

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

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.2782/Mum./2015**  
**(Assessment Year : 2010-11)**

Asstt. Commissioner of Income Tax  
Circle-14(2)(1), Mumbai ..... Applicant

v/s

Maharashtra State Electricity  
Transmission Company Ltd.  
Plot no.C-19, E-Block, 6<sup>th</sup> Floor  
Prakashganga Anant Kanekar Marg ..... Respondent  
Bandra Kurla Complex, Bandra (East)  
Mumbai 400 051 PAN – AAECM29336N

**ITA no.2942/Mum./2015**  
**(Assessment Year : 2010-11)**

M/s. Maharashtra State Electricity  
Transmission Company Ltd.  
Plot no.C-19, E-Block, 6<sup>th</sup> Floor ..... Applicant  
Prakashganga Anant Kanekar Marg  
Bandra Kurla Complex, Bandra (East)  
Mumbai 400 051 PAN – AAECM29336N

v/s

Addl. Commissioner of Income Tax  
CRange-10(1), Mumbai ..... Respondent

Assessee by : Shri Ketan Ved, C.A.  
Shri Ninad Patade, C.A.  
Revenue by : Shri C.T. Mathews, Sr. AR

Date of Hearing – 07/04/2022

Date of Order – 14/06/2022

## **ORDER**

### **PER SANDEEP SINGH KARHAIL, J.M.**

The present cross appeals have been filed by either parties challenging the impugned order dated 03/02/2015, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-22, Mumbai ("*learned CIT(A)*"), for the assessment year 2010-11.

#### **ITA no.2782/Mum./2015** **Revenue's Appeal – A.Y. 2010-11**

2. In its appeal, the Revenue has raised the following grounds:-

*"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred deleting the addition of Rs.8.80 lakhs of legal and professional charges without appreciating the fact that the allowance must be granted in the year in which the liability is incurred, irrespective of the question whether the disbursement has been made or not.*

*2. On the facts and circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs. 1530.50 lakhs on account of overstatement of interest and finance charges.*

*3. On the facts and circumstances of the case the CIT(A) has erred in deleting the disallowance of prior period expenses of Rs. 28,71,38,221/-*

*4. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of RS. 12,86,00,000/- on account of the employee cost by holding that it was notional and not realized.*

*5. On the facts and circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Rs.5,54,08,761/- being provision for interest shortfall on provident fund liability without appreciating the fact that no evidence or details were furnished to establish that liability was ascertained.*

*6. On the facts and circumstances of the case and in law, the CIT(A) erred in merely directing the AO to examine the facts with regard to the addition of Rs.40 Crores being the advances paid by the assessee for lease finance*

*project to M/s Infrastructure Leasing and Financial Services, without any clear finding after going into the merits of the case.*

*6.1 On the facts and circumstances of the case and in law, the CIT(A) erred in merely deleting the addition made by the AO of Rs. 40 Crores with regard to the advances paid by the assessee to M/s Infrastructure Leasing and Financial Services, by holding that the advances paid by the assessee to M/s. Infrastructure Leasing and Financial Services, by holding that the advances paid to M/s. ILFS are capital in nature, without assigning any reason for the finding.”*

3. The assessee is a subsidiary of Maharashtra State Electricity Holding Co. Ltd., and is engaged in transmission and distribution of electricity in the State of Maharashtra. For the year under consideration, the assessee filed its return of income on 29/09/2010, declaring total income of Rs.148,99,92,376.

4. The issue arising in ground no.1, raised by the Revenue is pertaining to deletion of addition of Rs.8.80 lakh in respect of legal and professional charges.

5. The brief facts of the case pertaining to the issue, as emanating from the record are: The assessee is one of the successor companies to the erstwhile Maharashtra State Electricity Board ('MSEB') and was formed in the previous year relevant to assessment year 2006-07 on the demerger / unbundling of the said MSEB. On the demerger / unbundling, the assets of MSEB to the extent it pertained and were specifically allocable to the transmission undertaking were transferred to the assessee. Similarly, liabilities of MSEB to the extent it pertained to/were directly relatable to the transmission undertaking were transferred to the

assessee. Accordingly, the sum of Rs.8.80 lakh being legal and professional fees, though pertaining to the erstwhile MSEB was debited to the Profit & Loss Account of the assessee on the basis of the apportioned brought forward losses and unabsorbed depreciation. The professional fees invoices dated 31/03/2010, were raised by the assessee's Tax Consultant i.e., M/s. P.C. Hansotia & Co., for various professional services rendered by it in representing the erstwhile MSEB before various appellate authorities for the assessment years 1999-2000, 2000-01 and from assessment years 2002-03 to 2006-07. The Assessing Officer, vide order dated 14/03/2013, passed under section 143(3) of the Act, inter-alia, on the basis of Comptroller & Auditor General ('C&AG') report under section 619(4) of the Companies Act, 1961 made the addition of the aforesaid legal and professional charges by treating the same to be prior period expenses pertaining to the period from the assessment years 1999-2000 to 2006-07.

6. In appeal before the learned CIT(A), the assessee submitted that the invoices were raised by the Tax Consultant only after the various orders were passed by the Tax Department during the year ended 31/03/2010, and thus, the expenditure was crystallized during the year under consideration. The learned CIT(A), vide impugned order, allowed the appeal filed by the assessee on this issue. Being aggrieved, the Revenue is in appeal before us.

7. During the course of hearing, Shri C.T. Mathews, the learned Departmental Representative ("*learned D.R.*"), by vehemently relying upon the order passed by the Assessing Officer submitted that the addition was made on the basis of views expressed in C&AG report and the impugned expenses pertained to the period prior to the relevant assessment year and thus is not allowable in the year under consideration.

8. On the other hand, Shri Ketan Ved, learned Authorised Representative ("*learned A.R.*") appearing for the assessee relied upon the order passed by the learned CIT(A) on this issue.

9. We have considered the rival submissions and perused the material available on record. The relevant assessment year is the fifth year of existence of the assessee company pursuant to demerger of MSEB. It is not in dispute that pursuant to demerger, assets and liabilities of MSEB to the extent it pertained to and were specifically allocable to the transmission undertaking were transferred to the assessee. At this point, reference to the provisions of clause 2(19AA) of the Act is relevant which, inter-alia, provide that upon demerger all the property and liabilities relating to the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property and liability of the resultant company by virtue of the demerger. Thus, as a

result, the professional fees invoices were raised on the assessee for the various professional and legal services provided by the Tax Consultant to the erstwhile MSEB for the assessment years 1999–2000, 2000–01 and from assessment years 2002–03 to 2006–07. As is evident from the record, the said invoices were raised by the Tax Consultant on 31/03/2010. As per the assessee, the said invoices were raised after various orders were passed by the Income Tax Department in the proceedings for the aforesaid assessment years and thus the expenditure has only crystallized during the year under consideration, which is an allowable expenditure. As noted above, the Assessing Officer has disallowed the claim by treating such expenses as prior period expenses i.e., not pertaining to the year under consideration. It cannot be denied that it is a general practice among the Consultants to raise their invoices upon conclusion of the matters before the concerned authorities after the orders are passed by the said authorities. It is highly unlikely in such a case that the orders are passed by the concerned authority within the very same assessment year to which the matter pertains. Even if we consider the assessment year under consideration, as an example, the assessment order was passed on 14/03/2013, and the impugned order was passed on 03/02/2015, while the assessment year under consideration is 2010–11. In such a scenario, if the Tax Consultant following its general practice raises the invoice upon conclusion of the matter after passing of the order by the concerned authority, we are of

the considered view that such expenditure cannot be treated as prior period expenses. Particularly, it is only when the invoices for legal and professional services are raised by the Consultant, the liability arises / crystallizes in the hands of the assessee and it is only in that year such expenditure will be allowable to the assessee. In view of the above, we find no infirmity in the order passed by the learned CIT(A) on this issue. Accordingly, ground no.1, raised in Revenue's appeal is dismissed.

10. The issue arising in ground no.2, raised by the Revenue is pertaining to deletion of addition of Rs.1530.50 lakhs on account of overstatement of interest and finance charges.

11. The brief facts of the case pertaining to the issue, as emanating from the record are: Pursuant to the aforesaid demerger, some of the liabilities of the erstwhile MSEB which were transferred / allocated to the assessee were not discharged by the assessee and were accordingly being reflected in its accounts as outstanding. One of these liabilities of Rs.1530.50 lakhs, which comprised of the following:-

- a) *Interest accrued but not due on Indian currency loss from Infrastructure Leasing and Financial Services Ltd. of Rs.42 lakh; and*
- b) *Interest accrued but not due on private bonds of Rs.14.88 lakh.*

The Assessing Officer vide order passed under section 143(3) of the Act made the addition on the basis of views expressed in C&AG report.

12. The learned CIT(A) vide impugned order deleted the addition made by the Assessing Officer by following its earlier decision rendered in assessee's own case for the assessment year 2008-09. Being aggrieved, the Revenue is in appeal before us.

13. The learned D.R. during the course of hearing by vehemently relying upon the assessment order submitted that the assessee follows mercantile system of accounting and in view of the C&AG report, there is a clear overstatement of interest and finance charges and understatement of profits by the assessee.

14. On the other hand, the learned A.R. submitted that this issue has been decided in favour of the assessee in the preceding assessment year by Co-ordinate Bench of the Tribunal.

15. We have considered the rival submissions and perused the material available on record. We find that on similar issue, the Co-ordinate Bench of the Tribunal in assessee's own case in ACIT v/s Maharashtra State Electricity Transmission Co. Ltd., in ITA no.6834/Mum./2011, vide order dated 18/06/2021, for the assessment year 2008-09, observed as under:

*"8. The revenue has assailed the deletion of an addition of Rs.15.30 crore that was made by the A.O u/s 68 of the Act. For a fair appreciation of the controversy leading to the impugned addition, we shall briefly cull out the facts germane to the same. During the course of the assessment proceedings, it was observed by the A.O that the Comptroller & Auditor General (for short „CAG“) had observed that de hors any corresponding bond or loan existing in the „books of account“ of the assessee company,*

*an amount of Rs.15.30 crs was reflected as an outstanding liability. On being confronted, it was submitted*

*by the assessee that the aforesaid amount was an „Opening balance“ of transfer Schemes that were received from the erstwhile MSEB. It was submitted by the assessee that the aforesaid amount appeared in the „account code 46.737“ (interest accrued but not due on Indian currency loan ILFS) – Rs.0.42 crs. AND “account code – 46.746” (private bonds interest accrued but not due) – Rs.14.88 crs i.e totalling Rs.15.30 crs, which were to be cleared at the time of finalization of the transfer scheme. For the sake of clarity, the reply filed by the assessee in context of the issue in question as was submitted before the A.O is reproduced as under:*

*“This is as per the opening balances of Transfer Schemes received from the erstwhile MSEB. The said amount appears in the a/c code 46.737 (interest accrued but not due on Indian currency loan ILFS) – Rs.0.42 crs. & a/c code – 46.746 (private bonds int accrued but not due) – Rs.14.88 crs i.e total Rs.15.30 crs. This will be cleared at the time of finalization of the Transfer Scheme.”*

*However, the A.O did not find favour with the aforesaid explanation of the assessee. Observing, that the liability of Rs.15.30 crore represented an unexplained credit that was neither in existence nor payable, the same was added by him under Sec. 68 of the Act. On appeal, it was observed by the CIT(A) that the assessee was one of the successor companies to the erstwhile MSEB and was formed in the previous year relevant to the A.Y 2006-07 on the demerger/unbundling of the said MSEB. It was observed by the CIT(A), that as claimed by the assessee, and rightly so, on the demerger/unbundling of MSEB, both its assets and liabilities, to the extent the same pertained and were specifically allocable to the transmission undertaking were transferred to the assessee. It was observed by the CIT(A) that some of the liabilities of the erstwhile MSEB that were transferred /allocated to the assessee were not discharged and were accordingly being reflected in its accounts as outstanding, and the liability of Rs. 15.30 crore was one of such outstanding liability. It was further observed by the CIT(A), that the interest accrued liability of Rs. 15.30 crore was on account of transfer of certain liabilities on unbundling/demerger of erstwhile MSEB and was appearing in the „balance sheet“ of the assessee as an „opening balance“ on 01.04.2017 and no fresh credit entries were passed during the year. In the backdrop of the aforesaid facts, the CIT(A) was of the view that since liabilities in question did not pertain to the year under consideration, the same, thus, could not have been added as an unexplained cash credit u/s 68 of the Act. It was, thus, observed by the CIT(A) that as submitted by the assessee, and rightly so, there were no unexplained credits and unexplained liabilities. Observing, that as per the audit objection raised by CAG the liabilities in question pertained to the earlier years, it was, thus, concluded by the CIT(A) that by no means an addition u/s 68 could have been made in the hands of the assessee. The CIT(A) while concluding as hereinabove had observed as under:*

"3.3. I have carefully considered the facts of the case. The A.O. made addition of Rs.15.30 crores u/s.68 of the Act holding the sum as unexplained credit. The A.O. made addition on the basis of audit objection raised by CAG. However, the CAG only pointed out that the corresponding loan of bonds were not existing in the relevant record against the liability of interest accrued at Rs.15.30 crores. The CAG stated that the correctness of the claim were not verifiable. The A.O. made addition u/s.68 on account of unexplained credit in the books of accounts. However, the question for consideration is whether there could be any unexplained credit in the books of account of the appellant, the appellant Government.

The appellant has explained that the interest Rs.15.30 crores was on account of transfer of certain unbundling of erstwhile MSEB. The said liabilities were appearing balance sheet as opening balances as on 01.04,2007 and no fresh entries were passed during the year. Since such liabilities were not pertaining to the year under consideration, the same could not have been considered in the year under consideration for the purpose of addition u/s.68 of the Act, Since the liabilities were pertaining to the earlier years, duly shown in the balance sheets of earlier year and also as opening balance in the year under consideration, the appellant correctly made entries of interest accrued on such old liabilities. Such liabilities were received by the appellant on account of unbundling of erstwhile MSEB, which fact was not disputed. In support of its claim of liabilities (on which interest accrued during the year) pertaining to the earlier years\* the appellant has filed copies of balance sheets of the concerned year and has also explained that similar objection was raised by CAG in the F.Y.2Q06-07 pertaining to A.Y.2007-08 which is reproduced as under:

A/c code 46.7 - Accrued/unclaimed amount relating to borrowings - Rs.53.96 crores	Appellant's reply to the CAG objection
Interest accrued is shown as Rs. 15.35 crores for which neither corresponding loan, bonds exists in the account nor relevant record are available for verification (HO & WM), hence the correctness of the amount is not verifiable	This is as per the opening balance, as per the transfer scheme received from erstwhile MSEB. The relevant details pertaining to this case being sought from MSEDCL soon and based on the response further action will be taken."

Thus, there is force in appellant's argument that there were no unexplained credit and unexplained liabilities. The interest of Rs.15.30 crores accrued during the year on the old liabilities received from erstwhile MSEB on unbundling of the MSEB. There is force in appellant's argument that in the facts and circumstances the provisions of sec.68 were not applicable. Even the audit objection raised by CAG in the immediately preceding year shows that the liabilities (considered in the year under consideration) were pertaining to the earlier years. It is worth to mention here that in assessment order of A.Y.2007-08, though this objection was raised by CAG but no addition was made by A.O. on this account."

We have given a thoughtful consideration to the aforesaid issue and concur with the view taken by the CIT(A), viz. that the interest accrued

*liability of Rs.15.30 crore was transferred to the assessee on demerger/unbundling of the erstwhile MSEB; and as the said liabilities in question pertained to the earlier year, the same, thus, could not have been added during the year under consideration as an unexplained cash credit u/s 68 of the Act. We, therefore, finding no infirmity in the view taken by the CIT(A) uphold the deletion of Rs.15.30 crore. The Ground of appeal No.1 is dismissed."*

16. The learned D.R. could not show us any reason to deviate from the aforesaid order and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the order passed by the Co-ordinate Bench of the Tribunal in assessee's own case cited supra, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue. Accordingly, ground no.2, raised in Revenue's appeal is dismissed.

17. The issue arising in ground no.3, raised in Revenue's appeal is pertaining to deletion of disallowance of prior period expenses of Rs.28,71,38,221.

18. The brief facts of the case pertaining to the issue, as emanating from the record are: During the course of assessment proceedings, it was noticed that the assessee while computing surplus as per revenue accounts has debited an amount of Rs.28,71,38,221, in the computation. The Assessing Officer vide order passed under section 143(3) of the Act treated the said expenses as prior period expenses and disallowed the same.

19. The learned CIT(A) by following its earlier decision rendered in assessee's own case for preceding assessment year deleted the addition and allowed the appeal of the assessee.

20. During the course of hearing, the learned D.R. vehemently relied upon the order passed by the Assessing Officer.

21. While, the learned A.R. submitted that similar issue has been decided in favour of the taxpayer by the decisions of the Co-ordinate Bench of Tribunal rendered in the case of erstwhile MSEB.

22. We have considered the rival submissions and perused the material available on record. We find that the Co-ordinate Bench of the Tribunal in DCIT v/s Maharashtra State Electricity Board, in ITA no.3813/Mum./2009, etc., vide order dated 17/02/2021, for assessment year 2001-02 to 2003-04, while deciding similar issue, observed as under:-

*"4. We have heard rival submissions and perused the materials available on record. We find that assessee is a State Government undertaking engaged in generation and distribution of electricity. We find that the Id. AO by placing reliance on the figures mentioned in the tax audit report submitted by the assessee under the head 'prior period expenses' / 'prior period income', sought details of the same during the course of assessment proceedings. The assessee furnished the details of prior period income and prior period expenses which are duly tabulated by the Id. AO in page 5 of his order. The assessee earned prior period income of Rs.84,48,47,317/- and prior period expenditure of Rs.944,00,69,767/-. The net prior period expenses amounting to Rs.859,52,22,450/-. The Id. AO brought to tax the amount already offered by the assessee in the return in respect of prior period income and disallowed entire prior period expenditure (gross) while completing the assessment by holding that these expenses did not*

*crystallise during the year under consideration. It is pertinent to note that out of total details of prior period expenses submitted by the assessee in a tabular form, the assessee had voluntarily made disallowance in the return of income towards depreciation amounting to Rs.31,02,01,481/- and income tax provision of Rs.156,66,42,865/- which was again disallowed by the Id. AO while framing the assessment, thereby leading to double addition. This mistake of double addition was duly rectified by the Id. CIT(A) in his order. The Id. CIT(A) deleted the remaining amount of disallowance made by the Id. AO by holding in detail as under:-*

*"8.1 Facts briefly, are that the appellant had credited its Revenue Account for the year by an amount of Rs.84,48,47,317/- as prior period income. Similarly a sum of Rs.9,44,00,69,767/- was debited as prior period expenses. Detailed break-up of the amounts included in the aforesaid sum of Rs. 944 crores has been given in the Assessment Order. The AO disallowed the expenditure of Rs.9,44,00,69,767 on the ground that such expenditure cannot be allowed unless it has crystallized during the year.*

*8.2 Before me the Ld.AR of the appellant submitted that the expenses have crystallized during the year under consideration. Further, it was also stated that the same is in accordance with the method of accounting regularly followed by the Appellant in the earlier years.*

*8.2 Before me the Ld.AR of the appellant submitted that the expenses have crystallized during the year under consideration. Further, it was also stated that the same is in accordance with the method of accounting regularly followed by the Appellant in the earlier years.*

*8.3. The Ld.AR of the appellant submitted that that MSEB is a statewide organisation having big net work of number of offices for power Stations Constructions. 400KV/Trans. Lines Constructions. Sub-station Constructions, Power Station, Major Stores and for each of these activities like construction, Generation, transmission, distribution and maintenance, etc. MSEB has got a number of zonal offices, section offices, etc. spread throughout the Maharashtra State. This being so, there is always a communication gap and some of the payments / income due or accrued, of the year may not be accounted for during the year. This is inspite of the fact that MSEB has got a system of proper Internal, Control and pre-audit. Further, it has got separate department headed by Director of Internal Audit for regular Internal Audit and Inspection under the D.O.I.A. for Inspection work and there are number of Inspection teams attached to circle offices for carrying out regular Inspection work. Ld.AR of the appellant mentioned that appellant's audit is conducted by CAG. In spite of above at the instant of the Government Audit, certain items of expenses and Income pertaining to earlier period are required to be accounted for. These items are nothing but spill over of the earlier period and which were not considered while submitting returns for the earlier period. MSEB Accounts thus prepared in keeping with the rules of Electricity (Supply) (Annual Accounts) Rules 1985 prescribed under section 69 of the Electricity Supply Act, 1948 and C.A.G. also accepts this accounting system.*

8.4 The appellant further submitted that the total income of the appellant required to be computed was in accordance with the method of accounting regularly followed by it as laid down by the provisions of sec. 145 of the Income-tax Act, 1961. In this connection attention was drawn to the accounting standard No. II issued by the CBDT notified vide notification no. SO69(E) dtd. January 25,1996 in terms of which it has been stated in Para 7 that :-

*'Prior period items shall be separately disclosed in P&L account in the previous year together with their nature and amount in a manner so that their impact on profit and loss in the previous year can be perceived'*

8.5 Hence it was submitted that the objective of the above mentioned Accounting Standard is that every assessee is required to disclose the prior period item separately. Had it been laid down that prior period expenditure is not allowable as per the LT.Act,1961, as alleged by the Assessing Officer there was no requirement for CBDT to issue an Accounting Standard in respect thereof.

8.6 Ld.AR further submitted that the quantum of prior period expenses is very negligible in comparison to the total expenses claimed. Reference was made to the following judicial pronouncements wherein it has been held that in the case, the prior period expenses are a meager percentage of the turnover, then the prior-period expenses should be allowed:

*Escorts Ltd. v/s. IAC reported in (2004) 89 TTJ 221 (Del) Unreported decisions of the Mumbai Bench of the Income Tax Appellate in the case of Rashtriya Chemicals & Fertilizers Ltd. v/s. JCIT ITA Nos. 1013/Mum/2001 and 3863/Mum/2006.*

8.7. Further reliance was placed on the decision of the Delhi High Court in the case of CIT vs. Vishnu Industrial Gases P. Ltd. in ITR No.229/1988 wherein the High Court, while dealing with a case where the department had not disputed that the expenditure was deductible in principle but was only disputing the year in which the deduction could be allowed, held, that as the tax rates were the same in both years, the department should not fritter away its energies in raising questions as to the year of deducibility/taxability.

8.8. Without prejudice to the foregoing, the Ld.AR submitted that the following amounts (out of the prior-period expenses) have been suo-moto disallowed by the Appellant and hence disallowing the same once again would tantamount to double deduction:

1. Depreciation under provided - Rs. 31,02,01,481 /- 2. Excess provision of income-tax / short provision - Rs. 156,66,42,865/-

Documents were filed evidencing the fact that the aforesaid items have been suo-moto disallowed.

8.9. I have carefully considered the submissions of the Ld.AR and gone through the material brought before me. First of all, if the appellant has worked out the loss computed as per return of income after disallowing and adding back short provisions for income tax amounting to

*Rs.156,66,42,865/- and short provision of depreciation amounting to Rs.31,02,01,481/-, the same two items cannot be added back again to the returned loss which has been adopted by the AO. The AO is directed to verify and make necessary corrections in this regard.*

*8.10 So far as the other items are concerned, the treatment given to them is according to the guidelines framed for preparing the accounts of the electricity companies. The facts showing the entirety of the appellant's operations and its huge net work explains the time taken to account for various expenses. The accounts of the appellant are audited by internal auditors and statutory auditors under the Companies Act and the Incometax-Act. Further the reference to the Board's Circular is also in favour of the appellant. The AO has not come out with any finding that any of these expenses are not allowable as deduction. Since the expenses are otherwise allowable, the appellant cannot denied the deduction which has been claimed following proper accounting standards. Further, the AO has included the prior period revenue in the appellant's income. So there is no logic to disallow the prior period expenses. In view of this the AO is directed to allow the prior period expenses as claimed."*

*4.1. It is not in dispute that the accounts of the assessee have been prepared in accordance with the mandate provided under the Electricity Act. We also find that the Id. AR drew our attention to the page 254 of the paper book containing the statutory mandate in the form of Commercial Accounting System for State Electricity Boards together with the Electricity (Supply) Annual Accounts Rules 1985 issued by the Government of India, Ministry of Energy, Department of Power, wherein it has been categorically stated that the prior period expenses or prior period revenues are to be shown separately which arise on account of difference between an accounting estimate made for accrual and actual values involved or on account of any other reason. The State accounting mandate statutorily stated that the same shall be accounted only prospectively and no retrospective re-stating of past years figures was permitted in the accounts. This clear statutory mandate issued by the Government with regard to maintenance of accounts enabled the assessee company, being a Public Sector Undertaking (PSU), to disclose the prior period expenses and prior period income separately in its accounts. Moreover, we find that the Id. CIT(A) had duly recognised the method of accounting regularly followed by the assessee in the instant case. We find that the Id. CIT(A) had taken due cognizance of each and every item pertaining to prior period expenses and had understood the modus operandi thereon and duly appreciated the fact of assessee company conducting its operations with huge net work which eventually explains the time taken for accounting of various expenses contributing to the delay and slippage of an annual accounting year. The Id. CIT(A) also took note of the accounts of the assessee company getting scrutinized by Statutory Auditors, Internal Auditors and also by the Controller of Auditor General of India. It is pertinent to note that none of them had given any*

*adverse remarks about the aspect of prior period expenditure. We find that the Id. CIT(A) had categorically given a finding that all the expenses reflected in the prior period expenses except the one which were voluntarily disallowed by the assessee in the return of income, though debited to prior period expenditure during the year, got crystallised during the year under consideration and hence, becomes allowable expenditure. None of these findings given by the Id. CIT(A) were rebutted by the Revenue before us. We also find that the Hon'ble Jurisdictional High Court in the case of yet another Public Sector Undertaking in CIT vs. Mahanagar Gas Ltd., reported in 42 Taxmann.com 40 had an occasion to go through the same issue. The question raised before the Hon'ble Jurisdictional High Court was as under:-*

*"B. Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in confirming the order of CIT(A) in deleting the disallowance of Rs.92,91,343/- made by the Assessing Officer on account of prior period expenses?"*

*4.2. The Hon'ble Jurisdictional High Court disposed off the aforesaid question by holding as under:-*

*"4) Regarding Question B :*

*(a) In its return of income for assessment year 2004-05 while declaring total income of Rs.100.76 crores the Respondent-assessee claimed an expenditure of Rs.92.81 lacs as prior period expenses. The Assessing Officer disallowed the expenditure relating to prior period on the ground that as the respondent followed mercantile system of accounting expenditure relatable to an earlier year cannot be allowed as deduction in the assessment year under consideration. Thus an amount of Rs.92.81 lacs was added to the income of the Respondent assessee.*

*b) In appeal, the CIT(A) held that the method of accounting consistently followed since many years by the respondent was that expenses were claimed as a liability as and when the bills were received even though the work was done in earlier year and not in the assessment year under consideration. The liability to make payment for work and services received in an earlier year was crystallized only in current assessment year when the bills were received by the respondent assesses from the person who did the work and/or rendered services. The CIT(A) also noted that the Assessing Officer had taxed income attributable to work rendered in the earlier years in the year under consideration depending upon the time when the amounts were crystallized. On the same principle, the expenses attributable to earlier years but crystallized in the year under consideration ought to be allowed. In view of the above, the CIT(Appeals) held that in view of the consistent practice followed by the Respondent-assessee and accepted by the Revenue the prior period expenses which were crystallized during the assessment year under consideration, on receipt of the bills are to be allowed as an expenditure.*

*(c) On further appeal by the revenue the Tribunal upheld the finding of fact arrived at by the CIT(Appeals) and held that prior period expenditure was claimed in respect of the bills received during the assessment year 2004-05, even though the work/services was received in an earlier year. This has been consistent practice followed by the respondent-assesses according to which the liability is to be accounted when the bills are received and the payments made in the subsequent year. Thus the appeal of the Respondent-assessee was allowed.*

*(d) The Revenue's grievance is that in mercantile system of accounting the respondent assessee has to account for the expenditure in the year in which the work/service was received by them and not when the bills were received by the respondent assesses.*

*(e) We find that the liability in respect of work/services rendered in earlier year was crystallized only on receipt of the bill in the current assessment year. Moreover, the method adopted by the respondent assesses has been accepted by the revenue for the earlier assessment year and also while accounting for the income earned in respect of the work done in earlier years. In the circumstances, the Revenue is required to adopt consistent approach and allow the expenditure which was crystallized during the assessment year under consideration as done in the earlier years. This finding of fact has not been shown to be perverse.*

*In view of the above we see no reason to entertain question B as the same does not raise any substantial question of law as it is essentially a finding of fact arrived at by two authorities concurrently."*

*4.3. In view of the aforesaid observations and respectfully following the decision of the Hon'ble Jurisdictional High Court referred to supra, we find no infirmity in the order of the Id. CIT(A) granting relief to the assessee in respect of prior period expenditure. Accordingly, the grounds raised by the revenue in this regard are dismissed."*

23. We further find that similar findings were rendered by the Co-ordinate Bench of the Tribunal in DCIT v/s Maharashtra State Electricity Board, in ITA no.1649/Mum./2010, etc., vide order dated 21.04.2021, for assessment years 2004-05 and 2005-06. And in DCIT v/s M/s Maharashtra State Electricity Board, in ITA no.1650/Mum./2010, vide order dated 20.05.2021, for assessment year 2006-07.

24. The learned D.R. could not show us any reason to deviate from the aforesaid orders. As, the assessee is one of the successor companies to the erstwhile MSEB, thus, respectfully following the aforesaid decisions rendered in case of erstwhile MSEB, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue. Thus, ground no.3, raised in Revenue's appeal is dismissed.

25. The issue arising in ground no.4, raised in Revenue's appeal is pertaining to deletion of addition of Rs.12.86 crores, on account of notional increase in employee's cost.

26. The brief facts of the case pertaining to the issue as emanating from the record are: The assessee pays a fixed contribution vis-a-vis Provident Fund at a pre-determined rate along with employee's contribution to MSEB Contributory Provident Fund Trust ('CPF Trust'). The fund so received by the CPF Trust are invested by the assessee in various securities segregated as Special Deposit Scheme, Central Government Schemes, State Government Securities, Public Sector Bonds and Financial Institution, etc. During the year under consideration, a valuation exercise was carried out for the purpose of complying with the requirement of Accounting Standard-15 - Employee Benefits, issued by the Institute of Chartered Accountants of India through an actuary on the investments held by the CPF Trust so as to compute the fair market of the said

investment and to arrive at the shortfall / surplus of the investment over a funded liabilities of the assessee. During the year under consideration, the aforesaid valuation exercise resulted in surplus / excess in planned assets amounting to Rs.12.86 crores. The said amount was ignored while computing the total income for the year under consideration. The Assessing Officer, vide order passed under section 143(3) noted that in the Schedule-15 of employee cost, the assessee has credited an amount of Rs.12.86 crores as income due to surplus / excess in planned assets, however, while computing the income in the computation, this amount has been reduced. Accordingly, the Assessing Officer added the aforesaid amount to the total income of the assessee.

27. The learned CIT(A) allowed assessee's appeal on this issue by observing as under:-

*"14.3 I have considered the appellant's submissions carefully. The appellant is a company formed pursuant to the unbundling / demerger of the erstwhile Maharashtra State Electricity Board (MSEB) and engaged in the transaction of electricity in the State of Maharashtra. The appellant pays a fixed contribution of Provident fund at predetermined rate along with MSEB contributory of PF Trust (CPF Trust). The funds so received by CPF Trust are invested by the appellant, in various securities as required in Accounting Standard-15 - under Institute of the Chartered Accountants of India [ISCA] through an actuary and valuation is carried out on investment held by CPF of the trust. It was found that Rs.12,86,00,000/- was surplus amount as per this exercise. This is on account of shortfall or excess in the CPF Trust asset which is reflected in the profit and loss account as notional account and it is accounted in the credit side of the accounts. Here it is clear that this shortfall or excess, in the investment of CPF trust is not realized in the year and it is only a value of the assets as at the end of the year. In order to know the real value of the funds in CPF Trust. In this year there was excess in the account. Hence this excess was credited in the profit and loss account as excess in the CPF Trust. While computing income for income tax purposes, this excess is deducted from*

*income as per profit and loss account as it is a notional entry and this amount was not realized during the year by the appellant. However, this amount also does not represent the appellant's income or loss but it is only a notional income. The AO had not understood this issue properly and hence added this amount as appellant had deducted while computing the income on the ground that it had not accounted this income properly. As it is seen from the above facts of the case, this amount is only a notional entry and this belongs to Employees Accounting Standard - 15. This amount was not even realized during the year. Even if there is a deficiency in the account though it is passed from the profit and loss account while computing the income as per IT computation, this amount, has to be added to the profit and loss account. Hence as it is a notional entry and it is not realized during the year, addition of AO is not justified. Therefore, AO's addition is deleted and ground of appeal is allowed."*

28. During the course of hearing, the learned D.R. submitted that once the surplus planned asset is credited in the Profit & Loss Account, the same is required to be included while computing the income for the year under consideration.

29. While, the learned A.R. placing reliance upon the findings in the impugned order on this issue submitted that surplus is only a notional entry and, therefore, cannot be considered as an income for the purpose of the Act.

30. We have considered the rival submissions and perused the material available on record. On a perusal of the record, it is evident that surplus in planned assets pursuant to valuation exercise by actuary on the investment held by the aforesaid CPF Trust was for the purpose of complying with the requirements of Accounting Standard-15. The same was done to compute the fair market value of the investments held in CPF Trust and to arrive at the shortfall / surplus of the investments over the

liabilities of the assessee. The assessee has reduced the surplus of Rs.12.86 crores in planned assets while computing the employee cost for the year under consideration. As the employee cost was reduced in the Profit & Loss Account, the said amount was also reduced from the income to nullify its effect. In the present case, it is not in dispute that the said entry is a notional entry. Thus, all the consequences in respect of the notional entries will follow and such an entry cannot be treated as an income if in excess / surplus. This being the accepted position, we do not find any infirmity in the impugned order passed by the learned CIT(A). Thus, ground no.4, raised in Revenue's appeal is dismissed.

31. The issue arising in ground no.5, in Revenue's appeal is pertaining to deletion of disallowance of Rs.5,54,08,761, being provision for interest shortfall on Provident Fund liability.

32. The brief facts of the case pertaining to the issue, as emanating from the record are: During the year under consideration, based on certificate of actuary, the assessee had recognised a sum of Rs.5,54,08,761, as shortfall in interest payable on Provident Fund liability to beneficiaries as at year end. As the assessee is following mercantile system of accounting, the assessee made provisions for interest shortfall on Provident Fund liability in respect of the said amount and claimed the same as allowable expenditure. The Assessing Officer vide order passed

under section 143(3) of the Act, disallowed the claim made by the assessee.

33. The learned CIT(A) allowed the appeal filed by the assessee on this issue by observing as under:-

*"15.3 I have considered appellant's submissions. The appellant had made provision for short fall on interest payable on PF liability to beneficiaries at Rs.5,54,08,761/-. The appellant on examination of accounts found that there was shortfall of Rs.5,54,08761/- for interest payable on PF liability to the beneficiaries at the end of the year. This amount was provided as provision in the accounts of appellant and appellant had claimed this amount in the P&L account. The appellant's main contention is that this is business liability which is arising in this year though it is paid in the later year, this claim has to be considered and expenditure is to be allowed in the year in which liability has arisen. Further the appellant submits that this case is not covered by Sec.43B(b) wherein the contribution interest is not' included in the PF is allowed on the payment basis. Here it is the case of interest which is not part of Sec.43B(b), hence, this liability which is arisen in this year should be allowed to the appellant. The appellant further relied on the case of Bharat Earth Movers vs. CIT (2000) 112 Taxman (SC) wherein it is held that "even when the business liability was unquantified as against the case of the appellant where the actuary has quantified the liability of the appellant" that if a liability has arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at the future date. When we consider that case it is clear that this interest under PF will not be covered u/s.43B(b) and also it is business liability which has arisen in this year that payment has to be made in the future date. In view of the above decision of Supreme Court, appellant's claim is allowed. The addition made by A.O. is deleted. This ground of appeal is allowed."*

34. During the course of hearing, the learned D.R. vehemently relied on the order passed by the Assessing Officer.

35. On the other hand, the learned A.R. by placing reliance on the impugned order submitted that the provisions for interest shortfall on

Provident Fund liabilities is not covered under section 43B(b) of the Act, wherein the deduction is allowable only on payment basis.

36. We have considered the rival submissions and perused the material available on record. In the present case, in keeping with guidance on implementing Accounting Standard (AS)-15 (Revised) on Employee Benefits notified by the Companies (Accounting Standard) Rules, 2006, employer established Provident Funds were treated as Defined Benefit Plans. Since the assessee is obliged to meet interest shortfall, if any, with respect to covered employees, the actuary had certified an amount of Rs.5,54,08,761, as shortfall in interest payable on Provident Fund liability to the beneficiaries as at year end. On the basis of such report, the assessee made provisions for the same. As per the assessee, the provisions so made was a business liability which is arising in this year though it is paid in a later year and thus the same should be allowed as expenditure in the year in which the liability has arisen. In the present case, the Revenue has only denied the claim of the assessee on the basis that it is merely based on the provisions so made and there is no actual expenditure by the assessee during the year under consideration. It cannot be denied that in case of actual payment made by the assessee in respect of Provident Fund such payments are allowable under section 43B of the Act. However, in the present case, the claim made by the assessee is on the basis of the provisions made for interest shortfall on Provident

Fund liability. As the assessee is following mercantile system of accounting, in view of the decision of the Hon'ble Supreme Court in *Bharat Earth Movers v/s CIT*, [2000] 112 Taxmann 61 (SC), which has rightly been followed by the learned CIT(A,) such a liability which has arisen during the year under consideration is allowable even though the same may have to be discharged at a future date. In view of the above, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue. Accordingly, ground no.5, raised in Revenue's appeal is dismissed.

37. The issue arising in ground no.6 and 6.1 in Revenue's appeal, is pertaining to the addition of Rs.40 crores with regard to advance paid by the assessee.

38. The brief facts of the case pertaining to the issue, as emanating from the record are: As stated earlier in this order, the assessee is formed pursuant to demerger / unbundling of the erstwhile MSEB. The accounts of the assessee are subject to audit by C&AG in terms of the provisions of section 619(4) of the Companies Act, 1956. During the course of audit, C&AG observed that in the absence of details of lease agreement and repayment made in respect thereof, the impact of Rs.153.78 crores could not be ascertained on the Balance Sheet and the Profit & Loss Account of the assessee. In response to the C&AG remarks, the assessee submitted that the said amount of Rs.153.78 crores being advance paid for lease

finance project were received by it pursuant to the transfer scheme and were opening balance of the transfer scheme received from erstwhile MSEB and hence would be settled / sorted out subsequently. The Assessing Officer, vide order passed under section 143(3) of the Act, made an addition of Rs.40 crores pertaining to capital expenditure which was claimed as lease rental payment.

39. In appeal before the learned CIT(A), the assessee submitted that the advance paid for lease finance project was transferred / allocated to the assessee in terms of the transfer scheme notification no. Reform 1005/CR 9061(1) MRG-5, dated 04/06/2005, i.e., these amounts were received by the assessee in accordance with the transfer scheme and pertained to erstwhile MSEB for the earlier years. The learned CIT(A) decided this issue by observing as under:-

*"10.2 I have considered appellant's submissions. The appellant's contention is that the appellant is a company formed pursuant to the unbundling / demerger of the erstwhile Maharashtra State Electricity Board (MSEB) and earlier under lease finance arrangement with Infrastructure Leasing and Financial Services by acquiring assets of High Voltage Current Project in the Asstt. Year 1999-2000. Copy of the lease agreement was submitted by the appellant. Appellant contends that this Advance for lease finance project is for Rs. 153.78 crores. This lease finance assets acquired through lease finance arrangement from ILFS on which lease rentals paid. The appellant states that discharge of lease financial liability and no liability exists towards lease rental as on March 2010. The company booked the entire lease rentals through profit, and loss account i.e. interest and finance charges instead of liability account to the extent of principal repayment and profit and loss account to the extent of interest finance charges and therefore the liability account remained unsettled. The appellant mainly states that settled lease liability with ILFS paid all the lease rentals by March 2010. Hence as per their records, this liability was discharged by paying in the form of settled rentals from ILFS. However in the earlier MSEQ account Rs. 40,00,00,000/- lease liability*

*was remained unsettled. On this issue, C&AG observed that regarding lease payments, the impact on profit and loss account and balance sheet could not be ascertained as it is not fully settled in the account. Here from the submissions of the appellant it appears that the appellant had discharged lease liability through lease rentals in the form of interest and finance charges and paid the total lease amount to ILFS. This was carried from Profit and loss account. However, in the liability account, this was not properly settled. Liability account is in the form of capital in nature. Hence no addition is required on this account. I had examined all the details filed by the appellant. However, he had not filed the profit and loss account of MSEB from 1999 to 2000 till date was that this amount can be verified whether these facts are correct. Hence appellant is directed to appear before the AO and submit all the profit and loss account and balance sheet of MSEB. If all these balance sheet and profit and loss accounts are submitted, the AO may verify the details and if the appellant had carried out properly all the transactions in the profit and loss account and as stated by the appellant, he had examined all the details, balance sheet properly, then only, this addition is deleted as it appears that lease liability account is capital in nature. If the accounts submitted to the A.O. are not proper in nature then the addition will be confirmed. Thus ground of appeal is partly allowed based on the submissions of the appellant."*

40. During the course of hearing, the learned D.R. submitted that the learned CIT(A) instead of deciding this issue has set aside the same to the file of the Assessing Officer which is beyond the powers now available to the learned CIT(A).

41. On the other hand, the learned A.R. fairly agreed with the submissions made by the learned D.R. on this issue.

42. We have considered the rival submissions and perused the material available on record. With effect from 01/06/2001, the learned CIT(A) no longer has power to set aside the matter and can only confirm, reduce, enhance or annul the assessment in an appeal against the assessment order. Thus, the impugned order on this issue to the extent the matter is

restored to the Assessing Officer for *de novo* verification of the details as directed to be filed by the assessee is contrary to the provisions of section 251(1)(a) of the Act. In view of the above, we direct the learned CIT(A) to adjudicate this issue *de novo*. The learned CIT(A) shall have the liberty to seek remand report, if any, from the Assessing Officer. Needless to say that before passing any order, opportunity of hearing shall be granted to assessee. Accordingly, grounds no.6 and 6.1, raised in the Revenue's appeal are allowed for statistical purpose.

43. In the result, appeal by the Revenue is partly allowed for statistical purpose.

**ITA no.2942/Mum./2015**  
**Assessee's Appeal – A.Y. 2010–11**

44. In its appeal, the assessee has raised the following grounds:–

*"1:0 Re.: Disallowance of expenditure on repairs to plant and machinery - Rs. 2,27,75,501/-*

*1:1 The Commissioner of Income-tax (Appeals) has erred in confirming the action of the Assessing Officer of making a disallowance of expenditure on repairs to plant and machinery by holding the same to be capital in nature.*

*1:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the repairs and maintenance expenditure incurred during the year is revenue expenditure and the stand taken by the Assessing Officer in this regard is incorrect, illegal, erroneous, misconceived and not in accordance with law and the Commissioner of Income-tax (Appeals) ought to have held as such.*

*1:3 The Appellant submits that the Assessing Officer be directed to delete the disallowance so made by him and to re-compute its total*

*income accordingly.*

*2:0 Re.: General*

*2:1 The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal."*

45. The only grievance of the assessee in this appeal is against the disallowance of expenditure on repairs of plant and machinery.

46. The brief facts of the case pertaining to the issue, as emanating from the record are: The assessee has debited repairs on account of repair to machinery. During the course of assessment proceedings, the assessee was asked to justify the repairs and to explain as to whether they are current repairs or otherwise. In reply, the assessee submitted sample copy of certain bills providing following details and submitted that these expenditures pertained to maintenance of machinery:—

<i>Date</i>	<i>Bill no.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Remarks</i>
17.03.2009	259-RA-2	Fixing of Vibrating Dampers cum Spacers	7783595	These expenses are not current repairs hence capitalized
17.03.2009	263-RA-4	Fixing of Vibrating Dampers cum Spacers	6098487	These expenses are not current repairs hence capitalized
17.03.2009	267-RA-6	Fixing of Vibrating Dampers cum Spacers	1925838	These expenses are not current repairs hence capitalized
24.03.2009	280-RA-4	Fixing of Vibrating Dampers cum Spacers	3771432	These expenses are not current repairs hence capitalized
17.03.2009	260-RA-1	Fixing of Vibrating Dampers cum Spacers	314437	These expenses are not current repairs hence capitalized
17.03.2009	261-RA-2	Fixing of Vibrating Dampers cum Spacers	6900919	These expenses are not current repairs hence capitalized

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47. The Assessing Officer vide order passed under section 143(3) of the Act held that the expenditures are not in the nature of current repairs and indicate substantial addition in the assets which are of enduring in nature. Accordingly, the Assessing Officer treated the expenditure as capital expenditure and allowed depreciation @ 15% on the same to the assessee.

48. In appeal, the learned CIT(A), vide impugned order, upheld the conclusion reached by the Assessing Officer on this issue.

49. During the course of hearing, the learned A.R. submitted that the aforesaid expenditures were incurred in the normal course of business and have not resulted in the acquisition of any new asset or obtaining any advantage of enduring nature. The learned A.R. further submitted that the assessee has a policy, whereby it suo-moto recognizes its repairs and maintenance expenses, which need to be capitalized and accordingly, during the year under consideration the assessee has suo-moto capitalised a sum of Rs.47,99,106.

50. On the other hand, the learned D.R. vehemently relied upon the orders passed by the lower authorities on this issue.

51. We have considered the rival submissions and perused the material available on record. It is the submissions of the assessee that the impugned expenditure was incurred to fix vibrating dampers-cum-spacers for maintenance of transmission lines and accordingly an amount to Rs.2,67,94,708, was claimed as expenditure in Profit & Loss Account. In the present case, it is an accepted fact that the assessee is engaged in the business of transmission of electricity and thus, it cannot be denied that the assessee is required to maintain the transmission lines for which in the normal course of business, the assessee is also required to incur certain expenditure for the purpose of same. As per the assessee, the expenditure incurred is required for preservation, maintenance, proper utilisation or for restoring the existing assets to its original condition and hence, the said expenditure is to be allowed under section 31(i) of the Act. Section 31 of the Act is reads as under:-

*"Repairs and insurance of machinery, plant and furniture.*

*31. In respect of repairs and insurance of machinery, plant or furniture used for the purposes of the business or profession, the following deductions shall be allowed—*

*(i) the amount paid on account of current repairs thereto ;*

*(ii) the amount of any premium paid in respect of insurance against risk of damage or destruction thereof.*

*Explanation.—For the removal of doubts, it is hereby declared that the amount paid on account of current repairs shall not include any expenditure in the nature of capital expenditure."*

52. Thus, as per the provisions of section 31(i) of the Act, any amount paid in respect of current repair of plant and machinery or furniture used for the purpose of business or profession is allowed as deduction. The

Hon'ble Supreme Court in CIT v/s Saravana Spinning Mills Pvt. Ltd., [2007] 293 ITR 201 (SC), held that the object behind the provisions of section 31(i) of the Act is to preserve and maintain the asset and not to bring in a new asset. The Hon'ble Supreme Court further held that the basic test to find out as to what would constitute current repairs is that the expenditure must have been incurred to "*preserve and maintain*" an already existing asset, and the object of the expenditure must not be to bring a new asset into existence or to obtain a new advantage. In the present case, apart from a mere allegation by Revenue that by way of these expenditure substantial addition in the assets were made, the Revenue has not proved by way of any material that new asset has come into existence by incurring these expenditure by the assessee. Further, the Revenue has also not doubted the policy of assessee whereby assessee suo-moto capitalise its repairs and maintenance expenditure, which needs to be capitalised. Further, unlike other observations of the C&AG on other aspects, the C&AG has not found any wrong in accounts of the assessee on this issue. At this stage, it is also pertinent to note the description on sample invoices, forming part of the paperbook from page nos. 256-261, which reads as- *Fixation of vibration dampers cum spacers by Hot Line method including replacement & tightening of Nut bolts of Existing jumpers cone/dead end of towers*. Thus, in view of the above, we direct the Assessing Officer to delete the disallowance made by treating

the expenditure on repairs of plant and machinery as capital in nature.  
Accordingly, grounds raised by the assessee are allowed.

53. In the result, appeal by the assessee is allowed.

Order pronounced in the open court on 14/06/2022

**Sd/-**  
**PRAMOD KUMAR**  
**VICE PRESIDENT**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 14/06/2022**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai