IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "E" : DELHI]

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

A N D

SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं/.I.T.A No.1041/Del/2018
निर्धारणवर्ष/Assessment Year: 2011-12

ACIT, Circle : 17 (2), New Delhi.	**बनाम** **Vs.**	M/s. National Fertilizers Ltd., Core-III, Scope Complex, 7, Institutional Area, Lodhi Road, New Delhi–110003
		PAN No. AAACN0189N

A N D

आ.अ.सं/.I.T.A No.1148/Del/2018
निर्धारणवर्ष/Assessment Year: 2011-12

M/s. National Fertilizers Ltd., Core-III, Scope Complex, 7, Institutional Area, Lodhi Road, New Delhi–110003	**बनाम** **Vs.**	ACIT, Circle : 17 (2), New Delhi.
PAN No. AAACN0189N		
अपीलार्थी/Appellants		**प्रत्यर्थी/Respondents**

निर्धारितीकीओरसे **/Assessee by :**	Shri Ved Jain, Advocate; & Shri Aman Garg, C. A.;
राजस्वकीओरसे **/ Department by :**	Ms. Rinku Singh, [CIT] – D. R.;

सुनवाईकीतारीख/ Date of hearing:	01/09/2022
उद्घोषणाकीतारीख/Pronouncement on :	02/11/2022

आदेश /O R D E R

PER C. N. PRASAD, J.M. :

1. These cross appeals are filed by the assessee and the Revenue against the order of the ld. Commissioner of Income Tax (Appeals)-44 [hereinafter referred to as CIT (Appeals)] New Delhi, dated 30.11.2017 for assessmentyear 2011-12.

2. The assessee has raised the following substantive grounds of appeal:-

> "1. On the facts and circumstances of the case, the order passed by the Learned CIT (A) is bad, both in the eye of law and on the facts.
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> 2. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the addition of an amount of Rs.8,24,00,000/- made by AO on account of defined contribution to Pension Scheme.
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> 3. (i) On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the disallowance of an amount of Rs.23,00,602/- made by AO on account of Chartless Recorder and LTPCC Penal (1600 AMPs) holding the same to be capital in nature.
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> (ii) That the disallowance was made rejecting the contention of the assessee that these items are consumables in nature, hence not capital.
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> 4. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law, in confirming the disallowance of an amount of Rs.1,96,48,527/- made by AO on account of purchase of HT CO Shift Catalyst.
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> (ii) The above disallowance was made rejecting the contention of the assessee that the Catalyst are used in the manufacturing process, hence revenue in nature.
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> 5. The appellant craves leave to add, amend or alter any of the grounds of appeal."

3. Ground No. 1 of the grounds of appeal is general in nature and no adjudication is required.

4.1 Ground No. 2 of grounds of appeal is with regard to confirming the addition made by the Assessing Officer on account of defined contribution to Pension Scheme.

4.2 The ld. Counsel for the assessee, at the outset, stated that this issue is decided in favour of the assessee by the Tribunal in assessee's own case for the assessment year 2010-11 in ITA. No. 122/Del/2014 dated 28.07.2017 read with M.A. No. 543/Del/2017 dated 8.05.2019 and the relevant portion is at page No. 393 of the Paper book. The ld. Counsel further submits that this issue was also decided in favour of the assessee in assessee's own case by the Hon'ble Delhi High Court in ITA. Nos. 782, 784, 817 and 551/Del/2016 dated 24.04.2017, which is at page 376 of the paper book.

4.3 The ld. DR fairly submits that the issue is covered in favour of the assessee.

4.4 On perusal of the order of the Tribunal as well as High Court, we find that the issue has been decided in favour of the assessee. We observe that the Hon'ble High Court held that the issue does not give rise to any substantial question of law and rejected the appeal of the Revenue observing as under:-

> "6. The other question raised by the Revenue concerns the provision made for superannuation/post-retirement benefits of the employees of the Assessee. The Assessee made the provision on the basis of an actuarial report. Its consistent stand was accepted by the Commissioner of Income Tax (Appeals) [CIT(A) who came to the conclusion that it was not an item of deduction covered under Section 43B of the Act. The ITAT in the impugned

order followed the decision of the Supreme Court in ***Bharat Earth Movers v CIT [20001 245 ITR 428 (SC)*** and the decision of this Court in ***CIT* vs. *Bharat Heavy Electrical Ltd*. [2013] *352 ITR 88 (Del)*** and upheld the order of the CIT (A).

7. The Court's attention is drawn by learned counsel for the Assessee to the decision in ***CIT v Ranbaxy Laboratories Ltd. (2011) 334 ITR 341 (Del)***. The ratio of the above decision is that where there are actuarial reports supporting the provision to meet a contingent liability, it cannot be gone behind by the Assessing Officer (AO) unless it is shown to be not basec *jn* any scientific or know financial principles.

8. It is sought to be urged by learned counsel for the Revenue that only because the actual payouts by way of post-retirement benefits to the employees in the AYs in question were far less than the provision made for that purpose, the actuarial report cannot be said to have been prepared on a scientific basis and was therefore not binding on the AO.

9. The Court is unable to accept this submission. The making of a provision to meet a contingent liability need not be in order to meet such liabn. y entirely in the year of its creation. The provision having been made on the basis of an actuarial report, which is not shown by the Revenue to be unacceptable on the ground that it is not based on known accounting or financial principles, the mere fact that the actual pay out in a particular AY may be far less than the provision cannot provide a justification to deny the deduction. The Court concurs with the view of the CIT (A) and ITAT that the provision does not attract Section 43 B of the Act. The concurrent finding of the CIT (A) and the ITAT on the above issue does not give rise to any substantial question of law."

