INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

(Through Video Conferencing)

ITA Nos. 716/Del/2018 and 3952 to 3959/Del/2016

(Assessment Year: 2000-01, 2002-03 to 2006-07, 2008-09 to 2010-11)

DCIT, Central Circle-25, New Delhi	Vs.	M/s. HTL Ltd, GST Road, Guindy, Chennai PAN: AAACH5516P
(Appellant)		(Respondent)

Revenue by :	Ms. Sunita Singh, CIT DR
Assessee by:	Shri Rakesh Joshi, CA
Date of Hearing	04/10/2021
Date of pronouncement	14/10/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. These are the bunch of 9 appeals filed by the ld Assessing Officer in case of one assessee namely, M/s. HTL Ltd from Assessment Year 2000-01 to 2010-11. In these appeals common issues are involved, parties argued them together and therefore, these are disposed off by this common order.

ITA No. 3952/Del/2016
Assessment Year 2002-03

2. ITA No. 3952/Del/2016 is filed by the ld DCIT, Central Circle-25, New Delhi for the Assessment Year 2002-03 against the order passed by the ld CIT (A)-1, New Delhi dated 29.04.2016.
3. The ld AO has raised the following grounds of appeal in ITA No. 3952/Del/2016 for Assessment Year 2002-03:-

"1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the prior period expenses of Rs. 26,39,87,000/-, made by the AO without appreciating the fact that the above expenses were debited against the accounting guidelines mentioned in AS-5 of ICAI and they were not crystallized during the relevant assessment year.
2. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law in deleting the disallowance of prior period expenses of Rs. 7,77,66,000/- out of total disallowance of total disallowance of Rs. 26,39,87,000/- without appreciating the fact that the assessee failed to submit any evidence that the above amount was added back u/s 43B in the return of income before the AO.
3. That on the facts and in the circumstances of the case , the Ld. CIT (A) has erred in law and on facts in holding that since the above expenditure is allowed as per the Companies Act hence it is not contingent in nature as income is computed as per Income Tax Act and not as per Companies Act for the purpose of income tax assessment.
4. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.
5. That the grounds of appeals are without prejudice to each other."

4. Brief facts of the case is that the assessee is a company engaged in the business of manufacturing of large switching exchange data modem and other equipments used for communication sector. It filed its return of income on 31.10.2002 at a loss of Rs. 72,69,71,970/-. Case was reopened u/s 147 of the Act and re-assessment order was framed u/s 143(3) of the Act on 31.12.2008 at a net loss of Rs. 68,57,26,919/-.

5. Subsequently, a search was carried out on 10.05.2007 in the Himachal Futuristic Communication Ltd group of company and a survey was also carried out at the business premises of the assessee. During the course of search and survey certain documents , as stated by the ld AO , pertaining to the assessee was found from various premises of HFCL group of companies. Therefore, notice u/s 153C read with section 153A was issued on 09.10.2009. The assessee filed return of income in response to that notice on 05.11.2009 declaring a loss of Rs. 72,69,71,970/- which was originally filed by the assessee. The ld AO passed an assessment order u/s 153C read with section 153A of the Act on 18.12.2009 wherein, the addition of Rs. 26,39,87,000/- was made and net loss was determined at Rs. 42,17,39,919/-. The addition of Rs. 26,39,87,000/- was made to the

return of income of the assessee on perusal of the profit and loss account of the assessee wherein, it was stated that assessee has debited this prior period expenditure in its books of account. The plea of the assessee was that it maintained its books of account on mercantile basis of accounting and the sale adjustment was made at the time of prices were finalized with BSNL later on and therefore, the above expenditure has agreed and incurred during the year. The ld AO rejected the contention of the assessee.

6. The assessee preferred an appeal before the ld CIT(A). Before the ld CIT(A), the assessee has raised an issue that the addition has been made to the total income of the assessee based on the same material, which was available at the time of original assessment, and further no incriminating documents were found. On the merits, the assessee contested the addition. The ld CIT(A) after careful consideration of the various judicial pronouncement held that the expenditure crystallized during the year and therefore, same are allowable. Hence, the addition was deleted. Such order was passed on 29.04.2016. The ld AO is aggrieved with the order.

7. At the time of hearing the assessee raised a ground invoking Rule 27 of the Act that the ld AO has erred in making the addition to the assessment order passed u/s 143(3) read with section 153C of the Act in non abetted assessment order without any incriminating documents found during the course of search. The ld AR relied upon several judicial precedents and submitted that the assessee can invoke this arguments and the appeal is pending before the coordinate bench.

8. On this issue he submitted that the notice is issued u/s 153C of the Act on 05.11.2009 and therefore, it is the deemed date of search in view of the decision of the Hon'ble Delhi High Court in CIT Vs. RRJ Securities Ltd 380 ITR 612. As on the date of search the assessment was completed u/s 143(3) read with section 147 of the Act by order dated 31.12.2008 and therefore, it was a concluded assessment. He further referred to the assessment order and submitted that the addition has been made on the basis of perusal of the profit and loss account itself and without any

incriminating material found during the course of search. He therefore, submitted that in view of decision of the Hon'ble Delhi High Court in PCIT Vs. Kabul Chawla as well as decision of the Hon'ble Supreme Court in case of CIT Vs. Singhadh Technical Educational Society 397 ITR 344 the addition deserves to be deleted.

9. The ld DR vehemently objected to the invocation of Rule 27 stating that assessee has not filed any appeal and therefore, same should not be admitted. Further, with respect to the merits of the case the assessee relied on the order of the ld AO.

10. We have carefully considered the rival contentions and perused the orders of the lower authorities. Honourable Delhi High court in SANJAY SAWHNEY vs. PRINCIPAL COMMISSIONER OF INCOME TAX (2020) 108 CCH 0005 Del HC (2020) 192 DTR 0105 (Del), (2020) 316 CTR 0392 (Del), (2020) 273 TAXMAN 0332 (Delhi) has held that :-

> "26. The upshot of the above discussion is that Rule 27 embodies a fundamental principal that a Respondent who may not have been aggrieved by the final order of the Lower Authority or the Court, and therefore, has not filed an appeal against the same, is entitled to defend such an order before the Appellate forum on all grounds, including the ground which has been held against him by the Lower Authority, though the final order is in its favour. In the instant case, the Assessee was not an aggrieved party, as he had succeeded before the CIT (A) in the ultimate analysis. Not having filed a cross objection, even when the appeal was preferred by the Revenue, it does not mean that an inference can be drawn that the Respondent- assessee had accepted the findings in part of the final order, that was decided against him. Therefore, when the Revenue filed an appeal before the ITAT, the Appellant herein (Respondent before the Tribunal) was entitled under law to defend the same and support the order in appeal on any of the grounds decided against it. The Respondent - assessee had taken the ground of maintainability before Commissioner (Appeals) and, therefore, in the appeal filed by the Revenue, it could rely upon Rule 27 and

advance his arguments, even though it had not filed cross objections against the findings, which were against him. The ITAT, therefore, committed a mistake by not permitting the assessee to support the final order of CIT (A), by assailing the findings of the CIT(A) on the issues that had been decided against him. The Appellant - assessee, as a Respondent before the ITAT was entitled to agitate the jurisdictional issue relating to the validity of the reassessment proceedings. We are, therefore, of the considered opinion that the impugned order passed by the ITAT suffers from perversity in so far as it refused to allow the Appellant - assessee (Respondent before the Tribunal) to urge the grounds by way of an oral application under Rule 27. The question of law as framed is answered in favour of the Appellant - assessee and resultantly the impugned order is set aside. The matter is remanded back before the ITAT with a direction to hear the matter afresh by allowing the Appellant- assessee to raise the additional grounds, under Rule 27 of the ITAT Rules, pertaining to issues relating to the assumption of jurisdiction and the validity of the reassessment proceedings under Section 153C of the Act."

11. Thus, We find that the assessee can invoke Rule 27 when the issue has been decided against the assessee.

12. In the present case, we find that the assessment was completed u/s 143(3) of the Act read with section 148 of the Act by order dated 31.12.2008 and the notice u/s 153C was issued on 05.11.2009, which is the date of search under the provision of 153C as per decision of the Hon'ble Delhi High Court in CIT Vs. RRJ Securities Ltd (2015) 94 CCH 0069 DelHC(2015) 128 DTR 0057 (Del), (2016) 282 CTR 0321 (Del), (2016) 380 ITR 0612 (Delhi) where in para no 24 it is held that In terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by

virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment year 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. In the case of a searched person the AO of the searched person assumes possession of seized assets/documents on search of the Assessee; the seized assets/documents belonging to a person other than a searched person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee's income for that year.

13. Thus, the Assessment year was a concluded assessment on the date of search. This assessment should have been tinkered with , only if there is any incriminating material belonging to the assessee found during the course of search. We find that the ld AO has made an addition only on the basis of perusal of the profit and loss account which was already part of the assessment record earlier. Therefore, it is clear that the addition has not made on the basis of any incriminating material found during the course of search. Thus issue is squarely covered by the decision of the Hon'ble Delhi High Court in PCIT Vs. Kabul Chawla (2015) 93 CCH 0210

DelHC, (2015) 126 DTR 0130 (Del), (2015) 281 CTR 0045 (Del), (2016) 380 ITR 0573 (Delhi), (2015) 234 TAXMAN 0300 (Delhi) and of the Hon'ble Supreme Court in case of CIT Vs. Sinhgadh Technical Educational Society V DCIT (2018) 103 CCH 0256 ISCC Thus, the addition could not have been made and hence deserved to be deleted.

14. Even on the merits of the case, the ld CIT(A) has categorically held that the expenditure crystallized during the year and therefore, they are allowable as business expenditure during the year. The decision of the ld CIT(A) is also based on several decisions of the Hon'ble jurisdictional high court. The ld DR did not show us any infirmity in the order of the ld CIT(A) in deleting of the above addition or to state that expenses did not crystallize during this relevant financial year. We also do not find any reason to disturb the order of the ld CIT(A). Accordingly, even on the merits of the case the order of the ld CIT(A) is deserves to be upheld.

15. Therefore, all the grounds of the appeal of the ld AO are dismissed, and the appeal of the assessee is also allowed for the reason that the addition has been made in absence of any incriminating documents in case of concluded assessment and as well on the merits expanses crystallized during the relevant financial year.

16. Thus, the appeal filed by the ld AO is dismissed.

ITA No. 3953/Del/2016

(Assessment Year 2003-04)

17. ITA No. 3953/Del/2016 is filed by the ld AO against the order of the passed by the ld CIT(A)-1, New Delhi dated 29.04.2016 wherein, the appeal filed by the assessee against the order passed by the ld AO u/s 153C read with section 153A of the Act dated 18.12.2009 was allowed.

18. The revenue is aggrieved and has preferred this appeal as per following grounds of appeal

> "1. That on the facts and in the circumstances of the case , the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 4.11,02.000/-, made by the AO holding that the provision for inventory was contingent in nature, without appreciating the fact

that the assessee had not written off the inventory and had only made provision.

2. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in holding that since the above expenditure is allowed as per the Companies Act and hence is not contingent in nature as income is computed as per Income Tax Act and not as per the Companies Act for the purpose of Income Tax Assessment.

3. That on the facts and in the circumstances of the case , the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs. 13,01,000/-made by AO on account of price difference as mentioned in the 'notes to accounts without appreciating the facts that the above income has accrued to the assessee as the assessee is following the mercantile system of accounting.

4. That on the facts and in the circumstance of the case , the Ld CIT(A) has erred in law and on facts in deleting the disallowance of prior period expenses of Rs. 2,06,000/- without appreciating the facts the above expenses were debited against the accounting guidelines mentioned in AS-5 of ICAI and they were not crystallized during the relevant assessment year.

5. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

6. That the grounds of appeals are without prejudice to each other."

19. Briefly stated the facts of the case shows that that the assessee filed return of income on 27.11.2003 declaring loss of Rs. 16,56,77,673/-. The case of the assessee was picked up for scrutiny and assessment u/s 143(3) and assessment was made at a net loss of Rs. 3,39,67,803/- wherein, disallowance of Rs. 13,17,09,870/- was made. Subsequently, an order u/s 154 was also passed on 24.04.2006 where the loss was determined finally at Rs. 10,60,77,803/-.

20. Search took place at HFCL Group of companies on 10.05.2007. Therefore, proceedings u/s 153C were initiated by issue of notice u/s 153C of the Act on 09.10.2009 against which the assessee filed return of income on 05.11.2009 declaring loss or Rs. 16,56,77,673/- as originally declared. The order u/s 153C read with section 153A was passed by the ld AO on 18.12.2009 accepting the above loss of Rs. 10,60,77,803/-.

21. The assessee preferred an appeal before the ld CIT(A). The grievance of the assessee is that the ld AO has disallowed the following:-

a. Provision of non moving obsolete items of inventory of Rs. 4,11,02,000/-,
b. Delayed payment of provident fund of Rs. 1,69,90,870/-,
c. downward price revision in sales of Rs. 13,01,000/-
d. prior period expenses of Rs. 2,06,000/-

22. The assessee challenged as per ground No. 1 validity of the assessment order and by other grounds the disallowances by the ld AO.

23. The ld CIT(A) deleted the disallowance of Rs. 4,11,02,000/- on account of provision of non moving inventory on the basis of earlier years order of the ld AO where such amount of write off was allowed. The ld CIT(A) deleted the above disallowances. With respect to the disallowance of provident fund of Rs. 1,69,90,870/- the ld CIT(A) following the decision of the Hon'ble Supreme Court in case of Vinay Cement Ltd as well as Hon'ble Delhi High Court's decision in Aimil ltd allowed the claim of the assessee as the provident fund was deposited before the due date of filing of return of income. The disallowances of Rs. 13,01,000/- being price difference of BSNL sales contract. He deleted the disallowance/ addition as the same was determined in subsequent year and accounted by the assessee in subsequent year. The disallowance of prior period expenses of Rs. 2,06,000/- was also deleted as expenses crystallized during the year. Thus, the ld AO is aggrieved with the above order and filed this appeal.

24. Assessee filed a legal ground invoking provision of Rule 27 of ITAT Rules 1963 stating that the assessment is concluded assessment, no incriminating material was found during the course of search and therefore, no addition could have been made by the ld AO.

25. Bothe the parties were heard on the issues in the appeal.

26. The issue is identical to the Assessment Year 2002-03. We find that in the present case return of income was filed u/s 139(1) of the Act on 27.11.2003. Search took place on HFCL Ltd on 10.05.2007, notice issued to the assessee u/s 153C of the Act on 05.11.2009. At that time assessment was already completed u/s 143(3) of The Act on 24.04.2006, therefore, as on the date of search i.e. issue of notice u/s 153C of the Act

on 05.11.2009, this assessment was not pending but concluded assessment which could have been disturbed only if there is an incriminating material found during the course of search. In the present case, all the additions have been made which was also originally made u/s 143(3) of the Act. Thus, it is apparent that the additions have been made in absence of any incriminating material found during the course of search therefore, these additions deserves to be deleted.

27. Otherwise, on the merits of the case the ld DR could not show us any infirmity in the order of the ld CIT(A). With respect to the first ground of appeal of Rs. 4,11,02,000/- where the provision was made for obsolete inventory is identical to the provision made by the assessee for earlier years which was allowed by the ld AO in earlier years. Even otherwise, the assessee has made the provision for non moving inventories by reducing the carrying value of such inventories. It is not the claim of the ld AO that it is an ad hoc provision. These obsolete inventories are written off by reducing the carrying cost of inventory. In view of this, we do not find any infirmity in the order of the ld CIT(A) and dismiss ground No. 1 and 2 of the appeal of the ld AO.

28. Ground No. 3 with respect to the deletion of addition of Rs. 13,01,000/- on account of price difference. The fact shows that this revision in the sale price which is determined by the BSNL for subsequent year the assessee also accounted same in the subsequent year and offered for taxation. The ld CIT(A) held that as the income accrued in the subsequent year and offered for taxation in the subsequent year there is no reason to make any addition in this year. Thus, we find that the deletion of the addition has been correctly made by the ld CIT(A). Hence, we confirm the same and dismissed ground No. 3 of the appeal.

29. Ground No. 4 of appeal is with respect to the prior period expenses disallowed by the ld AO. The ld CIT(A) held that these expenditure crystallized during this accounting year relevant to Assessment Year 2003-04 and therefore, those are incurred during this year. This fact remain undisputed and further in previous assessment year also identical disallowance was made and deleted by the ld CIT(A) which was

confirmed by this order. Therefore, disallowance has been correctly deleted by the ld CIT(A) and thus, ground No. 4 of the appeal is dismissed.

30. In view of the above facts for the reason that no addition has been made based on the incriminating material found during the course of search and further even on the merits of the addition, the ld CIT (A) has correctly deleted the same , the appeal of the ld AO is dismissed.

ITA No. 3954/Del/2016

Assessment Year 2004-05

31. ITA No. 3954/Del/2016 for Assessment Year 2004-05 is filed by the assessee against the order passed by the ld CIT(A)-1, New Delhi dated 29.04.2016 wherein, appeal filed by the assessee against the order of the ld CIT(A) passed u/s 153C read with section 153A of the Act dated 18.12.2009 was allowed.

32. The revenue has raised the following grounds of appeal in ITA No. 3954/Del/2016 for Assessment Year 2004-05:-

"1. That on the facts and in the circumstances of the case , the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 10,47,31,000/-, made by the AO holding that the provision for inventory was contingent in nature, without appreciating the fact that the assessee had not written off the inventory and had only made provision.

2. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in holding that since the above expenditure is allowed as per the Companies Act and hence is not contingent in nature as income is computed as per Income Tax Act and not as per the Companies Act for the purpose of Income Tax Assessment.

3. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

4. That the grounds of appeals are without prejudice to each other."

33. Shortly stated the fact of the case shows that the assessee filed return of income on 28.10.2004 declared loss of Rs. 26,26,30,920/-. This return was not picked up for scrutiny however, the last date of issue of notice u/s 143((2) of the Act expired on 30.09.2005. A search took place on

HFCL Group on 10.05.2007 and a notice came to be issued u/s 153C of the Act on the assessee on 05.11.2009. Subsequently, the assessment u/s 153C read with section 153A was passed on 18.12.2009 determining net loss of Rs. 13,84,88,497/-. The ld CIT(A) made following three disallowances:-

a. Disallowances on account of provision of obsolete inventory Rs. 10,47,31,000/-
b. Disallowance of inadmissible expenditure u/s 40(a) of Rs. 30,47,423/-
c. Disallowance on account of prior period expenditure of Rs. 1,63,64,000/-.

34. The assessee preferred an appeal before the ld CIT(A), who deleted all the above three disallowances and therefore, the ld AO is in appeal before us.

35. At the time of hearing the ld AR invoked Rule 27 of the ITAT Rules and stated that the above assessment year is concluded assessment as on the date of search . Therefore, any addition which requires to the total income of the assessee has to be based only on the basis of incriminating material found during the year of search. He submitted that there is no incriminating material found and therefore, all the three disallowances are deserves to be deleted on this account only. On the merits, he relied up on the order of the ld CIT (A).

36. The ld CIT DR objected the invocation of Rule 27 of The ITAT rules and on merits relied on the order of the ld AO.

37. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that the date of issue of notice u/s 153C of the Act is on 05.11.2009 which is the date of the search as per proviso u/s 153C of the Act. As on the date of search, assessment order for Assessment Year 2004-05 was a concluded assessment. This assessment could have been disturbed only if there is any incriminating material found during the course of search. No such material was found during the course of search and further the ld AO has also not referred to any such material. Therefore, all these disallowance and additions

deserves to be deleted as those were made in absence of any incriminating material found during the course of search.

38. Even on the merits of the case the ld AO has contested only the write off of the obsolete item of inventory of Rs. 10,47,31,000/- . Ld CIT(A) has deleted the same following the decision of the Karnataka and Bombay High Courts and further holding that same is not a provision, but an actual loss. We find that identical issue is covered in the earlier year wherein, we have upheld the order of the ld CIT(A) deleting the above addition. Accordingly, this solitary ground of appeal of the ld AO dismissed.

39. Thus, as the addition has not been made based on the any incriminating material and further even on the merits addition does not deserve to be made, we upheld the order of the ld CIT(A) and dismiss the appeal of the ld AO.

ITA No. 3955/Del/2016

Assessment Year 2005-06

40. This appeal is filed by the ld AO for Assessment Year 2005-06 against the order passed by the Commissioner of income tax (appeals) – I , New Delhi dated 29/4/2016.

41. The learned AO has raised the following grounds of appeal in ITA No. 3955/Del/2016 for Assessment Year 2005-06:-

"1. That on the facts and in the circumstances of the case , the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 5,00,21,000/-, made by the AO on account of provision for inventory by holding that the provision for inventory was contingent in nature, without appreciating the fact that the assessee had not written off the inventory and had only made provision.

2. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in holding that since the above expenditure is allowed as per the Companies Act and hence is not contingent in nature as income is computed as per Income Tax Act and not as per the Companies Act for the purpose of Income Tax Assessment.

3. That on the facts and in the circumstances of the case , the Ld. CIT (A) has erred in law and on facts in deleting the disallowance of Rs. 19,20,44,000/- made by AO holding that the provision for liquidating damages was contingent in nature, without appreciating the fact that the above expenditure was not ascertained liability and was contingent in nature.

4. That on the facts and in the circumstance of the case , the Ld CIT(A) has erred in law and on facts in deleting the disallowance of prior period expenses of Rs. 1,48,63,000/- without appreciating the facts the above expenses were debited against the accounting guidelines mentioned in AS-5 of ICAI and they were not crystallized during the relevant assessment year.

5. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

6. That the grounds of appeals are without prejudice to each other."

42. The brief facts of the case shows that on 29.10.2005 the assessee filed its return of income declaring loss of Rs. 19,78,95,879/-. The return was processed on 24.11.2006 u/s 143(1) of the Act. Consequent to the search dated 10.05.2007 on HFCL Group, the notice u/s 153C was issued to the assessee on 09.10.2009. It was responded by the assessee on 05.11.2009 submitting the original return filed on 29.10.2005 requesting to consider it as return filed in response to notice u/s 153C of the Act.

43. Assessment u/s 153C read with section 153A was passed by the ld AO on 18.12.2009 determining the total loss of Rs. 5,90,32,121/-. Three disallowances/additions were made during the assessment which are contested in this appeal

i. Disallowance of prior period expenses of Rs. 1,48,63,000/-.

ii. Addition on account of provision for inventory of Rs. 5,00,21,000/-

iii. Addition on account of provision of liquated damage of Rs. 19,20,44,000/-

44. The assessee preferred an appeal before the ld CIT(A). The ld CIT(A) deleted the addition on account of provision of obsolete stock of Rs. 5,00,21,000/-. He also deleted the addition on account of liquidated damages of Rs. 19,20,44,000/-. The ld CIT(A) also deleted the disallowances on account of prior period expenditure of Rs. 1,48,63,000/-. The ld AO aggrieved with the order of the ld CIT(A) has preferred an

appeal before us contesting all the three disallowances/ additions deleted by the ld CIT(A).

45. At the time of hearing, the ld AR raised a ground invoking provisions of Rule 27 of ITAT Rules stating that the notice u/s 153C was issued on 05.11.2009. On that date the assessment for Assessment Year 2005-06 got concluded and was not pending. He submitted that the above assessment could have been tinkered with only if there is any incriminating material found during the course of search. He submitted that the last date for issue of notice u/s 143(2) in that case has already expired on 30.09.2006. He stated that as none of the addition/ disallowances made by the ld AO is based on any incriminating material those have been correctly deleted by the ld CIT(A). On the merits of the case he submitted that the ld CIT(A) has correctly deleted the addition. The ld CIT DR vehemently objected to the arguments of the ld AR and further on the merits of the issue relied upon the orders of the ld AO.

46. Coming to the ground of the ld AR under Rule 27 of the ITAT Rules we find that search took place on 10.05.2007 on HFCL Group of companies and notice u/s 153C of the Act was issued on 05.11.2009. Therefore, on 05.11.2009 is date of search in case of the assessee for impugned assessment year . The assessee filed its return of income on 29.10.2005 and the last date for issuing notice u/s 143(2) was available up to 30.09.2006.

47. Honourable Delhi High court in CHINTELS INDIA LTD Vs DEPUTY COMMISSIONER OF INCOME TAX - CIRCLE-8 2017-TIOL-1366-HC-DEL-IT has held that in the present case the present case, the facts speak for themselves. The Assessee filed its return on 21st October, 2008. The return was processed under Section 143(1) of the Act on 27th March, 2010. It has held by this Court in Indu Lata Rangwala v. Deputy Commissioner of Income Tax that the mere processing of a return u/s 143(1) and the sending of an intimation to the Assessee will not make it an 'assessment'. At the same time, the consequences of the Department not issuing a notice under Section 143(2) of the Act within the time stipulated as far as the filing of the return in normal course is concerned

was not examined either in Commissioner of Income Tax v. Kabul Chawla or Indu Lata Rangwala v. Deputy Commissioner of Income Tax. As notice by the Punjab & Haryana High Court in Vipan Khanna v. Commissioner of Income Tax, the CBDT circular makes it abundantly clear that once an Assessee does not receive a notice u/s 143(2) within the period stipulated then such an Assessee "can take it that the return filed by him has become final and no scrutiny proceedings are to be started in respect of that return." The inevitable conclusion, therefore, in the present case, is that the ITAT was in error in holding that the assessment for AY 2008-09 should be treated as 'pending' whereas in terms of the above CBDT circular it should be treated as final in respect of which no scrutiny are to be started. Consequently as far as ITA No. 581/2016 is concerned the question framed by this Court on 27th January, 2017 is answered in the affirmative.

48. Honourable supreme court has also dismissed SLP against the above judgment of hon. Delhi high court Special Leave Petition (C) Diary No(s). 38757/2017 Dated: January 15, 2018.

49. Therefore, on 05.11.2009 the assessment for Assessment Year 2005-06 was not a pending assessment but a concluded assessment. Therefore, the addition could have been made in the hands of the assessee only on the basis of incriminating material found during the course of search. For the impugned disallowance/ addition the ld AO has not relied upon any incriminating evidence found during the course of search and only on the information contained in the return of income. Therefore, on this ground itself all the three additions have been correctly deleted by the ld CIT(A). Even otherwise on the merits of the case of the assessee the first disallowance of Rs. 5,00,21,000/- on account for provision for inventory of non obsolete stock. Identical issue was also there in earlier year in the case of assessee wherein, after giving detailed reasons we have upheld the order of the ld CIT(A) in deleting the above additions. For the similar reasons, as there is no change in the facts, we confirm the order of the ld CIT(A) deleting the disallowances made on provision for non moving

items of Rs. 5,00,21,000/-. Accordingly, ground Nos. 1 and 2 of the appeal are dismissed.

50. Coming to the ground No. 4 of the appeal with respect to disallowance of prior period expenditure of Rs. 1,48,63,000/- we find that these disallowances are similar to the disallowances made in the case of the assessee for earlier years. The ld CIT(A) has deleted the disallowance in those years and we have upheld the order of the ld CIT(A) deleting the above disallowances. There is no change in the facts and circumstances of the case with respect to these disallowances. The reason for the disallowances that these expenditure have crystallized during the year and therefore those are incurred during the year and hence they are allowable as an expenditure u/s 37 (1) of the act. Therefore, for the similar reason given in earlier years, we upheld the order of the ld CIT(A) in deleting the disallowance of Rs. 148,63,000/- on account of prior period expenditure. Thus, ground No. 4 of the appeal is dismissed.

51. The other ground of appeal is ground No. 3 wherein, the ld AO has disallowed a sum of Rs. 19,20,44,000/- on account of provision for liquidating damages. The facts relating to that shows that the assessee has debited a liquidating damages recovered by BSNL on account of supply of material amounting to Rs. 19,20,44,000/-. This was levied by BSNL for delay in supply of goods beyond the time specified in the purchase order. The liquidated damages were also as per part of the purchase transaction agreed. The ld CIT(A) referred to clause 18 of the purchase order dated 03.08.2004. According to that clause liquidated damages @0.5% were payable for delayed supply of goods per week up to 10 weeks and thereafter it was 0.7% for each week. As there was a delay in supply of material , the assessee made provision for the liquidating damages in terms of purchase order. The assessee disclosed in the notes of account and stated that above liquidating damages are incurred by the assessee wholly and exclusively for the business purpose and therefore, same are allowable as business expenditure as such a liquidated damages crystallized during the year. The ld CIT(A) has dealt with this issue at page No. 10 to 14 in para 7 as under:-

Ground No. 2 : Vide this ground, the appellant has challenged disallowance of Rs. 19,20,44,000/- by the A.O., being Liquidated Damages stating that the appellant has claimed it as provision which is contingent in nature and is not admissible under the provisions of Income-tax Act, 1961.

Observation of the Assessing Officer:

> "6. It was further noticed that the assessee has claimed provision for liquidated damages amounting to Rs.19,20,44,000/-. As discussed above, the provision is a contingent liability and is not admissible under the Income Tax Act, 1961. Under the Act, only an ascertained liability is admissible for deduction and there is no scope for deduction of anticipated liabilities. The scope of section 37 and the position with regard to admissibility of expenditures claimed under the head 'provisions' have been discussed in the previous paragraphs and in view of the elaborated discussions in this regard, claim of the assessee for provision of liquidated damages amounting to Rs.19,20,44,000 is disallowed. Addition of Rs. 19,20,44,000/- is hereby made. ''

The appellant has submitted detailed submission against the additions made in the assessment order, gist of which is given below :

> "The Liquidated Damages debited to the Profit and Loss Account amounts to Rs. 1920.64 lakhs. The details are as follows:

		Rs. In lakhs
1.	Actual LD recovered by BSNL	677.70
2.	Provision for LD for NIB Project s upplies to BSNL	1150.97
3.	Provision for LD for EWSD Switching equipments	91.97
	TOTAL	1920.64

Supplies to BSNL

- The Liquidated Damages debited to the Profit and Loss Account represents damages levied and recovered by BSNL, for delay in delivery of the goods beyond the delivery date specified in the PO. As per the terms of the PO wherein, it is stated that if deliveries to be made after the expiry of the contracted delivery period, the purchaser shall recover LD at 0.5% of the value of the delayed supply for each week of delay or part thereof for a period upto 10 weeks and thereafter at the rate of 0.7% for the value of the supply for each week of delay or part thereof for another 10 weeks.

- It is submitted that the aforesaid expenses is not for violation Of any law. If delivery is not made in the time as per order, the purchaser has a right to deduct the sum, as per the terms of the order to compensate the loss which may occur to the buyer. This is a general accepted practice in all types of industries and hence in the nature of normal business expenditure.
- Moreover, it is also pertinent to mention that the amount paid on account of delay in delivery cannot be said as penalty, because penalty is paid on amount payable by a person but in the appellant's case, the liquidated damages have been deducted by the buyers from the payments made by them. Hence it is not a penalty but less realization of sales.
- Further no addition can be made for the amount which never realised to the appellant. Real Income concept must be followed.
- In earlier scrutiny assessments also, the then A.O. had not disallowed the same.
- For your reference we summarise the status in earlier years –

A.Y.	Status of scrutiny assessment (u/s 143(3)/147)	Allowability of prior period expenses
1997-98	Yes	Yes
1998-99	Yes	Yes
1999 - 00	Yes	Yes
2000-01	Yes	Yes
2001 - 02	Yes	Yes
2002-03	Yes	Yes
2003-04	Yes	Yes

- In view of the above, it is stated that the damages accounted for as per BSNL P.O. terms for delay in delivery of goods which is as per the contractual terms and allowable as business expenditure."

Decision :

I have gone through the submissions of the appellant and considered the facts and evidences on record. It is seen that appellant has debited liquidated damages to the tune of Rs. 19,20,64,000/-. Details of which are as under:

Rs. In lakhs

1. Actual LD recovered by BSNL 677.70
2. Provision for LD for NIB Project supplies to BSNL 1150.97
3. Provision for LD for EWSD Switching equipments Supplies to BSNL 91.97

TOTAL 1920.64

Vide Clause 18 of BSNL Purchase order dated 03.08.2004, copy enclosed as Annexure A2 in the submission, it is stated that appellant

shall be liable for liquidated damage as per clause 18 of Annexure A2 of Purchase order. Liquidated damages are leviable for delay in supply of the goods. The rate of liquidated damage is specified in Clause 18(b) of the purchase order. As per clause 18(b) liquidated damage will be payable for delay in supply i.e. at the rate of 0.5% for each week or part there of upto 10 weeks and thereafter at the rate of 0.7% for each week and part thereof. During the year the appellant has decided to accrue the liquidated damages against the supp'y a -es: made to the customer as against the hitherto follow practice of accounting for SJCr expenditure as and when the same was deducted from the payments received aga.ns: the invoices for supplies made. It has been clarified in Note C7 of the Audited Accounts in the year under consideration due to this change charge to the Profit & Loss A/c on account of liquidated damages was higher by Rs. 1242.94 lakhs. This amount of Rs. 1242.94 lakhs pertains to liquidated damages levied for current year sale which was supplied late as stipulated in the terms of agreement. The appellant further submitted that liquidated damages of Rs.677.70 lakhs pertain to the amount recovered by customers from the payment received by the appellant during the year. The details of liquidated damages have been given above. In support of its contention, the appellant has filed copy of purchase order and other necessary documents like copy of cheques received against the supply of material.

The A.O, has made addition considering that provision is contingent in nature, hence not allowable. However, as per Schedule 16 to the audited accounts, the appellant has claimed Rs.19,20,44,000/- as expenses. The A.O. might have referred no C-7 of Schedule 20 to the audited accounts which states that 'from the current year, the company has to accrue the Liquidated Damages against supplies made to the customers as against the hitherto followed practice of accounting for such expenditure as and when the same are deducted from the payments received against the invoices for the supplies made. ’

It is standard practice of accounting to book all the expenses pertaining to a year, whether paid or accrued, while preparing financial statements for the year. The A.O. himself has stated in the assessment order, while making addition for prior period expenses, that ‘the Company is maintaining accounts on mercantile basis and under this system of accounting only expenses incurred during the year are admissible.’

By disallowing the liquidated damages, the A.O. himself has taken a contrary view to his own stand. This amount is allowable as expenditure incidental to business as unrealisable amount of sale and hence to be allowed as business expenditure. In this regard, reliance is placed on the judgment of Hon'ble Delhi ITAT in the case of Huber Suhner Electronics Pvt. Ltd. Vs. DCIT ITA No.4750/Del/2011 34 taxmann.com 149 and held as under:

> “Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of [Damages] - Assessment year 2007-08 - Whether where assessee-company was under obligation to deliver ordered goods to purchasers within period fixed for delivery in contract and

on failure to deliver goods within stipulated period was liable to pay liquidated damages to purchaser, payment of such liquidated damages was allowable as revenue expenditure - Held, yes [Paras 16 & 17] [In favour of assessee]"

Reliance is also placed on Bombay High Court judgment in the case of CIT Vs. R.D. Sharma & Co. 11 taxman 137 and held as under:

"Section 145 of the income-tax act, 1961—Method of accounting—Year in which liability/expenditure deductible—During assessment year 1967-68, notices served on assessee by military authorities for levying penalty for non-completion of contract in time— assessee following mercantile system of accounting, accepted liability and made a provision for it in its profit and loss account of assessment year 1967-68—Whether liability was deductible in assessment year 1967-68—Held, on facts, yes

Section 37(1) of the income-tax act, 1961—Business expenditure—Whether damages/penalty paid by assessee-contractor to government for non-completion of contract work in time is deductible—held, yes

Facts

The assessee, being military contractors, while computing the net profit for the assessment year 1967-68, took into account a certain amount being penalty leviable by the military authorities for non-completion of the work within the stipulated time. The ITO and, on appeal, the AAC held that this amount was not a deductible item of expenditure. On second appeal, the Tribunal having found (i) that the notices seeking to levy penalty were served on the assessee ; (ii) that the assessee-followed the mercantile system of accounting ; and (Hi) that the amount was shown as liability accrued on account of non¬completion of work in time, held that the assessee was entitled to deduct this liability from the profits and gains of the business.

On reference:

Held

1. Undoubtedly, the assessee had accepted the impugned liability and made a provision for it in its profit and loss account The Tribunal also seemed to have proceeded on the footing that the work was not completed in time, resulting in accrual of the impugned liability. Such a liability which had accrued was clearly a permissible deduction.

2. It is no doubt true that the amount of which deduction was sought, was described by the Tribunal as a penalty but in effect it was really compensation payable by the contractor to the Government and the nature thereof was wholly different from penalty which arises from a breach of a statutory provision. The Tribunal was, thus, justified in allowing the said amount as deduction."

Reliance is also placed on Madras High Court judgment in the case of F.L. Smidth Minerals Pvt, Ltd. Vs, DCIT 36 taxmann.com 72 (Mad.)

'Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of [Warranty provision] - Assessment year 2003-04 - Assessee-company was engaged in business of designing, engineering, supply and installation of plant and equipments used in mining and mineral processing industry - It had made provision for liquidated damages under two heads, namely, delay in delivery and other towards non-performance and warranty relating to defective parts which required repair and replacement - Assessing Officer denied said claim on ground that provision was unascertained liability - Whether since assessee made reliable estimate based on performance capacity and quality and materials relating to machinery, assessee's claim towards liquidated damages was to be allowed - Held, yes - Whether when provision for rectification expenses was based on information that some of equipments supplied by company required repair and replacement and technical team estimated such expenses for making provision in account, claim being based on materials and information of technical team, would certainly be allowable - Held, yes [Para 11] [In favour of assessee]"

The ratio of these judgments is squarely applicable to the appellant's case and the liquidated damages have been incurred by the appellant wholly and exclusively for the business purpose and same is allowable as an business expenditure on the basis of crystallization during the year. This ground of appeal is allowed."

52. The ld DR could not show us any reason that the liquidated damages are not incurred wholly and exclusively for the business purpose of business during the year. We also noted that the liquidated damages has been allowed to the assessee since Assessment Year 1998-99 till Assessment Year 2003-04 on the identical facts and circumstances. We also find that Whenever damages are to be paid by assessee for breach of contract, such damages were treated to be normal expenses of business, and where assessee had to pay damages to other party to fulfill contract entered into by him in ordinary course of his business, amount of damages to be paid was allowable deduction if it was in ordinary course of business and not opposed to public policy so was held in PRINCIPAL COMMISSIONER OF INCOME TAX vs. MAZDA LTD.(2017) 100 CCH 0019 Guj HC(2017) 250 TAXMAN 0510 (Gujarat).

53. In view of the above facts we do not find any infirmity in the order of the ld CIT(A) in deleting the above additions/ disallowances of Rs.

19,20,44,000/-. In view of this, we upheld the order of the ld CIT(A) and dismissed ground No. 3 of the appeal.

54. In view of the above facts we hold that the addition has been made in the hands of the assessee in a concluded assessment which were not based on any incriminating material found during the course of search and further on the merits of the additions/disallowances the learned CIT – A has correctly deleted the same.

55. Accordingly, appeal filed by the ld AO for Assessment Year 2005-06 is dismissed.

ITA No. 3956/Del/2016

Assessment Year 2006-07

56. ITA No. 3956/Del/2016 for Assessment Year 2006-07 is filed by the ld AO against the order of the ld CIT(A) dated 29.04.2016 raising following grounds of appeal:-

"1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of prior period expenses of Rs. 2,23,86,000/-(inadvertently mentioned as Rs. 1,48,63,000/- in the assessment order while computing the Income) without appreciating the fact that the above expenses were debited against the accounting guidelines mentioned in AS-5 of ICAI and they were not crystallized during the relevant assessment year.

2. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the disallowance of prior period expenses of Rs. 1,14,06,000/- out of total disallowance of Rs. 2,23,86,000/- (inadvertently mentioned as Rs . 1,48,63,000/- in the assessment order while computing the above amount was added back u/s 43 B in the return of income before the AO.

3. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

4. That the grounds of appeals are without prejudice to each other."

57. Brief facts of the case shows that the assessee filed its return of income declaring loss of Rs. 6,07,142/- on 28.11.2006 which was processed u/s 143(1) on 14.02.2008. Subsequently, the assessment was famed u/s 143(3) of the Act on 31.12.2008 at the return income of Rs. 4,10,08,858/-..

58. Search took place on HFCL Group of companies on 10.05.2007 and notice u/s 153C of the Act was issued to the assessee on 05.11.2009. Subsequently, assessment u/s 153C read with section 153A of the Act was passed by the ld AO on 18.12.2009, wherein, the total loss of the assessee was determined at Rs. 4,10,08,858/-. The ld AO made three disallowance as under:-

a. Addition on account of provision of none obsolete inventory of Rs. 43,67,000/-
b. Disallowances of prior period expenditure of Rs. 1,48,63,000/-
c. Addition on account liquidated damages of Rs. 2,23,86,000/-.

59. The assessee preferred an appeal before the ld CIT(A) who deleted all the three disallowances and therefore, the ld AO aggrieved with that order has preferred this appeal.

60. At the time of hearing the ld AR submitted that all the three additions were made by the ld AO without referring to any incriminating material found during the course of search therefore, he invoked the provisions of Rule 27 of ITAT Rules and stated that in absence of any incriminating material the addition could not have been made in a concluded assessment. Even on the merits of the case he relied on the order of the ld CIT(A).

61. The ld CIT DR supported the order of the ld AO and objected to the application of Rule 27 of by the ld AR.

62. We admit the prayer for invocation of Rule 27 of ITAT Rules by assessee.

63. We have carefully considered the rival contentions and perused the orders of the lower authorities. Apparently, for this year the return of income was filed on 28.11.2006, which was assessed u/s 143(3) of the Act on 31.12.2008. Subsequently, notice u/s 153C was issued on 05.11.2009. As on the date of search the assessment year a concluded

assessment which could have disturbed only on the basis of any incriminating material found during the course of search. We find that the ld AO has not referred any incriminating material found during the course of search for making any of the above three disallowance/ additions. No evince were produced before us to show that the additions/ disallowances contested in this appeal are on account of any incriminating material found during the course of search. Therefore, on this issue itself we uphold the order of the ld CIT(A) in deleting the above disallowances.

64. Even otherwise on the merits of the case the ground No. 1 deals with the prior period expenditure which has already been dealt by the ld CIT(A) by deleting it in earlier years. There is no change in the facts and circumstances of the case. The ld CIT(A) deleted the above disallowance only for the reason that the impugned expenditure crystallized during the year. In the earlier year in the case of the assessee we have upheld the order of the ld CIT(A) in deleting the above disallowances. For the similar reasons we also uphold the order of the ld CIT(A) in deleting the above disallowances for this year also. Accordingly, ground No. 1 and 2 of the appeal of the ld AO is dismissed. Though in the assessment order the ld AO has mentioned incorrect figures however, the ld CIT(A) while dealing ground No. 2 at para 7 of the appeal is dealt with correct figures. Therefore, the grievance of the ld AO also do not survive on this count.

65. Accordingly, we dismiss the appeal of the ld AO for the twin reasons that the additions/ disallowances were made without any incriminating found during the course of search in this concluded assessment and further on the merits of the case of the disallowances same are covered against revenue by the orders of the earlier years.

66. In the result, appeal No. 3956/Del/2016 filed by the ld AO for Assessment Year 2006-07 is dismissed.

ITA No. 3957/Del/2016

Assessment Year 2008-09

67. This appeal is filed by the ld AO against the order of the ld CIT(A)-1, New Delhi dated 29.04.2016.

68. The revenue has raised the following grounds of appeal in ITA No. 3957/Del/2016 for Assessment Year 2008-09:-

"1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 76,92,000/-, made by AO by holding that the provision for inventory was contingent in nature, without appreciating the fact that the assessee had not written off the inventory and had made only provision.

2. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in holding that since the above expenditure is allowed as per the Companies Act hence it is not contingent in nature as income is computed as per the income tax act and not as per Companies act for the purpose of Income Tax Assessment.

3. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the disallowance of Rs.2,24,78,000/-, made by AO by holding that the provision for liquidated damages was contingent in nature, without appreciating the fact that the above expenditure was not an ascertained liability and was contingent in nature.

4. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

5. That the grounds of appeals are without prejudice to each other."

69. Brief facts of the case shows that the assessee filed its return of income on 26.09.2008 declaring loss of Rs. 26,90,21,929/-. The above return of income filed by the assessee was not taken up for scrutiny. Consequent to search on HFCL Group of companies on 10.05.2007 the assessment came to be framed pursuant to notice u/s 153C issued on 05.11.2009 along with other earlier assessment orders. Consequently, the assessment order was passed u/s 153C read with section 153A of the Act on 18.12.2009 at a loss f Rs. 23,88,51,929/-. The ld AO made disallowances of Rs. 76,92,000/- on account of provision for obsolete inventory and further a sum of Rs. 2,24,78,000/- on account of liquidated damages.

70. Aggrieved with the order the ld AO preferred an appeal before the ld CIT(A) who deleted both disallowances following his own order for earlier years in case of the assessee. Therefore, the ld AO is aggrieved with that order and has preferred this appeal.

71. The ld AR at the commencement of hearing submitted that invoking of provision of Rule 27 of ITAT Rules additions deserves to be deleted even otherwise as they have not been made on the basis of any incriminating material found during the course of search. He submitted that the return of income was filed by the assessee on 26.09.2008 and last date for issue of notice u/s 143(3) of the Act was expired on 30.09.2009 whereas notice u/s 153C was issued on 05.11.2009 and therefore as on the date of search i.e. date of issue of notice u/s 153C on 05.11.2009 this was a completed assessment which could have been disturbed only on the basis of any incriminating material found during the course of search. He submitted that the ld AO did not refer to any incriminating material and therefore, even otherwise the ld CIT(A) has deleted the addition correctly. On the merits of disallowances he relied upon the order of the ld CIT(A).

72. The ld DR supported the order of the ld AO and objected to the invocation of Rule 27 of ITAT Rules by the ld AO.

73. We have carefully considered the rival contentions and perused the orders of the lower authorities. Admittedly in this case as in earlier years the last date of issue of notice u/s 143(3) was 30.09.2009 and the notice u/s 153C as agreed by the party was issued on 05.11.2009. Therefore, as on the date of issue of notice u/s 153C this is a concluded assessment. This assessment could have been disturbed only on the basis of incriminating material found during the course of search. We do not find any reference to incriminating material in the assessment order or no such incriminating materials were shown to us. Thereof, the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Delhi High Court as well as Hon'ble Supreme Court in case of Singharh Technical Educational Society 397 ITR 344. Hence on this issue also the addition have been correctly deleted by the ld CIT(A).

74. Now coming to the merits of the issue we find that as per ground No. 1 and 2 of the appeal the ld CIT(A) has challenged the deletion of the addition of Rs. 76,92,000/- on account of provision for obsolete inventory. We find that this issue is identical to the issue covers in the appeal of the assessee in earlier years. We have confirmed the order of

the ld CIT(A) deleting the above disallowances in those years. There is no change in the facts and circumstances of the case. Therefore, for the similar reasons we confirm the order of the ld CIT(A) in deleting the disallowance of Rs. 76,92,000/- on account of addition of provision for obsolete inventory. Thus, ground No. 1 and 2 of the appeal are dismissed.

75. Ground no. 3 is with respect to the disallowance of Rs. 2,24,78,000/- on account of liquidated damages deleted by the ld CIT(A). This issue is also identical to the issue in appeal of the assessee for earlier years where identical facts and circumstances of the case the disallowance was made by the ld AO and deleted by the ld CIT(A). There is no change in the facts and circumstances of the case with respect to the above issue. Therefore, for the similar reasons we also confirm the order of the ld CIT(A) in deleting the disallowances of liquidated damages of Rs. 2,24,78,000/-. Accordingly, ground No. 3 of the appeal is dismissed.

76. In view of the above facts, we confirm the order of the ld CIT(A) in deleting both the above disallowances for the reason that there is no incriminating material found during the course of search in the concluded assessment as well as on the merits of the addition. Accordingly, appeal of the ld AO for Assessment Year 2008-09 is dismissed.

ITA No. 3958/Del/2016

Assessment Year 2009-10

77. This appeal is filed by the ld AO for Assessment Year 2009-10 against the order of the ld CIT(A)-1, New Delhi dated 29.04.2016 where the ld AO is aggrieved by the order of the ld CIT(A) in deleting the disallowances of Rs. 3,76,61,278/- on account of liquidated damages.

78. The revenue has raised the following grounds of appeal in ITA No. 3958/Del/2016 for Assessment Year 2009-10:-

"1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on Acts in deleting the disallowance of Rs. 3,76,61.287/-. made by AO by holding that the provision for liquidated damages was contingent in nature, without appreciating the fact that the above expenditure as not ascertained liability and was contingent in nature.

2. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

3. That the grounds of appeals are without prejudice to each other.

79. Briefly stated the facts of the case shows that the assessee filed its return of income u/s 139(1) on 30.09.2009 declaring loss of Rs. 67,12,07,667/-. The ld AO passed the assessment order u/s 143(3) of the Act on 12.12.2011 assessing the loss of Rs. 63,35,46,380/- by making a disallowances of Rs. 3,76,61,287/- on account of liquidated damages.

80. The assessee preferred an appeal before the ld CIT(A) who deleted the above disallowances and therefore, the ld AO in appeal before us.

81. The ld CIT DR vehemently supported the order of the ld AO and stated that the ld AO has disallowed the same for the reason that from the perusal of the contract between BSNL and the assessee is very much aware of the fact that if there is case of delay in supply of the goods the assessee will have to pay the liquidated damages to BSNL. Therefore, despite knowing this fact the assessee committed breach of its contractual obligation and therefore such liquidated damages are penal in nature hence, same were disallowed.

82. The ld AR supported the order of the ld CIT(A).

83. We have carefully considered the rival contentions and perused the orders of the lower authorities. The facts show that the assessee has debited a loss of Rs. 3,76,61,287/- on account of payment of liquidated damages. The assessee submitted the details of the purchase order as well as reference to the various clauses to show that wherever the supplied are delayed the assessee is required to pay liquidated damages to the buyer. The assessee submitted that it is a contractual obligation and therefore, business expenditure incurred wholly and exclusively for the purpose of the business. This is allowable u/s 37(1) or section 28 of the Act. The ld AO held to be a penal in nature. On appeal before the ld

CIT(A) the ld above disallowance was deleted vide para No. 6 of the order from page No. 2 to 10 as under:-

> "6. Ground no. 1: Vide this ground, the appellant has challenged disallowance of Rs.3,76,61,287/- by the A.O., being Liquidated Damages stating that the appellant has claimed it as provision which is contingent in nature and is not admissible under the provisions of Income-tax Act, 1961.
>
> Observation of the Assessing Officer;
>
> > "3. On perusal of Profit and Loss account, it is observed that the assessee company has claimed loss of Rs.3,76,61,287/- on account of payments towards liquidated damages. As liquidated damages are not legitimate expenditure so deduction is apparently not admissible. In this regard assessee was asked vide show cause dated 23.11.2011 to show cause as to why the loss claimed on this account be not disallowed. In reply to this, the assessee has furnished the following:
>
> "Details of liquidated damages paid by the company amounts to Rs.3,76,61,287/-

S . No.	Description	P.O. Date	PO Value Rs. Lakhs	LD Amount Rs./Lakhs	Remarks
1	STM-1 ADM & CPE Equipments	15 April, 2008	1071.73	121.46	Refer Caluse 6.1 of PO (copy enclosed-Annex.-I)
2	IFWT Equipments	27 Dec.2007	5217.35	136.81	Refer Clause 16.1 & 16.2 ofAnnex-C9copy enclosed - Annex. II)
3	Carded Equipment	21 Feb. 2003	7340.56	71.06	Refer Clause 16.1 & 16.2 ofLD of Annex-C of PO (copy enclosed - Annex-Ill)

4	Digital Loop Carrier	16 Aug. 2002	2466.65	9.12	Refer Clause 16.1 & 16.2 ofAnnex-B of PO (copy enclosed-Annex. IV)
5	Other equipments	46 P.O. as per list encl.	~	39.16	List - Annex- V
				376.61	

From the above purchase order, it may be noted that the clauses referred to in the remarks column, refers to the Liquidated damages provided in the purchase order i.e. "Should the supplier fails to deliver the store or any consignment thereof with the period of prescribed for delivery, the purchaser shall be entitled to recover 0.5% of the value of the delayed supply for each week of delay or part thereof for the period up to 10 (TEN) weeks and thereafter at the rate of 0.7% of the value of delayed supplies for each week of delay or part thereof for another. Ten are incidental to carry on business and allowable as business expenditure."

3.1 The plea of the assessee has been examined. From the perusal of Contracts between the assessee company and the BSNL, it is evident that the assessee was very much aware of the fact that in case of delayed supply, it would have to pay the liquidated damages to BSNL. Despite fully knowing this fact, the assessee commited breach of its contractual obligations. In view of the above facts and considering that liquidated damages are penal in nature being paid by the assessee for breach of its contractual obligations, the same are disallowed and added to the income of the assessee. Accordingly, addition of Rs.3,76,61,287/- is hereby made."

Submission of the appellant in support of his contention are as under:

> 'The Learned Assessing Officer has erred in disallowing the sum of Rs.3,76,61,287/- towards the liquidated damages paid /recovered by Bharat Sanchar Nigam Ltd. (BSNL) for delay in sully of goods to them as per Contract.
>
> It is contended that the Liquidated Damages levied and recovered by BSNL are not in the nature of penalty imposed by any Statutory Authority for violation of the provisions of any statutory law, but were incurred as per the terms of the Contract of Supply with BSNL and hence in the nature of business expenditure.

The Liquidated damages have been paid by the assessee on account of delayed supply of goods to the customer and therefore, are business expenditure. These have been deducted from the sales bills by the customers while making payment and hence these are ascertained and incurred liabilities, allowable as business expenditure in computation of the income.

The details of LD accounted for in the books of Accounts for AY 2009-10 are as follows:

SNo	OC NO	DOC DATE	DESCRIPTION	(Rs/ lakhs)
(1)	70571	31-Mar-09	STM-1 ADM & CPE Equipments	12,146,278.00
(2)	76573	31-Mar-09	IFWT Equipments	13,681,013.00
(3)	76573	31-Mar-09	CORDECT Equipments	71,06,018.00
(4)	76573	31-Mar-09	Digital Loop Carrier Equipments	9,12,025.00
(5)	76573	31-Mar-09	Other Products	38,15,953.00
				3,76,61,287.00

The Liquidated damages debited to the Profit and Loss Account represents damages levied by BSNL the customer, for delay in delivery of the goods beyond the delivery date specified in the PO. As per BSNL terms of PO, it is stated that if deliveries to be made after the expiry of the contracted delivery period, the purchaser shall recover LD at 0.5% of the value of the delayed supply for every week of delay or part thereof for a period upto 10 weeks and thereafter at the rate of 0.7% for each week of delay or part thereof for another 10 weeks.

For S.No: (1) above, the copy of the BSNL Purchase Order dated 15/04/2008 for STM 1 Equipments is enclosed which specifies LD deduction vide Clause 6.1 (Page 2)of the PO (Annexure 1).

For S.No: (2) above, For S.No: (1), the copy of the BSNL Purchase Order dated 27/12/2007 for IFWT Equipments is enclosed which specifies LD deduction vide Clause 16.1 & 16.2 of Annex- C (Page 13) of PO (Annexure 2).

For S. No: (3) above, the copy of the BSNL Purchase Order dated 21/02/2003 for Cordect Equipments is enclosed which specifies LD deduction vide Clause 16.1 & 16.2 of Section-Ill (Page 18)ofPO (Annexure 3).

For S. No: (4) above, the copy of the BSNL Purchase Order dated 16/08/2002 for Digital Loop Carrier Equipment is enclosed which specifies LD deduction vide Clause 16.1 & 16.2 of Annex -B (Page 21)ofthe PO (Annexure 4).

For S. No: (5) above, the deduction consists of many BSNL Purchase Orders. In these purchase orders also, LD Deduction clause apply for delay in supply.

Accordingly, for the delayed supplies during the year, BSNL had levied and recovered liquidated damages amounting to Rs.376.61 Lakhs as detailed above.

This amount recovered by BSNL for delay in supply is allowable as the expenses incurred is wholly for the purpose of business.

Further, it is submitted that the aforesaid expenses is not for violation of any law. If delivery is not made in time as per the Purchase Order, the buyer has the right to deduct the sum as per the terms of the PO to compensate the loss which may occur to him. This is a generally accepted practice in all types of industries and hence LD is in the nature of normal business expenditure.

Moreover, it is also pertinent to mention that the amount paid on account of delay in delivery cannot be said as penalty, because penalty is levied for violation of law and not for violation of contractual terms, which provides for compensation in case of breach. The Liquidated Damages have been deducted by BSNL from the payments made by them and is thus less realization of Sales.

Further, no addition can be made for the amount which was never realized by the Appellant. The addition amounts to taxing a notional income which is contrary to the provisions of Income Tax Act, unless specifically provided for.

BSNL does not have the practice of issuing written communication with regard to deduction of LD etc. with any customer. When the payment is collected from the paying authority, details of deductions are noted by the Assessee and accordingly, accounted for in the Books of Accounts.

In view of the above, it is submitted that the liquidated damages levied and recovered by BSNL for the delay in delivery of goods as per the contractual terms are allowable as business expenditure.

The Appellant may be permitted to file additional grounds as may be required.

For these grounds and for such other grounds, that may be adduced at the time of hearing, it is prayed that the order of the Assessing Officer, be modified accordingly."

Decision

I have gone through the submissions of the appellant and considered the facts and evidences on record. It is seen that appellant has debited liquidated damages to the tune of Rs.3,76,61,287/-. Details of the liquidated damages accounted for in the books of accounts are as follows:

SNo	DOC NO	DOC DATE	DESCRIPTION	(Rs./Lakhs)
(1)	70571	31-Mar-09	STM-1 ADM & CPE Equipments	12,146,278.00
(2)	76573	31-Mar-09	IFWT Equipments	13,681,013.00
(3)	76573	31-Mar-09	CORDECT Equipments	71,06,018.00
(4)	76573	31-Mar-09	Digital Loop Carrier Equipments	9,12,025.00
(5)	76573	31-Mar-09	Other Products	38,15,953.00
				3,76,61,287.00

The Liquidated damages debited to the Profit and Loss Account represents damages levied by BSNL, the customer, for delay in delivery of the goods beyond the delivery date specified in the Purchase Order. As per BSNL terms of Purchase Order, it is stated that if deliveries to be made after the expiry of the contracted delivery period, the purchaser shall recover Liquidated Damages at 0.5% of the value of the delayed supply for every week of delay or part thereof for a period upto 10 weeks and thereafter at the rate of 0.7% for each week of delay or part thereof for another 10 weeks.

The Liquidated damages mentioned at SI. No.1 in the table represents the liquidated damages paid towards the purchase order of BSNL dated 15.04.2008 for STM 1 Equipments. The copy of the purchase order has been filed by the appellant as Annexure 1 to the submission. As per clause 16.1 and 16.2 Page 3 of the Purchase order the appellant has to pay liquidated damages @ 0.5% for delay in supply upto 10 weeks and thereafter, @ .7% for another 10 weeks. Accordingly, the liquidated damages for this purchase order of Rs.1,21,46,278/- has been paid / payable by the appellant.

For S.No (2) in the table above, the appellant has paid liquidated damages of Rs, 1,36,81,013/-. This liquidated damage has been paid for delay in supply of IFWT equipments In support of its contention, the appellant has filed copy of the purchase order of BSNL dated 27.12.2007 which is annexed as Annexure 2 of the submission filed by the appellant. As per this order, the appellant was liable to pay liquidated damages for delay in supply of the material. As per Clause 16.1 & 16.2 of Section III of the purchase order dated 27.12.2007. As per these clause, the appellant was liable to pay liquidated damages @ 0.5% for delay in supply upto 10 weeks and thereafter, @ .7% for another 10 weeks. Accordingly, the liquidated damages for this purchase order of Rs. 1,36,81,013/- has been paid / payable by the appellant.

For supply of items mentioned at S.No (3) Cordect Equipments appellant has paid or had made provision for liquidated damages of Rs.71,06,018/- for delay in supply of the items. These liquidated damages have been paid or payable as per clause 16.1 and 16.2 of Section III of the purchase order dated 21.02.2003. As per these clause, the appellant was liable to pay liquidated damages @ 0.5% for delay in supply upto 10 weeks and thereafter, @ .7% for another 10 weeks. Accordingly, the liquidated damages for this purchase order of Rs.71,06,018/- has been paid / payable by the appellant.

For supply of items mentioned at S.No (4) Digital Loop Carrier Equipment. The appellant has paid or made provision for liquidated damages of Rs.9,12,025/- for delay in supply of the above mentioned items. These liquidated damages have been paid or payable as per clause 16.1 and 16.2 of Annexure B of the purchase order dated 16.08.2002. As per these clause, the appellant was liable to pay liquidated damages @ 0.5% for delay in supply upto 10 weeks and thereafter, @ .7% for another 10 weeks. Accordingly, the liquidated damages for this purchase order of Rs.9,12,025/- has been paid / payable by the appellant.

For supply of items mentioned at S.No (5) of the table i.e. other products the appellant has to pay liquidated damages of Rs.38,15,953/- for delay in supply of other products. For these products also the liquidated damages were paid as per contractual agreement.

As per the above contractual agreement for the delayed supplies during the year, BSNL had levied and recovered liquidated damages amounting to Rs.376.61 Lakhs as detailed above. This amount recovered by BSNL for delay in supply is allowable as the expenses incurred is wholly for the purpose of business.

AR further submitted that the aforesaid expenses are not for violation of any law. If delivery is not made in time as per the Purchase Order, the buyer has the right to deduct the sum as per the terms of the PO to compensate the loss which may occur to the purchaser. This is a generally accepted practice in all types of industries and hence Liquidated damages are in the nature of normal business expenditure.

The liquidated damages debited to Profit & Loss A/c represents the damages recovered by BSNL, the customer, for delay in delivery of goods beyond the delivery date specified in the purchase order,

The rate of liquidated damage is specified in the purchase order. As per the purchase order, liquidated damage will be payable for delay in supply i.e. at the rate of 0.5% for each week or part there of upto 10 weeks and thereafter at the rate of 0. 7% for each week and part thereof. Accordingly, for the delayed supplies during the year BSNL levied and recovered the damages which is an allowable expenditure. The AR further submitted that aforesaid expenses are not for any violation of lav, f delivery is not made in time as per order the purchaser has a right to decuc: the sum, as per the terms of the order to compensate the loss which may occur to re buyer. This is a general accepted practice in all types of industries and hence in the nature of normal business expenditure. It is further pertinent to mention here that amount paid on account of delay in delivery cannot be said a penalty, because penalty is levied for violation of law and not for violation of a contractual term which provides for compensation in case of breach. These liquidated damages have been deducted by the buyer from payments made to the appellant. Thus, appellant has realized | less sale, amounts from the sales affected. It is also submitted by the appellant that BSNL simply deduct the amount from sale proceeds but does not communicate for such deductions in writing. When the payment is collected from the payee authority, details

of such deductions are noted down by the appellant and accordingly, accounted for in the books of accounts.

The A.O. has made addition considering that provision is contingent in nature, hence not allowable. However, as per Schedule 16 to the audited accounts, the appellant has claimed Rs.3,76,61,287/- as expenses. This amount is allowable as expenditure incidental to business as unrealisable amount of sale and hence to be allowed as business expenditure/ In this regard, reliance is placed on the judgment of Hon'ble Delhi ITAT in the case of Huber Suhner Electronics Pvt. Ltd. Vs. DCIT ITA No.4750/Del/2Q11 34 taxmann.com 149 and held as under:

> "Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of [Damages] - Assessment year 2007-08 - Whether where assessee-company was under obligation to deliver ordered goods to purchasers within period fixed for delivery in contract and on failure to deliver goods within stipulated period was liable to pay liquidated damages to purchaser, payment of such liquidated damages was allowable as revenue expenditure - Held, yes [Paras 16 & 17] [In favour of assessee]"

Reliance is also placed on Bombay High Court judgment in the case of CIT Vs. R.D. Sharma & Co. 11 taxman 137 and held as under:

> 'Section 145 of the income-tax act, 1961—Method of accounting—Year in which liability/expenditure deductible—During assessment year 1967-68, notices served on assessee by military authorities for levying penalty for non-completion of contract in time—assessee following mercantile system of accounting, accepted liability and made a provision for it in its profit and loss account of assessment year 1967-68— Whether liability was deductible in assessment year 1967-68—Held, on facts, yes
>
> Section 37(1) of the income-tax act, 1961—Business expenditure—Whether damages/penalty paid by assessee-contractor to government for non-completion of contract work in time is deductible—held, yes

Facts

> The assessee, being military contractors, while computing the net profit for the assessment year 1967-68, took into account a certain amount being penalty leviable by the military authorities for non-completion of the work within the stipulated time. The ITO and, on appeal, the AAC held that this amount was not a deductible item of expenditure. On second appeal, the Tribunal having found (i) that the notices seeking to levy penalty were served on the assessee ; (ii) that the assessee-followed the mercantile system of accounting ; and (Hi) that the amount was shown as liability accrued on account of non-completion of work in time, held that the assessee was entitled to deduct this liability from the profits and gains of the business.

On reference.

Held

1. Undoubtedly, the assessee had accepted the impugned liability and made a provision for it in its profit and loss account. The Tribunal also seemed to have proceeded on the footing that the work was not completed in time, resulting in accrual of the impugned liability. Such a liability which had accrued was clearly a permissible deduction.

2. It is no doubt true that the amount of which deduction was sought, was described by the Tribunal as a penalty but in effect it was really compensation payable by the contractor to the Government and the nature thereof was wholly different from penalty which arises from a breach of a statutory provision. The Tribunal was, thus, justified in allowing the said amount as deduction."

Reliance is also placed on Madras High Court judgment in the case of F.L. Smidth Minerals Pvt. Ltd. Vs. DCIT 36 taxmann.com 72 (Mad.)

> "Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of [Warranty provision] - Assessment year 2003-04 - Assessee-company was engaged in business of designing, engineering, supply and installation of plant and equipments used in mining and mineral processing industry - It had made provision for liquidated damages under two heads, namely, delay in delivery and other towards non-performance and warranty relating to defective parts which required repair and replacement - Assessing Officer denied said claim on ground that provision was unascertained liability – whether since assessee made reliable estimate based on performance capacity and quality and materials relating to machinery, assessee's claim towards liquidated damages was to be allowed - Held, yes - Whether when provision for rectification expenses was based on information that some of equipments supplied by company required repair and replacement and technical team estimated such expenses for making provision in account, claim being based on materials and information of technical team, would certainly be allowable - Held, yes [Para 11] [In favour of assessee]"

The ratio of these judgments is squarely applicable to the appellant's case and the liquidated damages have been incurred by the appellant wholly and exclusively for the business purpose and same is allowable as business expenditure during the year. This ground of appeal is allowed."

84. we find that the liquidated damages are part of the purchase contract entered into by the assessee with BSNL. There are contract obligation and not penal in nature. The ld CIT(A) has correctly deleted it to be a business expenditure. This issue also arose in the appeal of the assessee for earlier years wherein, we have upheld the order of the ld CIT(A). No infirmity was pointed out in the order of the ld CIT(A). It was also not

shown to us that how the contractual obligation could be penal in nature. In the result, we confirm the order of the ld CIT(A) in deleting the above addition/ disallowances.

85. Accordingly, appeal of the ld AO is dismissed.

ITA No. 3959/Del/2016

Assessment Year 2010-11

86. This appeal is filed by the ld AO for Assessment Year 2010-11 against the order of the ld CIT(A)-1, New Delhi dated 30.04.2016 raising solitary ground of appeal:-

> "1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 1,42,88,000/-, made by AO.
>
> 2 That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.
>
> 3. That the grounds of appeals are without prejudice to each other."

87. The brief fact of the case shows that the assessee filed its return of income on 30.09.2010 declaring loss of Rs. 14,24,61,649/-. The case of the assessee was picked up for scrutiny and the assessment u/s 143(3) of the Act was passed on 20.03.2013 making the disallowance of Rs. 1,42,88,000/- on account of liquidated damages holding to be penal in nature. The assessee preferred appeal before the ld CIT(A), who deleted the disallowances. The ld AO is aggrieved with the same and has preferred this appeal on this solitary ground.

88. Both the parties confirmed that the identical facts are also in the appeal of the assessee for Assessment Year 2009-10 and their arguments for this year are also same.

89. We have carefully considered the rival contentions and find that the issue is identical to the appeal of the ld AO for Assessment Year 2009-10. In that year we have upheld the order of the ld CIT(A) and dismissed the appeal of the ld AO.

90. Accordingly, in ITA No. 3959/Del/2016 filed by the ld AO is dismissed.

ITA No. 716/Del/2018

Assessment Year 2000-01:-

91. This appeal is filed by the ld AO for Assessment Year 2000-01 raising solitary ground of appeal against the deletion of the disallowance of Rs. 1,87,70,053/- on account of provisions made against loss of stock due to damage/ obsolete conditions.

92. The revenue has raised the following grounds of appeal in ITA No. 716/Del/2018 for Assessment Year 2000-01:-

> "1. The ld CIT(A) has erred in law as well as in facts in deleting the disallowances of Rs. 1,87,70,053/- made by the AO on account of provisions made against loss of stock due to damage/ obsolete conditions.
>
> 2. That the grounds of appeal are without prejudice to each other."

93. Brief facts of the case shows that the assessee is a manufacture of large switching exchanges, data modem and other equipments used in the communication sector. It filed its return of income on 30.11.2000 declaring an income of Rs. 20,42,94,650/-. The return was processed u/s 143(1) of the Act on 18.03.2002. Subsequently, on perusal of the records it was found that the assessee has debited a sum of Rs. 187.69 lakhs. The assessee submitted a detailed reply and stated that it is the provision of diminution in value of the inventory as the components are not usable since the manufacture of telephone exchange and electronic teleprinters are stopped in absence of any order from DOT. These are none useful closing stock for liable without any usage for more than 10 years and they are obsolete now. It was further stated that the inventory is required to be followed at the cost of market value whichever less hence, these stocks are written off. The assessee also submitted that it is regularly making the above provision and same have been accepted by the ld AO. The ld AO rejected the contentions o the assessee stating that the provision made for ascertain liability. Accordingly, the assessment order was passed on 10.12.2007 determined total income of the assessee at Rs. 27,59,77,469/-. The addition of Rs. 187,76,053/- was made on account of provision for none moving inventory.

94. The assessee preferred appeal before the ld CIT(A) who passed an order on 26.10.2017 following the order of the ld CIT(A) for Assessment Year 2003-04 to 2006-07 deleting disallowance. The ld AO is aggrieved with the same.

95. Both the parties confirmed before us that the facts and circumstances of the care are identical to the case of the assessee for Assessment Year 2003-04 to 2006-07. Their arguments are also similar.

96. We have carefully considered the rival contentions and find that identical issue has been dealt with us in appeal of the assessee for Assessment Year 2003-04 to 2006-07 wherein, we upheld the order of the ld CIT(A) deleting the above addition. Therefore, for the similar reasons we dismiss the ground No. 1 of the ld AO.

97. Accordingly, appeal of the ld AO is dismissed.

98. Accordingly all the appeals filed by the ld AO are dismissed.

Order pronounced in the open court on 14/10/2021.

-Sd/-	-Sd/-
(SUCHITRA KAMBLE)	(PRASHANT MAHARISHI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 14/10/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi