

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A' LUCKNOW**

[Through Virtual Hearing]

**BEFORE SHRI A.D JAIN, VICE PRESIDENT AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.316 /Lkw/2017
A.Y. 2012-13

DCIT, Range-6, Lucknow 226001	Vs.	M/s U.P. Rajkiya Nirman Nigam Ltd., Vibhuti Khand, Gomti Nagar, Lucknow PAN AAACU 5701F
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ITA No.319 /Lkw/2017
A.Y. 2012-13

M/s U.P. Rajkiya Nirman Nigam Ltd., Vibhuti Khand, Gomti Nagar, Lucknow PAN AAACU 5701F	Vs.	DCIT, Range-6, Lucknow 226001
(Appellant)		(Respondent)

Appellant by	Shri K.R. Rastogi, FCA And Shri Subham Rastogi, CA
Respondent by	Smt. Abha Kala Chanda, CIT, DR
Date of hearing	07/01/2021
Date of pronouncement	15/02/2021

ORDER

PER BENCH:

These are cross appeals filed by the assessee as well as by Revenue filed against the order of Id. CIT(A), Lucknow dated 14.03.2017. The grounds of appeal taken by the assessee as well as by Revenue are reproduced below:-

ITA No. 319/Lkw/2017 (Assessee's appeal)

- “1. The Ld. CIT(A)-2, Lko erred on facts and in law in not appreciating that no addition should be made w.r.t. direct expenses incurred on behalf of the client shown in the*

contract account. Thus, the addition on account of Labour Cess should not be made.”

ITA No. 316/Lkw/2017 Revenue's Appeal)

- “1. *The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Ks.55.14.378/- on account of difference in closing without appreciating the fact that there is no typographical error and closing stock figure of Rs.58,72,11,589/- is taken from the written submission dated 18.11.2014 of assessee showing detail of closing stock at page 250 to 273 of submission.*

2. *The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.13,99,33,507/- on account of prior period without appreciating the fact that the assessee has not produced documentary evidence before A.O. that income corresponding to expenditure of Rs.13,99,33,507/- has already been recognized as income in contract account of earlier years.*

- 2A *The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs. 13,99,33,507/- on account of prior period without appreciating the fact that the assessee was unable to prove before the assessing officer that the expenses crystallized during the year under consideration and thus are not allowable as assessee is following mercantile system of accounts.*

3. *The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.1,12,00,000/- on account of provision for gratuity without appreciating the fact that the assessee has made provisions of gratuity for muster roll employees amounting to Rs.1.12 Crores in A.Y. 2012-13 but did not add it back in the computation of income of A.Y. 2012-13.*

4. *The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.21,65,45,400/- on account of interest income earned on unutilized funds without appreciating the fact that assessee is claiming TDS relating to FDRs of un-utilized funds but is not showing the interest income of FDRs in its Income which is against provisions of section 198 and 199 of the I.T. Act, 1961.*

5. *The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.98,01,151/- on account of profit on sale of assets without appreciating the fact that though the amount has been shown in other receipts but in computation of income the same has been deducted from income.*
6. *The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.25,33,327/- on account of interest on unlisted machinery without appreciating the fact that though the amount has been shown in other receipts but in computation of income the same has been deducted from income.*
7. *The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.4,78,12,614/- on account of provisions written back without appreciating the fact that there is no repetition of Rs. 4,78,12,614/- and also the assessee has written back provision of gratuity of Rs. 4,78,12,614/- in income but also deducted the same in computation of income.*
8. *The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.29,95,43,067/- on account of interest accrued on investments and Rs.5,44,97,865/- on account of other income accrued but not received without appreciating the fact that the assessee did not furnish the details before the Assessing Officer.*
9. *The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs. 1,55,313/- on account of depreciation on unlisted assets without appreciating the fact that the assessee has already claimed the depreciation of Rs.5,13,16,077/- in profit and loss account.”*

2. At the outset, the Id. AR submitted that appeal of the assessee in ITA No. 319/Lkw/2017 is covered in favour of the assessee in the case of assessee itself in AYs 2010-11 and 2011-12 where the Hon'ble ITAT allowed relief to the assessee under similar facts and circumstances. Therefore, it was prayed that following the Tribunal's orders in the case of assessee itself, the appeal of the assessee may be allowed. The Id. DR fairly agreed that the issue under appeal is covered in favour of the assessee.

3. The Id. DR arguing the appeal in ITA No. 316/Lkw/2017 submitted that the Id. CIT(A) has wrongly allowed relief to the assessee on various issues and placed her reliance on the order of Assessing Officer. The Id. AR, on the other hand, submitted that the Ground Nos. 2 and 2A, Ground No.4, Ground No.6, Ground No.7 and Ground No.9 are already covered in favour of the assessee by orders of ITAT for AYs. 2010-11 and 2011-12 and in this respect filed a chart showing page numbers and para number of ITAT order wherein similar issues were already decided by the ITAT in favour of the assessee.

4. As regards Ground Nos. 1, 3, 5 and 8, the Id. AR submitted that detailed submissions were made before the Id. CIT(A) and Id. CIT(A) after going through the submissions of the assessee has allowed relief to the assessee as the Assessing Officer had wrongly made the additions. Explaining the facts of Ground No.1 the Id. AR submitted that there was a typographical mistake in the totaling of list of stock a copy of which was placed at paper book Pgs. 25 to 41 and Id. CIT(A) has rightly appreciated and has rightly allowed relief to the assessee. The Id. AR in this respect placed reliance on the orders of Id. CIT(A). Regarding Ground No.3, the Id. AR submitted that Assessing Officer had wrongly made addition on account of gratuity by holding that assessee had made the provisions of gratuity amounting to Rs.1,12,00,000/- whereas the fact remains that there was a opening balance of provision for gratuity amounting to Rs.6,67,74,209/- which was shown in the balance sheet and out of which the assessee had written back Rs.4.78 crores as being not required and rest of the balance of Rs.1,12,00,000/- was shown in the balance sheet and AO without appreciating the system of accounting made the addition of Rs.1.12 crores which is factually incorrect and Id. CIT(A) after understanding the issue correctly allowed the relief.

5. Coming to Ground No. 5, the Id. AR submitted that assessee had provided depreciation as per company law and had debited depreciation in the P&L account as per company law but had depreciation as per income Tax Rules on

block of assets in the computation of income. The depreciation as per income tax rules was claimed whereas depreciation debited in the P&L account was added back. The AO, however, without appreciating the fact again added the same which the Id. CIT(A) has rightly allowed.

6. Arguing Ground No.8, the Id. AR submitted that AO had made the additions of interest accrued on investments and other income accrued but not received which was shown under the head current assets. It was submitted that the assessee had considered interest income at Rs.64,54,23,802/- which was calculated by adjusting interest received during the year less opening balance of interest accrued already considered income in earlier years and then by adding accrued interest of the year not received which is the correct method and therefore, the Id. CIT(A) has rightly allowed relief to the assessee.

7. We have heard the rival parties and have perused the material placed on record. First we take up appeal ITA No. 319 which is the appeal of the assessee. There is only one ground wherein the Assessing Officer had made addition on account of expenses of labour Cess by holding as under:

5. Expenses on Labour Cess:

The assessee has shown labour cess provision of Rs.36,52,81,82/- in operating expenses in Schedule-11. The assessee was shown to furnish proof of depositing Labour cess of Rs.36,52,81,828/- in Govt. account vide questionnaire dated 21.10.2014 and 16.01.2015.

The assessee's reply dated 18.11.2014 is as under:-

"In this regard it is submitted as under:-

- (i) That concept of the Labour cess was for the first time introduced in the financial Year 2009-10 by the Labour Department of the Government of U.P. vide notification dated 20.11.2009.*
- (ii) That in light of this notification, the corporation vide its Circular dated 19.02.2010 informed all the unit Heads/General Managers to make provision for Labour Cess @ 1% of the cost of construction of the concerned work sanctioned by the*

Government and are in progress. Thus, the Labour Cess so charged on the work done by the corporation art' direct expenses in nature which are debited to the Contract Account for the purposes of charging centage on the work so done by the corporation. As the corporation undertakes the works of Government departments only, the labour cess so charged on the work is recoverable from the concerned Government Department.

- (iii) That the most important fact that we would like to bring to the kind notice of your goodself that the corporation has never debited its profit & loss accounts by the amount of labour cess and hence there is no occasion at all to reduce the profit.*
- (iv) Further, vide reply dated 28.01.2015, the assesses submitted only details of labour cess deposited during the year as per Annexure A, without submitting any proof of payment. The details submitted by the assessee shows that there was made only provision of labour cess for Rs.4107.75 lakhs upto 31.03.2012"*

The assessee's contention was considered but is not tenable. Firstly, the assessee has debited labour cess in P&L account under operating expenses. Secondly, the assessee has not furnished any proof for depositing labour cess of Rs.36,52,81,828/- in Govt. account. Moreover, Labour Cess is a statutory liability which falls under the preview of section-43B of the I.T. Act, 1961. Therefore, the provision of Rs.36,52,81,828/- made on account of Labour Cess is disallowed u/s 43B of the LT. Act, 1961 & added to die income of assessee."

8. The Id. CIT(A) has partly allowed relief to the assessee on this ground by holding as under:

"7(5) I find that the appellant has filed details of expenditure of Rs. 13,56,16,290/- incurred on account of labour cess alongwith proof of payment where the payment was made before 30.09.2012 i.e. the due date for filing of return of income for the assessment Year 2012-2013 under consideration. Accordingly relief of Rs. 13,56,16,290/- is allowed to the appellant and the addition made by the AO is confirmed to the extent of Rs. 22,96,65,538/-. The ground of appeal is allowed partly. The AO is however, directed to allow Rs. 22,96,65,538/- in subsequent year after examination of proof of payment. The additional ground of appeal is therefore allowed."

9. We find that similar issue was there before the ITAT in ITA No. 314 and 317 for AYs. 2010-11 and ITA No. 315 and 318 for AY 2011-12 and the ITAT in AY 2010-11 allowed relief to the assessee by holding as under:

“9. Accordingly, as per para 59 of the Working Manual, a contract account is to be prepared, which is a statement showing resulting profit or loss accruing during a construction period, which has a direct relation to the works dealt with in the business, which ascertains the cost of profit of the assessee Corporation. Thus, the contract account is, basically, accounting of work done where the gross profit worked out is the centage allowed towards the overheads and profits of the assessee Corporation. In the contract account, all direct costs, as are to be borne by the clients of the Corporation, are debited and the value of the work done is credited by adding 15% towards centage charges. As such, in case any disallowance is to be made in the cost debited to the contract account, a corresponding deduction is also required to be made in the cost debited to the work done, as this is a case of contra entries only. This accounting procedure of the assessee Corporation stands accepted by the Department in assessment year 1990-91, as taken note of by the Tribunal in the assessee’s case for assessment year 1991-92, in its order dated 30/11/2006, passed in ITA No.714/LKW/2002. For assessment year 2000-01, the Tribunal, vide its order dated 18/12/2018, passed in ITA No.382/LKW/2004, also took note that all the expenditures incurred by the assessee Corporation on material consumed is recovered from its clients along with 15% profit thereon and that so, even if there is inflation in the expenses in material consumed, the same is recovered along with 15% profit thereon, resulting in no loss of profit or loss to the Revenue in the form of tax. the Id. CIT(A) has confirmed the disallowance, holding that this disallowance was correctly made by invoking the provisions of section 43B of the Act. It remains undisputed that the labour cess is part of the contract account. That being so, the assessee is correct in contending that the addition, if any, is maintainable only in the hands of the client of the assessee Corporation and not in the hands of the assessee. The provisions made for labour cess, do not stand debited to the profit & loss account and the profitability of the Corporation in the form of centage earned as gross profit, is not affected. The assessee Corporation is only a collecting agency for the purposes of the labour cess and deposit thereof with the Government account. Thus, the action of the Id. CIT(A) in confirming the addition for the provisions for labour cess, is reversed and the addition is deleted. The sole ground raised by the assessee in its appeal is allowed.”

10. Similarly in ITA No. 315 and 318 for Ay 2011-12 the Hon'ble Tribunal followed the findings of Tribunal in AY 2010-11 and deleted the similar addition. Therefore, respectfully following the same the addition sustained by the Id. CIT(A) is deleted and therefore, the appeal in ITA No. 319 is allowed.

11. Now, coming to ITA No. 316. As regards the first ground regarding difference in valuation of stock, we find that assessee had declared stock at Rs.58,72,11,589/- instead of correct amount of Rs.58,17,00,211/- paper book Pg. 25 to 41 is the unit wise and job wise breakup of the stock of building material, the total of which comes out at Rs.58,170,0211/-. It was submitted before the Id. CIT(A) that valuation of closing stock of each unity was verifiable from the record and it was further explained that closing stock was arrived through physical verification by officers of Gazetted rank of state government and therefore, Id. CIT(A) had allowed relief to the assessee by holding as under:-

“4(4) I have examined the facts and circumstances of the case. I have examined thus findings of the Assessing Officer and the submissions of the appellant. I find that the appellant is a wholly owned undertaking of the U.P. Government. The appellant carries on the business of construction for Government. It receives orders for projects on behalf of the Government and executes the same. The inventory of stock is maintained at all units separately and is physically verified by an officer of the rank of a Gazetted officer. The closing stock as per profit and loss account for the year under consideration is Rs. 58,17,00,211/-. During the course of assessment proceedings the appellant filed inventor,' of closing stock which by typographical mistake was shown at Rs. 58,72,11,589/-. The AO instead of verifying the correct position with reference to opening stock, purchases and utilization in construction activities chose the easier way of rejecting the books of accounts under section 145(3) of the Act and making the addition for the difference. I find that the position has been explained by the appellant both during the assessment proceedings as well as appellate proceedings that the figure of Rs. 58,72,11,589/- is a typographical error and correct value of closing stock as per books of accounts and verified inventory is Rs. 58,17,00,211/-. The Law does not proceed from taking advantage of a genuine bonafide mistake of the appellant. The books of accounts of the appellant are audited by statutory auditors as well as CAG. Accordingly, the addition of Rs. 55,14,378/- made by the AO is deleted giving relief to the appellant.”

12. The Id. CIT(A) in his finding has clearly held that the difference was due to typographical error and he has further observed that books of accounts of assessee were audited by statutory auditor as well as by CAG and such inventory was physically verified therefore he has rightly allowed relief to the assessee and we do not find any reason to interfere with his finding and therefore Ground No.1 of the appeal is dismissed.

13. Now coming to Ground No. 2 and 2A, we find that vide these grounds the Revenue has agitated the deletion, which the AO had made on account of prior period items. We find that this issue is covered in favour of the assessee in the case of assessee itself in ITA No. 314 and 317 in AY 2010-11 and in ITA No. 315 and 318 in AY 2011-12. The Hon'ble Tribunal in AY 2010-11 has dealt with this issue vide paras 35 to 37 and has dismissed the grounds of appeal filed by Revenue by holding as under:

"2. Ground No.6 relates to the deletion of addition of Rs.23,54,235/- on account of prior period expenses.

3. The addition on account of prior period expenses made by the A.O was deleted by the Id. CIT(A), observing, as below:

"10(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. I find that the expenditure disallowed by the AO consists of Rs 19,01,616/- paid to M/s Dakshinanchal Vidyut Vitran Nigam Limited, Agra against the bill raised by the Electricity Distribution Division, Etawah and the balance amount of Rs. 4,52,619/- is on account of payment made to the M/s U.P. State Bridge Corporation Limited. The AO disallowed the expenses stating that these do not relate to the year under consideration whereas the appellant claims that the liability arose in the year under consideration. Alternatively, the appellant claims that the amount pertains to contract account and therefore in case the addition is made then simultaneously, the work in progress should be reduced by like amount.

10(5) I find that the appellant has clearly brought out the fact that the bills were raised by the Electricity department on 30.10.2009, which means that the liability has arisen in the current year and therefore the expenses are allowable in the assessment year under consideration.

Notwithstanding, the claim of the appellant that any addition made will result in reduction of work in progress is justified as the income corresponding to the said expenses of Rs.23,54,235/- has already been accounted for in the contract account of earlier years. In this connection a reference may be made to the decision of Hon'ble ITAT, Lucknow in case of the appellant for the assessment year 1991-92 in ITA No 714/LUC/02 dated 30/11/2006, which has been followed in case of the appellant for the assessment year 2000-2001 in ITA No 382/LUC/04 dated 18/12/2008. While deciding a similar disallowance of prior period expenses the Hon'ble Court held that if any disallowance was to be made in the cost debited to the Contract account then corresponding reduction is required to be made in the work done also, this being a case of contra entries only. The decision of the Hon'ble Tribunal is discussed at length in paragraph 5(6) above. Relying on the decision supra and finding that the income corresponding to the expenditure of Rs.23,54,235/- has already been recognized in contract account of earlier years, the addition of Rs.23,54,235/- made by the A.O is deleted giving relief to the appellant."

4. As observed by the Id. CIT(A), we find that the liability arose in the year under consideration, as is evident from the bill raised by the Electricity Department on 30/10/2019. Moreover, as claimed by the assessee, the amount pertains to the contract account and therefore, in case the addition is made, the equivalent amount is to be reduced from the work-in-progress. We, therefore, find no infirmity in the order of the Id. CIT(A) on this issue. Accordingly, we confirm his order on this issue and reject ground No.6 of the Revenue's appeal."

14. The Hon'ble Tribunal during AY 2011-12, has respectfully followed the AY 2010-11 and has dismissed the Ground of Revenue's appeal.

15. Respectfully following the orders of the Tribunal in the case of assessee, itself Ground No. 2 and 2A are dismissed.

16. Now coming to Ground No.3 which relates to addition which the AO had made on account of provision of gratuity. In this respect, we find that there was an opening balance of profession for gratuity amounting to Rs.66,774,209/- which is apparent from Schedule 4 of balance sheet placed in paper book at Pg. 47. The said provision for gratuity was reduced to Rs.1,1163945/- as during the

year the assessee written back the amount of Rs.4.78 crores which was no longer required and took the figure in the P&L account as its income. The written back provision has been taken in the P&L account under the head other non operating income, which is apparent from paper book Pg. 52 where such schedule forming part of balance sheet is placed. The AO has wrongly made the addition of outstanding balance of provision for gratuity which the Id. CIT(A) has rightly deleted by holding as under:

“8(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. I find that the appellant has written back an amount of Rs. 4,78,12,614/- as provision for gratuity by treating it as excess provision no longer required. The opening balance of the provision for gratuity as shown in schedule 4 of the balance sheet as at 31.03.2012 is Rs. 6,67,74,209/-. The issue has been dealt in detail in the appellate order for the assessment year 2011-2012 in case of the appellant wherein the details of provision for gratuity written back and added to the computation of income the years is as under –

Assessment Year	Provision for Gratuity added in Computation chart in Rs.	Provision for Gratuity written back as no longer required in Rs.
2000-2001	1,09,15,481/-	-
2001-2002	75,25,5267-	-
2002-2003	38,56,755/-	-
2003-2004	71,14,765/-	-
2004-2005	43,43,921/-	-
2005-2006	53,16,192/-	-
2006-2007	3,69,742/-	-
2007-2008	18,38,1751/-	-
2008-2009	2,90,67,063/-	-
2009-2010	5,22,62,229/-	-

2010-2011	2,65,73,248/-	-
2011-2012		11,46,32,701/-
2012-2013		4,78,12,614/-
TOTAL	16,87,26,673/-	16,24,45,315/-

8(5) In view of above I find that as against a provision of gratuity of Rs. 16.24.45.315/-upto assessment year 2012-2013 the appellant has already added back an amount of Rs. 16,87,26,673/- in the computation of income, The amount added back is more than the amount claimed as provision for gratuity. The addition made by the AO for Rs. 1,12,00,000/- is therefore not sustainable and is deleted giving relief to the appellant.”

17. The above findings are exhaustive enough wherein the Id. CIT(A) has examined the assessment records of earlier years also and has rightly allowed relief to the assessee. Finding no infirmity in the order of Id. CIT(A) we dismiss Ground No. 3 of the Revenue’s appeal.

18. Now coming to Ground No.4, we find that Assessing Officer had made an addition on account of interest income earned on unutilized fund by holding that the assessee was claiming TDS relating to FDRs of unutilized fund. The Id. CIT(A) has held that the interest on unutilized funds which belonged to clients of the assessee were required to be credited to their account and therefore, this income cannot be said to have accrued to the assessee. The Hon'ble Tribunal in ITA No. 317 and 314 for AY 2010-11 and ITA No. 315 and 318 in AY 2011-12 has allowed relief to the assessee under similar facts and circumstances. In AY 2010-11, the Hon'ble Tribunal has dismissed the ground of appeal of the Revenue by holding as under:-

“39. The A.O made the addition of Rs.39,46,18,444/- being interest on client fund as income of the assessee, without appreciating the Government Order that interest on client funds is to be added in client fund.

40. *The Id. CIT(A) deleted the addition, observing, as below:-*

“12(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. I find that the amount of Rs.39,46,18,444/- shown in the balance sheet as interest accrued on deposits is the running balance of accrued interest on the funds of the clients of the appellant. This amount is inclusive of opening balance not received during the year as well as the interest accrued on the assessee's own funds, which have already been assessed to tax. The appellant undertakes construction work against advances received from the clients. Expenses are met by withdrawing the funds from the bank accounts wherein the funds were deposited. These are running accounts and the balance left in the bank account earns interest. The clients also keep margin money with the appellant in the form of fixed deposits which earns interest. The appellant maintains its books of accounts on mercantile basis and it makes provisions of interest on accrual basis. The appellant credits such interest to the respective client's account in view of the Government Order No. A-1-FA-11/386/1976 dated 11.04.1976.

12(5) In view of my examination, I find that the interest accrued on deposits has been credited to the respective client account. The interest earned by the appellant on unutilized funds is therefore credited to the respective accounts and is income of the concerned client and not the appellant. The GO dated 11.04.1976 referred above supports the contention of the appellant. The addition of Rs.39,46,18,444/- made by the A.O on account of interest accrued on deposits is deleted giving relief to the appellant.”

41. Having considered the rival submissions and perusal of record, we find that the amount of Rs.39,46,18,444/- shown in the balance sheet as interest accrued on deposits was the running balance of the accrued interest on the funds of the clients of the assessee. The assessee maintains its books of account on mercantile basis and it makes provision of interest on accrual basis. The assessee also credits such interest to the respective clients' accounts as per Government Order dated 11/4/1076 (supra). The Id. CIT(A) has rightly observed that the interest earned by the assessee on unutilized fund is credited to the respective accounts and are the income of the concerned clients and not of the assessee. We do not find any infirmity in the well reasoned order of the Id. CIT(A) on this issue. We accordingly confirm his order on this issue and reject ground Nos.7 & 7.1 of the Revenue.”

19. Similar Ground of appeal was dismissed by the Hon'ble Tribunal in AY 2011-12, where the Hon'ble Tribunal followed the findings of Tribunal in AY 2010-

11 and allowed relief to the assessee. Therefore, respectfully following the orders of Tribunal in the case of assessee itself Ground No.4 is dismissed.

20. Now coming to Ground No.5, the Assessing Officer had made an addition of Rs.98,01,151/- on account of profit on sale of assets which the assessee had declared under head other income in schedule 12 forming part of balance sheet. The assessee had claimed depreciation as per income tax rules on block of assets and therefore, the block of assets was arrived at after reducing the sale value of assets sold and depreciation as per Income Tax Rules was claimed as per Income Tax Rules. The Assessing Officer, on the one hand, allowed depreciation as per Income tax Rules but again added Rs.98,01,151 being profit on sale of assets without appreciating the fact that no such addition was to be made as depreciation was allowed on block of assets as per Income Tax Rules where the sale consideration of assets was already reduced from the block of assets of depreciation was claimed on net block. The copy of computation sheet is placed at paper book Pg.42 where the computation of income is placed and where the assessee had reduced depreciation as per income tax rules and added back the depreciation debited in the P&L account. We find that Id. CIT(A) has made a finding of fact that assessee has claimed depreciation as per I.T. Rules on block of assets and has reduced the sale consideration of assets from gross block of assets and had claimed depreciation on net block therefore, he has rightly allowed relief to the assessee and we do not find any infirmity in the same and therefore, Ground No.5 is also dismissed.

21. Now coming to Ground No.6, we find that Assessing Officer had made an addition of Rs.25,33,327/- on account of interest on unlisted machinery, which the CIT(A) has deleted. We find that similar issues arose in AYs. 2011-12 in ITA No. 315 and 318 and the Hon'ble ITAT allowed relief to the assessee by holding as under:

“11. As regards ground No. 3 regarding deletion of addition on account of interest on unlisted machinery, we find that in schedule-12 to

the profit & loss account, placed at page 28, the assessee, under the head 'other receipts', has declared as income of Rs. 19,34,458/- and the total of all other receipts including the interest on unlisted machinery has been declared as income in the contract account, which is placed at page 21 of the paper book. Therefore, learned CIT(A) has rightly allowed relief to the assessee. In view of the above, ground No. 3 of the Revenue is dismissed."

22. We find that during the year under consideration, the Id. CIT(A) has made a finding of fact that interest of Rs.25,33,327/- on unlisted machinery is in the nature of notional interest being charged by assessee on the machinery used in the construction work undertaken by it and the notional interest chart on unlisted machinery being used in the work. The Id. CIT(A) further made a finding of fact that such amount has been debited in the contract account and therefore, the assessee had earned centage on this amount as specified by the Government and the centage so earned was taken in the P&L account. The findings of Id. CIT(A) contained in Para 10(6) are reproduced below:

"10(6) As regards the addition of Rs. 25,33,327/- as notional interest on unlisted machinery, I find that the AO has nowhere disputed the fact that the machinery used by the appellant for carrying out construction activities is owned by the appellant and the appellant is allowed centage on wear tear of the machinery, which is charged in the form of interest. The interest of Rs. 25,33,327/- on unlisted machinery is therefore in the nature of notional interest being charged by the assessee on its machinery used in the construction work undertaken by it. The notional interest is charged on unlisted machinery with view to earn centage on these machineries being used in the work. The amount of Rs. 25,33,327/- is shown in schedule of the financial accounts for the year ended on 31.03.2012 relating to expenditure of Contract account. By showing it in the contract account, the assessee has earned centage on this amount as specified by the government and the centage so earned has been taken to the profit and loss account under the head "Gross Profit transferred from contract account". Simultaneously, the amount of Rs. 25,33,327/- is also shown in the schedule of the financial accounts for the year ended on 31.03.2012 relating to other receipts. This means that the amount of Rs. 25,33,327/- is debited in Contract Account and is also credited in Other Receipts. The net result is that the amount is not claimed and the centage is shown as income of the year. In view of above, I do not find justification of Rs. 25,33,327/-

added by the AO as interest on unlisted machinery. The addition of Rs. 25,33,327/- made by the AO is therefore deleted giving relief to the appellant.”

23. The findings of Id. CIT(A) are quite exhaustive and such addition is covered in favour of assessee by the Tribunal order in the case of assessee itself. Therefore, we do not find any reason to interfere in the same and therefore, Ground No.6 is also dismissed.

24. Now coming to Ground No.7, we find that Assessing Officer had made the addition on account of gratuity amounting to Rs.4,78,12,614/- which the assessee had written back as no longer required. The assessee by writing back the excess provision of gratuity credited the other receipts and declared it as income as is evident from paper book Pg.52 and simultaneously the assessee reduced the same in the computation chart in computing net taxable income. The assessee had claimed that it never claimed the gratuity expenses and added back the same in computing of income and therefore, the addition was not justified. The Assessing Officer had wrongly made the addition, which the Id. CIT(A) has deleted by appreciating the facts correctly. The Id. CIT(A) has already dealt this issue in Para 8(4)(5) and has rightly deleted the addition. Finding no infirmity in the findings, Ground No.7 is also dismissed.

