claim has been scrutinized & processed for payment of an amount of USD 2,42,57,643 and the other two proposals are under process. Subsequently, vide letter dated 05.10.2007, the consultant approved the second claim for an amount of USD 12,29,652 and rejected the claim of USD 88,94,325. Thus the amount approved by the consultant aggregating to USD 2,54,87,295 (assessee's share USD 2,29,38,566 being 90% of USD 2,54,87,295). Based on the discussion with the consultant, the assessee had provided expenditure in the books of accounts amounting to Rs. 1,026.08 million (being assessee's share out of Rs. 1,140.08 million) under

Schedule 19 as "Pipeline Construction Expenses" and claimed as deduction u/s 37 of the Act.

22. Further, the assessee had issued a letter dated 31.07.2008, wherein, the EPC Contractor has been communicated that its claims have been assessed quantitatively by ONGC (Consultant) and such claims are now being legally scrutinized in totality for their admissibility. Upon receipt of the above letter, the EPC Contractor initiated arbitration proceedings against the assessee, vide its letter dated 26.12.2008.

23. Arbitral Award dated 07.01.2014 (as corrected on 27 March 2014) was passed according to which Dodsal is entitled to USD 30,00,000 (Adjustment claim) and USD 3,13,100 (for change order) alongwith with interest. EPC contractor did not accept the Award. Assessee had accepted Award in respect of change order and on 31.10.2014 voluntarily paid a sum of USD 4,52,195 to EPC Contractor which comprises USD 3,13,100.35 along with interest. However, the assessee had not accepted Award in respect of Adjustment claims. Accordingly, both the EPC Contractor and the assessee have challenged the Award in Delhi High Court and the matter is pending with the High Court.

24. Referring to the above sequence of events he submitted that the assessee has not merely incurred expenditure but such expenditure has duly been admitted by it and debited in the books of accounts. Further, said expenditure had duly been approved by the consultant M/s ONGC who were appointed to supervise and manage the project. However, in view of the fact that the assessee had not been

paid in respect of additional claim made by the Government of Sudan, the assessee had not recognized additional income in the books of account.

25. The ld. counsel for the assessee submitted that the AO has included the amount claimed by it from Sudan Government aggregating to Rs 1,49,31,02,715/- as its income (correct amount should be Rs. 1371.78 million) and in the alternative it was held in para 8.12 that the provision made by the assessee for additional expenses to the extent of Rs.1026.08 million should be disallowed on matching principles. He submitted that the findings recorded by the AO in the order that the aforesaid expenditure is merely a provision made is contrary to the notes of accounts. Referring to page 32 of the paper book, the ld. counsel for the assessee drew the attention of the Bench to the notes on accounts which read as under:-

> "During the year, the Company completed the execution of the 12" X 741 Kms. multi-product pipeline system from Khartoum Refinery to Port Sudan for the Ministry of Energy & Mining of the Government of Sudan (MEM) on Build, Own, Lease and Transfer (BOLT) basis and handed over the same to MEM. The project has been implemented in consortium with Oil India Limited, Company share's being 90%."

26. The EPC Contractor executing the project has claimed additional costs aggregating to Rs. 1,659.00 Million (Company's share being Rs. 1,493.10 Million), which have not been accepted by the Company as yet. However, part of the claims has been forwarded to MEM for their approval for an aggregate amount of receivables from MEM Rs. 1,524.20 Million (Company's share being Rs. 1371.78 Million), while the balance claims may be forwarded to MEM after further verification. Pending settlement with the EPC Contractor, an amount of Rs.

1,026.08 Million, being the Company's share out of Rs. 1,140.08 Million has been provided as expenditure during the year based upon the advices received by the Company from its consultant. The Company's share of the balance amount has been shown as claims not acknowledged as debt. However, no revenue in this respect has been recognized pending final approvals by MEM.

27. He submitted that the Assessing Officer in his order has referred to the matching principles which is inapplicable in the instant case. The assessee is following consistently mercantile method of accounts and maintained its accounts in accordance with AS-1 as provided u/s 145A of the Act. Referring to the decision of the Hon'ble Supreme Court in the case of *CIT Vs. Bilahari Investment Pvt. Ltd. reported in 299 1TR 1,* he submitted that the Hon'ble apex court has held that "every assessee is entitled to arrange its affairs and follow the method of accounting, which the department has earlier accepted. It is only in those cases where the department records a finding that the method adopted by the assessee results in distortion of profits that the department can insist on substitution of the existing method." He submitted that in the instant case the expenditure incurred is to be allowed as and when such expenditure is incurred which admittedly has been incurred by the assessee. However, in so far as the income is concerned, no such accrual as yet has taken place since the Government of Sudan has not admitted its liability and no income as such has accrued. Thus in view of the judgment of the Supreme Court in the case of E D Sassoon & Co. Ltd. Vs CIT reported in 26 ITR 27 unless the

income accrues, said amount of addition made aggregating to Rs. 1,49,31,02,715/- as included by the A.O. cannot be made the basis to disallow the claim of expenditure.

28. In so far as the amount of Rs. 1,49,31,02,715/- (correct amount Rs.1,371.78 million) is concerned, he submitted that the assessee has not yet raised any invoice on the Government of Sudan in respect of its additional income. However, in respect of the income accruing for the year as a result of contract entered with Government of Sudan for the execution of Multiproduct Pipeline from Khartoum Refinery Sudan to Port Sudan has been duly recognized by the assessee in the books of accounts which aggregates to Rs. 2,444.79 Million. Referring to paper book page 28, he drew the attention of the Bench to the details which are as under:

(i)	Construction contract revenue	Rs. 2173.53 million (appearing in Schedule 16)
(ii)	Lease income	Rs.271.26 million (appearing in Schedule 17)

29. He accordingly submitted that in view thereof there was no justification for the A.O. to have disallowed the claim of expenditure which has actually been incurred by it. The claim of expenditure could not have been disallowed merely on the ground that the assessee has not recognized the revenue despite the fact no such income had accrued. According to the ld. AR it is the settled law that expenditure is to be allowed in the year in which it incurred and whereas the income is to be recognized as and when the same accrues. In other words, expenditure is to be

allowed as deduction in the year when the same is incurred and in respect of which income is recognized only when the same accrues.

30. Referring to the decision of the Hon'ble Delhi High Court in the case of *Addl. CIT vs. Rattan Chand Kapoor 149 ITR 1 (Del),* he submitted that the Hon'ble High Court has in the said decision has held that since the entry made by the assessee on the basis of a demand and no different system had been previously followed by him, the assessee had adopted a hybrid system of accounting which was open to him and, hence, on the principle of accountancy followed by the assessee, the amount was a deductible expenditure for the assessment year 1964-65.

31. Referring to the decision of the Hon'ble Madras High Court in the case of *CIT vs. Coimbatore Lakshmi Inv. & Finance Company Ltd. reported in 331 ITR 229 (Mad)*, he submitted that it has been held that the assessee had classified its assets on the basis of the Notification issued by the RBI and was justified in not recognizing the income as such. In that case, there was no occasion to consider the principle of accrual. Relying on various other decisions, he submitted that incurring of expenditure u/s 37 and accrual of income are not same concept.

32. He submitted that payment has been made or not made is not relevant and the assessee himself has admitted the liability for claiming the same as an expenditure. In the present case, the assessee, in fact, has admitted such liability. Referring to the decision of the *Hon'ble Supreme Court in the case of Calcutta Company Ltd. vs.*

CIT, 37 ITR 1, he submitted that the Hon'ble Supreme Court in the said decision has held that the expression 'profits or gains' in section 10(1) of the IT Act has to be understood in its commercial sense and there can be no computation of such profits and gains until the expenditure which is necessary for the purpose of earning the receipts is deducted therefrom – whether the expenditure is actually incurred or liability in respect thereof has accrued even though it may have to be discharged at some future date.

33. Referring to the decision of the Hon'ble Delhi High Court in the case of *Aggarwal and Modi Enterprises (Cinema Project) Co. Pvt. Ltd. [2016]381 ITR 469 (Delhi),* he submitted that the Hon'ble High court in the said decision has held that the question whether a liability is ascertained or contingent is dependent on facts of each case. Merely because a liability may be contractual or non-statutory that would not make it incapable of being ascertained. Where an assessee follows the mercantile system of accounting, it is not necessary that the liability must have actually been incurred during the assessment year in question to enable the assessee to claim it as an expense or deduction as the case may be. The crux of the matter is the reasonable certainty with which the liability can be ascertained. The Hon'ble High Court accordingly reversed the decision of the Tribunal and allowed the entire licence fee and interest on arrears of licence fee as deductible. He also relied on various other decisions as placed in the paper book.

34. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

35. We have considered the rival arguments made by both the sides, perused orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the EPC Contractor executing the project on behalf of the consortium claimed additional costs aggregating to Rs.1659 million from the assessee and, consequently, an amount of Rs.1026.08 million being the assessee's share out of Rs.1140.08 million as approved by ONGC (consultant) was provided in the books of account and was claimed as an expenditure in the return of income. The assessee forwarded the counter claim to its customer, MEM amounting to Rs.1524.20 million (assessee's share being Rs.1371.78 million) which has not been accepted by the MEM. Therefore, the assessee did not consider any revenue on this account in its books of account on the ground that the assessee cannot be said to have acquired any right to receive such income till the time the claim is accepted by the MEM. According to the Assessing Officer, since the project has been completed in the relevant assessment year, the assessee acquired certain right to receive such amount from MEM and the same was taxable in the hands of the assessee on accrual basis and, accordingly, made an addition of Rs.149.31 lakhs to the total income of the assessee. Alternatively, he held that if the assessee's claim of treating the revenue as non-taxable on account of it being unascertained is accepted in appeal, then, the provision made by the assessee for the expenses to the extent of Rs.1026.08 million should be disallowed on matching principles and on the same logic as per exclusion of revenues. We find in appeal, the ld.CIT(A) deleted the addition of

Rs.1,49,31,000/- on the ground that the revenue did not accrue or arise in the hands of the assessee. He, however, accepted the alternate plea of the Assessing Officer on the ground that the additional expenses of Rs.1026.08 million provided as expenditure by the assessee has to be disallowed as no liability has arisen in the hands of the assessee. It is the submission of the ld. counsel for the assessee that it is following mercantile system of accounting. It has admitted the liability in its books of account totaling to Rs.1026.08 million and provided for in the books of account after the same was received from the EPC contractor. Therefore, such expenditure which is an ascertained liability and which has been provided in the books of account has to be allowed as expenditure. So far as the counter claim made by the assessee against EPC contractor is concerned, they have not accepted the same. Therefore, the assessee has not considered any revenue on this account in its books of account since the assessee cannot be said to have acquired any right to receive such income till the time the claim is accepted by MEM. It is the submission of the ld. DR that the assessee cannot take contradictory stands i.e., claim an expenditure on the basis that he has provided for the same in the books after admitting the same, but, will not show the revenue in its books of account on the ground the revenue did not accrue or arise to the assessee especially when the assessee is following mercantile system of accounting.

36. We find the assessee, during the year under consideration has completed the execution of the pipeline from Khartoum Refinery to Port Sudan. The EPC

contractor executing the project on behalf of the consortium has claimed additional costs aggregating to Rs.1026.08 million being the share of the company out of Rs.1140.08 million as approved by ONGC (consultant) which has been provided as expenditure during the year. The claim forwarded by the company has not been accepted by the MEM for which the company has not considered any revenue in the P & L Account. However, it has made a provision for additional expenses of Rs.1026.08 million being the company's share in the consortium. From the findings given by the CIT(A), we find the additional cost of Rs.1659.00 million company's share being Rs.1493.10 million claimed by the EPC contractor is pending in arbitration in its entirety. The claim of the EPC contractor has not been accepted by the assessee company. Part of the cost of Rs.1524.20 million (company's share being Rs.1371.78 million) claimed by the company has been forwarded to MEM for their approval. It has been clarified before the CIT(A) that no payment has been made by the assessee company to the contractor for which the ld.CIT(A) has given the finding that neither the additional cost claimed by the EPC contractor has been accepted nor any part of it has been paid. Therefore, the CIT(A) held that the liability towards the additional cost claimed by the EPC contractor has not arisen to the company during the relevant year. Thus, we find that while claim made by the assessee to EPC contractor has not been accepted by them, the claim made by the EPC contractor against the assessee towards additional expenditure though admitted by the assessee in its books of account is under litigation and no amount has been paid. We, therefore, find merit in the findings given by the ld.CIT(A) that

the additional expenses of Rs.1026.08 million provided as expenditure by the assessee calls for disallowance as no liability has arisen in the hands of the assessee and since the revenue did not accrue or arise in the hands of the assessee, therefore, the addition of Rs.1493.10 million made by the Assessing Officer cannot be justified. We accordingly dismiss the ground of appeal No.2 raised by the assessee and the ground Nos.6,7 and 8 by the Revenue. The various decisions relied on by the ld. counsel for the assessee are distinguishable and not applicable to the facts of the present case. In our opinion, the approach of the assessee should be consistent both for the revenue as well as expenditure. The assessee cannot take one stand for claiming the expenditure as an allowable deduction and, at the same time, do not recognize the revenue. In the instant case, since the claim has not been accepted by the EPC contractor, therefore, the addition made by the Assessing Officer is not justified. At the same time, although the assessee has provided in its Profit & Loss Account regarding the additional claim made by the EPC contractor, however, the assessee has challenged the same before the arbitrator and no payment having been made and the same is also under litigation and, therefore, following matching principle the claim of additional expenditure made by the assessee in its books of account has to be disallowed. We accordingly uphold the order of the CIT(A) on this issue and the grounds raised by the assessee as well as the Revenue are accordingly dismissed.

37. Ground of appeal No.5 by the Revenue reads as under:-

> "5. The Ld. CIT(A) has erred in law and on facts by ignoring the thorough discussion made by the assessing officer, in his order regarding the provisions of section 37 and section 42 and reason to why the expenses shall be claimed u/s 42 of the Act."

38. Facts of the case, in brief, are that during the relevant assessment year, the assessee incurred expense of Rs.1,125,125,851 on purchase of seismic data / submission of tenders or bids etc. for evaluation of oil blocks proposed to be acquired by the assessee and claimed the same as revenue expenditure allowable under section 37(1) of the Act on the ground that the said expenditure was incurred for expansion / extension of the existing business of the assessee. The AO disallowed the claim of the assessee and held that aforesaid expenditure may be claimed by the assessee as deduction under section 42 of the Act in terms of the Agreement in the subsequent assessment years only after the commencement of commercial production / abandonment of the relevant projects.

39. In appeal, the ld.CIT(A) following the order of the Tribunal in assessee's won case for assessment year 2002-03, 2004-05 and 2005-06, deleted the addition by observing as under:-

> "7.5.1 Ground no. 5 of appeal is directed against disallowance of pre-acquisition expenses of Rs 112,51,25,851/- claimed by the appellant under section 37 of the Act by holding that the same was allowable deduction under section 42 of the Act in terms of the Section 42 Agreement in the subsequent assessment years only after the commencement of commercial production / abandonment of the relevant projects. During the relevant assessment year, the Appellant incurred an expense of Rs. 112,51,25,851/- at the time to evaluation of projects in acquisition and pre-bid phase. The Appellant claimed above expenditure as revenue expenditure allowable under section 37(1) of the Act on the ground that the said expenditure were incurred for expansion / extension of the existing business of the Appellant. These expenses include expenses incurred for foreign block evaluation, for making bid, legal and professional fees paid to

lawyers and consultants, travelling, communication, boarding and lodging expenses etc. AO held that the above claim of pre-acquisition expenses u/s 37(1) to the extent of Rs. 112,51,25,851/- is not proper as the same is eligible u/s 42 as per the terms of the agreement. Therefore, AO disallowed the claim being premature and erroneous.

7.5.2 The Appellant is engaged in the business of Exploration and Production of oil and natural gas. The expenses are incurred on submission of bids/ tenders, consultancy fee paid to consultants, purchase and evaluation of seismic data etc. The Appellant has incurred the expenses to evaluate the prospects of proposed acquisition to determine the profitability of the oil block over a period of time. Expenses are incurred on submission of bids/ tenders, consultancy fee paid to consultants, purchase and evaluation of seismic data etc. There is no dispute that the aforesaid expenditure has been incurred by the Appellant for the furtherance of its business and evaluation of new opportunities for earning profits. A perusal of the nature of the expenses incurred reveal that the same are in the nature of revenue expenses incurred in the normal course of business. It is only that the expenses are incurred on evaluation of projects for acquisition and in pre-bid phase. These expenditure have to be incurred by the Appellant irrespective of whether any participating interest is acquired by the Appellant or not. By incurring these expenses, the Appellant evaluates the viability of the various projects and decides whether to invest in such venture or not, without which the Appellant may incur severe losses. AO erred in disallowing the pre-acquisition expenses of Rs. 112,51,25,851/- claimed under section 37 of the Act by holding that the same were allowable as deduction under section 42 of the Act in the subsequent assessment years only after the commencement of commercial production / abandonment of the relevant projects. Section 42 agreement makes it clear that only expenditure on exploration are governed by the agreement. However, in the present case, the expenditure has not been incurred on exploration, rather the expenditure has been incurred on evaluating whether a project is viable or not. In view of the above, the expenditure incurred by the Appellant are relatable to section 37 of the Act and not to sec 42 of the Act.

7.5.3 Similar additions was made in AY 2002-03 which was deleted by Hon'ble 1TAT. In AY 2004-05 and AY 2005-06 similar additions was deleted by Id. CIT(A) following the decision of Hon'ble 1TAT. In AY 2002-03 Hon'ble ITAT in ITA No. 472/D/08 in its decision dt. 30.10.2009 while allowing the claim of the appellant held:

> "With regard to disallowing claim of expenses of Rs.43.85 lacs incurred for purchase and evaluation of the seismic data of foreign blocks, on the plea of same being capital in nature, we found that assessee being engaged in the business of exploration and production of hydrocarbons in other countries to augment the oil resources of India, it was continuously evaluating various business opportunities before acquiring a particular field/block. Since all these opportunities have to be evaluated and studied

before taking decision to invest and enter into a contract, the process of evaluation of the block started with submitting tender fee/data fee etc. and then the seismic data had to be evaluated in seismic processing center. After evaluating the same, the assessee was to take decision as to whether investments to be made in the project or not. There is no dispute to the fact that in all industries an activity of furtherance of its business or evaluation of better profit earning process in one manner or other are undertaken. Efforts to evaluate the prospects of better earning profit is not a separate activity but is in the course of conduct of normal day to day business. These expenditure cannot be said to bring an enduring benefit to the business nor the same can be said as initial outlay for expansion of business. In the instant case, the expenditure so incurred by the assessee is for furtherance of activities undertaken by it in the normal course of its business. The same are incurred on continuous basis for evaluation of business activities. In view of the decision of Bombay High Court in the case of Essar Oil Ltd. - (2008) TIOL 530, such expenditure is to be allowed as revenue expenditure. Hon'ble I Calcutta High Court in the case of Keshoram Industries and Cotton Mills - 196 ITR 845 held that where the setting up does not amount to starting of new business but expansion or extension of the business already being carried on by the assessee, expenses in connection with such expansion or I extension of the business must be held to be deductible as revenue expenses. I One has to consider purpose of the expenditure and its object and effect. Accordingly, it was held that, expenses pertaining to exploring feasibility of expansion or extension of business are revenue expenditure and not capital expenditure. The expenditure so incurred by the assessee was in the normal course of business of exploration and production of oil, being revenue in nature is liable to be allowed as a deduction. Similar claim was also made by the assessee in the earlier year. We therefore direct the AO to allow the same as revenue expenditure. As we have allowed ground no. 3 to 3.2, the alternate ground no. 3.3 as taken by assessee become anfractuous.

16. The expenditure of Rs.5.64 crores incurred on projects pending final approval, even though the said expenditure was written off in the accounts over a period of five years the AO disallowed the same. We have considered rival contentions. The assessee in the instant case has incurred expenses relating to project pending final evaluation. The assessee had made distinction between contract projects for which agreement is entered into and the board approved projects i.e. projects for which no agreement/contract has been entered. The assessee used to capitalize expenditure incurred on projects for which no agreement/contract has been entered, however, the cost of such projects which are abundant was written off over a period of five years in the books of account of the assessee. The assessee had claimed the expenses pertaining to abandoned project as revenue expenses. The expenditure

> incurred for this purpose was in the nature of travel cost, meeting and conference expenses, delegation, salaries and professional fees etc. These expenditure were claimed by the assessee in its return of income in the year of its incurrence. The issue under consideration is covered in favour of the assessee by the order of Bombay High Court in the case of CIT Vs. Essar Oil Ltd. 2008 TIOL 530 wherein the High Court has observed that submitting tenders and bids in the field of oil exploration is a highly sophisticated technical task for which the assessee company had to incur substantial amount of expenditure before submitting its bid. If the assessee is not successful in obtaining bid, such expenditure is allowable as revenue expenditure. As the assessee was continuously in the business of exploration and production of oil, the expenditure so incurred was in the normal course of its business, such expenditure being revenue in nature incurred for the purpose of existing exploration and production business was required to be allowed u/s 37(1) of the IT Act. Similar claim was also made by the assessee in earlier years. Accordingly, we direct the AO to allow the same."

In view of the above, legal and factual position, the expenses incurred on submission of bids/ tenders, consultancy fee paid to consultants, purchase and evaluation of seismic data etc are normal business expenditure of the Appellant and allowable under section 37 of the Act and provisions of Section 42 of the Act are not applicable. Therefore, the addition made by the AO is legally not sustainable. The appeal is allowed in this ground."

40. Aggrieved with such order of the ld.CIT(A), the Revenue is in appeal before the Tribunal.

41. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the ld.CIT(A), in the instant case, following the order of the Tribunal in assessee's own case for the three preceding years, has deleted the addition on the ground that the expenses incurred on submission of bids/tenders, consultancy fee paid to consultants and purchase and evaluation of seismic data etc., are normal business expenditure of the assessee and allowable under section 37 of the Act and provisions of Section 42 of the Act are

not applicable. The ld. DR could not controvert by bringing any distinguishable features so as to take a different view than the vie taken by the Tribunal which has been followed by the CIT(A) while deleting the addition. In view of the above, we uphold the order of the CIT(A) and the ground raised by the Revenue is dismissed.

42. In the result, the appeal filed by the assessee as well as by the Revenue are dismissed.

The decision was pronounced in the open court on 01.07.2019.

Sd/-	Sd/-
(KULDIP SINGH) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMFBER

Dated: 01st July, 2019

dk

Copy forwarded to :
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi