

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
And**

SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

**ITA Nos.3209 & 3210/Del./2014
(Assessment Years : 2007-08 & 2008-09)**

DCIT, Circle 13 (1),
New Delhi. vs. M/s. ONGC Videsh Limited,
Deendayal Urja Bhawan,
Plot No.5A-5B,
Nelson Mandela Marg, Vasant Kunj,
New Delhi-110070
(PAN : AAACO1230F)

**ITA No.3816/Del./2015
(Assessment Year : 2009-10)**

DCIT, Circle 19 (1),
New Delhi. vs. M/s. ONGC Videsh Limited,
Deendayal Urja Bhawan,
Plot No.5A-5B,
Nelson Mandela Marg, Vasant Kunj,
New Delhi-110070
(PAN : AAACO1230F)
(APPELLANT) (RESPONDENT)

**ITA No.2119/Del./2017
(Assessment Year : 2010-11)**

Additional Commissioner of
Income Tax,
Special Range-7,
Room No.211,
C.R. Building, I.P. Estate,
New Delhi-1100052 Vs M/s. ONGC Videsh Limited
Deendayal Urja Bhawan,
Plot No.5A-5B,
Nelson Mandela Marg, Vasant Kunj,
New Delhi-110070
(PAN: AAACO1230F)
(APPELLANT) (RESPONDENT)

ITA No.7435/Del./2017
(Assessment Year : 2011-12)

Additional Commissioner of
Income Tax,
Special Range-7,
Room No.211,
C.R. Builing, I.P. Estate,
New Delhi-1100052

(APPELLANT)

M/s. ONGC Videsh Limited
601, 6TH Floor, Kailash Building,
Vs 26, Kasturba Gandhi Marg,
New Delhi-110001

(PAN: AAACO1230F)
(RESPONDENT)

ITA No.6281/Del./2017
(Assessment Year : 2012-13)

Additional Commissioner of
Income Tax,
Special Range-7,
Room No.211,
C.R. Builing, I.P. Estate,
New Delhi-1100052

(APPELLANT)

M/s. ONGC Videsh Limited
601, 6TH Floor, Kailash Building,
Vs 26, Kasturba Gandhi Marg,
New Delhi-110001

(PAN: AAACO1230F)
(RESPONDENT)

ITA No.158/Del./2018
(Assessment Year : 2013-14)

Additional Commissioner of
Income Tax,
Special Range-7,
Room No.211,
C.R. Builing, I.P. Estate,
New Delhi-1100052

(APPELLANT)

M/s. ONGC Videsh Limited
Tower B, 5,
Vs Pandit Deendayal Urja Bhawan,
Nelson Mandela Marg, Vasant Kunj,
New Delhi-110070

(PAN: AAACO1230F)
(RESPONDENT)

ITA No.2379/Del./2019
(Assessment Year : 2014-15)

Additional Commissioner of
Income Tax,
Special Range-7,
Room No.211,
C.R. Building, I.P. Estate,
New Delhi-1100052

Vs

M/s. ONGC Videsh Limited
Tower, B, Deendayal Urja Bhawan,
Plot No.5
Nelson Mandela Marg, Vasant Kunj,
New Delhi-110070

(APPELLANT)

(PAN: AAACO1230F)
(RESPONDENT)

ASSESSEE BY : Shri C.S. Agarwal, Sr. Advocate
Shri R.P. Mall, Advocate
REVENUE BY : Shri Mahesh Shah, CIT DR

Date of Hearing : 08.06.2022
Date of Order : 05.09.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These are appeals by the Revenue against the respective orders of
ld. CIT (Appeals).

2. Since the issues are common and connected the appeals were heard
together and these are being consolidated for the sake of convenience and
also disposed off by this common order.

3. For the sake of reference, we are referring to the following grounds
of appeal for the Assessment Year 2007-08 :-

“1. On the facts and circumstances of the case and in law, the
Ld.CIT (A) has erred in deleting the disallowance of acquisition
cost of participating interests in various blocks amounting to
Rs.174,52,34,343/- by not considering the fact that the
expression "licences" used in section 32(1)(ii) of the Act

applies to licences that are relatable to intellectual properties only and not relatable to all type of licences.

2. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of acquisition cost of participating interests in various blocks by not considering the fact that in AY 2002-03, the Hon'ble ITAT has erred in granting relief to the assessee by wrongly invoking provisions of Section 32(1)(ii) of the Act and that the Revenue is already in appeal against this decision before the Hon'ble High Court of Delhi.

3. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of acquisition cost of participating interests in various blocks by ignoring the fact that section 32(1)(ii) of the Act, has a narrower scope and must be given strict and plain interpretation than what was envisaged and allowed by the Hon'ble ITAT.

4. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of depreciation on support equipments and assets of venture amounting to Rs.95,36,850/- by not considering the specific observation in the assessment order that in the case of oil prospecting companies expenses incurred on abandoned or abortive projects are allowable as per section 42 of the Act and therefore any depreciation claimed on the projects where commercial production has not yet started is not allowable but allowable only where commercial production has begun.

5. On the facts and circumstances of the case and in law, the Ld.CIT (A) has erred in deleting the disallowance of depreciation on support equipments and assets of venture amounting to Rs.95,36,850/- by not considering the fact that each project is a separate and distinct project and there is no interlacing, interdependence of finance and production and hence expenses incurred in connection with a new division cannot be allowed as business expenditure before commencement of production of that unit.

6. On the facts and circumstances of the case and in law, the Ld.CIT(A) is erred in deleting the disallowance of claim of expenses pending settlement of EPC contract but not recognized as revenues amounting to Rs.145,33,10,000 by

holding that the issue pertains to A.Y.2006-07 and amounts to double addition by ignoring the fact that the above referred amount is not an expense but a revenue which was not considered in its P&L a/c for the F.Y.2006-07.

7. On the facts and circumstances of the case and in law, the Ld.CIT(A) is erred in deleting the disallowance of claim of expenses pending settlement of EPC contract but not recognized as revenues amounting to Rs.145,33,10,000 by ignoring the fact that the project has been completed and as such both the total costs as well as the total revenues should be taken into account for determining the taxable profits on accrual basis.

8. On the facts and circumstances of the case and in law, the Ld.CIT(A) is erred in deleting the disallowance of claim of expenses pending settlement of EPC contract but not recognized as revenues amounting to Rs.145,33,10,000 by ignoring the fact that the expenses claimed by the assessee are not added but only the profits which have accrued and crystallized during the year are added.

9. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the claim of the revenues amounting to 1453.31 million has been forwarded by the company to MEM during the year which shows that the revenue has not only accrued but crystallized during the year and the same should have been taken into account for calculation of profits.

10. On the facts and circumstances of the case and in law, the Ld.CIT(A) is erred in deleting the disallowance of claim of pre-acquisition expenses amounting to Rs.79,18,87,613/- by ignoring the fact that pre-acquisition expenses are covered within the scope of section 42 and the method prescribed under section 42 agreement are binding on the assessee as the same are special provisions sanctioned by Parliament and have overriding effect.

11. On the facts and circumstances of the case and in law, the Ld.CIT(A) is erred in deleting the disallowance of claim of pre-acquisition expenses amounting to Rs.79,18,87,613/- by ignoring the fact there cannot be a double claim for the same

expense once under any provision of the Act and then u/s 42 of the Act.

12. On the facts and circumstances of the case and in law, the Ld.CIT(A) is erred in deleting the disallowance of claim of pre-acquisition expenses amounting to Rs.79,18,87,613/- by ignoring the fact that the assessee is maintaining its books of accounts on mercantile basis and therefore the expenditure which neither accrued nor incurred in the relevant previous year, is not allowable during this year.

13. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in law and on facts in ignoring the decisions of the Hon'ble Madras High Court in the case of Madras Fertilizers Ltd. Vs CIT (Mad) 209 ITR 174 and Hon'ble ITAT, New Delhi in the case of Eveready industries India Ltd., 78 ITD 175 on the same issue.

14. On the facts and circumstances of the case and in law, the Ld.CIT(A) is erred in deleting the disallowance of excess depreciation claimed on UPS@60% amounting to Rs.3,58,080/- by ignoring the observation in the assessment order that UPS is not an integral part of the computer system like printer and scanner which are included in the definition of a computer under section 2(1)(i) of the Information Technology Act, 2000 and the fact that the technology which goes into making UPS is not developing so rapidly so as to make it obsolete in the short span.

15. On the facts and circumstances of the case and in law, the Ld.CIT(A) is erred in deleting the disallowance of expenditure on Farsi Block Iran amounting to Rs.121,38,27,143/- by treating the above referred expenditure as revenue expenditure by ignoring the fact that the expenditure was of capital in nature since the development service contract had not even awarded to it and the declaration of commerciality was still pending.

16. On the facts and circumstances of the case and in law, the Ld.CIT(A) is erred in deleting the addition on account of disallowance of prior period income of Rs.33,47,65,000/- by holding that the assessee in the course of assessment has filed the computation along with copy of revised return of income

for AY 2006-07 by ignoring the contention of the AO that the assessee has not furnished the copy of revised return for F.Y.2005-06 relevant to AY 2006-07 during the course of assessment.”

4. Grounds No.1, 2 & 3 relate to the issue whether the payment made for acquisition cost of participating interests in various blocks would qualify for intangible assets in order to be eligible for depreciation.