4.5 Respectfully following the said decision, we allow ground No. 2 raised by the assessee.

5.1 Coming to ground Nos. 3(i) and (ii), in respect of disallowance made on account of capital expenditure with regard to Chartless Recorder and LTPCC Penal (1600 AMPs), the ld. Counsel submits that this ground is not pressed due to smallness.

5.2 In view of the submission of the ld. Counsel ground Nos. 3(i) and (ii) are dismissed as not pressed.

6.1 The last ground of appeal of the assessee i.e. Ground No. 4(i) and (ii) is with regard to confirming the disallowance of Rs.1,96,84,527/- on account of purchase of HT CO Shift Catalyst. Brief facts are that the Assessing Officer while completing the assessment treated Rs.1,96,84,527/- being the cost of HT CO Shift Catalyst as capital expenditure placing reliance on the decision of the Hon'ble Kerala High Court in the case of CIT Vs. Cochin Refinery Limited [(1988) 173 ITR 461].

6.2 On Appeal the ld. CIT (Appeals) agreeing with the contentions of the Assessing Officer affirmed that the expenditure incurred on HT CO Shift Catalyst as capital in nature.

6.3 The ld. Counsel before us submits that during the year under consideration assessee company incurred an amount of Rs.1,96,48,527/- on purchase of HTCO Shift Catalyst from M/s. SUD-Chemie India Pvt. Ltd. on various dates. The cost of Catalyst is Rs.199.75 per liter. These Catalysts are used to increase the rate of a chemical reaction while producing the Fertilizers. The catalyst has been used in the manufacturing process and therefore these catalysts are in the nature of consumables. A brief explanation furnished regarding catalyst is as follows:-

- "A catalyst is a substance that speeds up a chemical reaction, or lowers the temperature or pressure needed to start one, without itself being consumed during the reaction;

- Long before chemists recognized the existence of catalysts, ordinary people had been using the process of catalysts for a number of purposes such as making soap or fermenting wine to create vinegar etc.;

- Catalysts appear in a number of reactions, both natural and artificial. For instance, catalysts are used in the industrial production of ammonia, nitric acid (produced from ammonia), sulfuric acid, and other substances. The ammonia process, developed in 1908 by German chemist Fritz Haber (1868–1934), is particularly noteworthy. Using iron as a catalyst, Haber was able to combine nitrogen and hydrogen under pressure to form ammonia – one of the world most widely used chemicals.

- During the course of assessment proceedings, ld. AO ignoring the details of invoices and nature of these expenses alleged that the above amount claimed by the assessee is in the nature of capital expenditure and to be treated as plant and machinery. The learned AO also relied upon the judgment of CIT Vs. Cochin Refinery Limited [(1988) 173 ITR 461 (Kerala)] wherein the purchase of item including catalyst was held to be capital in nature.

- Aggrieved by the order of the AO, assessee filed an appeal before CIT (A) and learned CIT(A) also confirmed the disallowance relying upon the order passed by the AO.

- At the outset, it is submitted that both Ld. CIT(A) and AO has misunderstood the facts.

- It is also submitted that the judgment relied upon by the AO in the case of CIT Vs. Cochin Refinery Limited [(1988) 173 ITR 461 (Kerala)] the assessee has purchase the catalyst along with the other spare parts to set up the plant which was capitalized where is in the present case the assessee has used the catalyst in the normal manufacturing process. Further the question before the Hon'ble Court was not that the whether the catalyst is capital or revenue in nature. Thus, the AO is wrong in drawing adverse inference from the same.

- Further the assessee is in the manufacturing of fertilizers and is using the catalyst in earlier years also and claimed the same as revenue expenditure and no such disallowance has been made by the AO in preceding years. These are in the nature of consumables only and their procurement does not give any benefit of enduring nature to the assessee.

- In the view of above submission, addition made AO and confirmed by CIT(A) must be deleted.

6.4 The ld. Counsel for the assessee further referring to the analysis submits that HTCO Shift Catalyst comes in huge drums and it is measured and priced in liters. Referring to the invoice No. EU Srob dated 21.07.2010, the ld. Counsel submits that the assessee has procured HTCO Shift Catalyst type C 2-3 size 6x6 MM catalyst 12,000 liters at Rs.199.75 which is packed in 60 drums in serial No. 61 to 120 costing Rs.27,59,409/-. Therefore Ld. Counsel submits that Shift Catalyst is nothing but consumable and cannot be treated as capital expenditure.

6.5 The ld. DR supports the order of the ld. CIT (Appeals).

6.6 Heard rival submissions perused the orders of the authorities below. We find considerable force in the submissions of the assessee. We find that the reliance placed by the Assessing Officer on the judgment of Kerala High Court in the case of CIT Vs. Cochin Refinery Limited (supra) is mis-placed. The Hon'ble Kerala High Court did not decide as to whether the HTCO shift catalyst is revenue expenditure or capital expenditure. It is also the submission of the ld. Counsel that assessee is in the manufacturing of fertilizers and is using the catalyst in earlier years also and claimed as revenue expenditure and the Assessing Officer never disputed this fact and the claim of the assessee was allowed and no disallowance was made in the preceding years as the Assessing Officer is consistently allowing the cost of catalyst as revenue expenditure. We see no reason to deviate the stand during the year under consideration. Thus, we direct the Assessing Officer to delete the disallowance made towards capital expenditure in respect of HT CO shift catalyst. Grounds 4(i) and (ii) raised by the assessee are allowed.

6.7 In the result, the appeal of the assessee is partly allowed.

7. Coming to Revenue's appeal the Revenue has raised the following substantive grounds :-

> "1. Whether on facts and in circumstances of the case, the Ld CIT (A) is legally justified in deleting addition of Rs.***6***,48,20,000/- on account of accrued interest made by the Assessing officer (the AO) without considering fact that the assessee was following mercantile system of accounting and the arbitration award give a right to the assessee to charge

simple interest @ 5% per annum on the amount of advance till the date of payment?

2. Whether on facts and in circumstances of the case, the Ld.CIT(A) is legally justified in deleting disallowance of Rs. 2,92,00,000/on account of demurrage and wharfage charges by ignoring provision of the Railway Act, 1989 and Explanation 1 to Section 37(1) of the Income Tax Act 1961 (the Act)?

3. Whether on facts and in circumstances of the case, the Ld. CIT (A) is legally justified in deleting the disallowance of Rs.4,28,00,000/- on account of write-off value of slow moving stores and spares by ignoring the provision of section 145 of the Act and without appreciating the fact that the assessee is not allowed to adopt any Accounting Standard of its choice as and when it deemed to be beneficial to it?

4. Whether on facts and in circumstances of the case, the Ld. C1T(A) is legally justified in deleting disallowance of Rs.4,28,00,000/- on account of post-retirement benefits without considering provisions of section 37(1) of the Act and a fact that the provision was many times higher than actual expenditure and not determined accurately and scientifically?

5. Whether on facts and in circumstances of the case, the Ld CIT (A) is legally justified in reducing disallowance of Rs.1,*86*,56,760/- out of total disallowance of Rs.*6*,69.34,924/- on account of 'repair & maintenance expense' without considering the facts recorded by the AO in assessment order and also by ignoring the provisions of section 37 (1) of the Act in this regard?

6. Whether on facts and in circumstances of the case, the Ld CIT (A) is legally justified in deleting disallowance of Rs. 3, 32,595/- on account of excess depreciation claimed on UPS (Uninterrupted Power Supply) by holding UPS as an integral part of computer by ignoring the fact that computers may run without UPS and hence, this was not an integral part of computers?

7. Whether on facts and in circumstances of the case, Ld CIT (A) is legally justified in deleting disallowance of Rs. 12,228/- u/s 14A of the Act without considering legislative intent of introducing section 14A of the Act 2001 as clarified by the CBDT's Circular No. 5/2014 dated 10.02.2014?

8. Whether on facts and in circumstances of the case, Ld CIT (A) is legally justified in deleting disallowance of Rs. 12,228 /- u/s

14A of the Act without considering legal principle that allowability or disallowability of expenditure under the Act is not conditional upon the earning of the income as upheld by Hon'ble Supreme Court in case CIT Vs. Rajendra Prasad Moody [1978] 115 ITR 519 and without considering ratio decidendi as upheld in cases of CIT Vs. Walfort Share and Stock Brokers P. Ltd [2010] 326 ITR 1 (SC) and Maxopp Investment Vs CIT [2012] 347 ITR 272 (Delhi) on application of provisions of section 14A of the Act?

9. Whether on facts and in circumstances of the case, Ld CIT (A) is legally justified in deleting disallowance of Rs. 3,12,972/- on account of additional depreciation claimed u/s 32 (1) (iia) of the Act without considering the fact that the relevant provisions are affected w.e.f. 01.04.2013.?

10. Whether on facts and in circumstances of the case, the Ld.CIT (A) is legally justified in deleting disallowance of Rs.3.58,658/- u/s 40 (a) (ia) of the Act on account of non-deduction of TDS on 'Bank Guarantee Expenses' by ignoring the contents of Notification No. 56/2012 of the CBDT in this regard issued vide F.No. 275/53/2012-IT (b) /SO 3069 (E) dated 31.12.2012 and also by ignoring the fact that the said notification had come in to force w.e.f 1st January, 2013?

11. Whether in facts and circumstances of the case, the Ld CIT(A) is legally justified in deleting addition of Rs. 2,42,880/- on account of accrued interest made by the AO on deposits without considering facts that the assessee was following mercantile system of accounting?

8. Ground No. 1 relates to deletion of addition on account of accrued interest on advances given to M/s. KARSON. The ld. Counsel for the assessee submits that this issue is squarely covered by the decision of the jurisdictional High Court in assessee's own case for assessment years 2006-07 to 2009-10 in ITA. No. 551, 782, 784 and 817/Del/2016 dated 24.04.2017 and also the decision of the Tribunal in assessee's own case for later years i.e. for assessment years 2013-14 and 2014-15 in ITA. Nos. 3897 and 3898/Del/2018 dated 30.09.2021.

9. The ld. DR supports the order of the Assessing Officer.

10. Heard rival submissions perused the orders of the Tribunal in assessee's own case. The Tribunal decided the issue in the appeal of the of the Revenue following the decision of the High Court in assessee's own case for the assessment years 2006-07 to 2009-10 dated 24.04.2017 in favour of the assessee observing as under:-

> 8. As regards Ground No. 1 of the Revenue's appeal, the Ld. DR submitted that the CIT(A) erred in deleting the addition of Rs. 6,48,20,000/- on account of accrued interest without considering the fact that the assessee was following mercantile system of accounting and the arbitration award give a right to the assessee to charge simple interest @ 5% per annum on the amount of advance given to M/s Karsan till the date of payment. The Ld. DR relied upon the assessment order.
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> 9. The Ld. AR submitted that the issue is squarely covered by the judgment of Hon'ble Jurisdictional High Court in assessee's own case for A.Y. 2006-07, 2007-08, 2008-09 and 2009-10 in ITA Nos. 551, 782, 784 and 817 of 2016 dated 24.04.2017.
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> 10. We have heard both the parties and perused the material available on record. It is pertinent to note that the Hon'ble High Court in assessee's case for AYs. 2006-07 to 2009-10 held as under:
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> > *"10. The third ground urged by the Revenue is regarding the failure by ITAT to disclose as part of its income, the interest accrued on the advance made by it to M/s. Karsan. Learned counsel for the Revenue pointed out that by a judgment dated 4th December 2006 of this Court, the arbitral award in favour of the Assessee under the Arbitration Act, 1940 was made rule of the Court. He submitted that although up to that date it could be said that the interest on the advance had not crystallized (as was held by this Court in its order dated 24th September, 2012 in ITA 541/2012 in the Assessee's own case for the AY 2005-06), for the subsequent AYs the right to receive interest had accrued to the Assessee and should have been added to its income."*

11. Respectfully following the said decision, we dismiss the ground No. 1 in the Revenue's appeal.

12. Ground No. 2 relates to deletion of disallowance of demurrage and wharfage charges.

13. The ld. Counsel submits that this issue is also squarely covered by the judgement of the High Court in assessee's own case for assessment years 2006-07 to 2009-10 in ITA. Nos. 551, 782, 784 and 817/Del/2016 dated 24.04.2017. It is also submitted that the Tribunal also decided in latter assessment years i.e. 2013-14 and 2014-15in ITA. Nos. 3897 and 3898/Del/2018 dated 30.09.2021 in its favour.

14. The ld. DR relied on the order of the Assessing Officer.

15. Heard rival submissions perused the orders of the Tribunal and find that this issue is decided in favour of the assessee observing as under:-

> "11. As regards Ground No. 2 of the Revenue's appeal, the Ld. DR submitted that the CIT(A) erred in deleting the addition of Rs. 2,59,00,000/- made on account of disallowance of demurrage and wharfage charges by ignoring the provision of the Railway Act, 1989 and Explanation 1 to Section 37(1) of the Income Tax Act, 1961. The Ld. DR relied upon the assessment order.
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> 12. The Ld. AR submitted that the issue is squarely covered by the judgment of Hon'ble Jurisdictional High Court in assessee's own case for A.Y. 2006-07, 2007-08, 2008-09 and 2009-10 in ITA Nos. 551, 782, 784 and 817 of 2016 dated 24.04.2017.
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> 13. We have heard both the parties and perused the material available on record. It is pertinent to note

that the Hon'ble High Court in assessee's case for AYs. 2006-07 to 2009-10 held as under:

> *"3. These four appeals seek to raise a common question whether the ITAT was justified in deleting the disallowance of demurrage and wharfage charges, which according to the Revenue was in the nature of penalty and, therefore, not amenable to deduction under Section 37(1) of the Income Tax Act, 1961?*
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> *4. The said question already stands answered in favour of the Assessee and against the Revenue by the judgment of this Court in Mahalaxmi Sugar Mills Company v. Commissioner of Income Tax, (1986) 157 ITR 683 (Delhi) and of the Allahabad High Court in Nanhoomal Jyoti Prasad v. Commissioner of Income Tax, (1980) 123 ITR 269 (All).*
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> *5. However, learned counsel for the Revenue seeks to rely on the judgment of the Rajasthan High Court in Tata Iron & Steel Co. Ltd. v. Union of India (decision dated 28th January 2014 in SB Civil Misc. Appeal No. 65/1997). Having perused the said judgment, the Court is not persuaded to take a view different from that earlier taken by this Court in Mahalaxmi Sugar Mills Company v. Commissioner of Income-Tax (supra)."*

Since, the issue contested in the present ground is identical to that of earlier assessment years and no distinguishing facts were pointed out by the Ld. DR. Ground No. 2 of the Revenue's appeal is dismissed."

16. Facts being identical respectfully following the order of the Tribunal, we dismiss ground No. 2 of the Revenue.

17. Ground No. 3 relates to disallowance on account of write off of slow moving support and spares.

18. The ld. Counsel for the assessee submits that this issue is squarely covered by the judgement of the High Court in assessee's

own case for the assessment years 2006-07 to 2009-10 in ITA. Nos. 783, 785, 815 and 816/Del/2016 dated 8.02.2017. It is also submitted that the Tribunal for latter assessment years i.e. 2012-13 and 2013-14 in ITA. Nos. 3697 and 3698/Del/2018 dated 30.09.2021 decided the issue in favour of the assessee.

19. The ld. DR relied on the order of the Assessing Officer.

20. Heard rival submissions perused the orders of the authorities below and the judgement of the Tribunal and find that this issue is decided in favour of the assessee by the Tribunal for assessment year 2013-14 observing as under:-

> "14. As regards Ground No. 3 of the Revenue's appeal, the Ld. DR submitted that the CIT(A) erred in deleting the disallowance of Rs. 3,91,00,000/- made on account of write-off value of slow moving stores and spares by ignoring the provision of Section 145 of the Act and without appreciating the fact that the assessee is not allowed to adopt any Accounting Standard of its choice as and when it deemed to be beneficial to it. The Ld. DR relied upon the assessment order.
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> 15. The Ld. AR submitted that the issue is squarely covered by the judgment of Hon'ble Jurisdictional High Court in assessee's own case for A.Y. 2006-07, 2007-08, 2008- 09 and 2009-10 in ITA Nos. 783, 785, 815 and 816 of 2016 dated 08.02.2017.
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> 16. We have heard both the parties and perused the material available on record. It is pertinent to note that the Hon'ble High Court in assessee's case for AYs. 2006-07 to 2009-10 held as under:
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> > *"5. This Court is of the opinion that the Revenue's contentions are unmerited. The assessee was all along reflecting the full value of the stock; for the year i.e. AY 2004-05 the CAG had made an observation that Slow-Moving Stock had to be realistically valued. This resulted in a fresh valuation by an engineering expert.*

Based upon this exercise the valuation was reduced to ₹ 47.76 crores.

6. Having regard to these circumstances, the Revenue's contention that the acceptance of 5% as the basis for valuing the Slow Moving Stock being unscientific, is baseless in our opinion. Once the engineering expert examined all the heads of stock and valued them, to the best of his judgment, and in the absence of any finding that the 5% was not relatable to such valuation without an alternative valuation or that it is a flawed method of valuation, the AO could not have rejected what was offered as the reduced value of the Slow-Moving Stock. In other words, there is nothing on the record to doubt the bonafides of the valuation. In the event of likelihood of the stocks realizing higher amount than the value shown, the same would be reflected in the subsequent year in the income or profit of the assessee, the Revenue's contention is without any merit.

7. Nor do we find any reason to subscribe and uphold the AO's adverse observations that the change in method of valuation was without basis. In fact the observations of the CAG in this case led to the change and adoption of AS-2, which was not previously resorted to.

8. For the above reasons, no substantial questions of law arise in the appeals. They are, accordingly, dismissed."

Since, the issue contested in the present ground is identical to that of earlier assessment years and no distinguishing facts were pointed out by the Ld. DR. Ground No. 3 of the Revenue's appeal is dismissed.

21. Facts being identical respectfully following the decision in assessee's own case we dismiss Ground No. 3 of the Revenue's appeal.

22. Ground No. 4 of grounds of appeal of the Revenue relates to deletion of disallowance on account of post-retirement benefits.

23. The ld. Counsel for the assessee submits that this issue is also squarely covered by the decision of the High Court in assessee's own case for the assessment years 2006-07 to 2009-10 in ITA. Nos. 351, 782, 784 and 817/Del/2016 dated 24.04.2017 and the copy of the order of the High Court is placed at page Nos. 376 to 381 in the paper book.

24. The ld. DR supports the order of the Assessing Officer.

25. Heard rival submissions perused the orders of the High Court in assessee's own case and find that the issue is covered in favour of the assessee. The High Court decided the issue in favour of the assessee observing as under:-

> "6. The other question raised by the Revenue concerns the provision made for superannuation/post-retirement benefits of the employees of the Assessee. The Assessee made the provision on the basis of an actuarial report. Its consistent stand was accepted by the Commissioner of Income Tax (Appeals) [CIT(A) who came to the conclusion that it was not an item of deduction covered under Section 43B of the Act. The ITAT in the impugned order followed the decision of the Supreme Court in ***Bharat Earth Movers v CIT [20001 245 ITR 428 (SC)*** and the decision of this Court in ***CIT* vs. *Bharat Heavy Electrical Ltd*. [2013] *352 ITR 88 (Del)*** and upheld the order of the CIT (A).
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> 7. The Court's attention is drawn by learned counsel for the Assessee to the decision in ***CIT v Ranbaxy Laboratories Ltd. (2011) 334 ITR 341 (Del)***. The ratio of the above decision is that where there are actuarial reports supporting the provision to meet a contingent liability, it cannot be gone behind by the Assessing Officer (AO) unless it is shown to be not basec *jn* any scientific or know financial principles.
>
> 8. It is sought to be urged by learned counsel for the Revenue that only because the actual payouts by way of post-retirement benefits to the employees in the AYs in question were far less than the provision made for that purpose, the actuarial report cannot be said to have been prepared on a scientific basis and was therefore not binding on the AO.

> 9. The Court is unable to accept this submission. The making of a provision to meet a contingent liability need not be in order to meet such liabn. y entirely in the year of its creation. The provision having been made on the basis of an actuarial report, which is not shown by the Revenue to be unacceptable on the ground that it is not based on known accounting or financial principles, the mere fact that the actual pay out in a particular AY may be far less than the provision cannot provide a justification to deny the deduction. The Court concurs with the view of the CIT (A) and ITAT that the provision does not attract Section 43 B of the Act. The concurrent finding of the CIT (A) and the ITAT on the above issue does not give rise to any substantial question of law."

26. Facts being identical respectfully following the said decision we uphold the order of the ld. CIT (Appeals) and dismiss ground No. 4 of the grounds of appeal of the Revenue.

27. Ground No. 5 relates to restricting the disallowance in respect of repairs and maintenance expenses.

28. The ld. Counsel submits that this issue is squarely covered by the decision of the Tribunal in assessee's own case for assessment year 2013-14 in ITA. No. 3897/Del/2018 dated 30.09.2021.

29. The ld. DR placed reliance on the order of the Assessing Officer.

30. On perusal of the orders of the Tribunal we find that this issue is decided in assessee's favour observing as under:-

> "28. We have heard both the parties and perused the material available on record. Since, the Ground No. 1 of the Revenue's appeal and the present Ground No. 8 is related and on the same principle, the findings given hereinabove will be applicable in this ground as well. Hence, Ground No. 8 of the Revenue's appeal is

dismissed.

29. As regards Ground No. 9 of the Revenue's appeal, the Ld. DR submitted that the CIT(A) erred in deleting disallowance of Rs. 41,47,983/- on account of repair and maintenance expenses without considering the facts recorded by the Assessing Officer in the Assessment order as well as ignored the provisions of Section 37(1) of the Act. The DR relied upon the assessment order.

30. The Ld. AR submitted that during the year under consideration the assessee has claimed repair and maintenance expenditure of Rs. 90.38 crores. During the assessment proceedings the assessee submitted the completed details of repair and maintenance charges. The Assessing Officer while passing the assessment order has alleged that for similar nature of items the assessee in one of its unit claimed as revenue expenditure while in some other units it was capitalized. The Ld. AR submitted before the Assessing Officer its explanation that when major equipment is added or replaced, item with similar description need to be capitalized however, if few small parts are replaced with similar description such items are treated as maintenance. The Ld. AR also submitted before the Assessing Officer that there is no estimate that the annual repair and maintenance should be a particular percentage of sales. However disregarding the said above submissions of the assessee, the Assessing Officer computed the disallowance at the rate of 0.63 % of 77.46 crores i.e. Rs. 48, 79, 980/- and after allowing the depreciation made the net disallowance of Rs. 41,47,983/- holding that the same shall be treated as the part of block of plant and machineries. The said percentage of 0.63% was calculated on the basis of proportion of amount capitalized over the repair and maintenance in panipat unit. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the CIT(A) and the CIT(A) deleted the disallowance holding that the assessee has given valid explanation for not capitalizing the same item in different unit and disallowance has been made on the presumption basis and ad-hoc basis and deleted the disallowance. The Ld. AR further submitted that the CIT(A) has given the well reason finding and disallowance made by the Assessing Officer is an ad-hoc disallowance and cannot be sustained in view of the following judgments:

- CIT Vs Ms. Shehnaz Hussain 267 ITR 572 (Del. HC) ACIT Vs M/s. Modi Rubber Limited, ITA No.1952/Del/2014 (ITAT Delhi.

- ACIT v. Amtek Auto Limited [2006] 112 TTJ 455

- M/s Nine Dot Nine Media work Pvt. Ltd., v. ITO [ITA No. 1262/Del/2016 And ITA No. 863/Del/2016] dated 30.07.2018

- DCIT versus Grintex India Limited ITA No, 1262/Del/2016 And ITA No. 863/Del/2016] ITAT (Del.) dated 30.07.2018

- DCIT Vs Grintex India Limited ITA No, 4622/Del/2016 (Del. Tribunal)

- Dhir & Dhir Associates v. ACIT in ITA NO. 2169/Del/2014 dated 16.06.2017 (Del. Tribunal)

- ACIT v. Precision Pipes & Profiles Co. Ltd. in ITA No. 4257/Del/2012 dated 12/10/2012.

31. We have heard both the parties and perused the material available on record. It is pertinent to note that disallowance made by the Assessing Officer is an ad-hoc disallowance. The submission of the Ld. AR that there is no estimate that the annual repair and maintenance should be in consonance with the percentage of sales, is accepted as the Assessing Officer has not given any particular reason on why the said expenses has to be disallowed on ad-hoc basis. The contention of the Ld. DR that Section 37 (1) was not properly followed is also not correct to say as the details of the expenses were before the Assessing Officer which was totally ignored by the Assessing Officer. Thus, the CIT(A) rightly deleted this disallowance. There is no need to interfere with the finding of the CIT(A). Hence, Ground No. 9 of the Revenue's appeal is dismissed."

31. Facts being identical respectfully following the said decision, we uphold the order of the ld. CIT (Appeals) and reject the ground raised by the Revenue.

32. Ground No. 6 of the appeal of the Revenue is in respect of disallowance of depreciation on UPS.

33. The ld. Counsel submits that this issue is squarely covered by the decision of the Tribunal in assessee's own case for the assessment year 2013-14 in ITA. No. 3697/Del/2018 dated 30.09.2021.

34. The ld. DR placed reliance on the order of the Assessing Officer.

35. On perusal of the order of the Tribunal, we find that the Tribunal allowed depreciation on UPS at 60% as against 15% allowed by the Assessing Officer observing as under:-

> 19. We have heard both the parties and perused the material available on record. The Tribunal in assessee's own case for A.Y. 2005-06 held as under:
>
> > *"14. Ground No. 2 is with regard to the issue as to whether depreciation on UPS is to be allowed at 60% or at normal rate of 25%.*
> >
> > *15. The claim of the assessee of depreciation on LAN/WAN and UPS @ 60% has been reduced to 25% by the AO by observing that LAN/WAN and UPS are not essential part of computer system but can only be treated as plant.*
> >
> > *16. On an appeal, the learned CIT(A) allowed the assessee's claim after following the decision of Tribunal, 'F' Bench, Delhi in the case of Expeditors International (India) Pvt. Ltd. Vs. ACIT, 118 TTJ 652 (Del), where it was held that printers, scanner, UPS would form integral part of the computer and as such, they are eligible for depreciation at a higher rate as applicable to the computer.*
> >
> > *17. Both the parties were heard and orders of the authorities below have been perused.*

> *18. In the case of CIT vs. BSES Yamuna Powers Ltd. (ITA No. 1267/2010), dated 31st August, 2010, the Hon'ble High Court has upheld the order of the Tribunal in allowing the depreciation @ 60% on computer peripherals and accessories such as printers, scanners and server etc. In that case, the Tribunal had followed the decision of coordinate Bench of the Tribunal in the case of ITO vs. Samiran Majumdar (2006) 98 ITD 119 (Kol.) and in the case of Expeditors International (India) (P) Ltd. (supra).*
>
> *19. Respectfully following the aforesaid decision of the Hon'ble Delhi High Court confirming the Tribunal's order, we uphold the order of the learned CIT(A) in accepting the assessee's claim of depreciation @ 60% on UPS and LAN/WAN. Thus, this ground No. 2 raised by the revenue is also rejected."*
>
> Since, the issue contested in the present ground is identical to that of earlier assessment years and no distinguishing facts were pointed out by the Ld. DR. Ground No. 4 of the Revenue's appeal is dismissed.

36. Facts being identical respectfully following the said decision, we reject the ground raised by the Revenue.

37. Ground Nos. 7 and 8 relate to disallowance made under section 14A of the Act of Rs.12,228/-.

38. The ld. Counsel submits that during the assessment year the assessee did not receive any exempt income and the decision of the Hon'ble Delhi High Court in the case of Cheminvest Limited Vs. CIT (378 ITR 33) squarely applies to the facts of the case.

39. The ld. DR placed reliance on the order of the Assessing Officer.

40. Heard rival submissions perused the order of the High Court and we find that this issue is squarely covered in favour of the assessee by the decision of the jurisdictional High Court in the case of Cheminvest Limited Vs. CIT (supra) wherein it has been held that no disallowance could be made under section 14A if no exempt income was earned by the assessee. The Hon'ble Delhi High Court in the cases of CIT Vs. Era Infrastructure (India) Ltd. [141 taxmann.com 289] and Pr. CIT Vs. Telecommunications Consultants India Ltd. In ITA. No. 293/2022 dated 31.08.2022 further held that the amendment made by the Finance Act, 2022 to section 14A by inserting a non-obstante clause and explanation will take effect from 1.04.2022 and cannot be presumed to have retrospective effect. Following the above said decisions, we dismiss ground Nos. 7 and 8 of grounds of Revenue.

41. Ground No. 9 relates to disallowance in respect of additional depreciation.

42. The ld. Counsel submits that this issue is squarely covered by the judgement of the Tribunal in assessee's own case for the assessment year 2013-14 in ITA. No. 3697/Del/2018 dated 30.09.2021 and the order is placed at page Nos. 401 to 426 and the relevant finding is at page 417 of the Paper book.

43. The ld. DR relied on the order of the Assessing Officer.

44. Heard rival submissions perused the order of the Tribunal and find that the issue is decided in favour of the assessee observing as under:-

> "23. As regards Ground No. 7 of the Revenue's appeal, the Ld. DR submitted that the CIT(A) erred in deleting the

disallowance of Rs. 6,45,673/- on account of additional depreciation claimed u/s 32(1)(iia) of the Act without considering the fact that the relevant provisions are applicable w.e.f. 01.04.2013. The Ld. DR relied upon the assessment order.

24. The Ld. AR submitted that the Assessing Officer was of the view that the benefit is available only to those undertaking which are engaged in the business of manufacture or production of any article or thing. Generation of power according to him cannot be equated with the production of any article or thing. Further clause ii(a), sub-section (1) of Section 32 of the Act was amended with effect from 1 April 2013 and therefore such additional depreciation could be allowed only with effect from 1 April 2013, thus the same was disallowed. The Assessee challenged the same before the CIT(A) who allowed the claim of the assessee relying on the decision of the coordinate bench in case of NTPC vs. DCIT [2012 (5) TMI 127 - ITAT Delhi. The above view is also affirmed by Hon'ble Delhi High court in the case of Pr. Commissioner of Income Tax -6, New Delhi Vs. NTPC Sail Power C. Pvt. Ltd.- 2019 (3) TMI 207 – Delhi High Court dated 18.02.2019.

25. We have heard both the parties and perused the material available on record. The electricity has been held as good as per the decision of the Hon'ble Apex Court in case of State of Andhra Pradesh vs. NTPC AIR 2002 SC 1895 as relied by the Hon'ble Delhi High Court in case of PCIT vs. NTPC Sail Power C. Pvt. Ltd. (supra). The Hon'ble High Court further held that to deny the benefit of additional depreciation to a generating entity on the basis that electricity is not an article or thing is an artificially restrictive meaning of the provision. Thus, the benefit of additional depreciation under Section 32(1)(iia) has to be granted to the assessee and w.e.f 01.04.2013, the provision has been amended by the Finance Act, 2012 wherein the assessees engaged in the generation of power have expressly been included in the ambit. Thus, the CIT(A) rightly deleted the disallowance. Ground No. 7 of Revenue's appeal is dismissed."

45. Respectfully following the said decision we dismiss ground No. 9 of the Revenue's appeal.

46. Ground No. 10 of grounds of appeal relates to disallowance made under section 40(a)(ia) of the Act on account of non-deduction of TDS of bank guarantee expenses.

47. The ld. Counsel submits that the issue is squarely covered by the decision of the Tribunal in assessee's own case for the assessment year 2013-14 in ITA. No. 3697/Del/2018 dated 30.09.2021.

48. The ld. DR relied on the order of the Assessing Officer.

49. Heard rival submissions perused the order of the Tribunal. We find that the issue is decided in favour of the assessee by the Tribunal by observing as under:-

> "7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the similar issue is decided by the Tribunal in case of DCIT vs. M/s Nalwa Steel and Power Ltd. 2021 (6) TMI 66 – ITAT Delhi – dated – 31 May, 2021 considering the Notification No. 56/2012 dated 31.12.2012 wherein it is held that
>
> > *"6. We have carefully considered the rival contention and find that the assessee has paid guarantee commission charges of state bank of India for giving guarantee in favour of the seller of coal to the assessee. It is one of the banking services provided by the state bank of India to the assessee. It cannot be said to be a "commission" as intended to u/s 194H of the but it is in the nature of Bank charges charged by the bank for provision of services to the assessee. Now this issue has been decided by the honourable Bombay High Court in case of CIT - TDS (1), Bombay versus Larsen and Toubro Ltd 101 taxmann.com 83 wherein the honourable High Court while dealing with the case for assessment year 2010 - 11 held as Under:-*
> >
> > > *"3. Learned counsel for the Revenue stated that the Revenue had filed an appeal against the judgment of*

the Tribunal in case of Kotak Securities Ltd but that the appeal was withdrawn on the ground of low tax effect. He has, however, made available a copy of the judgment of the Tribunal in the said case which contains a detailed discussion on the issue at hand. In the said judgment, the Tribunal referred to Section 194H of the Act which requires an assessee responsible for paying any income by way of commission or brokerage to deduct tax at source. The Tribunal was of the opinion that the words "commission or brokerage" must take colour from each other. The Tribunal was of the opinion that the payment in question, though categorized as "bank guarantee commission" is not strictly speaking payment of commission since there is no principal to agent relationship between the payer and the payee. The Tribunal, therefore, held that the requirement of deducting tax at source emanating from Section 194H of the Act in the present case does not arise.

4. We are broadly in agreement with the view of the Tribunal. The so- called bank guarantee commission is not in the nature of commission paid to an agent but it is in the nature of bank charges for providing one of the banking service. The requirement of Section 194H of the Act, therefore, would not arise. No question of law arises. The Income Tax Appeal is dismissed."

7. Therefore, respectfully following the decision of the honourable Bombay High Court rendered in case for assessment year 2010 - 11 and also the Notification No 56/2012 of CBDT which has been considered by several coordinate benches and held that same also applies to earlier period then the date of issue of notification, we hold that the assessee was not required to withheld any tax on bank guarantee charges paid to state bank of India and therefore no disallowance would have been made u/s 40 a (ia) of the act. So we confirm the order of the ld CIT (A) . In view of this ground number (1) of the appeal is dismissed."

In the present case, the assessee has paid Bank Guarantee Commission to Scheduled Banks approved by RBI and issue of Bank Guarantee is part of Banking services. Vide Finance Act, 2012 following has been inserted in Section 40(a)(ia) of the Income Tax Act, 1961:

> *"Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the proviso to Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the proviso of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first provision of sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date furnishing of return of income by the resident payee referred to in the said proviso."*

> In the present case also, it is one of the banking services provided by the Scheduled Banks to the assessee as per the norms of the RBI. It cannot be said to be a "commission" as intended to u/s 194H of the but it is in the nature of Bank charges charged by the bank for provision of services to the assessee. Now this issue has been decided by the Hon'ble Bombay High Court in case of CIT - TDS (1), Bombay versus Larsen and Toubro Ltd 101 taxmann.com 83 as well as per Notification No. 56/2012 of the CBDT the said provisions will also applied to earlier period than the date of issue of notification. Thus, the Ground No. 2(a) and 2(b) of the Assessee's appeal are allowed. Hence appeal of the assessee being ITA No. 3437/Del/2018 is allowed."

50. Respectfully following the said decision we dismiss ground No. 10 of the Revenue's appeal.

51. Ground No. 11 of grounds of appeal of the Revenue is in respect of deleting the addition made on account of accrued interest on deposits and the ld. Counsel for the assessee submits that the issue is squarely covered by the decision of the Tribunal in assessee's own case for the assessment years 2013-14 and 2014-15.

52. The ld. DR placed reliance on the order of the Assessing Officer.

53. The ld. CIT (Appeals) deleted the disallowance observing as under:-

> "15.2 The above mentioned issue was before the CIT(A) in AY 2012-13 who has made the following observation in his order in appeal No 142/15-16 dated 16.02.2017:-
>
> *"16a. From the appellant's submissions it is gathered that it had contended that as the interest was not earned while the adjudication /realization process was underway hence, it did not offer the interest on Rs.1.32 crore deposited in a scheduled bank; it had not become the property of the appellant but deposited at the behest of the court.*
>
> *16b. While the appellant's contention appears plausible that it was only in a fiduciary capacity holding the deposit and therefore the interest on the deposit of Rs.1.32 crore (lying in sundry deposit account in SBI, South Extension Part -1 Branch) was not offered for taxation, yet even applying the 'Real Income ' theory, the notional income earned as interest on this deposit can hardly be taxed; the appellant does not have the right over it! Further, ITA T as well as the Hon 'ble Delhi High Court have ruled that the advance given by the appellant to M/s. Karsan and pending recovery cannot be assessed as income of the appellant despite the latter maintaining its accounts on a mercantile basis applying the theory of 'real income ' - accrual concept applies only in respect of real income as laid down by the apex court in Godhrci Electricity Co. Ltd Vs CIT (1997) AIR 2350 (SC)following Shoorji Vallabhdas& Co. (1962) 46 ITR 144 (SC). Accordingly, in due deference to the decisions of the Hon 'ble Supreme Court as well as those of the jurisdictional High Court (Delhi HC) and ITAT Delhi in the appellant's own case for earlier years, the addition (Rs. 2,42,880/-) in this regard made in the impugned order is deleted. The appeal on this ground is allowed. "*
>
> 15.3 The material facts of the case are the same in the instant year. The appellant stated that the deposit in the bank was held in fiduciary capacity hence the interest on the same was not offered to tax. In accordance with the principle of consistency and respectfully following the order of the CIT (A) in AY 2012-13, I direct the AO to delete the disallowance made on account of accrued interest amounting to Rs.2,42,880/-. The appeal is allowed."

54. On perusal of the order of the ld. CIT (Appeals) we do not find any valid reason to interfere with the findings of the ld. CIT (Appeals). Revenue's ground is dismissed.

55. In the result, the appeal of the assessee is partly allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on : **02/11/2022.**

Sd/-	**Sd/-**
(ANIL CHATURVEDI)	**(C. N. PRASAD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 02/11/2022.

MEHTA

Copy forwarded to :

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	21.10.2022
Date on which the typed draft is placed before the dictating member	28.10.2022
Date on which the typed draft is placed before the other member	02.11.2022
Date on which the approved draft comes to the Sr. PS/ PS	02.11.2022

Date on which the fair order is placed before the dictating member for pronouncement	02.11.2022
Date on which the fair order comes back to the Sr. PS/ PS	02.11.2022
Date on which the final order is uploaded on the website of ITAT	02.11.2022
Date on which the file goes to the Bench Clerk	02.11.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	