IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'B' NEW DELHI

BEFORE SHRI O.P. KANT, ACCOUNTANTMEMBER
AND
SHRI K.N. CHARY, JUDICIAL MEMBER
[Through Video Conferencing]

ITA No.3885/Del./2011
Assessment Year: 2006-07

Central Warehousing Corporation, Warehousing Bhawan, 4/1, Siri Institutional Area, Hauz Khas, August Kranti Marg, New Delhi	**Vs.**	ACIT, Circle-3(1), C.R. Building, New Delhi
PAN :AAACC1206D		
(Appellant)		**(Respondent)**

AND

ITA No.3942/Del./2011
Assessment Year: 2006-07

DCIT, Circle-3(1), C.R. Building, New Delhi	**Vs.**	Central Warehousing Corporation, Warehousing Bhawan, 4/1, Siri Institutional Area, Hauz Khas, August Kranti Marg, New Delhi
		PAN :AAACC1206D
(Appellant)		**(Respondent)**

AND

ITA No.3439/Del./2014
Assessment Year: 2007-08

DCIT, Circle-3(1), New Delhi	**Vs.**	Central Warehousing Corporation, Warehousing Bhawan, 4/1, Siri Institutional Area, Hauz Khas, August Kranti Marg, New Delhi
		PAN :AAACC1206D
(Appellant)		**(Respondent)**

AND

C.O. No.93/Del./2015

[In ITA No.3439/Del./2014]

Assessment Year: 2007-08

Central Warehousing Corporation, Warehousing Bhawan, 4/1, Siri Institutional Area, Hauz Khas, August Kranti Marg, New Delhi	**Vs.**	DCIT, Company Circle-3(1), New Delhi
PAN :AAACC1206D		
(Appellant)		**(Respondent)**

AND

ITA No.3440/Del./2014

Assessment Year: 2008-09

DCIT, Circle-3(1), New Delhi	**Vs.**	Central Warehousing Corporation, Warehousing Bhawan, 4/1, Siri Institutional Area, Hauz Khas, August Kranti Marg, New Delhi
		PAN :AAACC1206D
(Appellant)		**(Respondent)**

AND

C.O. No.94/Del./2015

[In ITA No.3440/Del./2014]

Assessment Year: 2008-09

Central Warehousing Corporation, Warehousing Bhawan, 4/1, Siri Institutional Area, Hauz Khas, August Kranti Marg, New Delhi	**Vs.**	DCIT, Company Circle-3(1), New Delhi
PAN :AAACC1206D		
(Appellant)		**(Respondent)**

AND

ITA No.2201/Del./2014
Assessment Year: 2009-10

Central Warehousing Corporation, Warehousing Bhawan, 4/1, Siri Institutional Area, Hauz Khas, August Kranti Marg, New Delhi	**Vs.**	DCIT, Circle-3(1), New Delhi
PAN :AAACC1206D		
(Appellant)		**(Respondent)**

AND

ITA No.5784/Del./2014
Assessment Year: 2010-11

DCIT, Circle-3(1), New Delhi	**Vs.**	Central Warehousing Corporation, Warehousing Bhawan, 4/1, Siri Institutional Area, Hauz Khas, August Kranti Marg, New Delhi
		PAN :AAACC1206D
(Appellant)		**(Respondent)**

AND

C.O. No.158/Del./2015
[In ITA No.5784/Del./2014]
Assessment Year: 2010-11

Central Warehousing Corporation, Warehousing Bhawan, 4/1, Siri Institutional Area, Hauz Khas, August Kranti Marg, New Delhi	**Vs.**	DCIT, Company Circle-3(1), New Delhi
PAN :AAACC1206D		
(Appellant)		**(Respondent)**

Assessee by	Shri S. Krishnan, Adv. & Shri V. Raja Kumar, Adv.
Department by	Ms. Nidhi Srivastava, CIT(DR) Shri Mahesh Thakur, Sr.DR

Date of hearing	06.04.2021
Date of pronouncement	31.05.2021

ORDER

PER O.P. KANT, AM:

These cross appeals/cross objections by the Revenue and assessee are directed against separate orders passed by the Ld. First Appellate Authority in the case of the assessee, i.e., the Central Warehousing Corporation. The issues involved in these appeals/cross objections are common and therefore, these were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

ITA No. 3885/Del./2011 & 3942/Del./2011

2. First we take up, appeal of the assessee (ITA No. 3885/Del/2011) and cross appeal of the Revenue (ITA No. 3942/Del/2011) for assessment year 2006-07.

3. The assessee originally raised 14 grounds in its appeal, however during the course of the hearing, the assessee on 31/03/2015, submitted seven (7) condensed/concise grounds, as under:

1. Original ground no. 1 to 3 and 13 & 14;-

a. It is contended that non acceptance of the revised return filed by the Corporation with in the time limit prescribed u/s 139(5) is unlawful.

b. It is contended that the CIT(Appeal) has made wrong conclusion that the revised return should have been filed before the completion of the processing u/s 143(1).

2. Original ground no.4 & 5:-

a. It is contended that the CIT(A) had erred in not accepting the contention of the appellant with regard to the applicability of provisions of u/s 36(l)(xii) while appellant fulfills all the conditions laid down in this section and accordingly eligible for deduction.

3. Original ground no. 6 to 8:-

a. It is contended that the Assessing Officer has wrongly invoked sec 14A r/w Rule 8D in the instant case. The Assessing Officer has wrongly computed the amount allocable u/s 14A as Rs. 11327837/-by invoking Rule 8D(2), especially when the Rule 8D is applicable only from Asst. Year 2008-2009 as per the decision of the Hon'ble Bombay High Court in the case of Godrej Boyce.

b. CIT(Appeal) has erred in restricting the disallowance to 5% of the total exempted income and erred in sustaining an addition of Rs. 1908487/-.

4. Original ground no. 9 & 10:-

a. It is contended that addition on account of depreciation on assets costing upto 5000/- as per accounting policy of the Corporation amounting to Rs. 14142259/- is wrong.
b. It is contended that this amount has no bearing on the computation of the income for tax purposes since the entire amount of Rs. 14142259/- has been added back to the profit disclosed as per Books and proper depreciation in accordance with sec 32 had been claimed.

***5. Original ground no. 11**:- It is contended that the Assessing Officer has erred innot allowing the relief claimed by the Corporation on account of its share ofincome from the Joint Venture, CFS at Ludhiana for the years 2003-2004,2004-2005 which has been taxed twice i.e. once while framing the assessment of respective Asst. Years and then during the current Asst, year, wherein the aggregate amount for both these years clubbed with the share for 2005-2006 was accounted for and consequently offered for tax by the by the Appellant Corporation.*

***6. Original ground no. 12**:- It is contended that the Assessing Officer has erred in not allowing the Claim of the Corporation for Rs. 88,14,00,000/- towards provision made for Post - Retirement Medical*

Benefits in pursuance to Accounting standard No. 15 issued by the Institute of Chartered Accountants of India during the year 2005-2006 through the revised income tax return as the legitimate Business Expenditure, since the same is not a subject matter of section 43B of the IT Act and has to be allowed in the year of Accountal.

***7**. Original Ground Nos. 15 to 17 are general.*

3.1 The assessee also submitted three additional grounds on 10/09/2012 as follows:

> *1. Whether on the facts and circumstances of the case, the Appellant being a Corporation created by an Act of Parliament, could be construed to be a Company for the purposes of applying the provisions of section 115JA of the IT Act.*
>
> *2 Whether both on the facts and on law, Non-schedule VI Companies are Exempt from the provisions of the Minimum Alternate Tax (MAT), since such Non- schedule VI Companies are not required under the proviso to Section 211(2) of the Companies Act to prepare their Profit & Loss Account in accordance with Schedule VI of the Companies Act, 1956.*
>
> *3. Whether both on facts and on law for the purpose of computing the Book Profit under section 115JA of the Income Tax Act, the Profit & Loss Account; prepared in accordance with the provisions of the Appellant's Regulatory Act viz. the Warehousing Corporations Act, 1962 read with Central Warehousing Corporation Rules, 1963 and Central Warehousing Corporation (General Regulations), 1965 shall be taken as the basis for computing the Book Profit under section 115JA of the Income Tax Act.*

3.2 The grounds raised by the Revenue in the appeal are reproduced as under:

> *1. The Ld.CIT(A) has erred on facts and in law in deleting addition of Rs.40205550/- on account of disallowance of provision for Productive Link Incentive ignoring that the assessee failed to substantiate its claim with any documentary evidence before the Assessing Officer.*
>
> *2. The Ld.CIT(A) has erred on facts and in law in deleting addition of Rs.6944300/- on account of capitalization of SLP Dunnage expenses ignoring that:*
>
> *a) both the dunnages are used for same purpose i.e. to prevent the storage from floor seepage then how the Special Dunnage (SLP) is capital asset and ordinary dunnage is revenue in nature.*

b) On the issue of consistency reliance is placed on the Hon'ble Supreme Court in the case of Dwarkadas Kesardeo Morarka vs CIT 441 1TR 529 and in Joint Family of Udayan Chinubhai vs CIT 63 ITR 416 has decided that each year's assessment is separate from that of earlier years, therefore, the taxing authorities are not bound to follow the decision taken in earlier years.

3. *The Ld.CIT(A) has erred on facts in law in deleting addition of Rs.716955/- on account of disallowance of quality improvement expenses ignoring that such expenditure are incurred by the assessee for improving the working environment and efficiency of its employees and these expenses are providing benefits of enduring nature of the assessee company.*
4. *The Ld.CIT(A) has erred on facts and in law in deleting addition of Rs.40754700/- on account of disallowance of unabsorbed engineering overheads expenses ignoring that the assessee failed to provide documentary evidence before the AO and also benefit of enduring nature was drawn by the assessee on this account.*
5. *TheLd.CIT(A) has erred on facts in law in deleting the disallowance u/s 14A read withRule 8D upto Rs.9419350/- as against total disallowance of Rs.l 1327837/-. Ld.CIT(A) has failed to take cognizance of sub-section (3) of section 14A which specifies that even if the assessee makes a claim that no expenditure has been incurred in earning the exempted income, subsection^) of section 14A shall apply, meaning thereby, disallowance u/s 14A(1) us called for.*
6. *The Ld.CIT(A) has erred on facts and in law in deleting addition of Rs.72444000/- onaccount of disallowance of income from Bonded Warehouses ignoring that the assessee did not account for this accrued income even as the assessee is following merchantile system of accounting.*
7. *The Ld.CIT(A) has erred in law and on facts in deleting addition made on account ofcomputing book profit u/s 115JB provision for meeting liabilities other than ascertained liabilities such as provision for gratuity (Rs.63759797/-), provision for bad and doubtful debts(Rs.89686802/-), provision for wealth tax(Rs.662044/-), provision for leave encashment(Rs.54227950/-) and provision for PLI (Rs.40205550/-) ignoring the fact that provisions of section 115JB clauses (a) to (f) are applicable in this case.*
8. *The Appellant craves leave for reserving the right to amend, modify, alter, add or forego anyground(s) of appeal at any time before or during the hearing of this appeal.*

4. Briefly stated facts of the case are that the assessee is a Government of India undertaking, established under section 3 of

the Warehousing Corporation Act, 1962 and for the purpose of the Income- tax Act,1962 (in short the Act) , it is deemed to be a company within the meaning of the Act. It is an authority constituted under the law for the purpose of warehousing and marketing of commodities / agricultural products. The assessee derived its income from letting out of godowns or warehouses for storage, processing or facilitating/marketing of commodities. In financial year 1984, the assessee diversified its operation and started new line of business of running Container Freight Stations (CFS) and Inland Container Depots (ICD). For the year under consideration, the assessee filed return of income on 29/11/2006, declaring total income of ₹ 107,49,47,352/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Act were issued and complied with. In the scrutiny assessment completed on 16/12/2008, under section 143(3) of the Act, certain additions/disallowances were made and income of ₹ 126,45,30,182/-was computed for the year under consideration under regular provisions of the Act, which after adjustment of brought forward losses, was assessed at nil income. The book profit under section 115JB of the Act was computed at ₹ 127,96,53,053/-. The Ld. CIT(A) partly allowed the appeal of the assessee vide impugned order dated 20/06/2011. Aggrieved, both the Revenue and the Assessee are in appeal before the Income-Tax Appellate Tribunal (in short 'the Tribunal') raising the grounds as reproduced above.

5. Before us, the parties appeared through Video Conferencing facility and filed paper-book and other documents through email.

6. The condensed Ground No. 1 of the appeal of the assessee relates to validity of revised return filed in terms of section 139(5) of the Act.

6.1 The brief facts qua the issue in dispute are that the assessee filed its original return of income for assessment year 2006-07 on 29/11/2006. Notice under section 143(2) of the Act for selection of the case under scrutiny was issued on 12/10/2007. This return of income was processed on 28/03/2008 under section 143 (1) of the Act. Later on, the assessee wanted to make claim for provision of Post-retirement Medical Benefit and for this purpose, the assessee attempted to revise the original return of income filed. As per Income-tax Rules, 1962 during relevant time, the assessee was required to upload the revised return of income on the website of the Department. Though,the assessee could not upload the revised return of income on the web portal of the Income Tax Department on 31/03/2008 due to some technical errors, however, on 31/03/2008 it sent revised return of income through email to the Directorate of Income Tax (system), New Delhi i.e., relevant office of the Income Tax Department, responsible for managing e-filing of return of income. The assessee also sent hard copy of the revised return of income by speed post on 31/03/2008 and uploaded the said revised return electronically on 01/04/2008. As per the provisions of the Act, i.e. Section 139(5), an assessee can revise its return of income, within one year from the end of the relevant assessment year (i.e.

31/03/2008) or before completion of the assessment, whichever is earlier. The Ld. Assessing Officer ignored the revised return of income filed by the assessee. According to the Ld. CIT(A), the intimation under section 143(1) was sent on 28/03/2008, which is in the nature of the assessment, and therefore, the revised return of income filed thereafter on 31/03/2008, was not valid in terms of section 139(5) of the Act.

6.2 Further, the condensed ground No. 6 of the appeal of the assessee relates to claim for allowing provision of Post-retirement Medical Benefit, which was claimed under revised return of income.

6.3 Before us, the Learned counsel of the assessee referred to paper-book page 16, which is return of income filed for the assessment year 2019-20 and submitted that provision for Post-retirement Medical Benefit has been added back while computing the income and claimed on the basis of the actual amount paid. Accordingly, the learned counsel submitted that condensed ground No. 1 and 6 of the appeal were not pressed, however, alternatively, he requested to restore the matter to the Ld. Assessing Officer for examining the claim of Post-retirement Medical Benefit as per law.

6.4 The Learned DR, on the other hand, submitted that claim of post-retirement medical benefit was not agitated before the Learned CIT(A) and therefore, the assessee should not be allowed to contest now.

6.5 We have heard rival submission of the parties and perused the relevant material on record. Since the assessee has sought

not to press the condensed ground Nos. 1 and 6 of the appeal, we accept this request and dismiss these grounds as withdrawn and therefore, we are not deciding the alternative request of the assessee for restoring the ground No.6 of the appeal to the Assessing Officer for verifying the claim of the assessee. The condensed ground No. 1 and 6 of the appeal of the assessee are accordingly dismissed.

7. The condensed ground No. 2 of the appeal of the assessee relates to claim of deduction under section 36(1)(xii) of the Act.

7.1 Before the Assessing Officer, the assessee claimed for allowing all the expenditure debited in profit and loss account in view of section 36(1)(xii) of the Act, but the Assessing Officer did not give any finding on this claim of the assessee. The Ld. CIT(A) rejected the claim observing as under:

> *"8. There is no doubt that the assessee corporation was created under Warehousing Corporation Act, 1962. It is also not in dispute that it is an authority constituted under the law for the marketing of commodities and derives bulk of its income from the letting off of godowns or warehouses. However, as per the provisions of the Income Tax Act, the Authority of the AO not to closely dissect the accounts of the assessee can be taken away from him. The ld. AO is duty bound to closely peruse the objects of the company as also to closely ascertain to his satisfaction that each of the expenditure, not being of a capital nature, has been spent towards the objects of the company. In short, just because the expenditure has been booked in the Profit & Loss A/c does not take away the power of the AO. The assessee fails in ground of appeal No. 3."*

7.2 Before us, the Learned Counsel of the assessee submitted that direction may be issued to the Assessing Officer for examining and allowing the claim as per law.

7.3 The learned DR, on the other hand, submitted that expenditure claimed in profit and loss account has been allowed

by the Assessing Officer subject to the provisions of the Act and all expenditure cannot be allowed to deduct merely on the ground the same has been debited in the profit and loss account of the assessee.

7.4 We have heard rival submissions and perused the relevant material on record. The section 36(1)(xii) of the Act during relevant period is reproduced as under:

> *"36(1)(xii) any expenditure (not being in the nature of capital expenditure) incurred by a corporation or a body corporate, by whatever name called, constituted or established by a Central, State or Provincial Act for the objects and purposes authorized by the Act under which such corporation or body corporate was constituted or established."*

7.4.1 The above provision was inserted in the Act by way of Finance Act 2003. In the notes on finance bill for 2003 related to provision of the Direct Tax, purpose of proposing the above provision has been explained as under:

> ***"MEASURES FOR RATIONALISATION AND SIMPLIFICATION***
>
> *Deduction for expenditure incurred by entities established under any Central, State or Provincial Act*
>
> *Entities that are created under an Act of Parliament have the basic object and function of carrying on developmental activities in the areas as specified in the said Acts. By the Finance Act, 2001 and Finance Act, 2002, tax exemption of certain bodies set up through Acts of the Parliament was withdrawn.* ***Subsequent to the removal of the tax shield, a doubt has arisen that some of the activities having no profit motive being carried on by such entities cannot be said to be business and, therefore, expenditure incurred on such developmental activities may not be allowed as a deduction while computing the income under the head "Profits and gains of business or profession".***
> *The Bill proposes to insert a new clause (xii) in sub-section (1) of section 36 so as to provide that any expenditure (not being in the nature of capital expenditure) incurred by a corporation or a body corporate, by whatever name called, constituted or established by a*

> *Central, State or Provincial Act for the objects and purposes authorized by the Act under which such corporation or body corporate was constituted or established shall be allowed as a deduction in computing the income under the head "Profits and gains of business or profession".*
>
> *This amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-03 and subsequent years."*
>
> *(Emphasis supplied externally)*

7.4.2. It is evident from above explanation that this provision has been inserted to take care of the expenses in the nature of the development activities of statutory corporations , which may not be in the nature of business activity but incurred for the objects and purposes authorized by relevant Act under which such corporation or body was constituted or established. Thus, under this provision the expenses which may not be allowable under section 37 of the Act for not incurred wholly and actually for the purpose of the business, however same were incurred for the objects and purposes authorised by the relevant Act under which such corporation has been established, then those expenses might be allowed under section 36(1)(xii) of the Act.

7.5 Before us the learner Consul of the assessee did not furnish details of any amount eligible for deduction under the section 36(1)(xii) of the Act. No evidence have been filed before us to substantiate that said details were ever filed before the Assessing Officer or the Ld. CIT(A). The assessee has never contested deduction under above provision in earlier years. Even in subsequent assessment year i.e. AY 2007-08, the assessee has not pressed this ground of Cross Objection. Thus, it is evident that ground in current year has been raised in casual manner

without any detail of actual amount eligible under the above provision. The claim of the assessee before the Assessing officer was that all expenditures have been incurred for the object and purpose of the Central Warehousing Act. The Ld. CIT(A) also rejected the claim of the assessee.

7.6 In our opinion, it is for the assessee to substantiate, whether particular expenditure has been incurred for the objects and purpose of the Central Warehousing Act, 1962. In absence of any such detail of the claim of deduction under section 36(1)(xii) of the Act, no useful purpose will be served in restoring the matter back to the file of the Assessing Officer. We accordingly dismissed this ground of the appeal of the assessee.

8. The condensed ground No. 3 (three) of the appeal of the assessee and ground No. 5 (five) of the appeal of the Revenue relate to disallowance under section 14A of the Act.

8.1 The Assessing Officer observed dividend income of ₹ 3,81,69,742/-, which was claimed by the assessee as exempt income, but no *suo-motu* disallowance for administrative/management or other expenses earning for such exempt income, was made by the assessee. On being specifically asked by the Assessing Officer for making such disallowance, no reply was filed by the assessee before him. The Assessing Officer accordingly identified administrative and interest expenses of ₹ 182.71 crores and disallowed said expenses in the ratio of exempted income to total income, which was worked out at₹ 1,13,27,837/-. Before the Ld. CIT(A), the assessee claimed that it has invested in the shares of State Warehousing Corporations,

which are mandatory in nature and cannot be equated to any company investing surplus money in stock/shares of the Corporation for earning dividend. It was also submitted that no direct expenses had been incurred for earning exempted dividend income. Further, the assessee contested that disallowance of proportionate expenses was high and excessive. The Learned CIT(A) noted that assessee had not contested the addition fundamentally and what was contested, was the quantum of addition. The Learned CIT(A) following the decision of Hon'ble Bombay High Court in the case of Godrej and Boyce Mfg. Co. Ltd Vs DCIT (2010) 328 ITR 81 (Bom), held that disallowance of 5% of exempted income would be reasonable in the case of the assessee and accordingly, he sustained disallowance of ₹ 19,08,487/-.

8.2 Before us, the learned Counsel of the assessee referred to pages 47 and 62 of the paper-book, which is schedule of investment to balance-sheet as on 31/03/2006 and submitted that assessee has made investment of Rs.56.44 crores in share capital of various State Warehousing Corporation in terms of requirement of Central Warehousing Corporation Act,1962. He submitted that most of the shares were subscribed at the time of the forming of State Warehousing Corporations and those shares are not listed and have never been traded. He submitted that Warehousing Corporation Act has been restructured in such a manner so that the assessee i.e. Central Warehousing Corporation does business through State Warehousing Corporations. He submitted that the Board of Directors of the

State Warehousing Corporation(s) are appointed by the assessee and even salary of Managing Director(s) of the State Warehousing Corporations is also fixed in consultation with the assessee Corporation. Thus, according to the learned Counsel, the warehousing business of the State Warehousing Corporations (SWC) is conducted through the assessee Corporation and, therefore, expenses in holding shares of those SWCs are deductible against business income of the assessee. The learned Counsel submitted that shares in the State Warehousing Corporation are a tool in assessee corporation's trade. The learned Counsel relied on the decision of the Hon'ble Supreme Court in the case of **State Bank of Patiala, which was given alongwith the Civil Appeal in the case of Maxopp Investment Ltd Vs CIT, 402 ITR 640.** The learned Counsel further submitted that the investments in State Warehousing Corporation are legacy investment and no borrowed funds have been utilized. No decision was required as to period of holding or valuation since same is as per the statutory mandate and shares are not valued and cannot be traded. The learned Counsel submitted that in the assessment year 2002-03 and 2005-06, the issue has been restored to the file of the Assessing Officer for deciding in accordance to the latest judgements.

8.3 On the other hand, the Learned DR relied on the order of the Assessing Officer and submitted that in view of no details of expenses incurred in relation to the exempted income provided by the assessee, the Learned Assessing Officer was justified in

making proportionate disallowance of administrative and other expenses.

8.4 We have heard rival submission of the parties on the issue in dispute. The assessee has earned dividend income of ₹ 3,81,69,742/-from investment in shares of various State Warehousing Corporations. This dividend income has been claimed as exempted income. But, the assessee has claimed the activity of investment in the State Warehousing Corporation as part of its business activity and thus claimed that expenses incurred for investment activity are part of the business expenses and allowable against business income. In the case of State Bank of Patiala which was decided by the Hon'ble Supreme Court along with Maxopp Investment Ltd. (supra), the issue of dividend earned from shares held as a stock in trade was raised. The Hon'ble Supreme Court on the issue of disallowance of dividend earned from stocks held as a stock-in-trade adjudicated as under:

> *" 31. We have given our thoughtful consideration to the argument of counsel for the parties on both sides, in the light of various judgments which have been cited before us, some of which have already been taken note of above.*
>
> *32. In the first instance, it needs to be recognized that as per section 14A(1) of the Act, deduction of that expenditure is not to be allowed which has been incurred by the assessee "in relation to income which does not form part of the total income under this Act". Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income.*

33. There is no quarrel in assigning this meaning to section 14A of the Act. In fact, all the High Courts, whether it is the Delhi High Court on the one hand or the Punjab and Haryana High Court on the other hand, have agreed in providing this interpretation to section 14A of the Act. The entire dispute is as to what interpretation is to be given to the words 'in relation to' in the given scenario, viz. where the dividend income on the shares is earned, though the dominant purpose for subscribing in those shares of the investee company was not to earn dividend. We have two scenarios in these sets of appeals. In one group of cases the main purpose for investing in shares was to gain control over the investee company. Other cases are those where the shares of investee company were held by the assessees as stock-in-trade (i.e. as a business activity) and not as investment to earn dividends. In this context, it is to be examined as to whether the expenditure was incurred, in respective scenarios, in relation to the dividend income or not.

34. Having clarified the aforesaid position, the first and foremost issue that falls for consideration is as to whether the dominant purpose test, which is pressed into service by the assessees would apply while interpreting Section 14A of the Act or we have to go by the theory of apportionment. We are of the opinion that the dominant purpose for which the investment into shares is made by an assessee may not be relevant. No doubt, the assessee like ***Maxopp Investment Limited*** *may have made the investment in order to gain control of the investee company. However, that does not appear to be a relevant factor in determining the issue at hand. Fact remains that such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind Section14A of the Act in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income. Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in Section 14A of the Act. This is so held in* ***Walfort Share and Stock Brokers P Ltd.****, relevant passage whereof is already reproduced above, for the sake of continuity of discussion, we would like to quote the following few lines therefrom.*

> *"The next phrase is, "in relation to income which doesnot form part of total income under the Act". It meansthat if an income does not form part of total income,then the related expenditure is outside the ambit of theapplicability of section 14A..*
>
> *xxx xxxxxx*

> *The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under section 14A."*

35. The Delhi High Court, therefore, correctly observed that prior to introduction of Section 14A of the Act, the law was that when an assessee had a composite and indivisible business which had elements of both taxable and non-taxable income, the entire expenditure in respect of said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. The principle of apportionment was made available only where the business was divisible. It is to find a cure to the aforesaid problem that the Legislature has not only inserted Section 14A by the Finance (Amendment) Act, 2001 but also made it retrospective, i.e., 1962 when the Income Tax Act itself came into force. The aforesaid intent was expressed loudly and clearly in the Memorandum explaining the provisions of the Finance Bill, 2001. ***We, thus, agree with the view taken by the Delhi High Court, and are not inclined to accept the opinion of Punjab & Haryana High Court which went by dominant purpose theory.*** *The aforesaid reasoning would be applicable in cases where shares are held as investment in the investee company, may be for the purpose of having controlling interest therein. On that reasoning, appeals of* ***Maxopp*** *Investment Limited as well as similar cases where shares were purchased by the assessees to have controlling interest in the investee companies have to fail and are, therefore, dismissed.*

36. There is yet another aspect which still needs to be looked into. What happens when the shares are held as 'stock-in-trade' and not as 'investment', particularly, by the banks? On this specific aspect, CBDT has issued circular No. 18/2015 dated November 02, 2015.

37. This Circular has already been reproduced in Para 19 above. This Circular takes note of the judgment of this Court in ***Nawanshahar*** *case wherein it is held that investments made by a banking concern are part of the business or banking. Therefore, the income arises from such investments is attributable to business of banking falling under the head 'profits and gains of business and profession'. On that basis, the Circular contains the decision of the Board that no appeal would be filed on this ground by the officers of the Department and if the appeals are already filed, they should be withdrawn. A reading of this circular would make it clear that the issue was as to whether income by way of interest on securities shall be chargeable to income tax under the head 'income from other sources' or it is to fall under the head 'profits and gains of business and profession'. The Board, going by the decision of this Court in* ***Nawanshahar*** *case, clarified that it has to be treated as income falling under the head 'profits and gains of*

business and profession'. The Board also went to the extent of saying that this would not be limited only to co-operative societies/Banks claiming deduction under Section 80P(2)(a)(i) of the Act but would also be applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

38. From this, Punjab and Haryana High Court pointed out that this circular carves out a distinction between 'stock-in-trade' and 'investment' and provides that if the motive behind purchase and sale of shares is to earn profit, then the same would be treated as trading profit and if the object is to derive income by way of dividend then the profit would be said to have accrued from investment. To this extent, the High Court may be correct. At the same time, we do not agree with the test of dominant intention applied by the Punjab and Haryana High Court, which we have already discarded. In that event, the question is as to on what basis those cases are to be decided where the shares of other companies are purchased by the assessees as 'stock-in-trade' and not as 'investment'. We proceed to discuss this aspect hereinafter.

39. In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as 'income' under the head 'profits and gains from business and profession'. ***What happens is that, in the process, when the shares are held as 'stock-in-trade', certain dividend is also earned, though incidentally, which is also an income. However, by virtue of Section 10 (34) of the Act, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Share and Stock Brokers P Ltd. case. Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned.***

40. ***We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing to the theory of dominant intention applied by the***

> ***High Court.** It is to be kept in mind that in those cases where shares are held as 'stock-in-trade', it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like **Maxopp Investment Ltd.** where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove."*
>
> ***(emphasis supplied externally)***

8.5 Thus, in the cases where shares are held for business purposes and dividend income is also earned from such shares, the disallowance of expenses for earning exempt dividend income has to be made on proportionate basis. The assessment year under consideration being prior to assessment year 2008-09, Rule 8D of Income Tax Rules, 1962 (in short 'the Rules') cannot be invoked in the case and the disallowance of expenses has to be made on reasonable basis. The issue in assessment year 2002-03 (ITA No. 635/Del/2012) has been restored by the ITAT to the file of the Assessing Officer for deciding afresh observing as under:

> *"4. We have carefully considered the rival submissions in the light of the material placed before us. We find that there is a force in the claim of the learned AR that Rule 8D is not applicable to the impugned assessment year, hence, the matter has to be reconsidered in the light of the aforementioned decision of Hon'ble Delhi High Court in the case of Maxopp Investment-Limited vs. CIT*

> *(supra) as the said decision of Hon'ble Delhi High Court was not available when learned CIT (A) has decided the issue. We, therefore, restore this issue to the file of Assessing Officer for re-determination of the disallowance u/s 14A. We direct accordingly. This issue of disallowance u/s 14A is considered to be allowed for statistical purposes in the manner aforesaid."*

8.6 The identical issue in AY 2005-06 (ITA No. 2918/Del/2009) has been restored by the ITAT to the file of the Assessing officer observing as under:

> *"6. We have heard both the counsel and perused the records. We find that Hon'ble Mumbai High Court in the case of Godrej Boyce Mfg. Co. Ltd. vs. DOT in ITA No. 626 of 2010 234 CTR 1 has overruled the STAT decision of Daga Capital Management (Supra) and held that Rule 8D has been notified on 24.3.2008 and will be applicable only from Assessment year 2008-09.*
> *6.1 Front the above, we find that Rule 8D would not be applicable. However, the Hon'ble Mumbai High Court has held that the reasonable disaflowance has to be made. Hence, we remit this issue to the files of the Assessing Officer to consider the same afresh and decide as per . the law, in light of the above cited Hon'ble Mumbai High Court decision. Needless to add that the assessee should be given adequate opportunity of being heard."*

8.7 In view of the latest judgments cited above, the quantification of disallowance in the year under consideration is also restored to the file of the Assessing Officer for deciding in accordance with law keeping in view the overall facts and circumstances of the case including disallowances made in earlier assessment years i.e. assessment years 2002-03 and 2005-06 . The condensed ground No. 3 (three) of the appeal assessee and ground No. 5 (five)of the appeal of the Revenue are accordingly allowed for statistical purposes.

9. The condensed ground No.4 (four) of the appeal of the assessee relates to depreciation on the assets having cost upto ₹

5000/-. The Assessing Officer observed from clause 7(d)and 7(e) of the Tax Audit Report (TAR) that depreciation at the rate of hundred percentile (100 %) was charged in the books of accounts in case of assets having cost upto₹ 5000/-. The assessee explained that said depreciation claimed in the books of accounts was added back for the purpose of computation of income as per Income-tax Act. The said submission of the assessee was ignored by the Assessing Officer in absence of detailed list of such assets and he disallowed 5% of the total depreciation claimed, which was worked out to ₹ 1,41,42,259/-. The Ld. CIT(A) upheld the disallowance observing as under:

> *"38. I have gone through the order of the ld. AO and the submissions made by the ld. AR of the assessee. There can be no doubt that 100% depreciation can be claimed on assets which do not cost more than Rs. 5,000/-. However, in the case in hand, the ld. AO had specifically requested for the details of the assets wherein expenditure to the tune of Rs.5,000/- per se had been made. The assessee did not provide the detailed list of assets. It only refers to an enclosure filed along with the Tax Audit Report, which to my mind is inadequate. Once the assessee has not availed of this opportunity, it does not deserve any sympathy. In CIT Vs. Motor General Finance Ltd., (2002) 254 ITR 449, the Delhi High Court has held that the failure of the assessee to produce documents during the course of hearing can lead to an adverse inference to the effect that if produced they would have gone against assessee in terms of section 114 of the Evidence Act, 1872. This case had gone to the Supreme Court wherein the Apex Court returned the case to the High Court, as reported in 267 ITR 381 (SC) but did not comment upon the presumption raised u/s 114 of the Evidence Act. Thus, in such circumstances, when the assessee has not produced the primary bills/vouchers, it deserves to fail. As such, the assessee deserves to fail in ground of appeal No. 9."*

9.1 The learned Counsel before us referred to page 84 of the paper-book, which is computation of income for the purpose of the Act and submitted that entire depreciation claimed in books of accounts was added back and the depreciation of ₹

28,28,45,181/-as per the provisions of the Act was only claimed. The learned Counsel submitted that this issue might be restored back to the file of the Assessing Officer for verification of the claim of the assessee.

9.2 The Learned DR, on the other hand, relied on the order of the Assessing Officer but did not object to the contention of the assessee for sending the matter back for verification by the Assessing Officer.

9.3 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The contention of the assessee that said depreciation on the assets having cost less than ₹ 5000/- was claimed in the books of accounts, however, was not claimed for the purpose of computing income as per Income-Tax Act. Since this dispute is a matter of verification of the claim of the depreciation made for the purpose of computation of income under Income-tax Act, we feel it appropriate to restore this issue to the file of the Assessing Officer for adjudication after verification of documentary evidences in this regard. The ground No. 4 of the appeal of the assessee is accordingly allowed for statistical purposes.

10. The Condensed ground No. 5(five) of the appeal of the assessee relates to verification of share of income from Joint Venture CFS, Ludhiana.

10.1 Before the Learned CIT(A), the assessee submitted that Container Freight Station (CFC), Ludhiana was being run as a joint-venture with Punjab State Warehousing Corporation on 50-50 profit/loss basis. The assessee also made investment in other

joint ventures but in absence of the audited accounts, income of those joint ventures was not reported on accrual basis following mercantile system of accounting. Before us, learnedCounsel of the assessee referred to various pages of the paper-book and submitted that said income from joint ventures should be taxed once only i.e. either on mercantile basis or on cash basis. Accordingly, he submitted that issue in dispute may be restored to the file of the Assessing Officer for verification that income of joint-venture(s) is accounted on the basis of audited accounts and not on estimate basis.

10.2 The Learned DR, on the other hand, did not object for verification of the issue in dispute by the Assessing Officer.

10.3 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. It is undisputed that income from joint-venture has to be taxed in the hands of the assessee once and same income cannot be taxed twice. Since the assessee is following mercantile system of accounting, the income from joint-venture is required to be taxed on accrual basis after verification of audited accounts of the joint ventures. The Learned Counsel of the assessee has not disputed taxing the same following mercantile system and therefore we are not going into the aspect whether those receipt should be taxable on cash basis . The income from joint-venture once considered on mercantile basis in the year under consideration, same income cannot be taxed by the Assessing Officer on cash basis in subsequent years at the time of receipt. Accordingly, the issue in dispute is restored to the file of the Assessing Officer for

adjudication after verification of the documentary evidence including audited accounts of the joint ventures under reference. The ground No. 5 of the appeal of the assessee is accordingly allowed for statistical purposes.

11. Regarding additional grounds challenging the applicability of provision of section 115JA of the assessee, the learned Counsel of the assessee submitted that the grounds raised being legal and no investigation of the fresh facts required, the additional ground raised by the assessee might be admitted. Supporting the grounds the Learned Counsel submitted that Minimum Alternate Tax (MAT) is not applicable over the assessee being a non-schedule six company and books of accounts of the assessee company are prepared in accordance with the provisions of the Warehousing Corporation Act, 1962 read with Central Warehousing Corporation Rules 1963. He submitted that issue in dispute might be restored to the file of the Assessing Officer for deciding afresh.

11.1 The Learned DR, on the other hand, opposed the admissibility of the additional grounds raised after a substantial period after filing of the appeal. He submitted that issue that the assessee is a non-schedule VI company, was never raised before the lower authorities. He submitted that the additional ground raises not covered by the decision of the Hon'ble Supreme Court in the case of NTPC Ltd versus CIT, (1998) 229 ITR 383 (SC) as the issue is not having any bearing on the tax liability of the assessee. As far as merit of the ground is concerned, the Learned DR submitted that section 211(3) of the Companies Act, 1956

has prescribed that for exemption for any class of the companies from requirement of Schedule VI, an notification has to be issued by the Central Government. The learned DR specified that no such notification had been issued by the Central Government for exempting the companies established under the Central Warehousing Act (supra). He also submitted that there is no specific provision in the relevant regulatory Act regarding accounting standards or maintenance of books of accounts and thus books of accounts have been maintained as per the Companies Act and, therefore, provisions of section 115JB have been correctly applied in the case of the assessee.

11.2 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The additional grounds raised by the assessee being of legal nature and no fresh investigation of the facts was required and therefore same were admitted following the ratio in the case of NTPC Ltd. (supra). The contention of the assessee is that provision of Minimum Alternative Tax (MAT) are not applicable over the assessee being a non-Schedule VI company of Companies Act. Under the section 115JB, the book profit is taken as profit computed on the basis of books of accounts maintained as per Companies Act. The part of section 115JB of the Act during relevant period is reproduced as under:

> *" (2) Every assessee, being a company, shall for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of schedule 6 to the companies act, 1956 (1 of 1956)."*

11.3 The said Schedule VIof Companies Act,1956 has provided instruction for preparing profit and loss account for the financial year and balance sheet at the financial year end. The relevant section 211 of the Companies Act, 1956 specifying the form and content of the balance-sheet is reproduced as under for ready reference:

> *"211. Form and contents of balance-sheet and profit and loss account.-(1) Every balance-sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the Form set out in Part I of Schedule VI. or as near thereto as circumstances admit or in such other form as may be approved by the Central Government either generally or in any particular case ; and in preparing the balance-sheet due regard shall be had as far as may be to the general instructions for preparation of balance-sheet under the heading. "Notes" at the end of that Part:*
>
> *Provided that nothing contained in this sub-section shall apply to any insurance or banking company, or to any other class of company for which a form of balance sheet has been specified in or under the Act governing such class of company.*
>
> ***(2) Every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year and shall, subject as aforesaid, comply with the requirements of Part II of Schedule VI, so far as they are applicable thereto***
>
> ***Provided that nothing contained in this sub-section shall apply to any insurance or banking company, or any company engaged in the generation or supply of electricity, or to any other class of company for which a form or profit and loss account has been in or under the Act governing such class of company***
>
> ***(3) The Central Government may by notification in the Official Gazette, exempt any class of companies from compliance with any of the requirements in Schedule VI if, in its opinion, it is necessary to grant the exemption in the public interest***
>
> *Any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification*

(4) The Central Government may, on the application or with the consent of the Board of directors of the company, by order, modify in relation to that company any of the requirements of this Act as to the matters to be stated in the company's balance sheet or profit and loss account for the purpose of adapting them to the circumstances of the company

(5) The balance sheet and the profit and loss account of a company shall, not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose-

(i) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (IV of 1938);

(ii) in the case of a banking company, any matters which are not required to be disclosed by the Banking Companies Act. 1949 (X of 1949) ;

(iii) in the case of a company engaged in the generation or supply of electricity any matters which are not required to be disclosed by both the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948;

(iv) in the case of a company governed by an other special Act for the time being in force, any matters which are not required to be disclosed by that special Act; or

(v) in the case of any company, any matters which are not required to be disclosed by virtue of the provisions contained in Schedule VI or by virtue of a notification issued under sub-section (3) or an order issued under sub-section (4)”
……………………………………… ”

11.4 The sub section (2) of section 211 of the Companies Act, 1956 has specifically excluded application of preparing profit and loss account as per schedule VI to the insurance and banking companies, or companies engaged in the generation or supply of the electricity or any other class of the company specified. The sub-section (3) has specified requirement of issue of notification by the Central Government for exemption from the requirement of schedule VI of the Companies Act, 1956. Even being specifically

asked for, no such notification issued by the Central Government was produced before us by the Learned Counsel of the assessee. The Learned Counsel also failed before us to explain about any deviation in the manner of computation of profit and loss and balance sheet for the year under consideration in terms of instruction in schedule VI of Companies Act, 1956. The guidelines prescribed in the Central Warehousing Act, 1962 regarding maintenance of books of accounts are reproduced as under:

"31. Accountants and audit of Warehousing Corporation.— (1) Every Warehousing Corporation shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the profit and loss account and the balance sheet in such form as may be prescribed:

Provided that, in the case of the Central Warehousing Corporation, the accounts relating to the Warehousing Fund and the General Fund shall be maintained separately.

(2) The accounts of a Warehousing Corporation shall be audited by an auditor duly qualified to act as an auditor of companies under section 226 of the Companies Act, 1956 (1 of 1956).

(3) The said auditor shall be appointed by the appropriate Government on the advice of the Comptroller and Auditor-General of India.

(4) The auditor shall be supplied with a copy of the annual balance sheet and the profit and loss account of the Warehousing Corporation and it shall be his duty to examine them together with the accounts and vouchers relating thereto, and he shall have a list delivered to him of all books kept by the Corporation and shall at all reasonable times have access to the books, accounts and other documents of the Corporation and may require from any officer of the Corporation such information and explanations as the auditor may think necessary for the performance of his duties as auditor.

(5) The auditor shall make a report to the shareholders on the accounts examined by him and on the annual balance sheet and the profit and loss account and in every such report, he shall state whether in his opinion the accounts give a true and fair view—

(a) in the case of the balance sheet, of the state of the Corporation's affairs at the end of its financial year, and

(б) in the case of the profit and loss account, of the profit or loss for its financial year, and in case he has called for any explanation or information from the officers, whether it has been given and whether it is satisfactory.

(6) The appropriate Government may, after consultation with the Comptroller and Auditor- General of India at any time issue directions to the auditor requiring him to report to the appropriate Government upon the adequacy of measures taken by a Warehousing Corporation for the protection of its shareholders and creditors or upon the sufficiency of his procedure in auditing the accounts of the Corporation and may enlarge or extend the scope of the audit or direct that a different procedure in audit may be adopted or direct that any other examination may be made by the auditor if in the opinion of the appropriate Government public interest so requires.

(7) A Warehousing Corporation shall send a copy of every report of the auditor to the Comptroller and Auditor-General of India and to the Central Government at least one month before it is placed before the shareholders.

(8) Notwithstanding anything hereinbefore contained in this section, the Comptroller and Auditor- General of India may, either of his own motion or on a request received in this behalf from the appropriate Government, undertake in respect of a Warehousing Corporation such audit and at such time as he may consider necessary:

(9) The Comptroller and Auditor-General of India and any person authorised by him in connection with the audit of the accounts of a Warehousing Corporation shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of Government accounts and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the office of the Corporation.

(10) The annual accounts of a Warehousing Corporation together with the audit report thereon shall be placed before the annual general meeting of the Corporation within six months of the close of the financial year.

(11) Every audit report under this section shall be forwarded to the appropriate Government within a month of its being placed before the annual general meeting and that Government shall as soon thereafter as may be cause the same to be laid before both Houses of Parliament or the Legislature of the State, as the case may be."

11.5 The Ld. Counsel of the assessee failed to explain any specific guidelines/instruction for preparing profit and loss account and balance sheet in the relevant regulatory Acts, which

could become basis for non-application of sub-section 2 of section 115JB of the Act. Moreover, the assessee has complied the provisions of section 115JA or JB in earlier years and this doubt has been raised for the first time in casual manner, without supporting with any provision under any law.

11.6 In view of the above, the request of the learned Counsel to restore the matter back to the file of the Assessing Officer is not justified and accordingly rejected. The additional grounds of the appeal of the assessee are accordingly dismissed.

12. The ground No.1 raised by the Revenue relates to disallowance of ₹ 4,02,05,550/- for Productivity Linked Incentives (PLI) to employees, debited in profit and loss account. The assessee claimed that said provision was created on the basis of parameters laid down in the approved PLI scheme of the assessee Corporation, however, according to the Assessing Officer neither details regarding working of the provision nor evidence of the payment before filing return of income were filed. According to the Assessing Officer, the provision was in the nature of an unascertained liability and therefore, he added the same back to the returned income of the assessee. Before the Ld. CIT(A) the assessee submitted that the liability does not attract provisions of section 43B of the Act and it has to be allowed when same is crystallized. Further, it was submitted that it was an ascertained liability computed in accordance with the PLI scheme framed by the Corporation keeping in view the Government guidelines duly approved by the Board of Directors. It was submitted that provision was being made in earlier years also and have been

allowed by the Department except for the assessment years 2004-05 and 2005-06. The Ld. CIT(A) has deleted additions made by the Assessing Officer observing as under:

> *"11. I have considered the order of the Ld. AO and the submissions made by the Ld. AR of the assessee. Going through the order for A.Y. 2004-05 of my ld. Predecessor in Appeal No. 365/06-07, it was held in para 2.2 as under:*
>
> > *"2.2 Considering the arguments of ld. AR and on going through the observations of the A.O., I find that the A.O. had disallowed the PLI amount Rs.2,74,83,334/- with the observation. "Since the provision for PLI made was an unascertained liability, the same has been added back to the income of the assessee." On the contrary, in respect of PLI expenditure Rs.2,74,83,334/- ld. A.R. brought to my notice that provisions for Productive Link Incentive (PLI) was made in accordance with CWC Employees Productive Link Incentive Scheme, 1998, which was formulated as per the guidelines of Govt. of India. The amount of PLI expenditure to the extent of Rs.2,74,83,334/- was determined on the basis of such scheme and the payment was made in subsequent years after getting the approval from the Board of Directors. He further brought to my notice that this practice has been followed regularly and the similar expenditure was debited to the P&L account even in earlier years but no such disallowance were ever made. Considering the facts of the case, I find that it was regular expenditure and ascertained liability. Hence, the same cannot be said as mere provision or unascertained liability. Thus, I hold that the AO was not justified to disallow the same of Rs.2,74,83,334/-. Hence, the disallowance of Rs.2,74,83,334 is deleted.*
>
> *12. It is clear from the above that my ld. Predecessor has deleted the addition. There is no change of fact of law. Judicial discipline demands that I should follow the order of my predecessor in such circumstances. As such the assessee succeeds in ground of appeal No. 4."*

12.1 Before us, the learned Departmental Representative (DR) relied on the order of the Learned Assessing Officer and submitted that the assessee has failed to establish with documentary evidence that it was an ascertained liability and therefore the Ld. CIT(A) is not justified in deleting the addition. She submitted that issue in dispute may be sent back to the file

of the learned Assessing Officer for deciding afresh in the light of details furnished by the assessee before the Learned CIT(A).

12.2 On the contrary, the Learned Counsel of the assessee referred to page 24 of the paper-book and submitted that information, documents and evidences were filed before the Assessing Officer along with letter dated 22/11/2008. He also referred to a copy of said details of the claim, calculation and breakup of offices available on page 138 to 145 of the paper-book. It was also submitted that entire liability was paid before due date of filing of return. The Learned Counsel relied on the order of the Tribunal in the case of Container Corporation of India Ltd (ITA No.1555/Del/2012 and 1363/Del/2012) for assessment year 2006-07 and submitted that identical liability of PLI has been held to be non-contingent and allowable.

12.3 We have heard rival submissions of the parties on the issue in dispute and perused the relevant material on record. It is undisputed that liability of PLI has been allowed by the Assessing Officer in the case of the assessee except for assessment year 2004-05 to 2005-06. The Ld. CIT(A) has deleted the addition in all the three assessment years. The counsel submitted that in the AYs 2004-05 and 2005-06, no appeal was filed by the Revenue in absence of COD (Committee of Disputes) approval.The page 141 of the paper-book shows calculation of corporate productivity index for PLI for financial year 2005-06 i.e. relevant to assessment year under consideration, which is reproduced as under:

CENTRAL WAREHOUSING CORPORATION
(A GOVT. OF INDIA UNDERTAKING)
Calculation of corporate productivity index for PLI for the year 2005-2006

S.No.	Productivity Indicator	Actual Values for Last Four Years				Weight	Target Basis	Target	Value for	CPI
		2001-02	2002-03	2003-04	2004-05				2005-2006.	
1	Return on Capital Employed	12.713	6.417	4.511	7.515	30	Best of Past 4 Years	12.713	13.595	30.416
2	Value Added to Employee Cost	1.825	1.463	1,491	1.643	30	Best of Past 4 Years	1.825	1.792	29.458
3 .	Capacity Utilization	79.298	66.008	59.293	66.835	20	Best of Past 4 Years	79.298	79.159	19.965
4	Growth in TEUs Handled	6.598	28.182	18,682	20.151	20	Average of Past 4 Years	14.310	16.125	20.507
TOTAL CPI						100				100.345
Percentage of PLI Due to Employees										15.000
Amount of PLI Payable to each Employee										6300

Provision made for PLIIn the Accounts for the Year Ending 31.03.2006

		Number	Rate		Amount (Rs.)	Total (Rs.)	Charged to
Construction Staff		214	6300		1348200	1348200	Capital Projects
General Staff ..		6199	6300		39053700		
Payable to Employees who have worked in CWC for Part of the Year on Prorata Basis		230			1151850	40205550	Revenue
TOTAL PLI PROVISION						41553750	

12.4 The calculation has been made on productivity indicator and liability toward each employee has been worked out to Rs.6300/-. The provision of ₹ 4,15,53,750 /- has been made for staff engaged in different sectors like construction, general etc. and also office location wise (PB-138). The documents filed by the assessee before the Assessing Officer prima facie shows that liability is an ascertained liability and not a contingent liability. We find that Tribunal in the case of container Corporation of India Ltd. (supra) has allowed the provision of productivity linked incentive on the ground that the liability is in present, quantifiable and not contingent. Since the quantification of liability has not been verified at the level of the Assessing Officer, in the interest of substantial justice, we feel appropriate to restore this issue to the file of the Assessing Officer for verification of documentary evidences and decide in the light of the decision in the case of Container Corporation of India Ltd (supra). The ground No. 1 of

the appeal of the Revenue is accordingly allowed for statistical purposes.

13. The ground No. 2 of the appeal relates to addition of ₹ 69,44,300/-on account of capitalization of special (SLP) Dunnage, which has been deleted by the Learned CIT(A).

13.1 The facts in brief qua the issue-in-dispute are that the Assessing Officer observed from balance-sheet of the assessee that special (SPL) Dunnage has been treated as capital asset and depreciation has been claimed on the same, however, in the profit and loss account, a sum of ₹ 69,44,300/-was claimed as revenue expenditure on account of expenses made for purchase of ordinary Dunnage. The Assessing Officer noted that both the dunnage were used by the company for the same purpose i.e. to prevent the storage from floor seepage. The assessee submitted that special dunnage was having longer life whereas the ordinary dunnage being a shorter life debited as revenue expenditure. According to the Assessing Officer, no evidence/supporting documents in respect of this claim of shorter life of the ordinary dunnage were furnished by the assessee and therefore he rejected the claim of the assessee for allowing the expenditure as revenue in nature holding that method of accounting followed by the assessee is arbitrary and without any basis. Before the Ld. CIT(A), the assessee explained that accounts of the assessee company have been accepted by the Comptroller and Auditor General of India (CAG) and, therefore, comment regarding arbitrariness of the method of accounting were misplaced. It was submitted that the ordinary dunnage comprise of bamboo mats and sand

snakes, which once used, cannot be reused. Whereas the special dunnage is high-efficiency flooring dunnage made from jute impregnated with coal, tar and polyfilm to prevent the floor seepage having its life expectancy of six or more years and therefore it was capitalized. The Ld. CIT(A) observed that the Department in earlier years has accepted the special dunnage under the head capital asset and ordinary dunnage as revenue expenditure and the Revenue cannot abruptly change its stance without any change of the facts. According to him, the rule of consistency must be followed. He also analysed the nature of expenditure in view of the judicial precedents and concluded that ordinary dunnage should be considered in the nature of the revenue expenditure and accordingly, he deleted the addition.

13.2 Before us, the Learned DR relied on the order of the Assessing Officer and submitted that there was no difference in the use of both the dunnage and, therefore, Ld. CIT(A) was not justified in deleting the addition.

13.3 The learned Counsel of the assessee, on the other hand, submitted that issue-in-dispute is covered in favour of the assessee by the decision of the Tribunal in the case of the assessee for assessment year 2012-13.

13.4 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the identical issue of special versus ordinary dunnage and their treatment as capital expenditure or revenue expenditure has been adjudicated by the Tribunal in appeal filed by the Revenue in the case of the assessee in ITA No. 5449/Del/2017 for

assessment year 2012-13. The relevant finding of the Tribunal is reproduced as under:

> *"11. We have perused the record in the light of submissions made on either side. At the outset, there is no disputed that the assessee has been using two types of Dunnage, though for the same purpose, but with two different life times, namely, the special Dunnage having life time of more than five years, whereas the ordinary Dunnage has to be used only for one year ad un-usable thereafter. It is also not in dispute that the assessee has capitalized the expenditure on the special Dunnage in their accounts and has been claiming depreciation @ 16% per annum over the useful period and on the same analogy in respect of ordinary Dunnage, they are treating the expenditure for one year and debiting the same to the profit and loss account to claim it as revenue expenditure. It is also not in dispute that the Revenue has been accepting the capitalization of special Dunnage and allowing depreciation @ 16% per annum over the period of life expectancy of such Dunnage.*
> *12. Having regard to this fact that the life expectancy is taken as the determining factor for the separate treatment to the Dunnage, we do not find any illegality or irregularity in the view taken by the ld. CIT(A) that because of the single use within a year in respect of ordinary Dunnage, the expenditure thereon has to be taken as revenue expenditure and no addition on that score could be made. This finding of the ld. CIT(A) cannot be said to be illegal or irregular or perverse. We, therefore, find the ground no. 1 of the appeal of the Revenue as devoid of merits."*

13.5 Respectfully following the finding of the Tribunal (supra), we do not find any error or perversity in the order of the Ld. CIT(A) and accordingly, we uphold the same. The ground No.2 of the appeal of the Revenue is dismissed.

14. Grounds No. 3 of the appeal of the Revenue relates to disallowance of ₹ 7,16,955/- for Quality improvement expenses, which has been deleted by the Learned CIT(A).

14.1 The facts in brief qua the issue in dispute are that the assessee contended that expenditure of ₹ 7,16,955/- incurred for improving the working environment and efficiency of the

employees, was revenue in nature, whereas according to the Assessing Officer, the expenditure provided enduring benefit to the assessee and therefore it was in the nature of the capital expenditure and he disallowed the said expenditure. Before the Ld. CIT(A), the assessee submitted that by way of entering the expenditure for improving the working environment and efficiency of the employees, no new asset has been created nor the life of an existing asset was improved and therefore expenditure was purely revenue in nature. It was also submitted that in earlier year, no such disallowance was made. The Ld. CIT(A) following finding of his predecessor, deleted the addition. His predecessor in assessment year 2005-06 recorded the details of quality improvement expenses consisting of nomination fee for training of international quality audit for ISO, payment to M/s BSI India Private Limited for continuous assessment fee and travelling and other incidental charges, registration audit etc., printing of customer feedback inland letters, printing of fire safety posters, computer printing of ISO documents, casual labour engaged for cleaning of godowns, lamination and framing work etc.

14.2 The Learned DR before us submitted that no details of the expenses are available on record in the year under consideration on the basis of which the capital or revenue nature of such expenses could be decided and therefore issue in dispute may be restored back to the file of the Ld. CIT(A) or the Assessing Officer.

14.3 The Learned Counsel of the assessee on the other hand referred to page 24 of the paper-book and submitted that details in respect of the expenses were provided to the Assessing Officer

with letter dated 22/11/2008. The Learned Counsel referred to the details of the expenses filed in the paper-book from pages 153 to 164. He submitted that expenses incurred are mostly of the routine office expenses nature.

14.4 We have heard rival submission of the parties on the issue in dispute. The main issue-in-dispute is whether the expenses incurred under the head 'Quality Improvement expenses' are in the nature of the capital or revenue. The lower authorities have not appreciated the details of expenses furnished by the assessee. The Ld. CIT(A) has also decided the issue following his predecessor without examining the expenditure incurred in the year under consideration. Under the account head of 'Quality Improvement expenses', the assessee has incurred various expenses details of which are available on page 153 to 164 of the paper-book. The details include unit-wise expenses as well as nature of the expenses which include expenses on labour, lamination, purchase of the cleaning material, expenses related to ISO audit, supply of various construction and miscellaneous material. All these expenses need to be looked into from the angle that same are in the nature of the capital expenditure or in the nature of the revenue expenditure. In view of the facts and circumstances and in the interest of the justice, we feel it appropriate to restore this issue to the file of the Learned Assessing Officer for deciding afresh after affording adequate opportunity of being heard to the assessee. The ground no. 3 of the appeal of Revenue is accordingly allowed for statistical purposes.

15. Ground No.4 of the appeal of the Revenue relates to disallowance of Rs.4,07,54,700/- for unabsorbed overhead on capital works expenditure, which has been deleted by the Learned CIT(A).

15.1 The facts in brief qua the issue in dispute are that the assessee Corporation resort to monitoring of construction of warehouses by various contractors through the construction cells of company. The administrative expenses of the construction cells have been treated by the assessee as indirect cost, which together with the repair expenses have been charged directly to revenue expenditure. The assessee further explained that an accounting policy has been laid down by the assessee for charging of construction monitoring expense as revenue expenses, whereby all India percentage of such overheads is determined and actual overheads of each construction cell, restricted to the All India average percentage, are capitalised and balances charged to the revenue expenses. Following this policy, the assessee in the year under consideration out of the total construction monitoring expenditure of ₹ 11,78,00,000/-, debited Rs.40,22,000/- as repair and maintenance and treated ₹ 5,46,35,000/-as capital expenditure and claimed balance amount of ₹ 4,52,83,000/-as revenue expenditure under the head “unabsorbed overheads on capital works”. The Assessing Officer noted that no details of the relevant expenses were provided by the assessee and no distinction has been brought out as how a part of the expense was capital and balance was treated as revenue expenditure. In view of the facts, the Assessing Officer treated the revenue

expenditure of ₹ 4,52,83,000/- as capital expenditure and after allowing depreciation at the rate of the 10%, disallowed the balance amount of ₹ 4,07,54,700/-. The Ld. CIT(A) following the finding of his predecessor, deleted the addition in dispute.

15.2 Before us, the Learned DR relied on the order of the Assessing Officer and submitted that in view of the no details of actual expenses incurred, there was no option with the Assessing Officer except to treat the same as capital expenditure. The learned DR submitted that issue in dispute may be restored to the file of the Learned Assessing Officer for deciding afresh in the light of the nature of the expenses actually incurred.

15.3 The Learned Counsel of the assessee, on the other hand, submitted that detail in respect of the expenses was already filed by the assessee before the Assessing Officer alongwith letter dated 22/11/2008. The Learned Counsel also referred to notes to the accounts i.e. note 7(a) and (b), available on page 69 of the paper-book. The Learned Counsel fairly accepted that the issue in dispute in the assessment year 2005-06 has been restored to the file of the Assessing Officer.

15.4 We have heard rival submission of the parties on the issue in dispute. The issue is whether the part of overhead charges on monitoring of the capital expenditure of construction, could be charged to revenue expenditure. The claim of the assessee that same have been charged to revenue expenses, following regular accounting practice whereas according to the Revenue in absence of details of expenses actually incurred, no expenditure can be allowed as revenue expenditure only on the ad-hoc accounting

practice. We find that the Tribunal in ITA No. 2918/Del./2009 for assessment year 2005-06 has restored the identical issue to the file of the Assessing Officer after examining the nature of the expenses. The relevant finding of the Tribunal is reproduced as under:

> *"11.2 We have the rival contentions in light of the material produced and precedent relied upon. We note that Ld. Commissioner of Income Tax (Appeals) has noted that assessee was asked to give complete details of the expenditure, but the same have not been produced before the Ld. Commissioner of Income Tax (Appeals). In our considered opinion, if the matter is not enquired earlier, the same cannot act as an estoppels for the revenue authorities that the same cannot be enquired in the concerned assessment year. However, as noted by the Ld. Commissioner of Income Tax (Appeals), proper details in this regard, has not be submitted. The ld. Counsel of the assessee also did not elaborate on the system adopted in this regard with cogent material, except asserting that this system was followed for a long period. Hence, in the interest of justice we remit this issue to the files of the Assessing Officer to consider the same afresh. Needless to add that the assessee should be given adequate opportunity of being heard. However, the assessee is directed to provide necessary details in this regard before the authorities below."*

15.5 In view of the above facts and circumstances, the issue in dispute in the year under consideration is also restored to the file of the Assessing Officer for deciding afresh after providing reasonable and adequate opportunity of being heard to the assessee. This ground of the appeal of the Revenue is accordingly allowed for statistical purposes.

16. The ground No. 6 of the appeal of the Revenue relates to addition for income from bonded warehouses amounting to ₹ 7,24,44,000/-, which has been deleted by the Learned CIT(A).

16.1 The facts in brief qua the issue in dispute are that the assessee operates bonded warehouse under a license given by the customs department, where imported consignments are being

deposited by the importers to enable them to take delivery of the consignment by paying custom duty and warehousing charges at the time of the actual release of the imported goods. These warehousing charges are being accounted by the assessee on realisation basis. The contention of the assessee that realisation of such warehousing charges is uncertain as sometimes paying of custom duty and warehousing charges becomes commercially unviable to the importer and therefore importers are not induced to take delivery of such consignment. According to the Assessing Officer, the assessee is following Mercantile system and therefore income has to be booked as and when it is accrued to the assessee. The Assessing Officer noted that even if the importer decided not to get his cargo released, the warehousing charges is payable to the assessee Corporation from the auction proceeds of the cargo. Accordingly, the learned Assessing Officer made addition for the amount of ₹ 7,24,44,000/-for bonding warehouse on accrual basis. The Ld. CIT(A) following the finding of his predecessor that there was uncertainty in the income of the bonded warehouse, he deleted the addition made on this account.

16.2 Before us, the learned DR submitted that the assessee cannot be allowed for both cash and Mercantile system of accounting i.e. mixed accounting system. He submitted that the assessee follows Mercantile system of accounting and accordingly the income is taxable whenever it is accrued or received whichever is earlier and thus income of bonded warehouse is liable to be assessed in the year under consideration.

16.3 On the other hand, the Learned Counsel of the assessee concurred that there cannot be mixed accounting system and income has to be taxed on the accrual basis in the case of the assessee, however, he submitted that the income offered by the assessee on cash basis should be reduced. Accordingly, he submitted that issue in dispute may be restored back to the file of the Learned Assessing Officer for working out the quantum of income to be taxed.

16.4 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. In the case, the assessee has credited the income from the bonded warehouse on realisation basis i.e. cash basis, but the assessee is following Mercantile system of the accounting and therefore income has to be credited in the profit and loss account as and when it is accrued to the assessee. The Assessing Officer has added the income from warehousing charges which is accrued during the year under consideration. The learned Counsel has agreed in principle that warehousing charges is liable to be assessed on accrual basis in view of Mercantile system followed by the assessee, but he emphasized that income which has been taxed on accrual basis in the year under consideration, should not be subjected to tax twice i.e once on Mercantile basis and second on cash basis. We concur with the above contention of the Learned Counsel of the assessee. Accordingly, the bonded warehouse income added by the Assessing Officer on accrual basis, is hereby confirmed, however, the Assessing Officer is directed to ascertain that, bonded warehouse income which has

been added on Mercantile basis in the year under consideration, is not again subjected to tax on cash basis in subsequent years. The ground No. 6 of the appeal of the Revenue is accordingly, partly allowed for the statistical purposes.

17. In ground No.7, the Revenue has contested the additions for various provisions, made by the Assessing Officer in terms of section 115JB of the Act, which the Ld. CIT(A) has deleted.

17.1 The facts in brief qua the issue in dispute are that section 115JB of the Act specifies that provisions made for meeting liabilities other than ascertained liabilities are to be added to the book profit as per clause (c) of said section. The assessee in its books of accounts made provision for payment of gratuity at Rs.6,37,59,797/-, provision for bad and doubtful debts at ₹ 8,96,86,802/-, provision for payment of wealth tax at Rs.6,62,044/-, provision for leave encashment at ₹ 5,42,27,950/- and provision for PLI of ₹ 4,02,05,550/-. For working out book profit as per section 115JB of the Act, the Assessing Officer added these provisions to the book profit shown by the assessee in the books of accounts. Before the Ld. CIT(A), the assessee claimed that provision for payment of the gratuity and leave encashment was created as per the actuarial valuation and therefore those were ascertained liabilities. The Ld. CIT(A) accordingly held that there was no scope for making any addition for those provisions under section 115JB of the Act. Regarding wealth tax provisions, it was submitted by the assessee that it was an exact amount of the liability and which has been added back in the computation being inadmissible in nature. The Ld. CIT(A) following the finding

of his predecessors in assessment year 2003-04, 2004-05 and 2005-06 deleted the addition. As far as provision of PLI is concerned, the Learned CIT(A) deleted the addition in view of the holding the same as ascertained liability while adjudicating additions under regular provisions of the Act. The addition for provision of bad and doubtful debt was deleted following the decision of the Hon'ble Supreme Court in the case of HCL Comnet Systems and Services 305 ITR 409 (SC).

17.2 The Learned DR submitted that the liabilities being unascertained, the Ld AO has correctly added the items to the profit as per books of accounts for arriving at book profit as per the provisions of section 115JB read with explanation 1(c) of the Act.

17.3 The Learned Counsel of the assessee relied on the order of the Learned CIT(A) and submitted that items in dispute are ascertained liability and therefore cannot be added invoking Explanation 1(c) of section 115JB of the Act.

17.4 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. Before us, the learned Counsel of the assessee has submitted that provision for gratuity and leave encashment have been made on the basis of the actuarial valuation and therefore, these are ascertained liabilities. Similarly, regarding wealth tax provisions, it has been submitted that the liability has been added back. Similar submissions have been made regarding provision for bad and doubtful debts. Regarding profit linked incentives, we have already restored the issue in dispute to the file of the Assessing

Officer for verification of the working of said liability. In view of the above facts and circumstances, we feel it appropriate to restore this issue to the file of the Assessing Officer for verification of the claim of the assessee of actuarial valuation and other documentary evidence to substantiate that the relevant liabilities are ascertained liabilities. The ground No. 7 of the appeal of the Revenue is accordingly allowed for statistical purposes.

18. In the result, the appeal of the assessee as well as appeal of the Revenue, both are allowed partly for the statistical purposes.

ITA No. 3439/Del./2014 & C.O. No.93/Del./2015

19. Now, we take up the appeal of the Revenue and cross objection of the assessee for assessment year 2007-08. The grounds raised by the Revenue are reproduced as under:

> ***Grounds of appeal of the Revenue:***
>
> *1. On the facts and in the circumstances of the case, the CIT(A) has erred in:*
>
> *(i) Deleting the addition of Rs. 81,60,521,/- made on account of disallowance of SLP Dunnage, treating it as Revenue Expenditure instead of capital Expenditure as held by the AO.*
>
> *(ii) In Deleting the addition of Rs. 1,70,80,395/- made by the AO who disallowed the Depreciation claimed at 100% on assets costing less then Rs. 5,000/- by estimating it at 5%of the total depreciation, since details of assets costing less than Rs. 5,000/- were not produced.*
>
> *(iii) In deleting addition of Rs. 19,76,364/- made by the AO who disallowed social obligation expenditure as not related to business activities.*
>
> *(iv) In deleting the addition of Rs. 78,434/- made by the AO who disallowed social improvement expenses as being capital in nature.*
>
> *(v) In deleting the addition made at Rs. 25,37,000/- accrued on account of share of income from PSWC by accepting the assessee's claim the this was offered to tax in the year of receipt*

by ignoring the fact that the assessee was following mercantile system of accounting.

2. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing appeal.*

19.1 The cross objection raised by the assessee are reproduced as under:

Cross objection of the assessee:

1. *It is contended that the Appellant is entitled and covered by revision of section 36(1)(xii). Accordingly, all expenditure other than the capital expenditure should be allowed.*
2. *It is contended that the provision of section 115JB is not applicable in the case of the Appellant Corporation since it is not covered under Schedule VI of the Companies Act.*

20. The ground No. 1(i) of the appeal of the Revenue being identical to ground No. 2 (two) of the appeal of the Revenue in assessment year 2006-07, accordingly, following our finding in assessment year 2006-07, this ground of the appeal is dismissed.

21. The ground No. 1 (ii) of the appeal of the Revenue, the identical to ground No. 4 (four) of the appeal of the assessee in assessment year 2006-07, and thus the ground of the appeal of the Revenue is restored to the file of the Assessing Officer for deciding afresh in the light of the direction given in assessment year 2006-07. The ground is accordingly allowed for statistical purposes.

22. The ground No. 1(iii) of the appeal of the Revenue relates to disallowance of social obligation expenditure.

22.1 The Assessing Officer disallowed the claim of the assessee of social obligation expenses amounting to ₹ 19,76,364/-on the ground that there was no provision in the Act to allow such

expenses. According to the Assessing Officer, the business of the assessee Corporation depends on the quality of the service provided by the Corporation to its customer and not on discharging of social obligations. The Ld. CIT(A) deleted the disallowance observing as under:

> *"12.Ground No 8: This disallowance is in respect of Social Obligation expenditure of Rs 19,76,364/-. The AO in his assessment order has disallowed these expenses holding that the business of the assessee corporation depends on the quality of service which the assessee provides to its customers and not on the discharging of social obligation. On its part, the appellant has filed various documents with reference to the expenses incurred for social up- liftment which is a part of the Corporate Social Responsibility of the appellant corporation, as per the directions issued by the Ministry. Taking in to account all these factors, being a Government Corporation in my considered view such expenses made by the appellant towards meeting the social objective are an allowable business expenditure even though it may not have directly yielded to immediate revenue on one to one basis. The assessee succeeds in this ground. Accordingly ground no.8 is allowed."*

22.2 Before us, the Learned DR submitted that corporate social responsibility expenses are not allowable in terms of Explanation-2 to section 37 of the Act.

22.3 The Learned Counsel of the assessee on the other hand submitted that expenses have been incurred as per direction of the Ministry to meet the social obligations of the assessee Corporation. He referred to the detail of the expenses placed on page 248 of the paper-book and submitted that Explanation-2 to section 37 of the Act has been effective from 01/04/2015 only and not in the year under consideration.

22.4 We have heard rival submission of the parties on the issue in dispute. According to the Revenue, the expenses are

disallowable in view of the Explanation -2 to section 37 of the Act. The relevant Explanation is reproduced as under:

> ***"General.***
>
> ***37.*** *(1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".*
>
> *Explanation 1.—…………………..*
>
> *Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession."*

22.5 We find that this Explanation has been made effective from 01/04/2015. The Tribunal in the case of Addl CIT vs Rites Ltd (ITA No. 6447/Del/2017) has held this Explanation as prospective in nature. Respectfully, following the above decision, the corporate social responsibility expenses incurred by the assessee in the year under consideration cannot be disallowed invoking Explanation -2 to section 37 of the Act. Accordingly, this ground of the appeal of the Revenue is dismissed.

23. The ground No.1(iv) of the appeal of the Revenue is identical to the ground No. 3 (three) of the appeal of the Revenue in assessment year 2006-07. Following our finding in assessment year 2006-07, this ground of the appeal is allowed for statistical purpose.

24. Ground No. 1(v) of the appeal of the Revenue is identical to ground No. 5 (five) of the appeal of the assessee in assessment

year 2006-07. Following our finding in assessment year 2006-07, this ground of the appeal is allowed for statistical purposes.

25. As far as cross objection No. 1 of the assessee is concerned, the learned Counsel did not press the said objection, accordingly same is dismissed as infrutuous.

26. The cross objection No.2 raised by the assessee is identical to ground No.7 (seven) of the appeal of the assessee for assessment year 2006-07, accordingly this ground is dismissed following our finding in assessment year 2006-07.

27. In the result, the appeal of the Revenue is allowed partly for the statistical purposes, whereas cross objection of the assessee are dismissed.

ITA No.3440/Del./2014 & C.O. No.94/Del./2015 (AY 2008-09)
ITA No. 2201/Del/2014 (AY 2009-10)
ITA No. 5784/Del/2014 & CO No. 158/Del/2015 (AY 2010-11)

28. Now, we take up the appeals of the Revenue and Cross objections of the assessee for assessment year 2008-09 and 2010-11 and appeal of the assessee for AY 2009-10. The respective grounds of appeals and cross objections are reproduced as under:

(i) The Grounds of appeal raised by the Revenue in ITA No. 3440/Del/2014 are as under:

The DCIT, Circle - 3(1), New Delhi is hereby directed to file appeal in the abovementioned case before the 1TAT, New Delhi on the following ground of appeal.

1. *On the facts and in the circumstances of the case, the CIT(A) has erred in:*
   - *(i) Deleting the addition of Rs. 66,01,019,/- made on account of disallowance of SLP Dunnage, treating it as Revenue Expenditure instead of capital Expenditure as held by the AO.*
   - *(ii) Deleting the addition of Rs. 14,42,792/- made on account of disallowance of Quality improvement Expenses by holding it as Revenue Expenditure instead of capital Expenditure as held by the AO.*
   - *(iii) Restricting the disallowance of Rs. 4,17,16,650/- u/s 14A to 5% of the exempted income thereby allowing a relief of Rs. 39,57,454/- to the assessee.*
   - *(iv) Allowing Social Obligation Expenditure of Rs. 17,75,000/- as a deduction by treating it as expenditure related to business activities of the assessee.*

2. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of the appeal.*

(ii) The Cross Objections raised by the assessee in C.O. No. 94/Del./2015 are as under:

1) *It is contended that the assessing officer has erred in making ad-hoc disallowance u/s 14A r.w. Rule 8D. While working investment in sister concern or investment as a mandatory direction in State Warehousing Corporation should not be considered as investment..*
2) *It is contended that the provision of section 115JB is not attracted in the Appellant Corporation case since the appellant is not covered by Companies Act and its Balance Sheet is drawn according to Rules frame under Warehousing Corporations Act 1962.*

(iii) The Grounds of appeal raised by the assessee in ITA No. 2201/Del./2014 are as under:

1. It is contended that both the Assessing Officer and the Ld. CIT Appeals have erred in disallowing expenses of Rs.6704796/- by invoking section 14 A of the IT Act.

1.01 The provisions of 14 A of the IT Act are not applicable in the instant case since the AO and CIT Appeals have failed to prove the nexus of the expenditure that it relates to earning of exempted income.

1.02 It is contended without prejudice to the above grounds that the investment made in various state warehousing corporations is in accordance with the statutory obligations under Warehousing Corporations Act and such investment is made more to secure control and management for the smoothsailing of the state warehousing corporation and not with the purpose of earning dividend income.

1.03 Accordingly the aforesaid investment should not form part of investment while calculating the disallowance under Rule 8 D of the IT Rules to arrive at 0.5% of the average of opening and closing value of the investment.

1.04 It is contended, without prejudice the above grounds, that the disallowance made is high and excessive. Further the working of disallowance by the AO is wrong.

2. Both on facts and on law, the disallowance of Rs.3945000/- under the head social obligation expenses are normal routine business expenses with a view to achieve a corporate social responsibility as per the guidelines of the Dept, of Public enterprises, Govt, of India.

3. It is contended that both on fact and in law, the disallowance of Rs.409.43 lacs as an unabsorbed overhead on capital works expenditure treating the same as capital expenditure.

3.01 It is contended that the expenses of Rs 409.43 lacs being an unabsorbed overhead expense are revenue expenses and fully allowable as in the past.

4. It is contended that the AO has erred in adding a sum of Rs.282351000/- as income of the Bonded warehouse.

4.01 It is contended that the aforesaid Bonded income has neither accrued to the corporation in the previous year nor is capable of being quantified, hence does not qualify as income.

5. It is contended that the AO had erred in disallowing Rs. 1557766/- as interest on service tax which has wrongly been taken as penalty.

6. It is contended that the Appellant Corporation not being a schedule VI Company, the provisions of Section 115 JB are not applicable.

6.01 The computation of book profit without prejudice to the above contention is wrong and requires revision.

7. *It is contended that the charge of interest under section 234B and 234D is wrong and requires revision.*
8. *It is contended that the withdrawal of interest, earlier allowed u/s 244A, is wrong, as no such withdrawal of interest is warranted in the instant case.*
9. *It is contended that the AO and the CIT (Appeals) have not quantified the earlier Brought Forward Losses and unobserved depreciation which will exactly be quantified after giving proper appeal effects.*
10. *It is prayed that the Appellant may be permitted to add, alter or withdraw any of the grounds at the time of the hearing.*

(iv) The Grounds of appeal raised by the Revenue in ITA No. 5784/Del./2014 are as under:

1. *On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 10756157/- made on account of disallowance of SLP Dunnage, treating it as Revenue Expenditure instead of Capital Expenditure as held by the A.O.*
2. *On the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 23052221- made on account of disallowance of quality improvement expenses by holding it as Revenue Expenditure instead of Capital Expenditure as holed by the A.O.*
3. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.*

(v) The Cross Objections raised by the Assessee in C.O. No. 158/Del./2015 are as under:

1) *It is contended that the Section 14A has no application in the instant case and disallowance to the extent of Rs.75,23,199/- without bringing on record any material to the fact that expenses have been incurred by the appellant for earning exempted income is wrong.*
2) *Without prejudice to the above, it is contended that disallowance under section 14A is wrong and require revision since Investment in subsidiary have to be excluded.*
3) *It is contended that Engineering Overheads on capital works has been wrongly disallowed by the Assessing Officer treating these as capital expenditure. There has been no change in the treatment and principle of consistency should have been followed.*

4) It is contended that the provisions of section 115JB are not applicable in the instant case since it is a non-schedule VI company.
The Appellant craves leave for reserving the right to amend, modify, alter, add or forego any cross objection(s), to Grounds of Appeal filed by the Revenue at any time before or during the hearing of this appeal.

29. The ground No. 1(i) of the appeal of the Revenue for AY 2008-09 and Ground No. 1 of appeal of Revenue for AY 2010-11 relates to disallowance of Donnage expenditure . These grounds are identical to ground No. 2 of the appeal of the Revenue for assessment year 2006-07.Accordingly, following our finding in assessment year 2006-07, these ground of the appeal of the Revenue are dismissed.

30. The ground No.1(ii) of the appeal of the Revenue for AY 2008-09 and Ground No. 2 of the appeal of the Revenue for AY 2010-11 are identical to the ground No. 3 (three) of the appeal of the Revenue in assessment year 2006-07, thus these grounds are accordingly allowed for statistical purposes following our finding in assessment year 2006-07.

31. The ground No. 1(iii) (three) of the appeal of the Revenue for AY 2008-09 , the cross objection No. 1 (one) of the assessee for AY 2008-09 and Ground no. 1 of the appeal of the Assessee for AY 2009-10 and Ground No. 1 and 2 of the Cross objection for AY 2010-11 are related to disallowance under section 14A of the Act read with Rule 8D of the Rules. The identical grounds of the Revenue and the assessee in assessment year 2006-07 have been restored to the file of the Assessing Officer for deciding afresh in

the light of the recent decisions of the Hon'ble courts. Accordingly, the respective grounds for AY 2008-09 ; 2009-10 and 2010-11 are restored to the file of the Assessing Officer for deciding in accordance with law. The respective grounds are accordingly allowed for statistical purposes.

32. The ground No. 1(iv) of the appeal of the Revenue for AY 2008-09 and Ground No. 2 of the appeal of the assessee for AY 2009-10 are related to social obligation expense. These grounds are identical to ground No. 3 (three) of the appeal of the Revenue in assessment year 2007-08. Following our finding in assessment year 2007-08, the grounds of the appeal of the Revenue is dismissed, whereas ground of the assessee is allowed.

33. Cross objection No. 2 (two) of the assessee for AY 2008-09; ground No. 6 of the appeal of the assessee for assessment year 2009-10 and cross objection No. 4 (four) for assessment year 2010-11 are identical to ground No. 7 (seven) of the appeal of the assessee in assessment year 2006-07. Following our finding in assessment year 2006-07, the cross objection no.2 of the assessee for assessment year 2008-09 ; ground No. 6 (six) of the appeal of the assessee for assessment year 2009-10 and cross objection No. 4 for assessment year 2010-11 are dismissed accordingly.

34. The ground No. 3 of the appeal of the assessee for assessment year 2009-10 and cross objection No. 3(three) of the assessee for assessment year 2010-11 relates to unabsorbed Engineering overheads. These issues are identical to ground No. four of the appeal of the Revenue for assessment year 2006-07,

which has been restored to the file of the assessing officer for deciding afresh. Accordingly, following our finding in assessment year 2006-07, these grounds of the appeal and cross objection of the assessee are restored to the file of the Assessing Officer. These grounds are accordingly allowed for statistical purposes.

35. The ground No. 4 (four) of the appeal of the assessee for assessment year 2009-10 relates to income from bonded warehouse. The identical ground raised by the Revenue in assessment year 2006-07 has been restored to the file of the Assessing Officer for deciding afresh. Accordingly, following our finding in assessment year 2006-07, this ground of the appeal of the assessee is also restored to the file of the Assessing Officer for deciding afresh. The ground of the appeal of the assessee is accordingly allowed for the statistical purposes.

36. The ground No. 5(five) of the appeal of the assessee for assessment year 2009-10 relates to interest on service tax amounting to ₹ 15,57,766/-disallowed by the Assessing Officer. No justification was submitted by the assessee before the Assessing Officer for allowing this expenditure. The assessing officer held same to be in the nature of the penalty by the service tax department for default on the part of the assessee and accordingly, he disallowed the expense in terms of Explanation-1 1 to section 37(1) of the Act. The Learned CIT(A) upheld the disallowance observing as under:

> *"5.9.3 The courts of law of the country have time and again held that the nomenclature of penalty etc does not determine whether it is penal or compensatory in nature. Whenever, any statutory impost is paid by the assessee by way of damages or penalty or interest, not withstanding nomenclature of impost as given by statues, one has to*

find out as to whether it is compensatory or penal in nature. Further, where ever such impost is found to .be of composite nature, authorities are obliged to bifurcate the two components of imposts and give deduction to that component which is compensatory in nature and refuse to give deduction to that component which is penal in nature. This has been held in the case of CIT V. Catholic Syrian Bank Ltd. (2004) 265 ITR 177 (Ker).

5.9.4 In CIT V. Enchante Jewellery Ltd. (2012) 83 CCH 088 Del HC, it has been held Interest paid on customs duty for purchase of capital asset after commencement of business is allowable u/s 37(1) of the Act as the interest paid was not in the nature of penalty for infraction of law.

5.9.5 However, in ACIT V. Bhanvi Agro (P) Ltd. (2012) 32 CCH 288 Jodhpur Trib: (2012) 51 SOT 182 (Jodh) (URO), it has been held that compounding fee under Sales Tax Act, debited to the A/c 'Sales Tax' is not allowable as amount paid for infraction of law is not allowable u/s 37(1) of the Act.

5.9.6 Therefore, under the provision of Explanation to section 37(1) of the Act, the expenditure incurred for any purposes, which is an offence or which is prohibited by law cannot be allowed as a deduction. This explanation was introduced to reiterate the position taken by various courts that any expenditure incurred in connection with infringement of law is not an allowable business deduction. In Haji Aziz & Abdul Shakoor Bros V. CIT (1961) 41 ITR 350(SC), it was held by the apex court that no item of expenditure which is paid by way of penalty for the breach of law will be allowed as it cannot be said that the amount is incurred wholly and exclusively for the business of the assessee. Considering the fact that the assessee has paid interest on delayed payment of service tax, the view taken by the AO is held to be correct as that tantamount to penalizing the assessee for such default or infringement of law. Ijf the preliminary liability to be discharged by the assessee is not allowed as expenses laid out or incurred for the purpose of the business, ordinarily, the interest paid thereon also cannot be considered as expenses /aid out or incurred wholly & exclusively for the purpose of business, as held in Saurashtra Cement & Chemical Industries Ltd. V. CIT (1995) 213 ITR 523 (Guj). Therefore, the addition of Rs. 15,57,766/- is hereby confirmed and the assessee gets no relief on this ground of appeal."

36.1 Before us, the Learned Counsel of the assessee submitted that interest on delayed deposit of service tax is compensatory in

nature and not penal. He submitted that issues stands settled in favour of the assessee by the judgment of the Hon'ble Supreme Court in the case of Lachmandas Mathura Vs CIT (2002) 254 ITR 799 (SC) and CIT vs Luxmi Devi Sugar Mills Ltd (1991) 188 ITR 041 (SC). The Learned DR on the other hand relied on the order of the lower authorities.

36.2 We have heard rival submission of the parties on the issue in dispute. The issue involved is whether interest paid on delayed deposit of the service tax is in the nature of the compensatory or in the nature of the penalty. If it is in the nature of penalty, then it is liable to be disallowed in terms of Explanation- 1 to section 37(1) of the Act. The Hon'ble Supreme Court in the case of Lachmandas Mathura (supra) held that interest paid on sales tax is compensatory in the nature. The finding of the Hon'ble Supreme Court is reproduced as under:

> **"2.** *While granting special leave to appeal the appeal has been confined to question Nos. 1 and 2 only. The High Court has proceeded on the basis that the interest on arrears of sales-tax is penal in nature and has rejected the contention of the assessee that it is compensatory in nature. In taking the said view the High Court has placed reliance on its Full Bench decision in Saraya Sugar Mills (P) Ltd. vs. CIT 1978 CTR (All)(FB) 329 : (1979) 116 ITR 387 (All) (FB) : TC 17R.797. The learned counsel appearing for the appellant-assessee states that the said judgment of the Full Bench has been reversed by the larger Bench of the High Court in Triveni Engineering Works Ltd. vs. CIT (1984) 38 CTR (All)(FB) 107 : (1983) 144 ITR 732 (All)(FB) : TC 17R.794 wherein it has been held that interest on arrears of tax is compensatory in nature and not penal. This question has also been considered by this Court in Civil Appeal No. 850/79 titled Saraya Sugar Mills (P) Ltd. vs. CIT decided on 29th Feb., 1996. In that view of the matter the appeal is allowed and the question Nos. 1 and 2 are answered in favour of the assessee and against the Revenue. No order as to costs."*

36.3 The payment of sales-tax and service tax both are indirect taxes, which being *pari materia*, said expenditure on interest for delayed payment of service tax is eligible for allowance as revenue expenditure following the finding of the Hon'ble Supreme Court above. Accordingly, this ground of appeal is restored to the file of the Assessing Officer for verification, whether the assessee has followed inclusive/exclusive method of accounting for service tax and then decide in accordance with law. The ground of the appeal of the assessee is accordingly allowed for the statistical purposes.

37. In the result, all the appeals filed by the Revenue, i.e., 3942/Del/2011, 3439/Del/2014, 3440/Del/2014 & 5784/Del/2014 and the Appeals filed by the Assessee, i.e., ITA No.3885/Del/2011 & 2201/Del/2014 as well as the Cross Objections, i.e., C.O. No. 94/Del./2015 and 158/Del./2015 are partly allowed for statistical purposes; whereas the cross objections, i.e., C.O. No. 93/Del./2015 is dismissed.

Order pronounced in the open court on 31st May, 2021

Sd/-	***Sd/***
(K.N. CHARY)	**(O.P. KANT)**
JUDICIALMEMBER	**ACCOUNTANTMEMBER**

Dated: 31st May, 2021.
RK/-(DTDS)
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi