IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE HON'BLE SHRI G.S. PANNU, VICE PRESIDENT
AND
HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

I.T.A. No.4280/Mum/2013
I.T.A. No.5121/Mum/2013
(Assessment Year: 2008-09)
(Assessment Year: 2009-10)

In the matter of

Bharat Petroleum Corporation Ltd., taxation section 3rd floor, Bharat Bhavan-II, 4 & 6 Currimbhoy Rd. Ballard Estate, Mumbai PAN/GIR No.AAACB2902M	Vs.	Additional Commissioner of Income Tax, Range-2(1), Mumbai
(Revenue)	:	(Assessee)

Assessee by	:	Shri. J.D. Mistry
Revenue by	:	Shri. H.N. Singh

Date of Hearing	:	28.6.2019
Date of Pronouncement	:	28.06.2019

O R D E R

SANDEEP GOSAIN, J.M.:

Both these appeals arising out of different orders of learned Commissioner of Income Tax (Appeals)-4, Mumbai dated 15.3.2013 and 25.4.2013 pertaining to the Assessment Years 2008-09 and 2009-10.

First of all we take up I.T.A. No.4280/Mum/2013 filed by the assessee

Ground No. 1

2. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the disallowance of Rs.1,75,51,156/- being premium on leasehold land.

3. At the very outset of the hearing of the appeal, it was submitted by Ld. A.R. that, the present issue involved in the appeal is identical to the 'Ground of Appeal No. 5' raised by the assessee corporation in its appeal before ITAT for A.Y. 2004-05 in the case titled ***Bharat Petroleum Corporation Ltd. Vs. Additional CIT-Range-2(1), Mumbai, bearing ITA 5963/Mum/2011***. The operative portion of the decision of ITAT is reproduced below:-

> ***(D). GROUND OF APPEAL NO.5 :***
>
> ***Disallowance of amortization of premium on leasehold land:***
>
> ***14.*** *The A.O had during the course of the assessment proceedings disallowed an amount of Rs. 1,04,86,210/- which was claimed by the assessee as a revenue expenditure towards amortization of premium on leasehold land. The A.O holding a conviction that the amortization of premium on leasehold land was in the nature of premium paid for long term lease, and thus being capital in nature, was not allowable to be charged to the profit & loss a/c. The assessee assailed the aforesaid addition/disallowance before the CIT(A), who therein being of the view that there was no provision for amortization of the capital expenditure incurred on lease premium, therefore held that the same was not allowable as a*

revenue expenditure as claimed by the assessee.

15.*The assessee aggrieved with upholding of the disallowance of amortization of premium of leasehold land by the CIT(A), had therein carried the matter in appeal before us. That at the very outset it was submitted by the ld. A.R. that in the light of the judgment of the* ***Hon'ble High Court of Bombay*** *in the case of* ***CIT-3 Vs. Reliance Industrial Infrastructure Ltd. (ITA No. 3611 of 2010),*** *the claim of the assessee in respect of an amount of Rs. 2,47,98,757/- incurred towards registration and stamp duty charges, as was raised by way of a revised return of income for A.Y. 2014-15, was accepted and allowed by the A.O vide his order passed u/s. 143(3). The ld. A.R. in order to substantiate the aforesaid factual position, therein drew our attention to the copy of the aforesaid assessment order placed at Page No. 50 of 'APB'. Per contra, the ld. D.R. relied on the orders of the lower authorities.*

5. *We have heard the ld. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material produced before us. We find that as stands gathered from the records, the revenue in the assessment framed in the hands of the assessee corporation for A.Y. 2014-15 had allowed the registration and stamp duty charges of Rs.2,47,98,757/- as a revenue expenditure, as claimed by the assessee corporation in its revised return of income for A.Y. 2014-15, by relying on the judgment of the* ***Hon'ble High Court of Bombay*** *in the case of* ***CIT-3 Vs. Reliance Industrial Infrastructure Ltd. (2015) 379 ITR 0340 (Bom).*** *The* ***Hon'ble High Court*** *in its aforesaid judgment had held as under:-*

"In fact during the hearing before the Tribunal, the only issue which

appears to have been in dispute was whether the amount of Rs.23.42 lacs paid as a stamp duty to take land on lease is a capital expenditure or revenue expenditure. On the aforesaid facts, the Tribunal by the impugned order placed reliance upon the decisions of this Court, particularly in Cincita Pvt. Ltd. wherein it has been observed that the period of lease for which the property has been taken, cannot be regarded as a decisive test to determine the nature of the expenditure. In any case, it is not disputed before us that the stamp duty amount has been paid on the lease deed for the purposes of carrying on assessee's business. Once the aforesaid position is accepted then the amount of stamp duty paid for has to be allowed as revenue nature."

We would now test the claim of the assessee as regards the allowability of amortization of leasehold premium as a revenue expenditure, in the backdrop of the aforesaid judgment of the ***Hon'ble Jurisdictional High Court*** *in the case of* ***Reliance Industrial Infrastructure Ltd. (supra)****. We find that the assessee had entered into an agreement with various parties for the purchase of leasehold lands at various places, which were to be used for its business operations, viz. for establishing retail outlets, LPG bottling plants, refineries etc. The premium paid by the assessee corporation was one of the mode of giving compensation to the landlords, besides nominal annual rent paid to them. It is thus the contention of the assessee that the premium paid was in the nature of rent, and as such the amortization of premium should be considered as a revenue expenditure. Per contra, the Ld. D.R relied on the orders of the lower authorities, and therein averred that as the said payment by the assessee corporation was clearly by way of a capital expenditure, therefore*

the same had rightly been held as not allowable as a revenue expenditure by the lower authorities. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material produced before us. We are of the considered view that after appreciating the facts of the case in toto, it can safely be concluded that the leasehold premium amortized by the assessee corporation was in the nature of compensation paid to the landlords, in addition to the rent. We thus are of the considered view that the leasehold premium amortized by the assessee corporation, being in the nature of rent, was therefore allowable as a revenue expenditure in the hands of the assessee. We are of the considered view that our aforesaid view stands fortified by an analogy that can safely be drawn from the judgment of the ***Hon'ble Jurisdictional High Court*** *in the case of* ***Reliance Industrial Infrastructure Ltd. (supra)****, on the basis of which the claim of the assessee corporation towards registration and stamp duty charges of Rs.2,47,98,757/-, as observed by us hereinabove, had been allowed as a revenue expenditure in the assessment framed in the case of the assessee corporation for A.Y. 2014-15****. We are further of the considered view that the claim of the assessee corporation that the lease premium paid to the landlords in order to facilitate payment of nominal rent , can safely be characterized as a 'revenue expenditure' in the light of the judgment of the* ***Hon'ble Supreme Court*** *in the case of :* ***Commissioner of Income Tax Vs. Madras Auto Service (P) Ltd. (1998) 233 ITR 468 (SC), wherein it was held as under:-***

5. *In order to decide whether this expenditure is revenue expenditure or capital expenditure, one has to look at the*

expenditure from a commercial point of view. What advantage did the assessee get by constructing a building which belonged to somebody else and spending money for such construction? The assessee got a long lease of a newly constructed building suitable to its own business at a very concessional rent. The expenditure, therefore, was made in order to secure a long lease of new and more suitable business premises at a lower rent. In other words, the assessee made substantial savings in monthly rent for a period of 39 years by expending these amounts. The saving in expenditure was a saving in revenue expenditure in the form of rent. Whatever substitutes for revenue expenditure should normally be considered as revenue expenditure. Moreover, assessee in the present case did not get any capital asset by spending the said amounts. The assessee, therefore, could not have claimed any depreciation. Looking to the nature of the advantage which the assessee obtained in a commercial sense, the expenditure appears to be revenue expenditure.

We thus are persuaded to subscribe to the view of the Ld. A.R that the amount of Rs. 1,04,86,210/- pertaining to amortization of premium on leasehold land was allowable as a revenue expenditure in the hands of the assessee corporation. The ***Ground of Appeal No. 5*** *raised by the assessee before us is thus allowed.*

4. On the other hand, ld. D.R. had not disputed the aforesaid factual position.

5. After having heard the counsels at length and after having gone through order of ITAT as mentioned above in ***assessee's own case***, we find that the

identical issue has already been decided by the Hon'ble ITAT in **ITA No. 5963/Mum/11 for AY 2004-05 in assessee's own case**. Therefore, respectfully following the decision of the Coordinate Bench of Hon'ble ITAT and in order to maintain judicial consistency, we apply the same findings which are applicable *mutatis mutandis* in the present case. Resultantly, this ground raised by the assessee stands ***allowed.***

Ground Nos. 2, 3 & 4

6. These grounds raised by the assessee are inter related and inter connected and related to challenging the order of Ld. CIT(A) in confirming the disallowance made by AO u/s 14A of the I.T. Act.

7. At the very outset, Ld. AR appearing on behalf of the assessee submitted before us that these grounds are covered by the order of Hon'ble ITAT in **ITA No. 5963/Mum/11 for AY 2004-05 in assessee's own case**, wherein the ***identical grounds*** raised in the present appeal have already been decided on merits. The operative portion of the decision of the Coordinate Bench is reproduced below:-

> ***Disallowance u/s. 14A***
>
> **6.** *That the assessee corporation had received an amount of Rs.117,79,32,321/- on account of interest on tax free securities and bonds and dividends from shares, which were claimed as exempt during the year under consideration. The A.O observing*

that the assessee had not allocated any disallowance of expense u/s. 14A relatable to the said exempt income, therefore estimated 10% of the exempt income as expense relatable to earning of such income and disallowed the same. The CIT(A) after deliberating on the contentions of the assessee, followed the view taken by his predecessor in the assessee's own case for A.Y. 2003-04, and directed the A.O to recompute the disallowance u/s. 14A by adopting a reasonable method in conformity with the judgment of the ***Hon'ble High Court of Bombay*** *in the case of* ***Godrej & Boyce Manufacturing Company Ltd. Vs. CIT (2010) 328 ITR 81 (Bom).***

7. *The assessee being aggrieved with the aforesaid directions of the CIT(A) had carried the matter in appeal before us. That during the course of the hearing of the appeal it was submitted by the ld. A.R. that as the assessee company had utilized its self owned funds for the purpose of investing in the tax free securities, therefore, no expenditure was liable to be disallowed in view of the judgment of the* ***Hon'ble High Court of Bombay*** *in the case of* ***CIT Vs. Reliance Utility Powers Ltd. (2009) 313 ITR 340) (Bom).*** *The ld. A.R further submitted that the assessee company had not incurred any expenditure for earning of the exempt income, therefore no disallowance u/s. 14A was called for in its hands. The ld. A.R. submitted that a similar adhoc disallowance involving identical facts had been looked into by the ITAT 'B' bench, Mumbai in the case of the assessee, viz.* ***Bharat Petroleum Corporation Ltd. Vs. DCIT, Mumbai (ITA No. 2257 and 2258/Mum/2011),*** *for* ***A.Ys. 2002-03 and 2003-04, dated 19.10.2016,*** *wherein the Tribunal had deleted the addition by observing as under:-*

"8.4 After considering the facts of the afore mentioned decided case and the judgments passed by the ***Hon'ble Bombay High Court*** *we are of the considered view that if there is interest free funds available with the assessee which are sufficient to meet its investment and at the same time the assessee had raised a loan, then it can be presumed that the investments were from interest free funds available. We find support from the judgment rendered by the Jurisdictional High Court in the case of* ***'Reliance Utilities and Power Ltd.".*** *and also while the relying upon the judgment of* ***Hon'ble Bombay High Court*** *in the case of* ***East India (supra)*** *and considering the decision of Calcutta High Court in similar issue had arisen it was rightly held that if assessee is having interest free fund sufficient to meet the investments then it can be safely presumed that the investments were from the interest free fund available. Therefore, after considering the facts of the present case and also taking into consideration the findings recorded by the Revenue Authority, this presumption is established. Hence, in the net result, this ground of appeal filed by the assessee is allowed."*

It was thus averred by the ld. A.R. that the disallowance made by the A.O u/s. 14A which thereafter had been upheld by the CIT(A), was liable to be set aside. The Ld. A.R in order to drive home his contention that the assessee corporation had substantial interest free funds during the year under consideration, and thus it could safely be presumed that the investments made by the assessee corporation in the tax free income yielding investments during the year were made out of the interest free funds, and as such no part of the tax free income yielding investments could be related to the interest bearing funds, therein took us through his 'Paper

book' filed on 09.03.2017. We have perused the Final accounts of the assessee corporation for the year under consideration, Statement of dividend income/Interest income exempt from tax, as well as its Computation of income, placed at Page 1-35 of the 'APB'. The Ld. A.R had drawn our attention to a 'Chart' marked as 'Incremental Cash Flow of own funds from F.Y. 1986-87 to F.Y. 2003-04' , placed at Page 35 of the 'APB', in order to fortify his contention that the assessee corporation possessed substantial interest-free funds of its own since the Financial year 1986-87 till the year under consideration, from where it could safely be presumed that the investments in the tax free income yielding investments were throughout made by the assessee out of its interest-free funds, and thus no part of the interest expenditure could be related to such tax free income yielding investments. It was in the backdrop of the aforesaid facts therein averred by the Ld. A.R that no part of the interest expenditure could be related with the tax free income yielding investments, and as such disallowed u/s 14A of the 'Act'. The Ld. D.R. did not controvert the aforesaid contentions so placed before us.

8. *We have heard the ld. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material produced before us. We have given a thoughtful consideration to the contentions of the Ld. A.R and perused the 'APB' placed on record. We have perused the 'Incremental Cash Flow of own funds from F.Y. 1986-87 to F.Y. 2003-04', placed at Page 35 of the 'APB', and are persuaded to observe that 'Col. 5' ,'Col. 6' and 'Col. 7' of the 'Chart', establish beyond any scope of doubt that the 'Incremental total own funds' with the assessee corporation since the F.Y. 1986-87 were substantially enough to*

fund the 'Incremental investment in the investments yielding tax free income', and as averred by the Ld. A.R, it could safely be concluded that the investments in the tax free income yielding investments, were throughout made by the assessee corporation out of its interest-free funds, and thus no part of the interest expenditure could be related to such tax free income yielding investments. We are of the considered view that the issue involved in the case of the present assessee, as observed by us hereinabove is squarely covered by the order of the Tribunal in the assessee's own case for A.Ys. 2002-03 and 2003-04. We thus are of the considered view that if the assessee was having substantial interest free funds, then irrespective of the fact that it had also borrowed interest bearing funds, it can safely be presumed that the investments had been made from the interest free funds available with the assessee. We find that our aforesaid view is fortified by the judgment of the ***Hon'ble High Court of Bombay*** *in the case of* ***Reliance Utility and Power Ltd. (Supra),*** *which thereafter had been followed by the* ***Hon'ble High Court*** *in the case of* ***CIT Vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom)*** *and* ***HDFC Bank Ltd. Vs. DCIT (2016) 383 ITR 529 (Bom).*** *We thus are of the considered view that the facts of the present case are squarely covered by the aforesaid judgments of the* ***Hon'ble Jurisdictional High Court,*** *as well as the order passed by the Tribunal in the assessee's own case for the immediately preceding years, viz. A.Ys. 2002-03 and 2003-04.*

9. *Alternatively, we find that the A.O after rejecting the claim of the assessee that no disallowance was called for u/s. 14A, had therein estimated the said disallowance @10% of the exempt*

income, and madea consequential addition of Rs.11,77,93,232/-. We are unable to persuade ourselves to be in agreement with the whimsical estimation of disallowance by the A.O. We are of the considered view that the very process of determination of the amount of expenditure incurred in relation to exempt income would be triggered, only if the A.O. returns a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. That it is only if the A.O., having regard to the accounts of the assessee, as placed before him, is not satisfied with the correctness of the claim of the assessee that no expenditure had been incurred in relation to the exempt income, therein only after recording cogent reasons as regards the same, that the A.O. can embark upon the process of determination of the amount of expenditure under Section 14A. We find that our aforesaid view stands fortified by the recent judgment of the ***Hon'ble Supreme Court*** *in the case of :* ***Godrej & Boyce Manufacturing Company Limited (supra),*** *wherein the* ***Hon'ble Apex Court*** *had held as under:-*

"Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable.

> **10.** *We thus in light of our aforesaid observations are of the considered view that both on facts and the settled position of law, the adhoc disallowance made by the A.O u/s 14A cannot be approved. We thus set aside the orders of the lower authorities and delete the disallowance made in the hands of the assessee u/s 14A. The* ***Ground of appeal No. 2 and 3*** *raised by the assessee before us are thus allowed.*

8. On the other hand, Ld. DR contested the appeal and relied upon the orders passed by the revenue authorities.

9. After having heard the counsels at length and after having gone through order of ITAT as mentioned above in ***assessee's own case***, we find that the ***identical issue*** has already been decided by the Coordinate Bench of ITAT in **ITA No. 5963/Mum/11 for AY 2004-05 in assessee's own case**. Therefore, respectfully following the decision of the Coordinate Bench of Hon'ble ITAT and in order to maintain judicial consistency, we apply the same findings which are applicable *mutatis mutandis* in the present case. Resultantly, these ground raised by the assessee stands ***allowed.***

Ground Nos. 5 & 6

10. These grounds raised by the assessee are inter related and inter connected and relates to challenging the order of Ld. CIT(A) in holding that oil bonds are capital asset and confirming the loss on sale of oil bond as capital loss and not as business loss.

11. At the very outset, Ld. AR appearing on behalf of the assessee submitted before us that these grounds are covered by the order of Hon'ble ITAT in **ITA No. 3636/Mum/13 and 4279/Mum/14 for AY 2006-07 and 2007-08 in assessee's own case**, wherein the ***identical grounds*** raised in the present appeal have already been decided on merits. The operative portion of the decision of the Coordinate Bench is reproduced below:-

> *22. Ground No. 5 relates to loss on sale of Oil Bonds. This ground of appeal is identical to the ground no. 6 of appeal for AY 2006-07, which we have restored to the file of ld. CIT(A) for verification of fact and to allow the relief to the assessee on the basis of decision for AY 2004-05 & 2005-06. Considering the decision of Tribunal in assessee's own case for AY 2004- 05 & 2005-06 vide order dated 14.06.2007 wherein the similar ground of appeal was restored to the file of ld. CIT(A) to decide afresh. Hence, this ground of appeal is also restored to the file of ld. CIT(A) with similar direction.*
>
> *23. Ground No.6 relates to loss on sale of Oil Bonds is business loss. The ld. AR of the assessee argued that this ground of appeal is also covered in favour of assessee by the decision of Hon'ble Bombay High Court in*

case of Mangalore Refinery and Petrochemical Ltd. (supra) and decision of Tribunal in case of Mangalore Refinery and Petrochemical Ltd. vs. DCIT in ITA No. 77/M/2003. Ld. DR for the Revenue not disputed the contention of assessee.

24. We have seen that the similar grounds of appeal was raised by assessee for AY 2006-07 which we have already restored to the file of ld. CIT(A) on the basis of decision of Tribunal in assessee's own case for AY 2004-05. Thus, considering the principle of consistency, this ground of appeal is also restored to the file of ld. CIT(A) with similar direction.

12. On the other hand, Ld. DR contested the appeal and relied upon the orders passed by the revenue authorities.

13. After having heard the counsels at length and after having gone through order of ITAT as mentioned above in ***assessee's own case***, we find that the ***identical issue*** has already been decided by the Coordinate Bench of ITAT in **ITA No. 3636/Mum/13 and 4279/Mum/14 for AY 2006-07 and 2007-08 in assessee's own case**. Therefore, respectfully following the decision of the Coordinate Bench of Hon'ble ITAT and in order to maintain judicial consistency, we apply the same findings which are applicable *mutatis mutandis* in the present case and restore these grounds of appeal to the file of Ld. CIT(A) with similar directions.

Ground No. 7

14. This ground relates to Interest Income from Oil Bonds to be taxed as Business Income.

15. At the very outset, Ld. AR appearing on behalf of the assessee submitted before us that this ground is covered by the order of Coordinate Bench of ITAT in **ITA No. 3636/Mum/13 and 4279/Mum/14 for AY 2006-07 and 2007-08 in assessee's own case**, wherein the ***identical grounds*** raised in the present appeal have already been decided on merits. The operative portion of the decision of the Coordinate Bench is reproduced below:-

> *27. Ground No.8 relates to Interest Income from Oil Bonds to be taxed as Business Income. We have seen that this ground of appeal is identical to the ground no.10 of appeal for AY 2006-07 which we have restored to the file of ld. CIT(A) to decide afresh in accordance with the direction contained hereinabove. Thus, respectfully following the decision of Coordinate Bench, this ground of appeal is also restored to the file of CIT(A) to decided afresh a per the direction in appeal for AY 2006-07. In the result this ground of appeal is allowed for statistical purpose.*

16. On the other hand, Ld. DR contested the appeal and relied upon the orders passed by the revenue authorities.

17. After having heard the counsels at length and after having gone through order of ITAT as mentioned above in ***assessee's own case***, we find that the ***identical issue*** has already been decided by the Coordinate Bench of ITAT in **ITA No. 3636/Mum/13 and 4279/Mum/14 for AY 2006-07 and 2007-08 in assessee's own case**. Therefore, respectfully following the decision of the Coordinate Bench of Hon'ble ITAT and in order to maintain judicial consistency, we apply the same findings which are applicable *mutatis mutandis* in the present case. Resultantly, this ground of appeal is allowed for statistical purposes.

I.T.A. No.5121/Mum/2013

18. Now we take up assessee's appeals in ***ITA No. 5121/Mum/2013 (AY 2009-10)***. Since we have already decided the identical grounds of appeal No. 1 to 5 in ***ITA No. 4280/Mum/2013 for AY 2008-09*** on merits. Therefore, following our own decision in ***ITA No. 4280/Mum/13***, we apply the same findings in the present appeal in order to maintain judicial consistency which is applicable *mutatis mutandis*.

19. However, with regard to ground no. 6 of the present appeal is concerned, the same relates to challenging the order of Ld. CIT(A) in confirming disallowance of prior period expenditure.

20. At the very outset, Ld. AR appearing on behalf of the assessee submitted before us that this ground is covered by the order of Coordinate Bench of ITAT in **ITA No. 3636/Mum/13 and 4279/Mum/14 for AY 2006-07 and 2007-08 in assessee's own case**, wherein the ***identical ground*** raised in the present appeal have already been decided on merits. The operative portion of the decision of the Coordinate Bench is reproduced below:-

> *25. Ground No.7 relates to prior period expenditure. The ld. AR of the assessee argued that this ground of appeal is also covered in favour of assessee by the decision of Tribunal in assessee's own case for AY 2002-03 in ITA No. 2557/M/2011. The ld. DR for the Revenue not disputed the contention of ld. AR of the assessee. We have considered the submission of both the parties and find that the Co-ordinate Bench of Tribunal in assessee's own case for AY 2002-03 have passed the following order: "Ground No. 4. 10. This ground is against the disallowance of Rs.5,33,97,234/- held to be prior period expenses. Similar issue was decided by coordinate bench in ITA No.1013/Mum/2001 and the operative para is reproduced below:- "2. Ground No.1 of the appeal is regarding disallowance of prior period expenses amounting to Rs.34,51,324/-. 3. Learned Departmental Representative of the revenue supported the orders of authorities below. 4. It is submitted by ld. AR of the assessee that the amount of prior period expenses of Rs.34.51 lakhs arises on account of various expenses for the reason that there was some mistake in making provisions in the relevant year and it constitutes only 0.03% of the turnover of the assessee, which is Rs.1045.22 crores. It is submitted that under these facts, this issue is covered in favour of the assessee by the Tribunal judgment rendered in the case of Escorts*

Limited Vs. IAC reported in 79 ITD 291 (Del). Our attention was drawn to para No.118 to 121 of this Tribunal Judgment as per which under similar situation this issue was decided by the Tribunal in favour of the assessee. Relevant para no. 121 is reproduced below:-

"121. In the peculiar facts and circumstances of the case where the turnover or .he assessee is substantial, some bonafide adjustments in the books of accounts where the accounts for the relevant year may have been closed or the assessee's avenues for claiming these deductions in the relevant year have been exhausted. The assessee would be entitled to claim such deductions..Therefore we are unable to come to any other conclusion and are or the opinion that no interference in the impugned order is called for. Accordingly the ground raised by the Revenue is rejected." . 5. In the present case also, we find that the turnover of the assessee is substantial i.e. Rs. 1045.22 crates and the amount of prior period expenses disallowed by the: Assessing Officer is only Rs: .34.51 lakhs, Since, facts and circumstances of the present' case are similar with the facts in the case (X Escorts Limited (supra), we decide this issue in favour of the assessee' by respectfully following this Tribunal Judgement. This ground of the assessee is allowed. 11. As identical facts and circumstances have been brought before us in the present case hence we decide this issue in favour of assessee by respectfully following the order of coordinate bench in the case of "Rashtriya Chemicals and Fertilizers ltd." vs. JCIT, ITA No. 1013/Mum/2001. Therefore, this ground is allowed."

26. Considering the decision of Tribunal in assessee's own case for AY 2002- 03 and respectfully following the decision of Co-ordinate Bench, this ground of appeal is allowed in favour of assessee.

21. On the other hand, Ld. DR contested the appeal and relied upon the orders passed by the revenue authorities.

22 After having heard the counsels at length and after having gone through order of ITAT as mentioned above in ***assessee's own case***, we find that the ***identical issue*** has already been decided by the Coordinate Bench of ITAT in **ITA No. 3636/Mum/13 and 4279/Mum/14 for AY 2006-07 and 2007-08 in assessee's own case**. Therefore, respectfully following the decision of the Coordinate Bench of Hon'ble ITAT and in order to maintain judicial consistency, we apply the same findings which are applicable *mutatis mutandis* in the present case. Resultantly, this ground of appeal is allowed.

23. In the net result, the both the appeals filed by the assessee are partly allowed in terms indicated above.

Order pronounced in the open court on 28/06/2019

Sd/-	Sd/-
(G. S. PANNU)	**(SANDEEP GOSAIN)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Mumbai; Dated : 28.06.2019
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Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai