

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'E' NEW DELHI]**

BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 3553/DEL/2019 (A.Y. 2011-12)

<p>ACIT Circle-54 (1) Room No. 1502, E-2, Block, Ld. Departmental Representative. SPM Civic Centre, New Delhi (APPELLANT)</p>	Vs.	<p>National Agricultural Cooperative Marketing Federation of India 1, NAFED House, Siddhartha Enclave, Ashram Chowk, New Delhi PAN No. AAAAN4629F (RESPONDENT)</p>
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I.T.A. No. 3000/DEL/2019 (A.Y. 2011-12)

<p>National Agricultural Cooperative Marketing Federation of India 1, NAFED House, Siddhartha Enclave, Ashram Chowk, New Delhi PAN No. AAAAN4629F (APPELLANT)</p>	Vs.	<p>ACIT Circle-32 (1) New Delhi (RESPONDENT)</p>
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I.T.A. No. 3554/DEL/2019 (A.Y. 2012-13)

<p>ACIT Circle-54 (1) Room No. 1502, E-2, Block, Ld. Departmental Representative. SPM Civic Centre, New Delhi (APPELLANT)</p>	Vs.	<p>National Agricultural Cooperative Marketing Federation of India 1, NAFED House, Siddhartha Enclave, Ashram Chowk, New Delhi PAN No. AAAAN4629F (RESPONDENT)</p>
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I.T.A. No. 3555/DEL/2019 (A.Y. 2014-15)

ACIT Circle-54(1) Room No. 1502, E-2, Block, Ld. Departmental Representative. SPM Civic Centre, New Delhi (APPELLANT)	Vs.	National Agricultural Cooperative Marketing Federation of India 1, NAFED House, Siddhartha Enclave, Ashram Chowk, New Delhi PAN No. AAAAN4629F (RESPONDENT)
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Assessee by :	Sh. Herin Mehta, CA, Sh. Nirbhey Metha, Adv
Department by:	Ms. Sarita Kumari, CIT DR

Date of Hearing	07.06.2023
Date of Pronouncement	09 .08.2023

ORDER**PER YOGESH KUMAR U.S., JM**

These four appeals are filed by the revenue and the assessee against the order dated 31/01/2019 passed by the Office of the Commissioner of Income Tax (Appeals)-36, New Delhi, (hereinafter referred to 'CIT(A)' for assessment years 2011-12, 2012-13 , 2012-13 & 2014-15, respectively.

2. The assessee and revenue has raised the following commons grounds except the amount:-

I.T.A. No. 3553/DEL/2019 (A.Y. 2011-12) (Revenue)

I.T.A. No. 3554/DEL/2019 (A.Y. 2012-13) (Revenue)

“a. On the facts and circumstances of the case, whether the CIT (A)

has erred in not examining the issue of disallowance u/s 40(a)(i) of the Income Tax Act, 1961 made by the Assessing Officer, as the assessee had failed to furnish any cogent explanation in support of its claim.

b. On the facts and circumstances of the case, whether the CIT (A) has erred in not examining the issue of disallowance u/s 40(a)(i) made by the Assessing Officer as

s covered under the definition of interest u/s 2(28A) of the Income Tax Act, 1961.

c. On the facts and circumstances of the case, whether the CIT (A) has erred in not examining the issue of disallowance u/s 14A of the Income Tax Act, 1961 made by the Assessing Officer, as the assessee had failed to furnish any cogent explanation in support of its claim?

d. On the facts and circumstances of the case, whether the CIT(A) has erred in deleting the addition of Rs. 97,68,269 for AY 2011-12 and Rs. 1,05,98,437 for AY 2012-13 made by the AO u/s 14A as provisions of section 14A are not restricted to section 10 only but are applicable to income which does not form part of the total income under this act including section 80(P)(2)(d). Also, the assessee had deliberately not claimed the deduction of income received as dividend as per provisions of section 80(P)(2)(d) of the I. T. Act?

e. On the facts and circumstances of the case, whether the CIT (A) has erred in not examining the issue of disallowance of selling expenses treated as speculative loss suffered by the assessee on commodity trading made through unrecognized stock exchange.

f. On the facts and circumstances of the case, whether the CIT(A) has erred in deleting the addition of Rs. 8,43,27,778 for AY 2011-12 and Rs. 73,86,277 for ASSESSMENT YEAR 2011-12 and Rs. 73,86,277/- for Assessment Year 2012-13 made by the AO, without appreciating the fact that the said loss was rightly held as speculative loss as per section 43(5)(d) by the AO as the transactions were not done through recognized stock exchange and this loss can't be set off against income from non speculative business as per section 72 of the Income Tax Act?"

g. On the facts and circumstances of the case, whether the CIT (A) has erred in not examining the issue of disallowance of 'other selling expenses' as per the provisions of section 37(1) of the Act."

h. On the facts and circumstances of the case, whether the CIT(A) has erred in deleting the addition of Rs. 1,74,13,753 for AY 2011-12 and Rs. 3,49,44,618 for AY 2012-13 made by the AO in relation to 'other selling expenses' without appreciating the fact that the said amount is already included in the amount reimbursable to the assessee by Govt, of India. Also the said amount is neither in the nature of tax/cess nor has the assessee been able to prove that the said expenses were laid out wholly and exclusively for the purpose of business of the assessee?

i. On the facts and circumstances of the case, whether the CIT (A) has erred in not examining the issue of proportionate disallowance of Interest made by the Assessing Officer, as the assessee had failed to furnish any cogent explanation in support of its claim"

j. On the facts and circumstances of the case, whether the CIT(A) has erred in deleting the addition of Rs. 1,18,01,74,500 for AY

2011-12 and Rs. 49,17,33,916 for AY 2012-13 being notional interest, made by the AO, by not appreciating the fact that the AO had rightly held that interest free advances given by the assessee were not for the purpose of business whereas the assessee had paid interest on borrowed funds from banks?

Certified that the copy of the order of CIT(A)-36, New Delhi in the above mentioned case was communicated on 22.02.2019 and the limitation in this case expires on 23.04.2019.

I.T.A. No. 3000/DEL/2019 (A.Y. 2011-12) (Assessee)

- 1. That on the facts and circumstances of the case and in law, the order passed by CIT (A)-36, New Delhi (hereinafter referred to as CIT (A)), is bad in law.*
- 2. That on the facts and circumstances of the case and in law, the Ld. CIT (A) was not justified in upholding the action of AO in sustaining disallowance of Rs. 2,500 debited in the P&L account in respect of "Claims Rejected" alleging that the same are unverifiable.*
- 3. That on the facts and circumstances of the case and in law, the Ld. CIT (A) was not justified in upholding the action of AO in making disallowance of Rs. 99,50,659/- under section 43B 6f the Income Tax Act alleging that the deduction claimed by the assessee on payment basis is not actually paid during the year under consideration. The Ld. CIT(A) has failed to appreciate that the amount of Rs. 99,50,659/- is an allowable deduction for A.Y. 2011-12 and not allowing the said deduction alleging that the deduction has not been claimed in the original or revised return is contrary to the facts and bad in law.*

4. *That on the facts and circumstances of the case and in law, the Ld. CIT (A) was not justified and erred in law in sustaining addition made by AO of Rs. 8,81,846/- in respect of the depreciation charged on the new asset added during the year for Rs.1,77,44,524/- in the block of building shown as 'warehouse by erroneously holding that no evidence was provided for 'putting to use' the new property for more than 180 days. The Ld. A.O. has erred in law and facts in rejecting the depreciation claimed as per tax audit report and restricting the claim of depreciation to 5%.*

I.T.A. No. 3555/DEL/2019 (A.Y. 2014-15) (Revenue)

- a. *“On the facts and circumstances of the case, whether the CIT (A) has erred in not examining the issue of disallowance u/s 40(a)(i) of the Income Tax Act, 1961 made by the Assessing Officer, as the assessee had failed to furnish any cogent explanation in support of its claim.*
- b. *On the facts and circumstances of the case, whether the CIT (A) has erred in not examining the issue of disallowance u/s 40(a)(i) made by the Assessing Officer as the interest/claim of interest payable to M/s Alimenta gets covered under the definition of interest u/s 2(28A) of the Income Tax Act, 1961.”*

3. The issues involved in the above appeals are identical and the grounds raised by the assessee are also identical, therefore, the brief facts of the case of the Assessment Year 2011-12 are considered for the sake of convenience. The assessee is a National Level Co-operative Agricultural Marketing Federation for dealing in agricultural produce, registered under the Cooperative Societies Act, 1912. The Assessee is a nodal organization for purchase of agricultural produce under the Price System support Scheme and Marketing Intervention

Scheme of the Government of India for protecting the interest of the farmers and the consumers. The assessee filed a return of income for A.Y. 2011-12 declaring loss of Rs 85,25,87,816, The AO finalized the assessment (2011-12) at a loss of Rs. 16,16,21,755/- making an addition/disallowance of 1,37,78,43,133/- in following manners:-

<i>i. Disallowance of Alimenta interest u/s 37(1)/40(a)(i)</i>	Rs. 7,53,22,441/-
<i>ii. Disallowance U/s 14A</i>	Rs. 97,68,296/-
<i>iii. Disallowance on account of claims rejected</i>	Rs. 2,500/-
<i>iv. Disallowance of fixed asset written off</i>	Rs. 1,360/-
<i>v. Disallowance of speculative loss</i>	Rs. 8,43,27,778/-
<i>vi. Disallowance of misc. services purchased</i>	Rs.1,74,13,753/-
<i>vii. Disallowance of proportionate interest U/s 36/37</i>	Rs 18,01,74,500/-
<i>viii. Disallowance U/s 43B as discussed above</i>	Rs. 99,50,659/-
<i>ix. Disallowance U/s 32 as discussed above.</i>	Rs. 8,81,846/-

Total Addition **Rs. 1,37,78,43,133/-**

Total Income (Rs. 16,16,21,755/-

Net Loss (Rs. 16,16,21,755/-

4. Aggrieved by the assessment order dated 29/03/2014 the assessee preferred an Appeal before the CIT(A) , the ld. vide order dated 31/01/2019 partly allowed the Appeal.

5. Aggrieved by the deletion of the disallowance the Revenue preferred Appeal in ITA No. 3553/Del/2019 and aggrieved by the sustaining the disallowance the assessee preferred an appeal in ITA No. 3000/Del/2019 on the grounds mentioned above. The Ld. Counsel for the assessee submitted that most of the issues involved in the present Appeals are covered in the Assessee's own case for the Assessment Year 2003-04, 2004-05 and the Ld.

Counsel for the assessee has submitted the chart in support of the said contention.

ITA No. 3553/Del/2019 (Revenue) A.Y 2011-12

6. The Ground No. a & b of the Revenue's Appeal is regarding on the issue of disallowance u/s 14A of the Act made by the A.O. The Ld. Counsel for the Assessee submitted that the assessee had claimed the deduction on account of interest payment based on the Judgment of Decree passed against the assessee by the Hon'ble Delhi High Court, the said deduction of payment of interest was claimed in the computation of income. The grievance of the department is that, though the interest has been claimed in the computation of income, but the same has not been charged as expense in the audited accounts/books, apart from the same, the assessee follows Mercantile accounting system, therefore, the impugned amount only is a provision of liability which is not ascertained and is therefore in the nature of contingent liabilities only. The addition made by the A.O. has been deleted by the CIT(A).

7. The above said issue is covered in Assessee's own case for the Assessment Year. The Co-ordinate Bench of the Tribunal in ITA No. 4108/Del/2015 dated 24/08/2022 for Assessment year 2010-11 in held as under:-

"6. The CIT(A) has erred in deleting the addition of Rs. 1,33,42,570/- made by the AO on account of prior period expenses as the assessee

follows mercantile system of accounting and hence prior period expenses are not allowable.

7. The CIT(A) has erred in deleting the addition of Rs. 118,01.74,500/- being notional interest @ 10.5% (moderate rate of interest as the assessee has obtained fresh loans @ 9% to 11.75%) made by the AO by not appreciating the fact that the AO had 1123,97,57,150/- were not for the purpose of business whereas the assessee has paid interest on borrowed funds from banks.”

8. Since the issue involved in the Ground No. a & b of the Revenue's Appeal has already been dealt and decided in favour of the assessee in Assessee's own case for earlier year, we find no merit in the ground no. a & b of the Revenue, accordingly, the Ground No. a & b of the Revenue are dismissed.

9. Ground No. c & d are regarding deletion of the addition of Rs. 97,68,269/- for the AY 2011-12 made by the A.O. u/s 14A. The Ld. Counsel for the Assessee submitted that 'the disallowance u/s14A read with Rule 8D has been computed and added to the income of the assessee. The various case laws have also been referred to by the A.O. to justify the disallowance pertinently the decision of the ITAT in the case of Cheminvest Ltd. according to A.O. Matter of 14A has not reached to finality either in Hon'ble Jurisdictional High Court or before the Hon'ble Apex Court. Besides there are contradictory decisions in the matter of various Benches of ITAT. The income claimed exempt by assessee in any of the provisions of the Income Tax Act, 1961, be it

under Section 10 or Section 80P or relief claimed or u/s 90 which ultimately resulted non-payment of tax on account of DTAA are covered in the ambit of Section 14A of the Income Tax Act. The claim of the assessee that the provisions of Section 14A do not apply in its case, is based on an incorrect notion. The Ld. CIT(A) deleted the above addition made by the A.O’.

10. The above said issue is covered in Assessee’s own case for the Assessment Year 2010-11. The Co-ordinate Bench of the Tribunal in ITA No. 4108/Del/2015 dated 24/08/2022 held as under:-

“13. Facts relating to Ground No. 3 are that during the course of scrutiny assessment proceedings, the assessee has not shown/declared any tax free/exempt income but as per Annexure – IX of the Audit Report, the Assessing Officer found details of income which is covered by deduction u/s 80P(2)(d) of the Act which contained details of dividend received from co-operative societies claimed to be exempt under this section.

14. Invoking provisions of section 14A of the Act and applying Rule 8D of the Rules, the Assessing Officer computed the disallowance at Rs. 1,05,69,459/-. We find that this quarrel was before the co-ordinate bench [supra]. The relevant findings read as under: 11 “18. During the year, the assessee received dividend income of Rs .1 ,01,33 ,000/- from IFFCO and Cooperative Bank of India. The similar issue has been adjudicated by the Co-ordinate Bench of ITAT in the case of the assessee in ITA No. 301/Del/2011 for the A .Y. 2007-08 vide order dated 18.04.2012 wherein the disallowance made by the AO has been deleted . Since, the matter stands

adjudicated, in the absence of any material change and the legal proposition, we decline to interfere with the order of the ld. CIT(A) .”

15. Respectfully following the findings of the co-ordinate bench, no interference is called for. Ground No. 3 is dismissed.”

11. Since the issue involved in the Ground No. c & d of the Revenue's Appeal has already been dealt and decided in favour of the assessee in Assessee's own case for the Assessment year 2010-11, by respectfully following the same, we find no merit in the ground no. c & d of the Revenue, accordingly, the Ground No. c & d of the Revenue are dismissed.

12. Ground No. e & f of the Revenue are regarding deletion of the addition of Rs. 8,43,27,778/- for the AY 2011-12 made on the ground that the said loss was speculative loss as per Section 43(5)(d) by the A.O. as the transaction were not done through recognized stock exchange and the said loss cannot be set off against income from non speculative losses as per Section 72 of the Act. The Ld. Counsel for the Assessee submitted that the assessee during the year purchased the exchange specified commodities from the open market through societies and sold through online future trade through the commodity exchanges NMCE, NCDEX and the transactions are squared off by actual delivery of the commodity and the transactions have been accounted for by NAFED as Business Transactions. The losses suffered have been included

under the head other selling expenses debited to profit and Loss Account.

Details of the losses are as under:-

Cochin	Rs. 4,43,63,348/-
Calicut	Rs. 3,99,64,430/-
Total	Rs. 8,43,27,778/-

The Ld. Counsel for the assessee further submitted that the additions have been made by the A.O. by disallowing the business loss claimed by the assessee contenting that the same is a speculative loss suffered by the assessee on commodity trading made through unrecognized stock exchange since, as per the Government notification only MCX has been notified as the recognized exchange and the Ld. CIT(A) rightly deleted the said addition made by the A.O.

13. The issue involved in Ground No. e & f are covered in the case of the assessee for the Assessment Year 2010-11. The Co-ordinate Bench of the Tribunal in ITA No. 4108/Del/2015 dated 24/08/2022 in Assessee's own case held as under:-

“59. Referring to Board Circular No. 23D - F. No. 412/(4)/60/TPL dated 12.09.1960, the ld. CIT(A) came to the conclusion that the hedging transactions entered into by NAFED through NCDEX and NMCE NAFED are genuine and valid as the same have been entered into safeguard against losses through future price fluctuations in respect of actual trading of the commodities by the NAFED and, therefore, the 28 said transaction is not speculative transactions and directed the Assessing Officer to delete the impugned addition.

60. We have given thoughtful consideration to the findings of the Id. CIT(A). We do not find any error or infirmity in the findings of the Id. CIT(A) which calls for no interference. Ground No. 10 is, accordingly, dismissed.”

14. Since the issue involved in the Ground No. e & f of the Revenue's Appeal has already been dealt and decided in favour of the assessee in Assessee's own case for the Assessment year 2010-11, by respectfully following the same we find no merit in the ground no. e & f of the Revenue, accordingly, the Ground No. e & f of the Revenue are dismissed.

15. Ground No. g & h are regarding deletion of the addition of Rs. 1,74,13,753/- for the AY 2011-12 made by the A.O. in relation to other expenses. The facts are that the Government of India has directed the assessee to purchase Paddy on a specific rate and supply to FCI in the state of Orissa during Khariff season 2009-10 and 2010-11 Assessee will get 2.5% commission on the minimum support price. Assessee booked the cost of Gunny Bags @ Rs. 23.05 per bag (as decided by the Government of India). The cost of Gunny Bags booked by Bhubaneswar branch of NAFED was Rs. 6,42,56,952/- under the ledger account "Misc. Services Purchases". The A.O. disallowed the expenditure on the basis of following contentions:-

- i) *Perusal of copy of general ledger of Bhubaneswar Branch shows that amount of Rs. 2,43,42,393/- has been credited and amount of Rs. 4,17,56,146/- has been credited. The balance amount of Rs. 1,74,13,753/- has been booked as "Other Selling Expenses". However,*

the total amount of Rs. 1,85,40,763/- is basically an expenditure shown after netting of debit and credit of various branch A/Cs.

- ii) Perusal of P & L A/C for the year under consideration itself reveals that PSS/MSP operation aggregating Rs. 724.14 crores has been reimbursed by Government of India.*
- iii) Expenses incurred or any loss suffered by NAFED in carrying out PSS or MSP operation is being reimbursed fully.*

The above said addition has been deleted by the CIT(A), which is under challenge on the above grounds.

16. The issue involved in Ground No. g & h are covered in the case of the assessee for the Assessment Year 2010-11. The Co-ordinate Bench of the Tribunal in ITA No. 4108/Del/2015 dated 24/08/2022 in Assessee's own case held as under:-

"25. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that NAFED incurred cost of gunny bags for supply of rice to FCI as per Government of India MSP operation. Cost of gunny bags were booked by Bhubaneswar Branch under the head 'Misc. services purchased". The debit amounts in the ledger aggregated Rs. 18,80,37,772/- and the credits aggregated Rs. 12,37,80,809/- and the balance of Rs. 6,42,56,952/- is the cost of gunny bag not reimbursed by the government of India and, therefore, claimed as expenditure by the assessee.

26. These facts clearly show that the income of Rs. 12,37,772/- which has been shown by the assessee already includes amount of

reimbursable to the assessee by the government of India and deficit has to be as allowed as business expenditure and the same cannot be simply disallowed because it has not been reimbursed by the Government of India. We do find any error or infirmity in the findings of the ld. CIT(A). Ground No. 5 is accordingly dismissed.”

17. Since the issue involved in the Ground No. g & h of the Revenue's Appeal has already been dealt and decided in favour of the assessee in Assessee's own case for the Assessment year 2010-11, by respectfully following the same, we find no merit in the ground no. g & h of the Revenue, accordingly, the Ground No. g & h of the Revenue are dismissed.

18. Ground No. i & j are regarding deletion of the addition of Rs. 1,18,01,74,500/- for the AY 2011-12 made by the A.O. being notional interest. The main allegation by the A.O. forming the basis for disallowance is that the huge advances have been made by the assessee in the name of tie-up business from which not a single penny has been earned during the year under assessment and the immediately preceding assessment year. The A.O. is of the view that there exists no tie-up business during the year under assessment, the amount advanced towards the tie-up business has therefore been held by the A.O. as 'not for the business purposes'. The claim of interest expenditure to the extent attributable to the tie-up advances is held by the A.O. as not allowable under the provisions of Section 36(1)(iii) of the Income Tax Act as the amount was not used for the purpose of business. The claim of interest

expenditure by the assessee is also held by the A.O. as not allowable under the provisions of Section 37(1) of the Act as the basic ingredients for allow-ability of expenses were not satisfied. The above said addition has been deleted by the CIT(A).

19. The issue involved in Ground No. i & j are covered in the case of the assessee for the Assessment Year 2010-11. The Co-ordinate Bench of the Tribunal in ITA No. 4108/Del/2015 dated 24/08/2022 in Assessee's own case held as under:-

“36. This quarrel was also before the co-ordinate bench in Assessment Year 2009-10 [supra]. The relevant findings read as under:

“36. The proportionate disallowance of interest has been made by applying interest rate of 10.5% per annum on advances made for tie-up business in the earlier years alleging that these advances were not for the purpose of the business.

37. The main allegation by the A.O forming the basis for disallowance is that the huge advances have been made by the assessee in the name of tie- up business from which not a single penny has been earned during the year under assessment and the immediately preceding assessment year.

38. The A.O is o f the view that there exists no tie-up business during the year under assessment. The amount advanced towards the tie-up business has therefore been held by the A.O not for the business purposes . The claim of interest expenditure to the extent attributable to the tie-up advances is held by the A.O . not allowable under the provisions of section 36(1)(iii) of the Income Tax Act as the amount is not used for the purpose of business. The claim of interest

expenditure by the assessee is also held by the AO not allowable under the provisions of Section 37(1) of the Act as the basic ingredients for allowability of expenses were not satisfied .

39. It was explained that the tie-up advances are driven out of commercial expediency and the same for business purposes only. NAFED on account of its diversification of business had undertaken trading activities under Tie-up arrangement as per Clause 3(A) of bye-laws of NAFED duly approved by Central Registrar of Cooperative, GOI. Copies of MOU/Agreements entered into by NAFED with parties for tie-up business reveal that in order to tap international market, NAFED has diversified into import/export business for various Agricultural/Non-agricultural 19 Commodities.

41. It was argued that the business activity with the parties, known as tie-up parties was undertaken with an objective to earn income .

42. The business activity with the parties, known as tie-up parties was undertaken since A .Y. 2003-04. And for A.Y. 2004- 05 to A .Y . 2006-07 when the transactions of sales with tie-up parties were at large scale . Out of outstanding recoverable from tie-up parties aggregating to Rs. 1123.98 crores as on 31.03.2011 and Rs. 1191.56 as on 31.03.2012 the advance of Rs .428.55 crores are secured against stocks. The security in the form of stocks against these advances proves itself that the same were towards business purposes. It is uncontroverted that these tie-up advances were given by the assessee company during the previous assessment year A .Y. 2003-04 to A.Y . 2005-06 and the same were held as for business purposes in the assessment framed u/s 143(3) of the Income Tax Act,

for those assessment years and the interest claimed was fully allowed and no proportionate disallowance was made during those assessment years.

43. It was argued that the business activity with the parties, known as tie-up parties was undertaken with an objective to earn income. In fact, in the earlier years the transaction has generated income which has been already taxed. Mere nonaccrual of any income does not ipso facto make the tie-up advances as not for business purposes and very importantly when the same were given as held driven out of commercial expediency and the income has been earned in the past and duly included in the taxable income and 20 assessed under section 143(3) of the Income Tax Act for those years and for subsequent assessment years. NAFED is persistently pursuing the recoveries against these tie-up advances. A Year Wise breakup of recoveries made against Tie-Up Advances and total recoveries aggregated to Rs 158.24 crores. To expedite the remaining recovery, all the efforts are being made by the NAFED including legal proceedings which have been initiated against the defaulting parties at various levels i.e ., CBI, Enforcement o f Economics Of fences Wing , High Court, etc. 44. Since, the tie-ups could be said to be a part of the business operation, no disallowance of interest on this account is called for and hence we decline to interfere with the order o f the Id . CIT(A).”

37. On finding parity of facts, we decline to interfere. Ground No. 7 is dismissed. ”

20. Since the issue involved in the Ground No. i & j of the Revenue's Appeal has already been dealt and decided in favour of the assessee in Assessee's own case for the Assessment year 2010-11, by respectfully following the same, we

find no merit in the ground no. i & j of the Revenue, accordingly, the Ground No. i & j of the Revenue are dismissed. In the result, Appeal of the Revenue in ITA No. 3553/Del/2019 is dismissed.

ITA No. 3554/Del/2019 (Revenue) A.Y 2012-13.

21. The facts of AY 2011-12 are similar to those of AY 2012-13 and the Department has raised the identical grounds of Appeal in the present Appeal.

22. Since we have decided the issues involved in Assessment year 2011-12 in ITA No. 3553/Del/2019 by dismissing Ground No. a to j of the Revenue. By finding the parity and by applying the very same ratio, *mutatis mutandis* applies to AY 2013-14, accordingly Ground No. a to j of the Revenue's Appeal of in ITA No. 3554/Del/2019 is here by dismissed. In the result, Appeal of the Revenue in ITA No. 3554/Del/2019 is dismissed.

ITA No. 3000/Del/2019 (Assessee) A.Y 2011-12

23. The Ld. Counsel for the Assessee submitted that the Ground No. 1 is general in nature which requires no adjudication, further the assessee has not pressed the Ground No. 2 considering the smallness of the amount. Accordingly, Ground No. 1 & 2 of the assessee are dismissed.

24. Ground No. 3 is regarding disallowance of Rs.10,26,573/- on the ground that the interest liability in respect of Indian Overseas Bank did not crystallized during the relevant Assessment Year. Further disallowed a sum of Rs. 89,24,086/- on account of interest payable to SBI not paid till filing the return in following manners:-

“In the assessment order it is seen that disallowance of an amount of Rs. 99,50,659/- has been made by the A.O. u/s 43B of the Act for A.Y. 2011-12, stating that the deduction claimed by the appellant on payment basis was not actually paid during the year under consideration. The A.O. disallowed the amount of Rs. 10,26,573/- and Rs. 89,24,086/- (in total Rs. 99,50,659/-) under section 43B of the Act. The amount of Rs. 10,26,273/- has been disallowed by the A.O. stating that this amount was not reflected in the annexure attached to the Tax Audit Report in the relevant column of liability incurred during the year or in the liability existed on 01.04.2010. The A.O., thus, held that the expenses were not crystallized during the year under assessment and deduction has been sought. It is further seen from the assessment order that the amount of Rs. 89,24,086/- has been disallowed by the A.O. after referring to the provisions of section 43B of the Act and explanation thereto and observing that the claim of deduction on payment basis in any subsequent year can only be allowed if such sum has actually been paid during the year under consideration. According to the A.O. adjustment entry cannot be constituted as actual payment and has held that the appellant failed to fulfill the condition required under 43B of the Act.

25. In the Appeal the Ld. CIT(A) has held as under:-

“With regard to the disallowance u/s 43B of Rs. 99,50,659/- the AO has stated in the assessment order that an amount of Rs. 99,50,659/- has been claimed as deduction by the appellant on payment basis which was not actually paid during the year under consideration. In view of the same, the A.O. disallowed the amount of Rs. 10,26,573/- and Rs. 89,24,086/- (in total Rs. 99,50,659/-)

under section 43B of the Act. The AO has observed that the amount of Rs. 10,26,273/- was not reflected in the annexure attached to the Tax Audit Report in the relevant column of liability incurred during the year or in the liability existed on 01.04.2010 and therefore, the A.O., held that the expenses were not crystallized during the instant year. Further, the AO has commented that the amount of Rs. 89,24,086/- is to be disallowed as per the provisions of section 43B of the Income Tax Act and explanation thereto. The AO has held that the claim of deduction on payment basis in any subsequent year can only be allowed if such sum has actually been paid during the year under consideration. The AO has therefore concluded that any adjustment entry cannot be constituted as actual payment and has rightly held that the appellant failed to fulfill the condition required under 43B of the Income Tax Act, 1961.

The AR of the appellant has submitted that the A.O. has failed to appreciate the condition required under 43B of the Income Tax Act, 1961. The AR of the appellant has submitted that the A.O. has failed to appreciate that the expenses were duly recorded in the books and claimed in the profit and Loss Account and the corresponding liability has been shown in the Balance Sheet as on 31.03.2011. It was further submitted by the TEROPY to appellant that merely non-reporting of the amount in the tax audit does not debar the appellant to claim the deduction which it was entitled to claim. The AR further argued that the allowance of deduction for payment of interest is governed by the provisions of section 43B of the Act. The AR also submitted that regarding claim of deduction of interest on any loan or borrowing or advances under clause (d) & (e) the requisite condition is that the amount is actually paid by the assessee on or before the due date applicable in its case for furnishing the return of income and in the present case of the NAFED it is uncontroverted

fact that the interest of Rs. 10,26,273/- has been paid before the due date under section 43B of the Act. The AR further submitted that the requirements contained under section 43B for deduction are duly complied with pertinently the substantial condition of payment within the time permissible for filing of income tax return under section 139(1) and that there is no mandatory requirement of reporting of the same in the tax audit report. It was also submitted that the tax auditor might have omitted to report the same but non reporting of the same does not debar the appellant to claim deduction and it cannot be said that the liability has not crystalized pertinently the accounts and financial statements have been audited and reported by the statutory auditor and nothing adverse in this regard has been reported and non reporting furnishing the evidence is a procedural requirement. The AR further submitted that the amount of Rs. 89,24,086/- relates to Government PSS transactions and does not affect the P&L account of NAFED as shown in P&L A/cs under head interest reimbursable on PSS/MIS operations transferred to Government of India Account amounting to Rs. 72.41 crores and the same was adjusted in A.Y. 2012-13. It was also argued by the AR that the "actual payment" under section 43B of the Act does not mean actual receipt and delivery of the currency by the two parties and discharging of interest liability by book entry is per se not disallowable under section 43B of the Act. The AR also quoted that in the case of CIT vs Shakti Spring Industries Pvt. Ltd. [TS- 4-HC-2013QHAR], it was held by Jharkhand High Court that discharging of a liability by virtue of book entry would constitute "actual payment" for the purpose of section 43B of the Income tax Act, 1961 .

The submission of the assessee have been considered and not found to be tenable. The case laws cited are distinguishable in facts. I

find no reason to interfere with the A.Os order on this issue. Appeal on Ground No. 8 is dismissed.”

26. It is the specific case of the Assessee that a cryptic finding has been given by the CIT(A) without application of mind, the CIT(A) has not verified the document produced by the assessee and not even appreciated the submission made by the assessee. Further made following submissions:-

1. *Amount of Rs. 10,26,57/- was paid on 30.04.2011. Copy of bank voucher filed vide letter dated 23.03.2014 during the assessment proceedings.*

2. *Interest pertains to A.Y. 2011-12. Since the same was not appearing in the Tax Audit Report the AO presumed that the liability does not pertain to A.Y. 2011-12. Non- inclusion by the Tax Auditor will not impact the allowability of the expenditure.*

3. *Without prejudice if the case of the AO is that the interest amount does not pertain to A.Y. 2011-12 then on the same logic no disallowance is warranted for A.Y. 2011-12.*

4. *As regards the amount of Rs. 89,24,086/- pertaining to SBI, the same has not been claimed as expense. This amount is the interest reimbursable by GOI to NAFED for PSS operations. Once the expenditure is not claimed the same cannot be disallowed.”*

27. Considering the above submissions made by the Ld. AR, in the facts and circumstances of the case, we deem it fit to restore the issue involved in Ground No. 3 of the assessee to the file of the A.O. for de-novo verification with a direction to give specific finding on the contentions of the assessee and decide

the issue afresh for giving an opportunity of being heard to the assessee, accordingly, the Ground No. 3 of the assessee is allowed for statistical purpose.

28. Ground No. 4 of the assessee is against sustaining of addition made by the A.O. of Rs.8,81,846/- in respect of the depreciation charged on new asset added during the year for Rs. 1,77,44,524/- in the block of building shown as warehouse on the ground that no evidence was provided for 'putting to use' the new property for more than 180 days and rejecting the depreciation claimed as per the tax audit report and restricting the claim of deprecation to 5%.

29. The Ld. Counsel for the assessee submitted that a cryptic finding has been given by the CIT(A) the depreciation was claimed on two Warehouses at Lucknow and Indore which were added during the assessment year under consideration. Further submitted that the total addition in the block of "Building" of Rs. 1,76,36,912/- was made before 30.09.2010 and thus depreciation @ 10% aggregating Rs. 17,63,691/- was claimed, thus, the A.O. has erred in restricting the claim of depreciation to 50% by disallowing Rs. 8,81,546/-. The documentary evidence in the nature of invoices raised for the warehousing services were submitted vide letter dated 22.03.2014 to A.O., which has been ignored.

30. Per contra, the Ld. Departmental Representative relied on the order of the CIT(A).

31. Heard the parties on issue and perused the material. The depreciation on warehouse has been disallowed on the ground that the said Warehouse comes into exist after 30/09/2010. The contention of the Assessee's Representative that godown has been came into exist prior to 30th September, 2010 and the assessee is entitled for the depreciation at 10% of the said asset instead of 5% allowed by the Lower Authorities. The assessee has relied upon the observation of the A.O. that the assessee Warehouse is located at Lucknow and the documentary evidence furnished was in the nature of Warehouse bills on supply basis which were dated 03/09/2010, 07/10/2010 and 09/03/2010. Thus, in our opinion, the Warehouse acquired up to 30th September, 2010 is entitled for depreciation at 10% and the Warehouse acquired after 30th September 2010 is entitled for depreciation at 5%. Therefore, the assessee is directed to produce bills and other materials to establish that these assets were acquired before 30th September, 2010. Once, the assessee establishes the above facts the A.O. has to grant depreciation at applicable rate. Accordingly, with the said observation, the issue involved in Ground No. 4 is remanded to the file of the A.O. for fresh consideration. In the result, appeal of the Assessee in ITA No. 3000/Del/2019 is partly allowed for statistical purpose.

I.T.A. No. 3555/DEL/2019 (A.Y. 2014-15) (Revenue)

32. The present case, the assessee had claimed deduction on account of interest payable pursuant to the Judgment and Decree passed against the assessee by the Hon'ble Delhi High court. The deduction of payment of interest was claimed by the assessee in the computation of the income. It is the case of

the Department that though the deduction has been claimed in the computation of income but the same has not been charged as expense in the audited accounts/books and since the assessee follows mercantile accounting system the impugned amount only is a provision of allow ability which is not ascertained and therefore, the same is in the nature of contingent liability only. The Id. CIT(A) allowed the Ground of appeal of the assessee in following manners:-

“A perusal of the appellant's submission reveals that the issue is covered in the case of the appellant itself for earlier assessment years. The AR of the appellant has stated that the disallowance on the identical issue -was made for A.Y. 2003-04 which was confirmed by CIT(A). However, the addition was deleted by Hon'ble ITAT, New Delhi on second appeal filed by the appellant against the order of the CIT(A). The Hon'ble ITAT has held that liability to pay interest @18% in the case of NAFED crystalized on 28.1.2000 and the yearly interest claimed by NAFED was therefore allowed for A.Y. 2003-04. The AR has further stated that the addition for A.Y. 2004-05 was also deleted by the Hon'ble ITAT following their order for A.Y. 2003-04. The AR has submitted that for A.Y. 2001-02 and 2002-03, the succeeding bench of Hon'ble ITAT, New Delhi could not agree with the order of the coordinate bench for A.Y. 2003-04, referred In the preceding para and referred the matter for constitution of Special Bench for A.Y. 2001-02 & 2002-03. The Special Bench vide its order dated 16.10.2015 disagreed with the view of the -Bench disposing of the appeal of the appellant for A.Y. 2003-04 that liability to pay interest @18% to Alimenta was crystalized on 28.1.2000. According to the Special Bench the appellant incurred a legally and enforceable liability to pay interest

to Alimenta on 6.9.2000 i.e. for A.Y. 2011-12, the year under appeal. The AR has submitted that subsequently, the Hon'ble Delhi High Court vide its order dated 19.04.2017 reported in [2017] 81 taxmann.com 117 (Delhi) quashed the order of the Special Bench. Therefore, maintaining judicial discipline and respectfully following the decision of Hon'ble Delhi High Court, the appeal on this ground is allowed.”

33. The Ld. Counsel for the assessee submitted that the issue involved in Ground No. 2 stood covered in assessee's own case in previous Assessment Years and relied on the various orders passed by the Co-ordinate Bench and also Hon'ble High Court.

34. We have heard both the parties and perused the material available on record. the above issue of deduction claimed by the assessee on account of interest payment based on the Judgment Decree passed against the assessee by the Hon'ble Delhi High Court has been examined in the case of the assessee and relying on the earlier Assessment Years, in ITA No. 4107/Del/2015 for A.Y 2009-10, held as under:-

“Interest liability relating to M/s Alimenta, Geneva:

3. The assessee has claimed the deduction on account of interest payment based on the judgment of decree passed against the appellant by the Hon'ble Delhi High Court. This deduction of payment of interest was claimed in the computation of income. The grievance of the department is that though the same has been claimed in the computation of Income, but the same has not been charged as an expense in the audited accounts/books. Apart from

this since the appellant follows Mercantile accounting system, therefore, the impugned amount only is a provision of liability which is-not ascertained and is therefore in the nature of contingent liabilities only.

4. *We find that the issue stands examined in the case of the assessee itself for earlier assessment years as under:*

"The disallowance on the identical issue was made for A.Y. 2003-04 which was confirmed by Id. CIT(A). However, the addition was deleted by ITAT, New Delhi on second appeal filed by the appellant against the order of the Id. CIT(A). The ITAT has held that liability to pay interest @18% in the case of NAFED crystalized on 28.1.2000 and the yearly interest claimed by NAFED was therefore allowed for A.Y. 2003-04. Addition for AY 2004-05 was also deleted by the ITAT following their order OFA.Y. 2003-04. For A.Y. 2001-02 and 2002-03, the succeeding bench of ITAT, New Delhi could not agree with the order of the co-ordinate bench for A.Y. 2003-04 and referred the matter for Special Bench for A.Y. 2001-02 & 2002-03. The Special Bench vide its order dated 16.10.2015 disagreed with the view of the Bench disposing of the appeal of the assessee for A.Y. 2003-04 that liability to pay interest @18% to Alimenta was crystalized on 28.1.2000. According to the Special Bench the assessee incurred a legally and enforceable liability to pay interest to Alimenta on 6.9.2000 i.e. for A.Y. 2011-12, the year under appeal. The Hon'ble Delhi High Court vide its order dated 19.04.2017 81 taxmann.com 117 quashed the order of the Special Bench. In the instant year, the said disallowance has been deleted by the Id. CIT(A) vide order dated 30.03.2015."

5. Since, the issue has travelled a series of judgments of the Tribunal, Special bench and the Hon'ble High Court and the matter has been settled with regard to the payment of interest, we decline to interfere with the order of the Id. CIT(A)."

35. By respectfully following the ratio laid down in Assessee's own case (supra), we find no merit in the grounds of Appeal of the Revenue, accordingly, grounds of appeal of the Revenue are dismissed.

36. In the result, Appeal in ITA No. 3555/Del/2019 is dismissed.

Order pronounced in the open court on : **09/08/2023**.

Sd/-
(Dr. B. R. R. KUMAR)
ACCOUNTANT MEMBER

Dated : 09/08/2023

R.N, Sr. PS

Copy forwarded to :-

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

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

