

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
ANDSH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A.No. 542/Asr/2017
Assessment Year: 2013-14**

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| Asstt. Commissioner of Income Tax, Circle-IV, Pathankot. (Appellant) | Vs. | The Gurdaspur Central Cooperative Bank Ltd. Sadar Bazar Gurdaspur. [PAN: AAAAA0711A] (Respondent) |
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**C.O. No. 30/Asr/2017
(In I.T.A.No. 542/Asr/2017)
Assessment Year: 2013-14**

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| The Gurdaspur Central Cooperative Bank Ltd. Sadar Bazar Gurdaspur. [PAN: AAAAA0711A] (Appellant) | Vs. | Asstt. Commissioner of Income Tax, Circle-IV, Pathankot. (Respondent) |
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| Appellant by | Sh. Hitendra Bhauraoji Ninawe, CIT. DR |
| Respondent by | Sh. Anil Vasudeva, CA. |

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| Date of Hearing | 21.12.2022 |
| Date of Pronouncement | 31.01.2023 |

ORDER

Per Anikesh Banerjee, JM:

The appeal of the revenue and Cross objection of the assessee are directed against the order of the Id. Commissioner of Income Tax (Appeals)-2, Amritsar, [in

brevity the CIT(A)], bearing Appeal No. 10047/16-17 date of order 25.05.2017 order passed u/s 250(6) of the Income Tax Act 1961, (in brevity the Act) for A.Y. 2013-14. The impugned order was originated from the order of the Id. Dy. Commissioner of Income Tax, Circle-VI, Pathankot (in brevity the AO) order passed u/s 143(3) of the Act date of order 29.03.2016. The revenue has taken the following grounds:

- “i. On the facts and in the circumstances of the case, the Ld.CIT(A) has wrongly deleted the addition of Rs. 12,40,188/- out of total addition of Rs. 18,41,173/- made u/s 40(a)(ia) of the Act on account of non deduction of TDS on Building Rent paid as assessee had failed to furnish the evidence regarding definite and ascertainable shares of co-owners to whom rent was paid.*
- ii. On the facts and in the circumstances of the case, the Ld.CIT(A) has wrongly deleted the addition of Rs.34,90,828/- on account of non deduction of tax at source on Advertisement Expenses u/s 40 (a) (ia) of the Act.*
- iii. On the facts and in the circumstances of the case, the Ld.CIT(A) has wrongly deleted the addition of Rs. 12,98,32,058/- made u/s 43D*

of the Act on account of interest receivable not declared as income by the assessee without appreciating the fact that assessee is not a Public Financial Institute as defined in section 43D and, therefore, interest receivable is not exempted as per section 43D.

iv. On the facts and in the circumstances of the case, the Ld.CIT(A) has wrongly deleted the addition of Rs.2,00,00,000/- on account of Provision for Gratuity and Leave Salary without appreciating the fact that these were not ascertainable liabilities during the year under consideration.”

2. The assessee has taken the following additional ground:

“ADDITIONAL GROUND OF OBJECTIONS:

Sirs

Please find enclosed the following additional ground of objections I in connection with the above mentioned matter which may kindly be considered as the same arises out of the decision of the Ld. CIT(A):-

1) That the Ld. CIT(A) has erred in sustaining addition of Rs 165100/- & Rs 57135/- being amount debited for repair of building as the amount was incurred for purchase of Floor tiles for repair of toilet floor Rs 165100/- and repair of roof Rs 57135/-. The same being essentially an expense of revenue nature deserves to be allowed.

2) That the Ld. CIT (A) has erred in sustaining addition of Rs 378750/-on account of non-deduction of tax on rent paid for Batala building to two co-owners. Sh Surjit Singh Dhillon &Smt Surinder Kaur Dillon @ Rs. 12,500/-for each co-owner and the excess being arrears of rent paid in respect of previous years.”

3. To be precise enough, we note at the outset that the assessee is a cooperative bank. The addition was made in different heads by the Id.AO during assessment proceedings u/s 143(3) of the Act. The addition was made u/s 40(a)(ia) for non-deduction of TDS, the disallowance of the expenses related to advertisement amount of Rs.34,90,828/-, disallowance of the deduction of interest receivable on loan and advance amount of Rs.11,95,804/- and interest receivable on housing loan advance amount of Rs.1,02,71,254/- which works out total amount of Rs.12,98,32,058/-. The addition was made on payment of gratuity and leave salary amount of Rs.1,50,00,000/- and Rs.50,00,000/- respectively, which works out total amount of Rs.2 Crore. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) has passed the order and allowed the assessee's appeal except the payments amount of Rs.1,65,100/- and Rs.57,135/-against the repair of building for

purchasing floor tiles. The amounts are not accepted for debiting the P & L a/c. Addition was made U/s 40(a)(ia) for non-deduction of tax on rent paid Rs.12,500/- each on account of two co-owners Sh. Surjit Singh Dhillon and Smt. Swinder Kaur. The amount of addition was sustained Rs.3,78,750/- by the order of the Id. CIT(A). The other issues are already allowed by the Id. CIT(A). Considering this the revenue and assessee both are filed appeal and cross objection against the order of the Id. CIT(A) before the ITAT.

Ground No. (i) of Revenue relating to Section 40(a)(ia) and Additional ground of assessee:-

4. The Id. CIT DR vehemently argued and relied on the order of the Id. AO. The Id. counsel submitted the written submission which is kept in the record. Related to the deduction of 40(a)(ia) the assessee had paid rent to the different parties. The remand report was called for. The remand report bearing no. 15/16-05-2017 drawn by the Id. AO was accepted by the Id. CIT(A) & was brought in record. Considering the remand report the payment of rent was deleted as the quantum of rent paid is not under purview of deduction of tax at source. But the only payments related to two parties amount of Rs.1,65,100/- and Rs.57,135/- for purchasing the

floor tiles for repair of building. Also Rs.3,78,750/- which are paid to both the Co-owners @ Rs.12,500/- each as rent amount of was not accepted by the Id.CIT(A).

5. We heard the rival submission and perused on the documents available in the record. From the order of the Id. CIT(A), it is come out that the Id. AO has accepted the assessee's submission in remand. In consensus by both the rival parties, the deletion was made by the Id. CIT(A) related addition U/s 40(a)(ia) relied on remand report. The CIT-Dr was not able to bring any contrary fact against the submission of assessee. In relation to rejection of the addition Rs.1,65,100/- and Rs.57,135/- related to purchase of floor tiles are nature of capital expenditure. So, it is not the revenue expenditure & cannot be the part of the P & L a/c. It is to be directed that the depreciation of the capital expenditure should be allowed to the assessee in applicable rate. In relation to payment of the two Co-owners amount Rs.3,78,750/- the said addition is also deleted as each Co-owner is Rs. @ 12,500/- which is below the quantum of TDS. The violation of section 40(a)(ia) will not be accepted.

Considering this the ground no. (i) of the revenue&additional ground no-1 of assesseearedismissed and additional ground no. 2 of the assessee is allowed.

Ground No. (ii) of Revenue for non-deduction of tax on Advertisement

Expenses:-

6. In assessment the ld. AO disallowed the advertisement expenses Rs.34,90,828/- on the ground that non deduction of TDS from the party.

In argument the ld. CIT-Dr relied on the order of the ld. AO.

The ld. counsel for the assessee argued that the payment was for purchasing of printing material and the said purchase price is included the Value Addition Tax (in short VAT) under State Act. The issue was agitated before the ld. CIT(A) and the ld. CIT(A) had concluded the fact with the following observation which is extracted here as below:-

“Decision: - The assessee had incurred expenditure of Rs 34,90,828/- on advertisement. The said expenses were claimed by the assessee to be for the purchase of pamphlets and banners for distribution to customers at branches and general public on which VAT has been charged. It was claimed that all these expenses are of the nature of printing and stationery and not requiring TDS. The AO however held that where specific

printing work is got carried out, the same amounts to contract, charging of VAT does not give it the colour of purchases.

The AO relied upon the circular of CBDT no. 715 dated 08-08-1995 and held that the present case is of supply of printed material as per specifications provided by the assessee. Accordingly, the AO hold the advertisement expenditure to be for TDS but since TDS was not deducted on the payments made included under the head advertisement expenses, therefore for non-deduction of TDS, the AO disallowed Rs 34,90,828/- u/s 40(a)(ia).

The appellant had pointed out that VAT was charged by the party supplying advertisement material to the appellant and produced the copies of purchase bills of items such as pamphlets, banners, hoarding, calendar included in the advertisement expenses claimed by the appellant claimed. The copies of purchase bills repealed the purchase of pamphlets, banners and other stationery items which were used for the publicity of the bank's scheme. VAT has been paid on all of them. Since the parties making sales of pamphlets, banners and other stationery items to the appellant had charged VAT on the billed amount raised by them, therefore its nature is only a contract of sale and no TDS is required to be deducted on the

payments made and claimed under head advertisement expenses at Rs 34,90,828/-.

Further the appellant had submitted that no separate agreement is entered into with the supplier as purchase order is provided for every bill. The copies of purchase orders of pamphlets and banners and brochures were also submitted on sample basis as evidence of its claim. The appellant has also submitted the confirmation of the party supplying pamphlets, banners and brochures that it had no agreement with the appellant for supply of the said items. The decision of the Hon'ble Punjab & Haryana in the case of CIT vs Deputy Chief Account Officer, Markfed reported in (2008)5 DTR 0326: (2008) 304 ITR 0017 is applicable in the case of the appellant wherein it was held that purchase of printed packing material for which raw material was not supplied by the assessee was a contract for sale outside the purview of section 194C- Factum of such packing material carrying some printed work can only be regarded by the supplier incidental to the sale to the assessee.

Moreover, by virtue of sub clause (e) of clause (iv) of the explanation of section 1940, the definition of "work" does not include manufacturing or supplying a product according to the

requirement or specification of a customer by using material purchased from a person, other than such customer. In the present case, it is not the case of the AO that the pamphlets, banners and other stationery items were supplied to the appellant according to the requirement or specification of the assessee by using material purchased from the assessee. Therefore the provisions of TDS are not attracted on the supply of pamphlets, banners and other stationery items to the assessee as the same does not fall in the definition of “work” by virtue of sub clause (e) of clause (iv) of the explanation of section 194C. The disallowance of Rs 34,90,828/- u/s 40a(ia) is therefore deleted.”

6.1 The Id. Counsel further in argument invited our attention in **CBDTCircular No. 13/2006 dated 13.12.2006**. The relevant para is extracted as below:-

“3. It is, therefore, clarified that the provisions of section 194C would apply in respect of a contract for supply of any article or thing as per prescribed specifications only if it is a contract for work and not a contract for sale as per the principles in this regard laid down in para 7(vi) of Circular No. 681, dated 8-3-1994.”

6.2 In our considered view, the said purchase of printing material is a VAT paid goods. The specification duly drawn by the assessee for executing the material. Considering Circular No. 13/2006 it is well defined that the contract of sale is not a contract of service. We find no infirmity in the order of the Id. CIT(A). The Id. CIT DR was not able to bring any contrary view of any contrary judgments against the findings of the Id. CIT(A). Accordingly, we upheld the observation of the Id. CIT(A).

In the result, the ground no. (ii) of the revenue is dismissed.

Ground No. (iii) of Revenue-addition of Rs.12,98,32,058/- u/s 43D

7. The assessee is a cooperative bank during this financial year the interest recoverable under the non-performing asset account (in short NPA) the interest accrued amount of Rs.12,98,32,058/- out of that Rs.11,95,60,804/- is related to interest receivable from NPA account and Rs.1,02,71,254/- was interest receivable on housing loan advance. As per the Id. AO, the assessee is not a financial institution and the section 43D will not be applicable. Accordingly, the addition was made on the accrual interest of NPA account. As per the Act the benefit was allowed to the interest to credit in the P & L A/c on the basis of the actual payment.

Against the order of the Id. AO the assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) has passed a speaking order after considering the submission of the assessee. The Id. Counsel for the assessee has further drawn our attention in **pagenos. 16 to 18** of the Id. CIT(A)'s order which is reproduced as below:

“Decision: - As per policy of the employees of the bank have special facility of paying principal amount first and interest afterwards. The appellant had brought this fact to the knowledge of the AO but the AO did not rebut it with any argument or evidence. As explained by the appellant as above, the interest due on housing loan for the year is debited to the members account and credited to the profit & loss account. In the relevant previous year, the assessee had made two entries of Rs.627,142/- and of Rs 606,03 respectively in respect of interest on housing loan to staff credited to profit and loss account. The details of amount credited to the P & L account along with vouchers was submitted and placed in the paper book filed during appeal proceedings. During the year the interest accrued on housing loan to staff is Rs 12,33,177/- and not Rs 102,71,254/- which is the entire amount due from staff on account of housing loan. Accordingly in view of the above facts and submissions of the appellant, the AO had wrongly made the addition of Rs. 102,71,254/- and the said addition is deleted.”

7.1 In argument Id. Counsel further mentioned that overdue interest reserve account is not a taxable in case of assessee. The interest is credited in the account as per the guideline of the **Reserve Bank of India direction's 1998 are potential / province norms issued by RBI under Chapter III-B of the 1934**. The norms duly essentially with income recognition the force NBFCs to disclose the loan amount of NPA in their financial a/c. The force NBFC to reflect true and correct profit by virtue of section 45Q-V-1934 Act, and overriding effect is giving RBI direction 1998 vis-a-vis without (income recognition)principles in the Companies Act 1956.

8. The Id. CIT DR vehemently argued and relied on the order of the Id. AO. He further mentioned that the 43D will not be applicable for the assessee.

9. We heard the rival submission and considered the documents available in the record. The “**overdue interest reserve**”, is an “**income recognition**” as per the guideline of the RBI. The fact cannot be overruled the direction of the RBI. However, in present case, the AO has followed the RBI direction 1998. In view of section 45Q of 1934, we respectfully relied on the observation of the Hon’ble High Court Of Punjab & Haryanain the case of **PCIT, Ludhiana vs. Ludhiana Central C-operative Bank Ltd. (2018) 99 taxmann.com 81**. The observation of the Hon’ble Jurisdictional High Court is reproduced as below:-

*“31. The similar issue was considered in **Shri Mahila Sewa Sahakari Bank Ltd.'s case(supra)** in the case of Cooperative Banks by the Gujarat High Court where the issue was decided in favour of the assessee through a detailed judgment. Against the judgment of the Gujarat High Court, the Apex Court approving the said decision dismissed the C.A.No.8977 of 2017 filed by the revenue on 13.12.2017. It may further be noticed that the Parliament has amended Section 43D of the Act by Finance Act, 2017 effective from 1.4.2018 whereby specifically including "a cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank" in the said provision.*

32. Adverting to the factual matrix, it may be noticed that the Tribunal while relying upon the various pronouncements had decided the issue regarding taxability of interest on NPA's in favour of the assessee as being taxable in the year of receipt. The Tribunal had upheld the deletion made by the CIT(A) on account of addition of Rs. 3,02,82,000/- regarding interest accrued on NPA. No illegality or perversity could be demonstrated by learned counsel for the revenue in the aforesaid findings recorded by the Tribunal.

33. Thus, substantial questions of law as claimed are answered accordingly and the appeals are dismissed.”

10. We respectfully relied on the order of the Hon'able Jurisdictional High Court, *supra*. We find that no infirmity in the order of the Id. CIT(A). the Id. CIT-Dr was not in strong argument against the observation of the appellate authority. There is no interference needed on the observation of the Id. CIT(A).

Accordingly, the ground no. (iii) of the revenue is dismissed.

Ground No. (iv) of the Revenue-Leave Encashment and Gratuity of Rs. 2

Crore: -

11. The ld. CIT DR vehemently argued that the assessee made the provision on leave encashment and gratuity amount of Rs.1 crore 50 lac and Rs.50 lacs respectively and claimed the expenses u/s 36(1)(iv) in accordance with section 43(2) of the Act. The observation of the ld. AO in assessment order **para no. 4** is extracted as below:

“4. Provision for gratuity and leave salary of Rs.2,00,00,000/- not admissible as per the act.

Assessssee as per the profit and loss account has debited amount of Rs. 1,50,00,000/- and Rs.50,00,000/- as Gratuity and leave salary respectively which is not admissible per the Act when as per the act it is admissible if paid by employer by way of contribution toward approved Gratuity fund. Assessee vide notice dated 2-2-2015 and 10-6-2015 was required to explain with supporting evidence. Assessee vide written submissions dated 25-6-2015 made explanation that Gratuity registered with t he appropriate Authority and provision of Rs 1,50,00,000/ has been made toward Gratuity which is allowable when it is not allowable as above when as per the act it is admissible if paid by employer by way of contribution toward approved. Gratuity

fund u/s 36 (v) and assessee has made provision and debited to profit and loss account.

Explanation regarding provision for leave salary of Rs.50,00,000/ has not been made.

Accordingly, addition of Rs.2,00,00,000/-is made. Penalty proceedings, u/s 271(l)(c) of the Income Tax Act,1961 are initiated for furnishing inaccurate particulars of income. [Addition of Rs 2,00,00,000/-].”

12. The Id. Counsel for the assessee mentioned that the assessee is eligible in deduction u/s 43B(f) and the same amount is admissible paid by the employer by way of contribution funds approved gratuity funds.

12.1. Challenging the addition, the assessee filed an appeal before the Id. CIT(A) and challenged the order of the Id. AO. The Id. CIT(A) has taken the view against the Id. AO and allowed the appeal of the assessee. The relevant part of the of the **order of CIT(A) from page no. 19** is extracted as below:-

Decision:- As per P & L account, assessee had debited Rs 150,00,000/- and Rs 50,00,000/- as gratuity and leave salary respectively. In the appeal proceedings appellant has submitted the copy of approval/registration dated 06-12-2010 granted by the CIT-2, Amritsar to the group gratuity scheme of the appellant with Reliance Life Insurance Co-op Ltd w.e.f 19-02-2007 as evidence that the gratuity scheme of the appellant is an **approved gratuity fund**.

The assessee was asked to submit the statement of actuarial computation of demand raised by the gratuity fund for payment of gratuity which was submitted according to which the amount required from the assessee by Reliance Life Insurance Company Ltd was Rs 641,80,174/-, against which the assessee only paid Rs 150,00,000/-. The appellant had submitted copy of voucher of payment of "gratuity fund payable" dated 28-09-2013 which revealed that the amount of Rs 150,00,000/- on account of provisions towards gratuity fund was paid on 28-09-2013. i.e. before filing the return of income for A Y 2013-14 u/s 139(1) of the Act.

The provision for the said approved gratuity fund at Rs 150,00,000/- as on 31-03-2013 created by the appellant is an allowable deduction u/s 40A(7)(b) of the I T Act. The special provisions of section 40A(7)(b) of the Act shall prevail over the general provisions of section 43B of the Act in view of the decision of hon'ble ITAT, Bangalore "B" Bench in the case of Hinduja Exports vs JCIT Spl Range -II, Bangalore reported in (2006) 9 SOT 349 (Bang) and also the decision of hon'ble Karnataka High Court in the case of Karnataka Motor Industries Co. Ltd vs CIT, Bangalore (2007) 160 Taxman 316.

The said provision for the approved gratuity fund payable by the assessee employer at Rs 150,00,000/- as on 31-03-2013 is also allowable u/s 43B(b) of the Act read with proviso to the section 43B(b) of the Act

As regards the meaning of word paid used in section 36(1)(v) in connection with the contribution of an employer towards an approved gratuity fund /approved superannuation fund, the hon'ble Bombay High Court in the case of CIT vs Tata Hydro Electric Supply Company vide order dated 17-11-1995 reported in (1996) 219 ITR 178 has held in context of word "paid" used in section 36(1)(iv) of the Act that the word "paid" occurring in section 36(1)(iv) has to be given the same meaning as has been assigned to it by the legislature in section 43(2) of the Act unless the context otherwise requires. There is nothing in the context in which it occurs in section 36(1)(iv) of the Act to require otherwise.

The same principal laid down by the Bombay High Court in the above case is applicable in the context of the word "paid" used in section 36(1)(v) of the Act. As per section 43(2) of the Act. The word "paid" means actually paid or incurred according

to method of accounting upon the basis of which the profits or gains are computed under the head "Profits and gains of business or profession". The method of accounting of the appellant is "mercantile" and accordingly the provision for the approved gratuity fund payable by the assessee employer at Rs 150,00,000/- created as on 31-03-2012 was allowable even u/s 36(1)(v) of the Act in accordance with Section 43(2) of the Act. **The addition of Rs 150,00,000/- is accordingly deleted.**

As regards the provisions for Rs 50,00,000/- towards leave salary on the basis of estimation of future liability, it was explained that the assessee had purchased a policy in respect of this from Reliance Life Insurance Company from the last several years and made contribution of Rs 50,00,000/- on the basis of ascertained liability and paid the amount to the company on 30-09-2013. The appellant enclosed the copy of the payment voucher of leave encashment payable at Rs 50,00,000/- which was paid to Reliance Insurance Company on 30-09-2013 i.e. before filing the return of income for A Y 2013-14 u/s 139(1) of the Act.

The said provisions towards leave encashment of earned leave was held by the hon'ble Supreme Court of India in the case of Bharat Earth Movers vs CIT vide order dated 9-8-2000 reported in (2000) 245 ITR 0428 to be business liability, as the liability has definitely arisen in the accounting year, and therefore the deduction is allowable although the liability may have to be quantified and discharged at a future date.

Moreover, since the said provision of Rs 50,00,000/- on account of leave encashment of earned leave appearing in the balance sheet of assessee as on 31-03-2013 was duly paid to Reliance Insurance Company on 30-09-2013 i.e. before filing the

return of income for A Y 2013-14 u/s 139(1) of the Act on 01-10-2013, therefore the same is allowable in view of section 43B(f) read with the first proviso to section 43B of the Act. Accordingly the addition of Rs 50,00,000/- on account of provision for leave salary is deleted.

7. In the result, appeal is **partly allowed**.

13. We heard the rival submission and considered the documents available in the records. The same issue was delt by the Hon'ble **Supreme Court of India** in the case of **Union of Indiav.Exide Industries Ltd.[2020] 116 taxmann.com 378 (SC)**.

The observation of the Hon'able apex court is extracted as follows: -

“40. Notably, this regulatory measure is in sync with other deductions specified in Section 43B, which are also present and accrued liabilities. To wit, the liability in lieu of tax, duty, cess, bonus, commission etc. also arise in the present as per the mercantile system, but assessee used to defer payment thereof despite claiming deductions there against under the guise of mercantile system of accounting. Resultantly, irrespective of the category of liability, such deductions were regulated by law under the aegis of Section 43B, keeping in mind the peculiar exigencies of fiscal affairs and underlying concerns of public revenue. A priori, merely because a certain liability has been declared to be a present liability by the Court as per the prevailing enactment, it does not follow that legislature is denuded of its power to correct the mischief with prospective effect, including to create a new liability, exempt an existing liability, create a deduction or subject an existing deduction to new regulatory measures. Strictly speaking, the Court cannot venture into hypothetical spheres while adjudging constitutionality of a duly enacted provision

and unfounded limitations cannot be read into the process of judicial review. A priori, the plea that clause (f) has been enacted with the sole purpose to defeat the judgment of this Court is misconceived.

41. The position of law discussed above leaves no manner of doubt as regards the legitimacy of enacting clause (f). The respondents have neither made a case of non-existence of competence nor demonstrated any constitutional infirmity in clause (f).

42. In view of the clear legal position explicated above, this appeal deserves to be allowed. Accordingly, the impugned judgment of the Division Bench of the High Court is reversed and clause (f) in Section 43B of the 1961 Act is held to be constitutionally valid and operative for all purposes. No order as to costs. Pending interlocutory applications, if any, shall stand disposed of.”

The leave encashment will be allowed only on the basis of the actual payment. The Id. CIT(A) in his order has never been placed any such evidence that the amount of Rs. 2 crore was paid in the approved gratuity funds and superannuation fund. During financial year the Id. AO was also not subject to distinguish the provision or actual payment of the said amount. The same issue was asked to clarify the counsel before the bench, but the bench is not satisfied with the submission of the Id. Counsel. The Id. CIT-DR has fully relied on ground of revenue & argued that provision of Rs. 2 crore is contravening the section 43B(f) of the Act. In this respect we are intervening in the order of the Id. CIT(A) and duly rejected the same in relation of Section 43B(f) of the Act. The issue is remanded back to the

ld. CIT(A) for further adjudication in the light of the direction of Hon'ble Supreme Court in the case of **Everest Industries Ltd.**(*supra*).

In the result, the ground no. (iv) of the revenue is allowed for statistical purpose.

14. In the result, the appeal of the revenue bearing ITA No. **542/Asr/2017** & appeal of the assessee **C.O. 30/Asr/2017** are partly allowed.

Order pronounced in the open court on 31.01.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

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By Order