5. On this issue, Assessing Officer made disallowance of Rs.174,52,34,343/- on acquisition cost/WDV of participating interest in respect of Sakhalin 1 Project, Block A-I & A-3 Myanmar Project, Sudan Blocks 5A & 5B Projects, Ivory Coast Project, 81-1 Libya Project, Egypt, Qatar, Block 127 & 128 Vietnam Project and Cuba Project. As per the return of income filed, the assessee company has claimed depreciation on acquisition cost of participating interests @25% holding them as intangible assets and the total depreciation claim was to the extent of Rs.174,52,34,343/-. Claim of depreciation was made on various production sharing contracts through which the participating rights were acquired by the assessee company in the above projects. AO following similar disallowance made in A Y 2006-07 held that the expression 'licences' used in sec 32(1)(ii) of the Act to apply to licences relatable to intellectual properties only and not to all licences. AO held that u/s 32 of the Act depreciation is not allowed on all capital assets but is allowable

on capital assets which fall in any of the categories enumerated in the section. Accordingly, the assessee's claim of depreciation of Rs.174,52,34,343/- on participation right of the above joint venture were disallowed and added back by the AO to the total income of the assessee company.

6. Upon assessee's appeal, Id. CIT (A) followed the order of ITAT for AY 2002-02 and held as under :-

"4.1.2 Identical issue came up in appeal in assessee's own case in A Y 2002-03 which was decided by Hon'ble ITAT, Delhi in ITA No. 472/2008 and 546/2008 as under:-

"There is no dispute to the fact that assessee has incurred expenditure of Rs.1559.09 crores for obtaining the right and license for exploration of oil. It is not possible to say that such expenditure was neither capital nor revenue in nature. If it is held to be capital, then it is obvious that what the assessee has acquired was a participating right which is in the nature of commercial right of carrying on of business of exploration and production of mineral oil. It also cannot be said that the right so acquired was not an asset. If it is an asset being the right then it is obvious that same is commercial right, therefore in the nature of asset in the form of license. This right had been granted to the assessee by way of license and the assessee became owner of such right i.e. license to have an access and to carry on of business of exploration and development of mineral oil. Accordingly, as per our considered view such an asset fall within the category of asset falling u/s 32(1)(ii) of the Act. Accordingly, we are inclined to agree with the learned senior counsel that the assessee had acquired business and commercial right and license by making payment of Rs. 1559.10 crores, which is in the nature of intangible assets entitled to claim of depreciation u/s 32(1)(ii) of the IT Act."

The above decision of Hon'ble ITAT is squarely applicable to the facts of the present case as the issue is identical. In view of the above, following the above decision of Hon'ble ITAT it is held that the participating interests in the above projects are intangible assets entitled to claim of depreciation u/s 32(1)(ii) of the IT Act. Therefore, the claim of depreciation disallowed by the AO is deleted and appeal is allowed in this ground.”

7. We further note that ITAT for AY 2006-07 in ITA No.3208/Del/2014 has held that the ITAT in assessee's own case for AYT's 2003-04, 2004-05 & 2005-06 has upheld the order of the Id. CIT (A) and allowed the depreciation. The ITAT further noted that the Revenue's appeal against Tribunal order for AY 2002-03 has been dismissed by Hon'ble Delhi High Court. Therefore, ITAT held that in absence of any distinguishing feature, the CIT(A)'s order is upheld and the ground raised by the Revenue is dismissed.

8. Ld. DR in this regard submitted that Id. CIT (A)'s order is erroneous and it needs to be seen that whether the assessee company satisfies the required condition of section 32 of the Act or not. He submitted that the provisions of section 32 are not complied herewith. He further submitted that Revenue's appeal for AY 2002-03 was dismissed by Hon'ble High Court not based on the facts of the case as the appeal was dismissed for delay in filing of the appeals.

9. Per contra, Id. counsel of the assessee submitted that the issue is fully covered in favour of the assessee by the aforesaid decisions of ITAT

i.e. for AYs 2002-03 to 2005-06. The Revenue's appeals have further been dismissed by Hon'ble Delhi High Court. Further, it was submitted that Revenue did not challenge the order of ITAT in AY 2006-07. Ld. counsel further submitted that the claim of depreciation should also be allowed vide Circular No.20/2019 dated 19th August 2019 issued by CBDT.

10. Upon careful consideration, we find that the issue is squarely covered in favour of the assessee by a series of decisions of ITAT in assessee's own case and the matter has already been travelled to Hon'ble High Court and Revenue's appeal has been dismissed. Ld. DR's plea that ITAT's order is suffering from infirmity is not at all tenable. We are bound by the coordinate Bench decision which has also been upheld by Hon'ble High Court. In this view of the matter, we do not find any infirmity in the order of the ld. CIT (A) and we uphold the same. Accordingly, grounds no.1, 2 & 3 are decided against the Revenue.

11. Grounds No.4 & 5 relate to the disallowance to depreciation on support equipment under section 32 (1)(ii). Disallowance of depreciation on supporting equipments pertained to Myanmar A-I & A-3, Block 81-1 Libya, Block NC-188 & NC- 189, Iran, Syria, Egypt and Qatar amounting to Rs.95,36,850 on the ground that the aforesaid projects were at setting up stage and commercial production has not commenced

therein. Assessee claimed depreciation on support equipment/assets of the above joint venture projects for which commercial production has not yet started. AO observed that during the year under consideration, only Sakhalin Project and Vietnam Project had started production, whereas the other projects were at exploration and setting up stage only and no income has yet been booked from these projects. Therefore, in these projects the assessee is still in the pre-commencement stage during the year under consideration. AO observed that in the case of the assessee each project is a separate and distinct project. There is no interlacing, interdependence or inter-connection of finance & production and hence expenses incurred by the assessee in connection with a new division cannot be allowed as business expenditure of the assessee before commencement of production of that unit. Further, AO observed that in the case of the assessee being an oil prospecting company sufficient safeguard is provided by section 42 of the Income Tax act. As such section 42 determines the scheme of things in case of oil prospecting companies. In terms of section 42 business is "set up" in the calendar year in which the commercial production starts. AO observed that in the case of the projects where the commercial production have not commenced the claim of depreciation is not allowable at this stage but only where commercial production begins. In case of abandonment the entire costs

may be allowed over a period of 10 years as per the agreement. As such for the year under consideration the claim of depreciation on support equipments at Myanmar Block A-I & A-3, Libya Block NC- 188, NC-189, Block 81-1, Iran Farsi Block, Syria, Egypt and Qatar where joint venture projects for which commercial production has not yet started totaling to Rs.95,36,8501- were disallowed by the AO and added to the income of the assessee along similar lines as in A. Y. 2006-07.

12. Ld. CIT (A) decided the issue in favour of the assessee by observing as under :-

“4.2.2 From the submission of the Appellant it is evident that the disallowance relates to depreciation on supporting equipments such as computers, vehicles, office equipments etc. that were used by the Appellant for its business purposes. The Appellant is engaged in the business of hydrocarbon exploration prospecting and production for last many years. In the course of its business, it continuously acquires rights in new oil fields to continue its business of exploration / prospecting / production of hydrocarbons. Therefore, the projects which are in exploration and setting up stage are not new business of the appellant company but expansion or extension of business already being carried on by the appellant. Therefore, once the business of an assessee has commenced, any further expenditure incurred by the appellant cannot be disallowed on the ground that commencement of business has not begun.

4.2.3 There is no dispute about the ownership of the assets as well as the usage of the assets by the Appellant for the purpose of business. Further, similar claim of depreciation has not been disputed by the AO and have been allowed in all the previous year's except in A Y 2006-07 and A Y 2007-08. There has been no change in the fact pattern and following the principle of consistency, depreciation on supporting equipments has been claimed by the Appellant. Further, the depreciation on

supporting equipments would not be covered under the Section 42 agreement because the explanation included in the agreement clearly states that the assets on which depreciation is admissible under section 32, shall not be included in the expenditure covered by the Agreement. Therefore, the view of the AO that the expenditure incurred on support equipments are covered by sec 42 of the IT Act is erroneous.

4.2.4 In case of Kesoram Industries and Cotton Mills Ltd. Vs CIT (196 ITR 845), the Hon'ble Calcutta High Court held that expenses incurred on setting up a new unit in the same line of business by the assessee are not related to setting up of new business but amounts to an extension of existing business only. The observations of the High Court are as under:

"It cannot be disputed that if the expenses are incurred in connection with the setting up of a new business, such expenses will be on capital account. But where the setting up does not amount to starting of a new business but expansion or extension of the business already being carried on by the assessee, expenses in connection with such expansion or extension of the business must be held to be deductible as revenue expenses.

The assessee is a manufacturer of cement. In addition to its factory in Andhra Pradesh, it proposed to start another cement factory in Rajasthan. There is one business. Although the factory at Rajasthan was not set up in the previous year relevant to the assessment year, this fact, in our view, is not a relevant factor in determining whether the deduction is allowable or not. The expenses in this case are miscellaneous expenses and legal charges for the proposed cement factory project. This expenditure is not related to the setting up of a new factory, it pertains to exploring the feasibility of expanding or extending the existing business by setting up a new factory in the same line of business. The assessee, during the course of its business, may incur expenditure for obtaining a project report or legal opinion regarding the viability of such project. This cannot, in our view, be considered as capital expenditure as, in that case, any legal expenses incurred by an assessee for taking any opinion on the desirability

or feasibility of expansion of the business will not be allowable as deduction. Such expenditure is unmistakably connected with the running of the business."

4.2.5 Division Bench of Hon'ble Delhi High Court in CIT V. Goodyear India Ltd. [2000] 243 ITR 239 relied upon Jonas Woodhead and Sons (India) Ltd. v. CIT [1997] 224 ITR 342 (SC) and concluded that it is now well settled that when expenditure is incurred for the expansion / extension or for the betterment of the product which was already being produced, and/or the improvisation made is part and parcel of the existing business, it is allowable as a revenue expenditure. In case of CIT Vs Alembic Glass Industries Ltd (112 TTJ 94), the assessee was engaged in the business of manufacturing glass and incurred certain expenses to establish a new glass manufacturing unit. It was held by the Hon'ble Gujarat High Court that the new factory did not constitute a new business but was only an establishment of a new unit of the existing business. In view of the above factual and legal position it is held that joint venture projects for which commercial production has not yet commenced, are extension of existing business of the appellant and claim of depreciation on support equipment of the projects is an eligible claim. As such the disallowance of depreciation on support equipments made by the AO cannot be sustained. The appeal is allowed in this ground."

13. Ld. DR for the Revenue reiterated the stand of the AO and also placed reliance on the decision of Hon'ble Supreme Court in the case of M/s. Enron Oil and Gas India Ltd. reported in 305 ITR 75.

14. Ld. counsel of the assessee made following submissions in this regard :-

- Support equipment is a part of the block of assets. Depreciation on support equipment claimed by the assessee till A Y 2005-06 had been held allowable by the AO himself.

- Further, the depreciation claimed for A Y 2006-07 has been allowed by the CIT(A) and Revenue did not challenge the order of CIT(A) on this issue.
- Thirdly, depreciation could not held disallowable [see the judgment of Delhi High Court in the case of Oswal Agro reported in 341 ITR 467 (copy attached at page no. 15 to)].
- The Ld. AO held that the support equipment on which depreciation has been claimed pertains to those projects/Oil blocks wherein the assessee has acquired participating interest and are at such stage where exploration activities are being undertaken by the Assessee and no income has yet been booked from these projects. Further, held that each project constitutes a new business for the Assessee, therefore, in these projects, the Assessee is still in the pre-commencement stage.
- Each block of participating interest is not a separate business. The assessee is engaged in the business of exploration of crude oil and natural gas and in the process, keeps on acquiring other blocks in other jurisdictions. Thus when it acquires participating interest in other oil block, it is only an expansion of the business in which it is engaged. Support equipments are like other fixed assets and as such depreciation is allowable on cost incurred for acquisition of such assets during the year and also in respect of WDV of other block of assets acquired in the preceding years.
- Support equipment are for the purpose of the business and details of related oil blocks are enclosed in paper books.

15. Upon careful consideration, we find that depreciation on these support equipment has already been allowed in earlier year. There is no change in facts or law in this year. Hence, there is no reason why Revenue should change its stand and disallowed depreciation. The case laws referred by Id. CIT (A) as well as the Id. counsel of assessee are

germane and support the case of assessee. Hence, the order of Id.CIT (A) is upheld.

16. Another ground relates to deletion of disallowance of claim of expenses pending settlement of EPC contract of Rs.145 crores.

17. On this issue, AO has dealt the issue as claim of Rs.998.74 million as explained during settlement of EPC contract but not recognition of revenue to the extent of Rs.1453.31 million. After discussion on the issue and referring to case laws, the AO has concluded as under :-

“8.10 As the assessee has failed to offer the accrued revenues to the extent of Rs.1453.31 million the claim for which has also been forwarded by the assessee company to MEM the same should have been recognized as revenues. This is more so, because the corresponding costs totaling Rs.1109.71 Million have been provided for in reducing the profits of the year. The sum of Rs.1453.31 million is added to the taxable income of the assessee company.”

18. This ground was dealt with by the Id. CIT (A) as under :-

“4.3.1 In Ground no. 4 of appeal the plea of the appellant is that AO has erred in making an addition of Rs.145,33,10,000 in respect of the Sudan pipeline project alleging that Company has claimed expenses relating to the project but not recognized the income without appreciating that the above referred expenses were claimed in A Y 2006-07 and not in A Y 2007-08. During the A Y 2006-07, the company completed the execution of a pipeline from Khartoum refinery to Port Sudan for the Ministry of Energy and Mining of the government of Sudan (MEM). The project has been implemented in consortium with Oil India Limited, Company's share being 90%. The EPC contractor executing the project on behalf of the consortium has claimed additional costs aggregating to Rs.998.74 Million, being the company's share

out of Rs.1109.71 Million which has been provided as expenditure during the A Y 2006-07. The above issue pertains to A Y 2006-07 and does not pertain to A Y 2007-08. The issue was decided by me in A Y 2006-07 in appeal 140/09-10. Since, the issue pertains to A Y 2006-07 and addition made by the AO in A Y 2007-08 is double addition, therefore, the same is deleted. The appeal is allowed in this ground.”

19. This issue was decided by the ITAT in AY 2006-07 as under :-

“35. We have considered the rival arguments made by both the sides, perused orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the EPC Contractor executing the project on behalf of the consortium claimed additional costs aggregating to Rs.1659 million from the assessee and, consequently, an amount of Rs.1026.08 million being the assessee’s share out of Rs.1140.08 million as approved by ONGC (consultant) was provided in the books of account and was claimed as an expenditure in the return of income. The assessee forwarded the counter claim to its customer, MEM amounting to Rs.1524.20 million (assessee’s share being Rs.1371.78 million) which has not been accepted by the MEM. Therefore, the assessee did not consider any revenue on this account in its books of account on the ground that the assessee cannot be said to have acquired any right to receive such income till the time the claim is accepted by the MEM. According to the Assessing Officer, since the project has been completed in the relevant assessment year, the assessee acquired certain right to receive such amount from MEM and the same was taxable in the hands of the assessee on accrual basis and, accordingly, made an addition of Rs.149.31 lakhs to the total income of the assessee. Alternatively, he held that if the assessee’s claim of treating the revenue as non-taxable on account of it being unascertained is accepted in appeal, then, the provision made by the assessee for the expenses to the extent of Rs.1026.08 million should be disallowed on matching principles and on the same logic as per exclusion of revenues. We find in appeal, the Id.CIT(A) deleted the addition of Rs.1,49,31,000/- on the ground that the revenue did not accrue or arise in the hands of the assessee. He,

however, accepted the alternate plea of the Assessing Officer on the ground that the additional expenses of Rs.1026.08 million provided as expenditure by the assessee has to be disallowed as no liability has arisen in the hands of the assessee. It is the submission of the ld. counsel for the assessee that it is following mercantile system of accounting. It has admitted the liability in its books of account totaling to Rs.1026.08 million and provided for in the books of account after the same was received from the EPC contractor. Therefore, such expenditure which is an ascertained liability and which has been provided in the books of account has to be allowed as expenditure. So far as the counter claim made by the assessee against EPC contractor is concerned, they have not accepted the same. Therefore, the assessee has not considered any revenue on this account in its books of account since the assessee cannot be said to have acquired any right to receive such income till the time the claim is accepted by MEM. It is the submission of the ld. DR that the assessee cannot take contradictory stands i.e., claim an expenditure on the basis that he has provided for the same in the books after admitting the same, but, will not show the revenue in its books of account on the ground the revenue did not accrue or arise to the assessee especially when the assessee is following mercantile system of accounting.

36. We find the assessee, during the year under consideration has completed the execution of the pipeline from Khartoum Refinery to Port Sudan. The EPC contractor executing the project on behalf of the consortium has claimed additional costs aggregating to Rs.1026.08 million being the share of the company out of Rs.1140.08 million as approved by ONGC (consultant) which has been provided as expenditure during the year. The claim forwarded by the company has not been accepted by the MEM for which the company has not considered any revenue in the P & L Account. However, it has made a provision for additional expenses of Rs.1026.08 million being the company's share in the consortium. From the findings given by the CIT(A), we find the additional cost of Rs.1659.00 million company's share being Rs.1493.10 million claimed by the EPC contractor is pending in arbitration in its entirety. The claim of the EPC contractor has not been accepted by the assessee company. Part of the cost of Rs.1524.20 million (company's share being Rs.1371.78 million) claimed by the

company has been forwarded to MEM for their approval. It has been clarified before the CIT(A) that no payment has been made by the assessee company to the contractor for which the Id.CIT(A) has given the finding that neither the additional cost claimed by the EPC contractor has been accepted nor any part of it has been paid. Therefore, the CIT(A) held that the liability towards the additional cost claimed by the EPC contractor has not arisen to the company during the relevant year. Thus, we find that while claim made by the assessee to EPC contractor has not been accepted by them, the claim made by the EPC contractor against the assessee towards additional expenditure though admitted by the assessee in its books of account is under litigation and no amount has been paid. We, therefore, find merit in the findings given by the Id.CIT(A) that the additional expenses of Rs.1026.08 million provided as expenditure by the assessee calls for disallowance as no liability has arisen in the hands of the assessee and since the revenue did not accrue or arise in the hands of the assessee, therefore, the addition of Rs.1493.10 million made by the Assessing Officer cannot be justified. We accordingly dismiss the ground of appeal No.2 raised by the assessee and the ground Nos.6,7 and 8 by the Revenue. The various decisions relied on by the Id. counsel for the assessee are distinguishable and not applicable to the facts of the present case. In our opinion, the approach of the assessee should be consistent both for the revenue as well as expenditure. The assessee cannot take one stand for claiming the expenditure as an allowable deduction and, at the same time, do not recognize the revenue. In the instant case, since the claim has not been accepted by the EPC contractor, therefore, the addition made by the Assessing Officer is not justified. At the same time, although the assessee has provided in its Profit & Loss Account regarding the additional claim made by the EPC contractor, however, the assessee has challenged the same before the arbitrator and no payment having been made and the same is also under litigation and, therefore, following matching principle the claim of additional expenditure made by the assessee in its books of account has to be disallowed. We accordingly uphold the order of the CIT(A) on this issue and the grounds raised by the assessee as well as the Revenue are accordingly dismissed.”

20. Further we note that ld. counsel of the assessee has submitted that the assessee's submissions in this regard are as under :-

- For AY 2006-07, the Company had provided an expenditure amounting to INR 1,026.08 Million in the books of accounts with respect to a claim made by an EPC contractor which remain outstanding. The claim made had not been allowed by the ITAT on the ground that no such liability had accrued.
- For AY 2007-08 to 2014-15, the Company had neither claimed nor debited nor provided for any fresh claim from EPC contractor. Thus, there being no claim made, the addition made was not only misconceived but had inadvertently been made.
- In fact, in the notes to accounts for AY 2007-08 to 2014-15, the Company had reinstated the amount of liability incurred in AY 2006-07 on account of fluctuation in the foreign exchange rate.
- The foreign exchange gain/loss arising on account of such fluctuation had been erroneously offered to tax/claimed in the respective A Y s despite the fact that no such sum had accrued. The AO had accepted such claim/income and not raised any issue.
- Since the claim made in A Y 2006-07 had not been allowed by ITA T, such foreign exchange gain/loss should have reduced/added to total income as it had been erroneously offered to tax/claimed.
- Further, for AY 2006-07, the- Company made a counter claim to MEM which was rejected by the Legal department of MEM. The Company did not book any income during AY 2006-07 to AY 2014-15 on account of such claim as the same was not accepted by MEM and no income accrued to the Company.

- However, the AO made an addition of the reinstated value of claim made by the Company to MEM on protective basis in the order passed for AY 2007-08 to 2014-15.
- The Ld. AO in his order has referred to the matching principles which is inapplicable in the instant case as the assessee has not claimed any expenditure during the AY 2007-08 to 2014-15 as detailed above.
- The figures adopted by the AO are as under:

AY	Amount (in INR million)
2007-08	1,806.57*
2008-09	1,654.88
2009-10	2,119.10
2010-11	1,875.56
2011-12	1,858.52
2012-13	2,124.50
2013-14	2,260.56
2014-15	2,496.21

*Inadvertently amount of INR 1,453.31 million has been considered as addition in assessment order

- The said figures have been adopted by him on the basis of note to accounts wherein the reinstated value of claim made by EPC contractor and claim made to MEM had been reported.”

21. Having heard both the counsels and perusing the record, we find that the ITAT has already decided this issue in AY 2006-07 wherein the claim of expenditure was disallowed as well as the addition of income was also deleted. For the present year, Id. CIT (A) has given a finding that these do not pertain to this year. However, Revenue’s ground is on

merits. We are of the considered opinion that this aspect has already been dealt with by ITAT and same ratio should follow. Accordingly, the AO is directed to consider the issue afresh in the light of the ITAT order as referred above.

22. Another ground relates to pre-acquisition of expenses.

23. Brief facts of the case are that the disallowance of pre-acquisition expenses of Rs.79,18,87,613 claimed by the assessee under section 37 of the Act by holding that the same was allowable deduction under section 42 of the Act in terms of the Section 42 Agreement in the subsequent assessment years only after the commencement of commercial production/abandonment of the relevant projects. During the relevant assessment year, the assessee incurred an expense of Rs. 791,887,613 at the time to evaluation of projects in acquisition and pre-bid phase. The assessee claimed above expenditure as revenue expenditure allowable under section 37(1) of the Act on the ground that the said expenditure were incurred for expansion / extension of the existing business of the assessee. These expenses include expenses incurred for foreign block evaluation, for making bid, legal and professional fees paid to lawyers and consultants, travelling, communication, boarding and lodging expenses etc. AO held that the above claim of pre-acquisition expenses u/s 37(1) to the extent of Rs.79,18,87,613/- is not proper as the same is

eligible u/s 42 as per the terms of the agreement. Therefore, AO disallowed the claim being premature and erroneous along similar lines as in AY 2006-07.

24. Ld. CIT (A) was of the opinion that this issue relating to section 37 and not section 32. He noted the following from the ITAT decision and decided the issue in favour of the assessee :-

“4.4.3 Similar additions was made in A Y 2002-03 which was deleted by Hon'ble ITAT. In AY 2004-05 and AY 2005-06 similar additions was deleted by Id. CIT(A) following the decision of Hon'ble ITAT. In AY 2002-03 Hon'ble ITAT in ITA No. 472/0/08 in its decision dt. 30.10.2009 while allowing the claim of the assessee held:

"With regard to disallowing claim of expenses of Rs.43.85 lacs incurred for purchase and evaluation of the seismic data of foreign blocks, on the plea of same being capital in nature, we found that assessee being engaged in the business of exploration and production of hydrocarbons in other countries to augment the oil resources of India, it was continuously evaluating various business opportunities before acquiring a particular field/block. Since all these opportunities have to be evaluated and studied before taking decision to invest and enter into a contract, the process of evaluation of the block started with submitting tender fee/data fee etc. and then the seismic data had to be evaluated in seismic processing center. After evaluating the same, the assessee was to take decision as to whether investments to be made in the project or not. There is no dispute to the fact that in all industries an activity of furtherance of its business or evaluation of better profit earning process in one manner or other are undertaken. Efforts to evaluate the prospects of better earning profit is not a separate activity but is in the course of conduct of normal day to day business. These expenditure cannot be said to bring an enduring benefit to the business nor the same can be

said as initial outlay for expansion of business. In the instant case, the expenditure so incurred by the assessee is for furtherance of activities undertaken by it in the normal course of its business. The same are incurred on continuous basis for evaluation of business activities. In view of the decision of Bombay High Court in the case of Essar Oil Ltd. - (2008) TIOL 530, such expenditure is to be allowed as revenue expenditure. Hon'ble Calcutta High Court in the case of Keshoram Industries and Cotton Mills - 196 ITR 845 held that where the setting up does not amount to starting of new business but expansion or extension of the business already being carried on by the assessee, expenses in connection with such expansion or extension of the business must be held to be deductible as revenue expenses. One has to consider purpose of the expenditure and its object and effect. Accordingly, it was held that, expenses pertaining to exploring feasibility of expansion or extension of business are revenue expenditure and not capital expenditure. The expenditure so incurred by the assessee was in the normal course of business of exploration and production of oil, being revenue in nature is liable to be allowed as a deduction. Similar claim was also made by the assessee in the earlier year. We therefore direct the AO to allow the same as revenue expenditure. As we have allowed ground no. 3 to 3.2, the alternate ground no. 3.3 as taken by assessee become anfractuous.

16. The expenditure of Rs.5.64 crores incurred on projects pending final approval, even though the said expenditure was written off in the accounts over a period of five years the AO disallowed the same. We have considered rival contentions. The assessee in the instant case has incurred expenses relating to project pending final evaluation. The assessee had made distinction between contract projects for which agreement is entered into and the board approved projects i.e. projects for which no agreement/contract has been entered. The assessee used to capitalize expenditure incurred on projects for which no agreement/contract has been entered, however, the cost of such projects which are abundant was written off over a period of five years in the books of account of the assessee. The assessee had claimed the expenses pertaining to abandoned project as

revenue expenses. The expenditure incurred for this purpose was in the nature of travel cost, meeting and conference expenses, delegation, salaries and professional fees etc. These expenditure were claimed by the assessee in its return of income in the year of its incurrence. The issue under consideration is covered in favour of the assessee by the order of Bombay High Court in the case of CIT Vs. Essar Oil Ltd. 2008 TIOL 530 wherein the High Court has observed that submitting tenders and bids in the field of oil exploration is a highly sophisticated technical task for which the assessee company had to incur substantial amount of expenditure before submitting its bid. If the assessee is not successful in obtaining bid, such expenditure is allowable as revenue expenditure. As the assessee was continuously in the business of exploration and production of oil, the expenditure so incurred was in the normal course of its business, such expenditure being revenue in nature incurred for the purpose of existing exploration and production business was required to be allowed u/s 37(1) of the IT Act. Similar claim was also made by the assessee in earlier years. Accordingly, we direct the AO to allow the same."

In view of the above, legal and factual position, the expenses incurred on submission of bids/ tenders, consultancy fee paid to consultants, purchase and evaluation of seismic data etc are normal business expenditure of the Appellant and allowable under section 37 of the Act and provisions of Section 42 of the Act are not applicable. Therefore, the addition made by the AO is legally not sustainable. The appeal is allowed in this ground."

25. Ld. CIT DR pointed out that ITAT has erred inasmuch as the issue is covered by the Hon'ble Supreme Court decision in the case of M/s. Enron Oil and Gas India Ltd. (supra).

26. Ld. counsel of the assessee in this regard submitted that on this issue, Revenue has appealed for AYs 2002-03 and 2005-06 which has

been dismissed by Hon'ble Delhi High Court. Further, for AY 2006-07, the Revenue did not challenge the order of ITAT.

27. In this view of the matter, since the issue is covered by Hon'ble Delhi High Court in assessee's own case, reference to case laws of M/s. Enron Oil and Gas India Ltd. 305 ITR 75 by ld. DR is not applicable on the facts here. Hence, the order of ld. CIT (A) is upheld on this issue.

28. Another issue relates to excess depreciation claimed on UPS @ 60% u/s 32(1)(ii).

29. Pursuant to the AO's disallowance in this regard, ld. CIT (A) has decide the issue in favour of the assessee by placing reliance on the decision of Hon'ble Delhi High Court in case of BSES Yamuna Powers Ltd. in ITA No.1267 order dated 31.08.2010 wherein it has been held that depreciation on UPS shall be allowed @ 30%.

30. In AY 2005-06, in assessee's own case, the same issue is decided in favour of the assessee by the ITAT.

31. In our considered view, this issue is covered in favour of the assessee, hence the order of ld. CIT (A) is upheld on this issue.

32. Another issue raised from AY 2007-08 relates to allowability of expenses incurred on exploration activities u/s 37 of the Act carried out in Farsi block, Iran under a service contract.

33. Brief facts of the case are that AO erred in making an addition of Rs.121,38,27,143 being the expenses incurred in respect of the exploration activities of Farsi Iran Block. As per schedule 25 (Para 13) of notes on accounts the company in consortium with other partners has entered into an Exploration Services Contract (ESC) with National Iranian Oil Company (NIOC) in respect of Farsi Block Iran. The Company drilled exploratory wells in the block during the year and a provisions has been made in respect of the expenditure incurred on exploratory wells (Rs.1,287.30 million) pending declaration of commerciality and award of development service contract by NIOC. The assessee made the above provision of Rs. 1287.30 million on this count even though service contract for development/exploration have not even been awarded to it. The Statutory Auditor have qualified that provision for wells drilled Rs. 128,72,98,865/- was made under Service Contract (Iran) for which the commercial discovery has still not been accepted by NIOC. Out of the total amount Rs. 1213.83 million pertains to expenses incurred during FY 2006-07 and the balance Rs. 73.47 million to FY 2005-06. Since the expenditure pertained to service contract it was treated as revenue in nature deductible u/s 37 of the Act. The assessee has added back Rs. 73.47 million being expenditure relevant to FY 2005-06. AO observed that the assessee has recognized the expenditure, during the year

under consideration but it has not recognized the corresponding revenue against the same. This is against the matching principles of accountancy. The company had recognized the expenditure even though the development service contract had not been awarded to it. Even the declaration of commerciality was pending. Furthermore the expenditure was essentially capital in nature but was still debited to the P&L account. Therefore, the amount of Rs. 1213.83 million corresponding to AY 2007-08 is added back by the AO to the income of the assessee.

34. Upon assessee's appeal, ld. CIT (A) deleted the disallowance by holding as under :-

“4.7.3 The above view of the AO is erroneous because it is a settled legal position that allowability of an expense is not contingent on earning of income accrued. Hon'ble Supreme Court in the case of CIT Vs Rajendra Prasad Moody and Another: 115 ITR 519, held that the only condition for allowability of expenditure is that the same should have been incurred wholly and exclusively for the purpose of the business of the assessee. There is no dispute that exploratory expenditures under the service contract have been incurred wholly and exclusively for the purpose of business of the assessee. In case of Underwater Services Co.(P) Ltd vs DCIT (1991) 37 ITD 447, Mumbai IT AT held that simply because the assessee had incurred expenditure and the income resulted in the subsequent years, the claim of expenses cannot be disallowed. In Birlasoft (India) Ltd. Vs DCIT [44 SOT 664 (Del)] Hon'ble ITAT Delhi held that settled proposition that when once an outlay is made for the purpose of the business, it need not turn out to be profitable. It is a mistake to suppose that any deductible expenditure must not only be incurred for the purpose of business or trade but must also be profitably laid out. Deductible expenditure incurred for the purpose of business does not require the presence of a receipt on the credit

side to justify deduction of an expenses. It is well-settled that expenditure wholly an exclusively for the purpose of business cannot be disallowed merely because the assessee income or the turnover would be very much reduced thereby. In view of the above legal position the disallowance made by the AO cannot be sustained. The appeal is allowed in this ground.”

35. Ld. CIT DR submitted that this issue is to be governed by Section 42 of the Income Tax Act and he referred to the decision of Hon'ble Supreme Court in the case of M/s. Enron Oil and Gas India Ltd. (supra).

36. Ld. counsel of the assessee submitted that assessee had entered into an exploration service contract with NIOC for Farsi Block in the year 2002. Under the said contract, all the funds required for exploration operations were to be provided by the assessee and to be reimbursed by the NIOC upon signing a development service contract (upon establishment of commercial field). The assessee had incurred Rs.7,34,71,772/- during the AY 2006-07 and the AO had accepted the claim of deduction of expenditure incurred for the relevant year. Further contentions of the ld. counsel of the assessee is as under :-

- The assessee had incurred further expenditures on exploration activities during AY 2007-08 to 2014-15 and claimed as deduction in respective years.
- The above claims have not been allowed on the ground that the assessee has not recognized the corresponding revenue. In fact, there has been no corresponding income since the development March 2014.
- The AO has disallowed the said sum of expenditure incurred on a complete misinterpretation of law where the claim of

expenditure incurred was held disallowable since the assessee has not reported any income. He failed to appreciate that no income had accrued to the assessee yet. Thus, invoking matching principal was found misconceived.

- The matching principal was that the assessee should follow the mercantile system or cash system of accounting. It has been held that the assessee can not follow for the purpose of claiming expenditure mercantile basis and offer income on receipt basis. In this case, the assessee is following mercantile basis.
- There is a distinction between accrual of income and incurring of expenditure. While computing the income under the Income Tax Act, an expenditure incurred is allowable when it is incurred. However, an income accrues and is taxable when it is due to be received with a corresponding liability of the other party from whom it is due.”

37. Upon careful consideration, we find that the Id. CIT (A) has taken a correct view of the matter. It is certainly settled law that allowability of expenses is not contingent upon earning of income. It has been duly incurred and no doubt has been expressed about the veracity of the expenditure. When no income has accrued in this regard, the expenditure cannot be disallowed on the plank that since income has not been earned expenditure is to be disallowed. In our considered opinion, the order of Id. CIT (A) and the case laws referred by him are germane and duly support the case of the assessee. Hence, we uphold the order of the Id. CIT(A) on this issue. The mere reference to section 42 and the decision of the Hon'ble Supreme Court by the Ld. DR does not fructify the case of

the Revenue in absence of details submitted as to how they are affecting the issue here.

38. Another issue raised relates to deletion of addition on account of disallowance of prior period income of Rs.33,47,65,000/-.

39. Brief facts of the case are that the assessee has taken plea that AO has erred in making an addition of Rs. 33,47,65,000 as prior period income in respect of 50% of survey expenses written back in relation to Sakhalin project without appreciating that the assessee had not claimed the deduction for aforesaid expense by filing the revised return of income for A Y 2006-07. During the relevant Assessment Year, the assessee had written back liability in respect of 50% of survey expenses in relation to Sakhalin Project. Since the liability was contingent in nature, the assessee has written back the same in its books of accounts for A Y 2007-08. It was further submitted that the assessee in its revised return of income for A Y 2006-07 has given up the claim of deduction made earlier, therefore prior period income was not offered to tax in the subject assessment year. The AO held that no evidence of revision of return of A Y 2006-07 has been furnished and therefore made an addition of 334,765,000 to the income of the assessee on this account.

40. Ld. CIT (A) deleted the addition by holding as under :-

“4.8.2 In the AY 2006-07, the Company had claimed Rs.3,206,077,138 as deduction u/s towards exploration

expenditure for Sakhalin project. Subsequently, due to write back of liability amounting to Rs. 334,765,000, the Company revised its return and claim u/s 42 was reduced to this extent and offered to same for tax- in the computation of income on this account. The revision was accepted by the AO in computing the income in the assessment order for AY 2006-07. Consequently the corresponding prior period exploratory expenditure of FY 2005-06 written back in the financials of FY 2006-07 relevant to A Y 2007-08, can not be subjected to tax. AO has erred in adding the same on the ground that no evidence of revision of return of AY 2006-07 in respect of including the aforesaid amount in the income has been furnished. Because in the course of assessment proceedings, the appellant has filed the computation along with copy of revised return of income tiled for A Y 2006-07. In view of the above factual position, addition made by the AO on account of prior period income is deleted.”

Against this order, Revenue is in appeal before us.

41. Ld. DR for the Revenue submitted that this is factual issue and the same might be remitted back to the AO for verification.

42. Ld. counsel of this assessee in this regard as made following submissions :-

- AO, despite the fact that a sum of INR 33,47,65,000 does not represent the income for A Y 2007-08 has not excluded the same from the income.
- For the AY 2006-07, the assessee had claimed deduction u/s 42 of the Act amounting to INR 320,60,77,138 in the original return of income. The above amount includes liability amounting to INR 33,47,65,000 to be paid after the recovery of development investment. Accordingly, based on the advice of CAG, the- assessee had written back liability of INR 33,47,65,000 in the books of account of FY 2006-07 (AY 2007-08) as prior period income.

- The assessee had also 'revised its return of income for the AY 2006- 07 and deduction u/s 42 was reduced by INR 33,47,65,000. Copy attached at page no. 24 to 32 .
- The AO held that no evidence had been furnished to substantiate that the aforesaid sum has been offered to tax in the A Y 2006-07. In fact the revised return of income for A Y 2006-07 has been accepted by the revenue.

43. We find that ld. DR is not disputing the findings of the ld. CIT (A) on this issue but only wants the matter to be remitted to AO for verification. We find that the matter has already been examined by ld. CIT(A) and has passed a cogent order. No infirmity therein has been pointed out to persuade us to remit the matter to AO, hence we uphold the order of ld. CIT (A).

44. Another issue relates to AY 2009-10 relating to revision of opening and closing stock.

45. On this issue, ld. CIT (A) has dealt with the assessee's request that since the value of closing stock has been increased in AY 2008-09, in AY 2009-10 the value of opening stock should also increase. The ld. CIT (A) has noted the assessee's submissions as under :-

“3.27.1 In the audited accounts for the financial year (FY) 2007-08 relevant to the assessment year (AY) 2008-09, the closing stock was computed at Rs. 155.11 million which inadvertently included Rs. 56.61 million being value of crude oil in the pipeline till the delivery point in relation to Sudan 5A project which should be excluded as per COTA agreement. Appellant revised its return of income for the A Y 2008-09 and exclude Rs. 56.61 million from the value of closing stock and

corresponding reducing income. Copy of relevant extract of audited financial statement of FY 2008-09. However, the Ld. AD in completing the assessment (AY 2008-09) has not accepted the above claim and had increased the income by Rs. 56.61 million by increasing the value of closing stock.

3.27.2 The appellant submitted that opening stock for the AY 2009-10 is to be assessed at the same amount at which closing stock of A Y 2008-09 has been assessed. In this connection, it is submitted that claim was made in AY 2008-09 by reducing the amount of closing stock by 56.61 million. However, the Ld. AO did not accept this claim and increased the income for the AY 2008-09. Copy of the assessment order for the AY 2008-09 enclosed as page no. 519 to 557 of paper book. It is submitted that this claim has not been accepted by your honor in disposing the appeal for the AY 2008-09. Hence, the value of closing stock assessed at Rs.155.11 million should be taken as opening stock for the AY 2009-10 as against 98.50 million in the audited financial statement and the return of income for the AY 2009-10. Consequent upon increase in value of opening stock of A Y 2009-10 from Rs. 98. 50 million to Rs.155.11 million, the income for the AY 2009-10 shall stand reduced by Rs.56.61 million.

In view of the above we pray before your honor to allow deduction amounting to Rs.5,66,05,690 on account of consequential claim of increase in value of opening stock in AY 2009-10."

46. Considering the same, ld. CIT (A) found merit in the same and directed that the AO may allow benefit of revised opening stock to the assessee.

47. Ld. counsel of the assessee has made following submissions :-

- Stocks of crude oil in pipeline/flow line till the delivery point remains the property of State. The ownership of the oil gets transferred at marine terminal to the consortium. This accounting policy adopted has been accepted for

valuation of stocks in respect of Sakhalin 1 Project, Russia and such accounting policy of the company of valuation of closing stock' has also been accepted by the Comptroller and Auditor General of India.

Therefore, the assessee had reduced the closing stock of AY 2008- 09 by INR 56.61 million and the corresponding opening stock of AY 2009-10 was shown at the reduced value.

- The AO did not accept the contention of the assessee and assessed the closing stock of AY 2008-09 at a higher value including the aforesaid sum. The assessee has accepted the higher value of closing stock in AY 2008-09.
- CIT(A) had directed the revenue to adopt the said increased value of closing stock as the opening stock for the AY 2009-10.
- The assessee had accordingly requested the revenue to provide the benefit of increased opening stock in AY 2009-10 which has been allowed by the CIT(A) in the AY 2009-10 and the affect to same has also been provided.

48. Ld. CIT DR in this regard submits that the issue involves factual issue and may be remitted back to the file of AO.

49. We find that ld. DR has not disputed the CIT (A)'s finding and he is only submitting that this is a factual issue and may be remitted to AO. We find that this is exactly what ld. CIT (A) has done. The CIT (A) has noted the assessee's submissions and held that AO may consider the same. Hence, Revenue's ground in this regard is misplaced and hence dismissed.

50. Another issue raised in AY 2009-10 onwards is contribution to abandonment account.

51. On this issue, the matter pertains to contribution made to site restoration fund also known as abandonment account. AO stated that the amount deposited by the assessee was in the nature of a provisional liability which had not arisen during the year. That the claim was an expense which was to be allowed in future years and was a claim which was not acceptable in view of the decision of M/s. Goetze India.

52. Upon assessee's appeal, ld. CIT (A) reproduced the submissions of the assessee. Ld. CIT (A) noted the positions as under :-

“12.3. The appellant has stated that the appellant was required to make a deposit in a fund called the Site Restoration Fund, as per Article 20 of PSA. The amount was deposited in an abandonment account in discharge of liability which accrued during the year. The amount deposited could not be withdrawn and was to be transferred to the state. The appellant had no lien over the amount. The appellant had also not debited this amount to the P & L A/c but had made a payment in the account and had created an asset in the balance sheet .

12.4 The appellant stated that the appellant had Signed an agreement with Consortium Members & the Russian Govt. As per the PSA (Production Sharing Agreement) the consortium was to establish an account for each development area (referred to as Abandonment Account). The appellant had made a provision for future abandonment cost being dismantling, abandoning, restoring well sites. During the year, the appellant had made a payment of Rs.6,02,19,264/- and an amount of Rs.1,65,67,432/- & Rs.94,91,110/- had accrued for the month of February & March respectively.

12.5. The appellant moved an application for submitting additional evidence under Rule 46A. The appellant gave evidence that deposits in the fund were made during the year. The matter was referred to the AO for a report.

12.6. In spite of several reminders, no report has been received from the AO. I am therefore basing my order on the documents on record and on merit.

53. Ld. CIT (A) admitted the additional evidence. He noted the submissions as under :-

"The Appellant vide an assignment agreement dated February 10, 2001 with Consortium members and the Russian Government acquired a 20% participating interest in Sakhalin Block Russia. As per the Production Sharing Agreement (PSA), the consortium has liability of site restoration and for this purpose shall establish an account (Abandonment Account) and begin making a monthly contribution to the Abandonment Account following the initial sale of Hydrocarbons, succeeded by cost recovery. The amount of monthly abandonment contribution is calculated by multiplying the monthly production volume from each Development Area by an abandonment cost per unit of production. Accordingly, the Appellant has contributed Rs.60,219,264 towards abandonment liability for the months June 2008 to January 2009 as per monthly contribution notice of operator (ExxonMobil)/Foreign Party Administrator (JP Morgan Chase Bank, UK).

In the books of accounts, the Appellant created a provision for abandonment liability of Sakhalin project (Block) by debiting 'Producing Property A/c' (Schedule 5 of Financial Statements) under assets side. Therefore, there is no impact on Profit & Loss account due to the above provision made in the books.

The asset standing under producing properties are charged off to the Profit & Loss account on annual basis through depletion. During the year, the amount charged off to Profit & Loss account as depletion has been added back in the computation of

income. Hence, no deduction on account of provision for abandonment cost has been claimed in the ROI filed.

During the course of the assessment proceedings, the Appellant has made the following claims by filing a revised computation before the AO:

Particulars	Amount
Contribution to Abandonment Account for June 2008 to January 2009 made in AY 2009-10	60,219,264
Interest on Abandonment Account	493,456
Foreign exchange fluctuation gain	6,998,554
Total	67,711,274

In assessment order, the AO did not allow the claim of the Appellant holding that amount deposited in the Abandonment Account (also referred to as "site restoration fund") is mere provisional in nature. Further, the company has earned an income on the deposit and it is not possible for an assessee to earn interest on an item of expenditure. At best it is an expense that has to be allowed in future years. AO also mentioned that claim is not maintainable at the assessment stage in view of Hon'ble Supreme Court decision in the case of Goetze India Limited vs. CIT 284 ITR 323 (SC).

Against the assessment order, appellant has raised following grounds on this issue:

8.1 That the Ld. AO has erred in not considering the claim of the appellant, filed during the assessment proceedings, for allowing deduction on account of contribution to site restoration fund amounting to Rs.60,219,264 as per Production Sharing Contract for Sakhalin, Russia block.

8.2 That the Ld. AO has erred on facts and in law in holding that the amount deposited in the site restoration fund is mere provisional in nature.

8.3 That the Ld. AO has erred on facts and in law in holding that at best it is an expense that has to be allowed in future years.

8.4 That the Ld. AO has erred on facts and in law in holding that it is not possible for an appellant to earn interest on an item of expenditure.

8.5 That the Ld. AO has erred in not considering the claim of the appellant, filed during the assessment proceedings, that the amount of Rs. 493,456 credited to site restoration fund as interest was not in the nature of income or alternatively the same is to be treated as amount of contribution to the fund and hence is not taxable.

8.6 That the Ld. AO has erred in not considering the claim of the appellant, filed during the assessment proceedings, that the amount of Rs.6,998,554 credited to site restoration fund as foreign exchange fluctuation on account of restatement was not in the nature of income or alternatively the same is to be treated as amount of contribution to the fund and hence is not taxable.

Further, in addition to above, the Appellant has raised the following additional ground vide its letter dated 22.05.2014:

On the facts and circumstances of the case and in law, the deduction of Rs.2,60,58,542/- being the amount of contribution for the month of February 2009 & March 2009 on account of abandonment liability of Sakhalin Project deposited with JP Morgan Chase Bank should be allowed as deduction under section 37 of the Act in assessment year 2009-10.

The above additional ground has been raised by the Appellant on the premise that the Appellant being a Company is required to follow mercantile basis of accounting and therefore the liability for contribution to abandonment account for site restoration for the month of February and March 2009, though deposited in the next financial year but pertains to AY 2009-10 and hence should be allowed as deduction in AY 2009-10.”

54. Considering the same, Id. CIT (A) gave a finding that the expenditure is for business purpose and was allowable u/s 37 of the Act.

He has held as under :-

“12.8. It is relevant to note that the AO has not doubted that the appellant has to incur this liability. The issue is whether it will be allowed as an expense in this year or in future years.

12.9. In my View, the expenditure is clearly for business purposes and it has been incurred during the year. The appellant cannot get back any amount from the fund. The amount has been incurred for the purpose of business.

12.10. As per section 37:

"37(1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure' or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

12.11 In view therefore, the appellant is allowed claim of deduction of this amount being in the nature of business expenditure. The addition is deleted. The ground of appeal is ruled in favour of the appellant.”

55. In this regard, ld. DR has submitted as under :-

“9.1 A perusal of the facts of the case clearly demonstrates that while filing the original ROI no deduction on account of provision of abandonment cost has been claim. However, during the course of assessment proceedings, the assessee claimed an amount of Rs.6,77,11,274/- as a deduction. The assessee also claim deduction for the month of February 2009 and March 2009 totaling to Rs.8,62,77,806/- in total.

9.2 The AO did not allow the same on the ground that the amount deposited in the site restoration fund accounts is mere provisional in nature. It is also clear that the assessee has an option of making a bank or corporate guarantee in lieu of paying the same. The liability in respect of the abandonment cost has not arisen during the year and can be changed at the end of the period. The deposit is payable in the future years and

no liability to pay has been incurred during the year. The agreement clearly states that there is no finality of the amount that the assessee is liable and shall only be determined at the conclusion of the contract.

9.3 The Ld. CIT(A) allowed the claim of the assessee by holding as under:

"12.8 It is relevant to note that the AO has not doubted that the appellant has to incur this liability. The issue is whether it will be allowed as an expense in this year or in the future years.

12.9 The expenditure is clearly for business purposes and it has been incurred during the year. The appellant cannot get back any amount from the fund. The amount has been incurred for the purpose of business."

The Id. CIT(A) has failed to decide the issue whether the expenditure claimed by the assessee is provisional in nature or not. This is also fortified by the fact that the foreign exchange fluctuation gain earned by the assessee has also been claimed as an expenditure. Reliance is also placed on the relevant clauses of the agreement wherein the assessee is required to contribute to the abandonment account. The same would be argued at length based on these clauses as well."

56. The submission of Id. counsel of the assessee in this regard is as under :-

- The aforesaid claim represents contribution to site restoration fund.
- The assessee made a contribution to abandonment account on account of Sakhalin Block as mandated by the PSA entered by the assessee and the Government of Russia.
- Such liability is quantified on monthly basis by operator/ FPA and is actually paid by the assessee within due dates on the basis of payment notices issued by the operator / FPA.

In other words, the contribution amount deposited in each month is in accordance with payment notice issued as per the terms of PSA and represent pro-rata cost of the abandonment plan.

- The said sum is not a provision. The mere fact that the assessee had an option for providing corporate guarantee and/or to make deposit, does not constitute the same as a provision.

57. Upon careful consideration, we find that Id. CIT (A) has duly examined the additional evidences and given a proper finding that the expenditure is allowable u/s 57. The Id. CIT (A)'s order is well reasoned. The Id. CIT (A) has already found that the assessee cannot get back any amount from the fund. Hence, Revenue's plea that Id. CIT (A) has not decided whether the amount paid is provisional or not is not at all sustainable. Hence, we uphold the order of the Id. CIT (A).

TRANSFER PRICING ISSUE

58. The TPO has done transfer pricing adjustment in the AY 2011-12, 2013-14 & 2014-15 with respect to loan to Associated Enterprises. On confirmation of the same by DRP, the assessee has filed appeal before us. The same are dealt with as under.

ASSESSMENT YEAR 2011-12

59. During FY 2010-11, the appellant had advanced foreign currency loan from its own funds amounting to INR 733,425,259 to its indirect subsidiary ONGC Caspian carrying a rate of interest of 2.5%. The bridge

loan was advanced by the Appellant to ONGC Caspian on November 4, 2010 and was repaid on March 30, 2011 in accordance with the terms of the loan agreement. The loan to ONGC Caspian was advanced for the purpose of investment in South East Asia Gas Pipeline Company Limited (SEAGP). It was a short term loan for less than 6 months and was borrowed to bridge the short term gap between the requirement of funds and inflow of funds.

60. The assessee had maintained the TP Documentation for establishing the arm's length nature of its above mentioned international transaction. The appellant applied Comparable Uncontrolled Price ('CUP') method as the most appropriate method. Since the loan was a short term loan for 146 days only and was repaid during the year itself, the appellant had compared the interest rate charged to the average 6-month LIBOR rate prevailing during the year i.e. 0.59%.

61. Since, interest earned by the appellant was from ONGC Caspian of 2.5% (LIBOR plus 1.91 %) was higher than the average 6-month Libor rate, the appellant concluded its international transaction of interest income earned from loan given to ONGC Caspian to be at arm's length, as prescribed under the Indian Transfer Pricing Regulations ('TP Regulations').

62. Further, during the course of assessment proceedings, the appellant, vide its submission dated January 16, 2015 submitted to the TPO an additional benchmarking analysis conducted using Loan Connector database. In the said submission the appellant submitted that the effective interest rate paid by the comparable companies was 1.40% (average 6-month LIBOR plus a spread of 0.81 %) as against the interest rate of 2.5% earned by the appellant. Accordingly, it was claimed that the appellant's international transaction of receipt of interest from ONGC Caspian was at arm's length from an Indian TP perspective.

63. The TPO relied upon his own order for the earlier AY i.e. AY 2010-11 where the loan transactions chosen by him pertained to AY 2010-11 rather than 2011-12 i.e. the year under reference. The loan transactions chosen by him are tabulated below.

Company Name	Date	Deal amount (in million USD)	Tranche months
Mc Clatchy	11-Feb-2010	547.38	41
Ford Motor	24-Nov-2009	7,937.35	49

64. However, during the course of the TP assessment proceedings, the TPO considered the credit rating of ONGC Caspian as "CCC" and determined the interest rate of LIBOR plus 500 basis points as the Arm's Length Price ('ALP') and proposed an addition amounting to INR

8,648,551 with respect to the loan granted by the appellant to ONGC Caspian.

65. Against the above order, assessee objected before the Id. CIT(A). Ld. CIT (A) noted that assessee has advanced foreign currency loan from its own funds to its indirect subsidiary ONGC Caspian for investment in South East Asia Gas Pipeline Company Ltd.. The loan was for a period of 146 days i.e. less than 6 months and was repaid during the year itself. That the assessee had compared the interest charged to the average 6 month LIBOR rate prevailing during the year i.e. 0.59% and used a spread of Libor plus 1.91% to arrive at the figure of 2.5%. That the assessee claimed that the said interest was at arm's length as it has been benchmarked using 6 month Libor as the base rate. The assessee submitted an additional benchmarking analysis conducted using Loan Connector database where the effective interest rate paid by the comparable companies was 1.40%. It was further stated that it was the first year of operation of ONGC Caspian, hence it has not earned any income though it had incurred expenditure. Ld. CIT (A) accepted assessee's contention that TPO has erred in determining the credit rate of ONGC Caspian as 'CCC' instead of considering its credit rating to be the same as that of the parent company. Further assessee also objected before the Id. CIT (A) to the TPO using loan transactions undertaken by

two different companies as comparable transactions. Assessee stated before the Id. CIT (A) that the loan in the name of above companies were taken in the last financial year and were long term loans as compared loan given by it to ONGC Caspian which was a bridge loan for less than 6 months and which was paid during the year. Ld. CIT(A) further accepted that the analysis conducted by the assessee using the loan connector database supports the contention of the assessee that the interest rate was at arm's length, hence Id. CIT (A) directed the AO/TPO to delete the adjustment made on account of loan advanced by the assessee to ONGC Caspian.

66. Against the above order, the Revenue is in appeal before us.

67. We have heard both the parties and perused the record. We agree with the Id. CIT (A) that the TPO has applied erroneous and non-comparable search to benchmark the loan transaction. Further assessee has also submitted additional benchmarking analysis using the loan connector database which also compared well with the rate of interest arrived by the assessee. The TPO has used the data regarding loans which pertains to earlier years where the loan was for a period of 3 years. As the loan given by the assessee was a bridge loan for less than 6 months and has been repaid during the financial year itself, we find that

the adjustment made by the TPO has rightly been set aside by the Id. CIT (A). Accordingly, we uphold the order of Id. CIT (A) on this issue.

ASSESSMENT YEAR 2013-14

68. For this year, the TPO has made transfer pricing adjustment on loan provided to Jarpeno. Jarpeno acquired Imperial Energy Corporation Plc., UK ("Imperial") in January 2009, for which consideration was advanced by the Appellant to Jarpeno. Subsequently, the Appellant extended advances to Jarpeno to acquire the shares of balance shareholders. The advances were in the nature of long-term investment by the Appellant into Jarpeno. During FY 2012-13, the Appellant advanced foreign currency loan from internal accruals, amounting to INR 1,29,15,19,936 to Jarpeno. The Appellant charged interest at the rate of 4% on such advance provided to Jarpeno.

69. The Appellant had maintained the TP Documentation for establishing the arm's length nature of its above mentioned international transaction. In the TP documentation, the Appellant had applied internal as well as external CUP method. Based on the same the Appellant concluded interest income earned from loan given to Jarpeno to be at arm's length.

70. To further substantiate the arm's length nature of the transaction, during the course of the TP assessment proceedings, the Appellant also

submitted an additional analysis (search on Loan Connector) and concluded the transaction to be at arm's length.

71. The TPO did not agree to the contention of the appellant. He remarked that credit rating by external agency was not available for the borrower company and rejected the additional benchmarking analysis conducted by the Appellant. The TPO used the interest rate charged by SBI and determined the arm's length interest at the rate of 5.4357% (LIBOR+4.5%) by assigning lowest credit rating to Jarpeno.

72. Against the above order, the assessee filed objections before the Id.CIT (A). Ld. CIT (A) also noted that for AY 2010-11 in assessee's own case, the Id. CIT(A) has deleted the adjustment on interest on loan provided to Jarpeno made by the TPO and concluded that the interest rate charged by the assessee @ 4% at arm's length. He further noted that in AY 2011-12, the TPO did not make any adjustment on the interest on loan provided to Jarpeno and accepted the interest rate charged by the assessee @ 4% at arm's length. Ld. CIT (A) in this regard relied on the CIT(A)'s order for those years and found that it has rejected the transfer pricing adjustment made by the TPO by relying upon the decision of Hon'ble Delhi High Court in the case of CIT vs. Cotton Naturals (I) Pvt. Ltd. (ITA 233/2014) wherein it was held that loan in foreign currency extended to AEs should be benchmarked using the Libor. Ld. CIT (A)

extensively quoted from the order of CIT (A) for AYs 2010-11, 2011-12 & 2012-13. Referring to these two years, Id. CIT (A) concluded as under:-

“13.21 However, the TPO has applied the WACC method to calculate the arm's length price of interest which is different from the method applied by the TPO in the year under reference. However, the CIT(A) in his order for AY 2012-13 extracted above has discussed the issue why both internal and external CUPs used by the appellant need to be rejected. The same view holds in the instant year also.

13.22 In the instant year, the TPO has taken the arm's length rate of interest as the rate charged by SBI at LIBOR plus 4.5% for entities with lowest credit rating. The appellant, in his submission dated 26.09.2017, has pointed out that the TPO had accepted that the credit rating of Jarpeno, based on Moody's Analysis, was AA and AAA which is borne out by the order of the TPO for AY 2010-11 dated 28.01.2014 filed along with the above submission. It is also observed that the TPO has not made any addition on account of the loan given to Jarpeno during AY 2011-12. The same has not been disputed by the CIT(A) in his order for AY 2010-11. In view of the above, the AO/ TPO is directed to calculate the arm's length interest by giving credit rating of AA/AAA to Jarpeno i.e. LIBOR plus 3% as mentioned at page 15 of the order of the TPO dated 26.10.2016. The ground of appeal is disposed off accordingly.”

73. Against the above order, the Revenue is in appeal before us.

74. We have heard both the parties and perused the record. We find that identical issues were decided by the Id. CIT(A) in assessee's own case for earlier AYs i.e. 2010-11 & 2012-13 wherein addition on similar basis by adopting SBI rates was rejected relying upon the decision of Hon'ble Cotton Naturals (I) Pvt. Ltd. (supra). We find that Id. CIT (A)

has analysed the issue in proper perspective and taken a correct view of the matter, hence we uphold the same.

ASSESSMENT YEAR 2014-15

75. For this Assessment Year, the TPO made transfer pricing adjustment qua interest on these loans to AE, which are dealt with as under.

76. On loan to Jarpeno, the transfer pricing adjustment was deleted by the Ld. CIT(A) based on his earlier order for AY 2013-14. He held as under:-

“13.22. In the instant year, the TPO has taken the arm’s length rate of interest as the rate charged by SBI at LIBOR plus 4.5% for entities with lowest credit rating. The appellant, in his submission dated 26.09.2017, has pointed out that the TPO had accepted that the credit rating of Jarpeno, based on Moody’s Analysis, was AA and AAA which is borne out by the order of the TPO for AY 2010-11 dated 28.01.2014 filed along with the submission. It is also observed that the TPO has not made any addition on account of the loan given to Jarpeno during AY 2011-12. The same has not been disputed by the CIT(A) in his order for AY 2010-11. In view of the above, the AO/TPO is directed to calculate the arm’s length interest by giving credit rating of AA/AAA to Jarpeno i.e. LIBOR plus 3% as mentioned at page 15 of the order of the TPO dated 26.10.2016. The ground of appeal is disposed off accordingly.

7.5. The material facts of the case are the same in the instant year also. In accordance with the principle of consistency and respectfully following the orders of the CIT(A) in AYs 2010-11, 2012-13 and 2013-14, the AO/TPO is directed to calculate the arm’s length interest at LIBOR plus 3%. The AO/TPO is also directed to verify the value of LIBOR after taking the contention of the appellant into consideration. In view of the order of the CIT(A) in AY 2012-13, the AO/TPO is also directed to apply 6 months LIBOR rate for benchmarking receipt of interest from Jarpeno. The ground of appeal is disposed off accordingly.

77. Since, we have already upheld the order of the Ld. CIT(A) for AY 2013-14 facts being similar, this order of the Ld. CIT(A) is also upheld on the same reasoning.

78. On loan to ONGC (BTC) Ltd., the TPO had made transfer pricing adjustment of Rs.2,06,88,027/- in computing the interest on the loan, the TPO applied interest rate of LIBOR plus 4.5% instead of 4% applied by the assessee.

79. Upon assessee's appeal, the Ld. CIT(A) has held as under:-

“7.8 The TPO/AO has not accepted the credit rating analysis for ONGC (BTC) based on Moody's software as it has been conducted by the appellant itself and not by any independent third party. The TPO/AO has benchmarked above transaction at LIBOR + 4.5% i.e. the maximum rate of interest charged by the SBI. The appellant on the other hand has calculated the credit rating as B1. The appellant has also submitted that a spread of only 2.42% per annum should be considered as a mark-up above the LIBOR rate on basis of the analysis conducted by the taxpayer on the LoanConnector Data Base.

7.9 It is seen that the CsIT(A) have accepted the credit rating of the AE of the taxpayer prepared on the basis of Moody's RiskCalc Plus Software in the case of Jarpeno for AYs 2012- 13 and 2013-14. No objection has been made by the TPO/AO to the credit rating filed by the appellant for ONGC (BTC) in the year under reference except that it had been prepared by the appellant itself and not by a third party.

7.10 I have considered the facts and the circumstances of the case. As the CsIT(A) have accepted the credit rating of the AE of the taxpayer prepared on the basis of Moody's RiskCalc Plus Software in the case of Jarpeno for AYs 2012-13 and 2013-14 and no specific objection been made by the TPO, the credit rating of ONGC (BTC) is taken as B1. The TPO lia5 benchmarked the transaction at LIBOR plus 4.5% by taking the lowest credit rating for the AE. However, on the basis of

facts available on record, the AO/TPO is directed to benchmark the loan transaction of the appellant with ONGC (BTC) at 6 months LIBOR + 4%. The AO/TPO is also directed to verify the value of LIBOR after taking the contention of the appellant into consideration. In view of the order of the CsIT(A) in AYs 2012-13 and 2013-14, the AO/TPO is also directed to apply 6 months LIBOR rate for benchmarking receipt of interest from ONGC (BTC).The ground of appeal is disposed off accordingly. ”

80. Upon careful consideration, we find the Ld. CIT(A) has passed a reasonable order which does not need any interference from us. The TPO's application of interest rate based on SBI rates have already been disapproved by the Hon'ble Delhi High Court in the case of Cotton Naturals.

81. On loan to ONGC Nile Ganga, the AO/TPO did not accept the interest rate of 2.5% charged by the appellant to be at arm's length and applied interest rate of LIBOR + 4.5%. The AO/TPO also rejected the credit rating of A2 furnished by the appellant.

82. Upon assessee's objection, the Ld. CIT(A) dealt with the issue as under:-

“7.13 The appellant advanced a short term loan of Rs. 5,318,240,000 to ONGC Nile Ganga at 2.5%. The appellant submitted that ONGC Nile Ganga had invited quotations from several PSU Banks and that the interest rates quoted by the PSU Banks range from 2.07% to 2.25%. It also submitted that the TPO had not accepted the credit rating of the AE submitted as per Moody's RiskCalc Plus as A2 for the year under consideration. It was also submitted that the average arm's length interest rate of comparable deals as per the

LoanConnector Data Base was LIBOR plus 1.048% per annum.

7.14 I have considered the facts and the circumstances of the case. As the CsIT(A) have accepted the credit rating of the AE of the taxpayer prepared on the basis of Moody's RiskCalc Plus Software in the case of Jarpeno for AYS 2012-13 and 2013-14 and no specific objection has been made by the TPO, the credit rating of ONGC Nile Ganga is taken as A2. The TPO has benchmarked the transaction at LIBOR plus 4.5% by taking the lowest credit rating for the AE. However, on the basis of facts available on record, the AO/TPO is directed to benchmark the loan transaction of the appellant with ONGC Nile Ganga at 6 months LIBOR + 4%. The AO/TPO is also directed to verify the value of LIBOR after taking the contention of the appellant into consideration. In view of the order of the CsIT(A) in AYS 2012-13 and 2013-14, the AO/TPO is also directed to apply 6 months LIBOR rate for benchmarking receipt of interest from ONGC Nile Ganga."

83. Upon careful consideration, we find that Ld. CIT(A) has passed a reasonable order. It is on the same lines as on the earlier two loans, which we have already upheld. Hence, we uphold the order of the Ld. CIT(A).

84. In the result, the appeals of the Revenue stand dismissed.

Order pronounced in the open court on this 05th day of September, 2022.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 05th day of September, 2022
TS & *Shekhar*

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XVI, Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.