25. Now coming to Ground No.8, we find that the Assessing Officer made the additions on account of interest accrued on investment and other income which was shown in the balance sheet under the head current assets. Paper book Pg.49 under the head other current assets declares interest accrued on investment at Rs.299543067 and other income accrued but not received at Rs.54497865. When the assessee passed this entry and declared the income as receivable naturally credit would have been given to the income which would have gone to the P&L account. The system of accounting adopted by assessee is that the income is arrived at by first adding interest received during the year less opening balance of interest accrued considered income in earlier years and

then by adding accrued interest of the year not received. The Id. CIT(A) has deleted this addition by holding as under:

“11(5) I find that the AO has failed to appreciate the fact that Interest accrued on Investment at Rs. 29,95,43,067/- and Other income accrued but not received at Rs. 5,44,97,865/- are closing balances shown in the balance sheet as at 31.03.2012 and the method of accounting followed by the appellant is Mercantile System of accounting. There is no change in the method of accounting in the current year as compared to earlier years. I find that as per Schedule-7(d) Forming Part of the Balance Sheet as at 31.03.2012, the Accrued interest on investments as on 01.04.2011 is Rs. 2298,58,426/- and Other income accrued but not received as on 01.04.2011 is Rs. 6,22,10,048/-. Out of these the appellant has deducted the amount of Interest received during the year, which was already shown as Income in earlier year and added the Interest accrued during the year but not received. As a result the appellant has shown Interest Income for the year at Rs. 64,54,23,802/-. Since the interest income of Rs. 64,54,23,802/- has been shown the closing balances in the balance sheet as at 31.03.2012 of Rs. 29,95,43,067/~ and Rs. 5,44,97,885/- cannot be considered as income and addition made thereof. According, the addition of Rs. 35,4Q,40,952/- made by the AO is deleted giving relief to the appellant.”

26. These findings of Id. CIT(A) are explanatory and he has rightly allowed relief to the assessee and therefore, Ground No.8 is dismissed.

27. Now coming to Ground No.9, we find that Assessing Officer had made addition of Rs.1,19,55,313/- by disallowing depreciation in P&L account under the head operating expenses which was added back while computing allowable depreciation as per I.T. Rules. At pg.42 is copy of computation of income, where the assessee had added back depreciation amounting to Rs.63271390/- and which included depreciation in P&L account amounting to Rs.11955313/- therefore, assessee itself had added back depreciation which the Assessing Officer had wrongly again added back. The Id. CIT(A) has deleted the addition by holding as under:

“13(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. I find that the appellant claims

depreciation in Contract account as well as in the profit and loss account. Depreciation of Rs. 5,13,16,077/- added by the AO has been claimed in the contract account and depreciation of Rs. 1,19,55,313/- has been claimed in the profit and loss account. In the computation of income the appellant has written back an amount of Rs. 6,32,71,390/- (Rs. 5,13,16,077/- + Rs. 1,19,55,313/-) and has claimed depreciation as per Income Tax Rules at applicable rates of Rs. 6,31,64,856/-. There is therefore no justification in the addition made by the AO as the correct depreciation has been claimed by the appellant as per Rules after adding back the depreciation debited to the contract account and profit and loss account. The addition of Rs. 1,19,55,313/- made by the AO is deleted giving relief to the appellant.”

28. In view of the above facts and circumstances, finding no infirmity in the findings, Ground No.9 is also dismissed.

29. In the result, appeal filed by assessee in ITA No. 319/Lkw/2017 is allowed whereas appeal filed by Revenue in ITA No. 316/Lkw/2017 is dismissed.

(Order pronounced in the open court on 15/02/2021)

Sd/-
(A.D. Jain)
Vice President

Sd/-
(T.S. Kapoor)
Accountant Member

Aks –
Dtd. 15/02/2021

Copy of order forwarded to:

<i>(1) The appellant</i>	<i>(2) The respondent</i>
<i>(3) Commissioner</i>	<i>(4) CIT(A)</i>
<i>(5) Departmental Representative</i>	<i>(6) Guard File</i>

By order

PRIVATE SECRETARY