आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.11/Ind/2019 (AY:2012-13)
ITA No.850/Ind/2019 (AY:2013-14)
ITA No.12/Ind/2019 (AY:2014-15)
ITA No.13/Ind/2019 (AY:2015-16)

M/s. STI India Limited, 1,Sonvay Rau, Pithampur, Indore (PAN: AAECS3348C)	बनाम/ Vs.	DCIT/ACIT, 5(1), Indore.
Appellant		Respondent

ITA No.22/Ind/2019 (AY:2012-13)
ITA No.784/Ind/2019 (AY:2013-14)
ITA No.23/Ind/2019 (AY:2014-15)
ITA No.24/Ind/2019 (AY:2015-16)

DCIT/ACIT, 5(1), Indore	बनाम/ Vs.	M/s. STI India Limited, 1,Sonvay Rau, Pithampur, Indore (PAN: AAECS3348C)
Appellant		Respondent

Assessee by	Shri S.S.Solanki, CA & Ld. AR
Revenue by	Shri P.K.Mishra, CIT DR

Date of Hearing	03.08.2023
Date of Pronouncement	24.08.2023

आदेश / O R D E R

Per Bench:

Feeling aggrieved by undermentioned appeal-orders passed by Commissioner of Income-tax (Appeal) ["CIT(A)"], the assessee and revenue both have filed the captioned cross-appeals for different assessment-years ["AY"], which in turn arise out of respective assessment-orders passed by

Assessing Officer ["AO"] under the provisions of Income-tax Act, 1961 ["the act"]:

Appeal No.	**Appeal by**	**AY**	**Brief details of Order passed by CIT(A)**
I.T.A.No.11/Ind/2019	Assessee	2012-13	Order dated 11.10.2018 passed by CIT(A)-II, Indore.
I.T.A.No.22/Ind/2019	Revenue	2012-13	Cross Appeal
I.T.A.No.850/Ind/2019	Assessee	2013-14	Order dated 03.05.2019 passed by CIT(A)-II, Indore.
I.T.A.No.784/Ind/2019	Revenue	2013-14	Cross Appeal
I.T.A.No.12/Ind/2019	Assessee	2014-15	Order dated 11.10.2018 passed by CIT(A)-II, Indore.
I.T.A.No.23/Ind/2019	Revenue	2014-15	Cross Appeal
I.T.A.No.13/Ind/2019	Assessee	2015-16	Order dated 11.10.2018 passed by CIT(A)-II, Indore.
I.T.A.No.24/Ind/2019	Revenue	2015-16	Cross Appeal

Since these appeals are related to the same assessee; argued by same representatives and involve certain issues of common nature; they were heard together at the request of parties and are being disposed of by this common order for the sake of convenience and clarity.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. The registry has informed that ITA No. 22/Ind/2019 is filed by Revenue after a delay of 3 days and therefore time-barred. Ld. DR for the revenue submitted that the delay is very small and caused by administrative procedure. He prayed to condone the delay in the interest of justice. We are satisfied with the reasoning and prayer made by Ld. DR. Therefore, the delay is condoned and appeal is proceeded for hearing.

4. The grounds raised by parties are as under:

Assessee's ITA No. 11/Ind/2019 for AY 2012-13:

1. That the Ld. CIT(A) erred in maintaining disallowance of Rs. 2,70,708/- out of foreign travel expenses by alleging that these expenses are personal in nature. That the expenditure were incurred wholly and exclusively for the purpose of business, the same is allowable.

2. That the Ld. CIT(A) erred in maintaining disallowance of depreciation to the extent of Rs. 1,82,66,673/-. That the assessee has used the plant and machinery in its business, the claim of depreciation of Rs. 3,89,37,375/- requires to be allowed fully.

Revenue's ITA No. 22/Ind/2019 for AY 2012-13:

1. Whether on the facts and in the circumstances of the case, the Hon'ble CIT(A) was justified in deleting the disallowance made on account of delayed payment of employee's share of PF.

2. Whether on the facts and in the circumstances of the case, the Hon'ble CIT(A) was justified in deleting the disallowance made on account of prior period expenses.

3. Whether on the facts and in the circumstances of the case, the Hon'ble CIT(A) was justified in restricting the disallowance on account of depreciation on plant and machinery at Rs. 1,82,66,673/- instead of total disallowance of Rs. 3,89,37,375/- because the Ld. CIT(A) has not given exact working and basis of disallowable depreciation and the same cannot be worked out on the basis of figures available in various schedules and audit report filed electronically.

Assessee's ITA No. 850/Ind/2019 for AY 2013-14:

1. That the Ld. CIT(A) erred in maintaining disallowance of depreciation to the extent of Rs. 2,26,37,000/- (actually this figure should have been 1,75,70,797/-) out of claim of depreciation of Rs. 4,02,07,797/-. That since the assessee has used plant and machinery in the business during the year, entire claim of Rs. 4,02,07,797/- was to be allowed. The same require to be now allowed.

2. That the Ld. CIT(A) erred in confirming disallowance of Rs. 1,50,946/- being prior period expenses. That these expenses being incurred and crystallized during the year, the same required to be allowed.

Revenue's ITA No. 784/Ind/2019 for AY 2013-14:

1. Whether on the facts and in the circumstances of the case, the Hon'ble CIT(A) was justified in restricting the disallowance on account of depreciation on plant and machinery at Rs. 2,26,37,000/- instead of total

disallowance of Rs. 4,02,07,797/- because the Hon'ble CIT(A) has not given exact working and basis of disallowable depreciation and the same cannot be worked out on the basis of figures available in various schedules and audit report filed electronically?

2. Whether on the facts and in the circumstances of the case, the Hon'ble CIT(A) was justified in deleting the disallowance made on account of sundry creditors u/s 41(1) of the I. T. Act?

Assessee's ITA No. 12/Ind/2019 for AY 2014-15:

1. That the Ld. CIT(A) erred in maintaining disallowance of deprecation to the extent of Rs. 2,87,14,642/- (actually this figure should have been 1,49,11,045/-) out of claim of depreciation of Rs. 4,36,25,687/-. That since the assessee has used plant and machinery in the business during the year, entire claim of Rs. 4,36,25,687/- was to be allowed. The same require to be now allowed.

Revenue's ITA No. 23/Ind/2019 for AY 2014-15:

1. Whether on the facts and in the circumstances of the case, the Hon'ble CIT(A) was justified in restricting the disallowance on account of depreciation on plant and machinery at Rs. 2,87,14,642/- instead of total disallowance of Rs. 4,36,25,687/- because the Ld. CIT(A) has not given exact working and basis of disallowable depreciation and the same cannot be worked out on the basis of figures available in various schedules and audit report filed electronically?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the disallowance made on account of delayed payment of employee's share of PF.

Assessee's ITA No. 13/Ind/2019 for AY 2015-16:

1. That the Ld. CIT(A) erred in maintaining disallowance of deprecation to the extent of Rs. 2,55,75,306/- (actually this figure should have been 1,26,75,306/-) out of claim of depreciation of Rs. 3,82,51,252/-. That since the assessee has used plant and machinery in the business during the year, entire claim of Rs. 3,82,51,252/- was to be allowed. The same require to be now allowed.

Revenue's ITA No. 24/Ind/2019 for AY 2015-16:

1. Whether on the facts and in the circumstances of the case, the Hon'ble CIT(A) was justified in restricting the disallowance on account of depreciation on plant and machinery at Rs. 2,55,75,306/- instead of total disallowance of Rs. 3,82,51,252/- because the Ld. CIT(A) has not given exact working and basis of disallowable depreciation and the same

cannot be worked out on the basis of figures available in various schedules and audit report filed electronically?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the disallowance made on account of delayed payment of employee's share of PF.

5. We proceed to decide these appeals in their seriatim.

Assessee's ITA for AY 2012-13:

Ground No. 1:

6. This ground relates to the disallowance of Rs. 2,70,708/- out of foreign travel expenses.

7. The AO has made disallowance vide Para No. 3 of assessment-order by observing that the expenses were incurred for travels to turkey, Istanbul, etc. although the product of assessee is sold mainly to middle east. Therefore, the expenses are personal in nature and have no relation to assessee's business. Ld. CIT(A) has merely upheld the observations of AO without giving independent finding.

8. Before us, Ld. AR for the assessee submitted that the assessee is a company. He carried us to the meticulous details of foreign travel expenses, details of imports and export sales made by assessee at Page No. 48 to 53 of Paper-Book. He demonstrated that out of total expenditure of Rs. 2,70,708/-, major expenditure of Rs. 3,700 + 1,79,050 was on visits by Shri R.C. Gupta, President of assessee-company to Spain; followed by expenditure of Rs. 47,353 + 28,539 + 3,718 + 548 on visits by Mr. Amitva Sarkar to Istanbul/turkey; and the rest of expenditure is incurred on passport/visa fee of some persons. He submitted that all visitors are employees of assessee and a small amount of Rs. 2,500/- is incurred for passport/visa fee of Mr. Vivek Loiwal, director of company. He carried us to the country-wise breakup of imports/exports done by assessee and submitted that the assessee has made imports/exports from Spain and Turkey besides other

countries. He submitted that gross value of import and export made by assessee during the year was Rs. 10,01,34,723/- and Rs. 22,56,64,881/- respectively. He submitted that the assessee is a company; the expenditure is incurred for visits by employees (a nominal expenditure for director's visa and passport fee); and the assessee is having a high value of imports/exports from/to foreign countries including the countries where visits were done. Therefore, according to Ld. AR, the expenditure is clearly incurred for business purposes and there is no element of personal or non-business nature. Hence, the lower-authorities are not justified in disallowing expenditure without looking into the details and on a superficial observation of personal/non-business nature. He also argued that the quantum of expenditure is also very nominal as compared to the volume of import and export done by assessee. Finally, Ld. AR prayed to delete the disallowance. On other hand, Ld. DR supported the AO's order. He submitted that the AO has made disallowance simpliciter but the CIT(A) has not only upheld the disallowance made by AO but also initiated penalty proceeding us/ 271(1)(c) which itself shows that the CIT(A) has a strong objection against assessee. Therefore, he prayed to uphold the disallowance.

9. We have considered rival submission of both sides and perused the details/data of expenditure, import and export to which our attention is drawn. After a careful consideration, we find that the AO has made general observation of personal/non-business expenditure which is not at all supported by the details/data analysed by Ld. AR. Further, the CIT(A) has merely approved the AO's notings. Ld. DR is true in arguing that that the CIT(A) has stepped further to initiate penalty proceeding u/s 271(1)(c) but on perusal of his order, it is very much apparent that he has merely upheld AO's observations and not given his independent finding even for the disallowance. From the details of expenditure placed in Paper-Book, we find that the assessee has done significant business at least with Spain and Turkey for which the major expenditure is incurred. That apart, the quantum of expenditure is also very reasonable considering the volume of

imports and exports done by assessee. Therefore, we do not find any justification in the disallowance made by lower-authorities, consequently we delete the same. Assessee's ground is allowed.

Ground No. 2:

10. This ground relates to the deduction of depreciation on plant and machinery. The assessee claimed depreciation of Rs. 3,89,37,375/-; the AO disallowed fully and the CIT(A) upheld disallowance partly to the extent of Rs. 1,82,66,673/-. Now, the assessee claims that it should have been allowed fully.

11. Facts apropos to this issue as explained by Ld. AR are such that the assessee took loan from bank for purchase of plant and machinery. Subsequently, the assessee was declared as a sick company by Board for Industrial and Financial Reconstruction (BIFR). In terms of rehabilitation package sanctioned by BIFR, the assessee entered into One Time Settlement (OTS) with its lending Bank whereunder the assessee got waiver of the principal amount of loan. The waiver was granted in AY 2007-08 and while completing scrutiny-assessment of AY 2007-08, the then assessing authority adopted "Nil" value of the opening W.D.V. of fixed assets and thereby disallowed the depreciation claimed by assessee. The AO did this on the basis of provision of section 43(1) read with Explanation 10 to section 43(1). During current AY 2012-13 under consideration, Ld. AO followed his predecessor's approach of AY 2007-08 and accordingly disallowed entire depreciation of Rs. 3,89,37,375/- claimed by assessee in current year vide Para No. 5 of assessment-order. During first-appeal, Ld. CIT(A) agreed with the observation of AO but, however, he made some modification. He observed that that the AO was wrong in disallowing full depreciation. He took a view that the disallowance has to be restricted in relation to the assets acquired prior to OTS but there cannot be disallowance of depreciation *qua* the assets acquired after OTS. Accordingly, he upheld

disallowance partly to the extent of Rs. 1,82,66,673/- and deleted extra disallowance. This way, the assessee got part relief in first-appeal.

12. Immediately after narration of these facts, we enquired from Ld. AR the status of AY 2007-08, whether the assessee filed any appeal contesting the issue and if yes, what is present position? Ld. AR requested to give some time to check the status and the hearing was adjourned. On the next date of hearing, Ld. AR apprised that the assessee contested issue in AY 2007-08 (as well as AY 2008-09 and 2010-11) and for that matter filed appeals to CIT(A) but the CIT(A) dismissed assessee's appeals for non-prosecution. Thereafter, the assessee went in further appeals to ITAT, Indore in ITA No. 223 to 225/Ind/2016 whereupon the matter was remanded back to CIT(A) for a proper adjudication. Thus, the appeals of those years are now pending at CIT(A) stage. Therefore, as of now, there is no decision of appellate forum over the issue.

13. Having apprised this, Ld. AR made a vehement submission on merit of the issue. He submitted that the present issue calls for interpretation of main body of section 43(1) and Explanation 10 thereto, which reads as under:

> **"43.** In sections 28 to 41 and in this section, unless the context otherwise requires—
>
> (1) "actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority:
>
> XXX
>
> Explanation 10.—Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee :
>
> **Provided** that where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of

> the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee."

14. Ld. AR submitted that the revenue's stand is such that the waiver of loan obtained by assessee under OTS falls within "*reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority"* as occurring in the main body of section 43(1) or within "*Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee"* as occurring in Explanation 10 to section 43(1). But this stand is totally mis-conceived. He submitted that the main body of section 43(1) is applicable where any portion of cost of asset is directly or indirectly met by any person or authority. In the same vein, Explanation 10 is applicable only where any portion of cost of asset is directly or indirectly met by Govt. or any authority or any person. These provisions of law are very much clear and applicable only to a situation where the cost at the time of purchase is met directly or indirectly. Such direct or indirect meeting of cost can be in the form of a subsidy, grant or reimbursement. But the situation of present case is totally different. Here, the assessee has incurred full cost from own pocket and even if some part of cost was financed by borrowal from bank, the whole cost is met by assessee himself and not by bank. The subsequent waiver of loan by bank under OTS is altogether a different event and the revenue is unnecessarily getting confused. Ld. AR submitted that it will be stretching too far if long after purchase of asset a debt incurred is written off, it could be equated with the situation contemplated in main body of section 43(1) or Explanation 10. Ld. AR submitted that the amount of waiver of principal amount is nothing but a capital receipt and it cannot reduce the cost or WDV of asset. To support his contention, Ld. AR placed reliance upon following judicial rulings:

(a) CIT Vs. Cochin Co. (P) Ltd. (1990) 184 ITR 230 (Kerala HC):

Held:

"3. We heard counsel. The short question that arises for consideration is whether, on the facts of this case, section 43(1) of the Income-Tax Act is attracted. The said section provided that "actual cost" means the actual cost of the assets to the assessee. Reduced by that portion of the cost therefore, if any, as has been met directly or indirectly by any other person or authority. Counsel for the revenue stressed the fact that when Atlanta Corporation wrote off the amount due from the assessee, which included at least a portion of the liability of the assessee, towards the purchase of the machinery in 1968, it should be consider that Atlanta Corporation met either directly to indirectly the cost of such machinery and so the Income-Tax Officer was justified in his view that in working out the written down value for the assessment year, he should reduce from the original cost the sum of Rs. 2,56,757 and also the depreciation actually allowed to the assessee in the past. We are unable to accept the submission. The Appellate Tribunal has categorically found that Atlanta Corporation is only a financier and when Atlanta Corporation wrote off the liability of the assessee, it cannot be said in retrospect that the cost of the assessee of any part of the machinery purchased in 1967, was met by the Atlanta Corporation. The Appellate Tribunal held that the remission of the liability by Atlanta Corporation long after the liability was incurred cannot be relied on to hold that Atlanta Corporation met directly or indirectly, part of the cost of the machinery of the assessee purchased as early as 1968, as per section 43(1) of the Act, if the cost of the asset is met directly or indirectly. At the time of purchase of the machinery, by any other person or authority, to that extent, the actual cost of the asset to the assessee will stand reduced. But it is far cry to state that though at the time of purchase of the machinery, no person met the cost either directly or indirectly, if, long thereafter a debt incurred in that connection is written off, it could be equated to a position that the financier met part of the cost of the asset to the assessee. We are unable to accept the plea that the remission of the liability by Atlanta Corporation can, in any way, be said to be one, where the corporation met directly or indirectly the cost of the asset to the assessee. In this view of the matter, we are of the view that remission by Atlanta Corporation could not be reduced from the cost of the machinery of the assessee for the purpose of income-tax."

(b) Akzo Nobel Coatings India Private Ltd. Vs. DCIT (Bangalore ITAT) (2012) 139 ITD 612:

Held:

"20. We shall examine the issue from the provisions of Sec.43(1) of the Act and Explanation 10 thereto also. Section 43(1) of the Act is reproduced hereunder: -

> "(1) "actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority:"

> By the Finance (2) Act, 1998, Explanation 10 to Section 43(1) was inserted with effect from 1.4.1999. It reads as under:
>
> "Explanation 10 - Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee:
>
> Provided that were such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee."

21. The aforesaid Explanation was explained by the Board in Circular No.772 dated 23.12.1998 [reported in (1999) 235 ITR (St.)35]. The relevant part of the Circular is reproduced below:

> "22.2 Explanation 10 provides that where a portion of the cost of an asset acquired by the assessee has been net directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee. Cost incurred/payable by the assessee alone could be the basis for any tax allowance. This Explanation further provides that where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement so received, shall not be included in the actual cost of the asset to the assessee. The amendment made through Explanation 10 will take effect from 1st April, 1999, and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years."

22. Even the aforesaid provisions of Expln. 10 will apply only when there is a subsidy or grant or reimbursement. In the present case there was no such subsidy or grant or reimbursement. There was only a waiver of the amounts due for purchase of machinery which cannot fall within the scope of any of the aforesaid expressions used in Expln.10. Even otherwise Sec43(1) is applicable only in the year of purchase of machinery and in the present case the purchase of the machinery in question was not in AY 01-02 . Therefore the actual cost which has already been recognised in the books in the AY prior to AY 01-02 cannot be disturbed in AY 01-02. In this regard there is a lacuna in the law and it is for the legislature to provide appropriate

safeguards in this regard. It is true that the Assessee on the one hand gets the waiver of monies payable on purchase of machinery and claims such receipt as not taxable because it is capital receipt. On the other hand the Assessee claims depreciation on the value of the machinery for which it did not incur any cost. Thus the Assessees stand to benefit both ways. As per the law as it prevails as on date, we are of the view that the revenue is without any remedy. The only way that the revenue can ITA No.751 to 755 & 1131/10, 349/11& 771 to 773 & 1164/Bang/10 remedy the situation is that it has to reopen the assessment for the year in which the asset was acquired and fall back on the provisions of Sec.43(1) of the Act which says that actual cost means the actual cost of the assets to the assessee. Even this can be done only when after the waiver of the loan which was used to acquire machinery. By that time if the assessments for that AY gets barred by time, the revenue is without any remedy. Even the provisions of Sec.155 do not provide for any remedy to the revenue in this regard.

23. The AO has made a reference to the provisions of section 43(6)(b) of the Act. In our opinion, these provisions were not applicable to the present case. The applicable provisions to the present case are section 43(b)(c) of the Act. It is also noticed that the Hon'ble Supreme Court in the case of CIT v. Tata Iron & Steel Co. Ltd. (supra) has taken a view that repayment of loan borrowed by an assessee for the purpose of acquiring asset has no relevance to the cost of assets on which depreciation has to be allowed. Similar view was also expressed by the Hon'ble Kerala High Court in the case of CIT v. Cochin Co. Pvt. Ltd. (184 ITR 230) (Ker), as already stated, as follows:-

> "WDV as at the beginning of the preceding year as well as the depreciation actually allowed in that year have reached finality and cannot be changed in the assessment year under appeal. They could have been changed only if the assessment of that or earlier years could be re-opened. Such an action was barred by limitation.

Further, as per section 43(6)(c)(ii) & (i), the only adjustments permitted in the WDV of the block with reference to the year in which depreciation is to be allowed are (a) addition actual cost of asset acquired during the year and (b) reduction of monies receivable on sale, discarding, demolition or destruction of the assets and its scrap value."

24. As far as the validity of initiation of reassessment proceedings are concerned, we find that there were no assessments u/s. 143(3) of the Act and only an intimation had been issued. In the circumstances, we have to view that the ld. CIT(Appeals) was right in coming to the conclusion that the reopening of assessment u/s. 148 was valid. We therefore uphold the order of the ld. CIT(A) on the issue of validity of initiation of reassessment proceedings u/s. 148 of the Act.

25. On the merits of the addition made by the AO in all the assessment years, we are of the view that the disallowance of depreciation cannot be sustained. The CIT(A), in our view, ought to have deleted the disallowance of depreciation in full. We hold accordingly and allow the relevant grounds of appeal of the assessee."

(c) Aditya Oil & Chemicals Ltd, ITA No.4878/Mum/2010, dated 08.02.12 (Mumbai ITAT):

"Now the revenue grounds are left for adjudication. Ground No. 2 raised by the revenue reads as under:-

> "On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in directing the AO not to reduce the WDV of the assets by the principal amount of loan waived without appreciating the facts that the AO had rightly reduced the principal amount of loan written off of Rs. 4,91,16,833/- from the WDV of building, plant and machinery by invoking explanation (1) to section 43(1) of the Act."

21. The AO reduced the principal amount of loan written off of Rs. 4,91,16,833/- from WDV of building, Plant & Machinery and thereby arriving at the closing WDV at Rs. Nil by invoking explanation (10) to s. 43(1) of the Act, observing that cost of assets is reimbursed by IDBI and SBH to the extent of the waiver of the loan amount. On appeal, before the CIT(A) the learned AR of the assessee submitted that it had obtained loan from financial institution and bank which are repayable with interest as per the terms of such loan arrangement. He further submitted that these loans are neither a subsidy nor a grant nor a reimbursement and hence explanation (10) to s. 43(1) of the Act, is not applicable. It was submitted that reimbursement of such loan liability under an agreed scheme/arrangement could not be termed as subsidy or grant meant for meeting cost of part of plant & machinery. The learned AR relied upon the judgment of the Hon'ble High Court of Kerala in CIT Vs. Kochin Co. P. Ltd., 184 ITR 230 (Ker.) and also that of the ITAT, Ahmedabad in the case of Steelco Gujarat Ltd. Vs. ACIT, 33 SOT 407. After considering the submissions of the assessee, the CIT(A) held as under:-

> "5.2 I have considered the submissions and also the judgments as relied upon. Explanation (10) to s. 43(1) provides that " actual cost means the actual cost of the assets to the assessee, reduced by the portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority". Thus, the said section has application only if the cost of assets is met directly or indirectly at the time of the purchase of capital assets. The waiver of loan is not equivalent to reimbursement or a grant or a subsidy. Hence, it is held that the waiver does not fall within the ambit of explanation (10) to section 43(1) or proviso thereof. Therefore, following the judgment of Hon'ble High Court of Kerala in the case of CIT Vs. Kochin Co. P. Ltd., it is held that explanation (10) to s. 43(1) does not apply to the facts of the case and therefore, WDV of assets is not to be reduced by the amount of loan waived by the banks. This ground is decided in favour of the assessee."

Aggrieved, the revenue is in appeal before us.

22. The learned DR strongly relied upon the order of the AO and submitted that the AO has rightly reduced the principal amount of loan written off of Rs. 4,91,16,833/- from the WDV of building, plant and machinery by invoking explanation (10) to section 43(1) of the Act, but, the CIT(A) was wrong in directing the AO not to reduce the WDV of the assets by the principal amount of loan waived. The learned DR further submitted that the decision relied upon by the CIT(A) in the case of Cochin Company Ltd. (supra) prayer to insertion of explanation 10 to section 43(1) of the Act. Therefore, he contended that the order of CIT(A) may be set aside and that of the AO restored.

23. The learned counsel for the asesssee, on the other hand, relied upon the order of the CIT(A).

24. We have heard the parties and perused the record as well as gone through the orders of the authorities below. It is observed that the finding of the CIT(A) that explanation (10) to s. 43(1) does not apply to the facts of the case and therefore WDV of assets is not to be reduced by the amount of loan waived by the banks., is in consonance with the judgment of the Hon'ble High Court of Kerala in the case of CIT Vs. Kochin Co. P. Ltd. (supra). The relevant portion of the said judgment is extracted below:

> "The short question that arises for consideration I whether, on the facts of this case, section 43(1) of the Income Tax Act is attracted. The said section provides that 'actual cost' means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. Counsel for the Revenue stressed the fact that when Atlanta Corporation wrote off the amounts due from the assessee, which included at least a portion of the liability of the assessee, towards the purchase of the machinery in 1968, it should be considered that Atlanta Corporation met either directly or indirectly the cost of such machinery and so the ITO was justified in his view that in working out the written down value for the assessment year, he should reduce from the original cost the sum of Rs. 2,56,757 and also the depreciation actually allowed to the assessee in the past. We are unable to accept the submission. The Appellate Tribunal has categorically found that Atlanta Corporation is only a financier and when Atlanta Corporation wrote off the liability of the assessee, it cannot be said in retrospect that the cost to the assessee of any part of the machinery purchased in 1968, was met by Atlanta Corporation. The Appellate Tribunal held that the remission of liability by Atlanta Corporation long after the liability was incurred cannot be relied on to hold that Atlanta Corporation met directly or indirectly, part of the cost of the machinery of the assessee purchased as early as 1968. As per section 43(1) of the Act, if the cost of the asset is met directly or indirectly, at the time of purchase of the machinery, by any other person or authority, to that extent, the actual cost of the asset to the assessee will stand reduced. But it is a far cry to state that though at the time of purchase of the machinery, no person met the cost either directly or indirectly, if, long thereafter a debt incurred in that connection is written off, it could be equated to a position that the financier met part of the cost of the asset to the assessee. We are unable to accept the plea that

> the remission of liability by Atlanta Corporation can, in any way, be said to be one, where the Corporation met directly or indirectly the cost of the asset to the assessee. In this view of the matter, we are of the view that the remission by Atlanta Corporation could not be reduced from the cost of the machinery of the assessee for the purpose of income-tax".

25. The principle laid down by the Hon'ble Kerala High Court in the said case is squarely applicable to the facts of the case under consideration.

26. In so far as Explanation 10 to section 43(1) is concerned, the same is extracted below:

> "Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee".

27. On plain reading of the above Explanation, it is clear that the assessee not received any subsidy or grant or reimbursement, therefore, the above Explanation is not applicable to the case of the asssesee. In view of the above, we do not find any infirmity in the order of the CIT(A) and the same is hereby upheld and the ground of revenue is dismissed."

15. Ld. AR also relied upon the decision of **Hon'ble Supreme Court in CIT Vs. Tata Iron & Steels Co. Ltd. (1998) 2 SCC 366,** the relevant paragraphs are re-produced below:

> "4. Coming to the questions raised, we find it difficult to follow how the manner of repayment of loan can affect the cost of the assets acquired by the assessee. What is the actual cost must depend on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee. But even if the assessee did not repay the loan it will not alter the cost of the asset. If the borrower defaults in repayment of a part of the loan, cost of the asset will not change. What has to be borne in mind is that cost of an asset and cost of raising money for purchase of the asset are two different and independent transactions. Even if an asset is purchased with no repayable subsidy received from the Government, the cost of the asset will be the price paid by the assessee for acquiring the asset. In the instant case, the allegation is that at the time of repayment of loan, there was a fluctuation in the rate of foreign exchange as a result of which, the assessee had to repay a much lesser amount than he would have otherwise paid. In our judgment, this is not a factor which can alter the cost incurred by the assessee for purchase of the asset. The assessee may have raised the funds to purchase the asset by borrowing but what the assessee has paid for it, is the price of the asset. That price cannot change by any event subsequent to the acquisition of the asset. In our judgment the manner or mode of repayment of the loan has nothing to do with the cost of an asset acquired

> by the assessee for the purpose of his business. We hold that the questions were rightly answered by the High Court. The appeals are dismissed. There will be no order as to costs."

16. Ld. AR also relied upon the decision of **Hon'ble Supreme Court in CIT Vs. Tata Iron & Steels Co. Ltd. (1998) 2 SCC 366,** the relevant paragraphs are re-produced below:

> "4. Coming to the questions raised, we find it difficult to follow how the manner of repayment of loan can affect the cost of the assets acquired by the assessee. What is the actual cost must depend on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee. But even if the assessee did not repay the loan it will not alter the cost of the asset. If the borrower defaults in repayment of a part of the loan, cost of the asset will not change. What has to be borne in mind is that cost of an asset and cost of raising money for purchase of the asset are two different and independent transactions. Even if an asset is purchased with no repayable subsidy received from the Government, the cost of the asset will be the price paid by the assessee for acquiring the asset. In the instant case, the allegation is that at the time of repayment of loan, there was a fluctuation in the rate of foreign exchange as a result of which, the assessee had to repay a much lesser amount than he would have otherwise paid. In our judgment, this is not a factor which can alter the cost incurred by the assessee for purchase of the asset. The assessee may have raised the funds to purchase the asset by borrowing but what the assessee has paid for it, is the price of the asset. That price cannot change by any event subsequent to the acquisition of the asset. In our judgment the manner or mode of repayment of the loan has nothing to do with the cost of an asset acquired by the assessee for the purpose of his business. We hold that the questions were rightly answered by the High Court. The appeals are dismissed. There will be no order as to costs."

17. Thus, the Ld. AR submitted that in the aforementioned decisions, exactly same issue has been analysed and the Hon'ble Courts have held that waiver or write of loan taken for purchase of asset cannot reduce the WDV of asset. In view of these decisions, Ld. AR prayed that the AO was not justified in disallowing any part of depreciation claimed by assessee. Therefore, the depreciation, as claimed by assessee, in return of income must be allowed fully.

18. Per contra, Ld. DR for the revenue placed a heavy reliance on the words "directly or indirectly" used at both places in section 43(1) i.e. in the main body as well as Explanation 10. He argued that the bank has given loan for purchase of asset and therefore subsequent waiver of loan is a

situation where the bank has "indirectly" met the cost of asset, if not directly. Therefore, according to him, the lower authorities have rightly disallowed depreciation to assessee.

19. We have considered rival submissions of both sides and perused the provisions of section 43(1) as also the judicial rulings cited by Ld. AR. After a mindful consideration, we find that the case of assessee is directly and fully covered by all decisions cited by Ld. AR, the relevant paragraphs of the decisions are already extracted earlier and we need not re-produce here again. Regarding the decision of Hon'ble Supreme Court in **Tata Iron & Steels (supra)**, we find that the said decision dealt with a situation of exchange gain which arose to assessee from fluctuation in exchange-rate at the time of repayment of loan (the loan was originally taken for acquisition of assets) and the department wanted to reduce the 'cost of asset' by amount of gain and thereafter allow depreciation on reduced cost. That decision was not on the issue of waiver of bank loan. But while deciding the same, the Hon'ble Supreme Court has clearly observed in Para No. 4 that the manner of repayment of loan cannot affect the cost of asset. The actual cost must depend on the amount paid by the assessee to acquire the cost. The amount may have been borrowed by the assessee but even if the assessee did not repay the loan, it will not alter the cost of asset. This observation-cum-interpretation given by Hon'ble Supreme Court has also been used by **ITAT, Bangalore in Akzo Nobel Coatings (supra)**, Para No. 23 of order re-produced earlier, while deciding the case of waiver of loan. In any case, the decision in **CIT Vs. Cochin Co. (P) Ltd. (1990) 184 ITR 230 (Kerala HC); Akzo Nobel Coatings India Private Ltd. Vs. DCIT (Bangalore ITAT) (2012) 139 ITD 612; Aditya Oil & Chemicals Ltd, ITA No.4878/Mum/2010, dated 08.02.12 (Mumbai ITAT)** relied upon by Ld. AR and dealt with by us in foregoing paragraph, are directly dealing the present issue of waiver of bank loan in favour of assessee and the Ld. DR for the revenue could not make out a case to distinguish those decisions on facts or in law nor he has brought any contrary ruling to demonstrate any judicial view in favour of

revenue. Therefore, respectfully following these decisions, we too hold that the AO is not justified to reduce WDV of assets to Rs. Nil and thereby disallow any part of depreciation. Consequently, we direct the AO to allow depreciation fully as claimed by assessee. Assessee's ground is allowed.

Revenue's ITA for AY 2012-13:

Ground No. 1:

20. This ground relates to the disallowance of Rs. 7,48,230/- made by AO on account of delayed payment of employees' contribution to Provident Fund (PF) but deleted by CIT(A).

21. Short facts relating to the issue are such that the assessee received contributions from employees towards PF but deposited/paid to the PF after due dates under PF law but before due date u/s 139(1) of Income-tax Act, 1961 for filing of return. The AO made disallowance by holding that the payments made after due dates under PF law, were not allowable as deduction u/s 36(1)(va). In first appeal, the CIT(A) reversed AO's action by following certain ruling of ITAT and High Court wherein it was held that section 36(1)(va) is to be read with section 43B and accordingly if the relevant sum is paid upto due date u/s 139(1) for filing of return, deduction is allowable.

22. Now, Ld. DR for revenue submitted that the issue has finally travelled to Hon'ble Supreme Court in **Chekmate Services (P) Ltd. Vs. CIT-1 Civil Appeal No. 2833 of 2016, order dated 12.10.2022** wherein the Apex Court has given a clear verdict that the employees' contribution paid after due date under PF laws is not allowable as deduction u/s 36(1)(va). It is further held that section 43B is not applicable to employees' contributions. The decision of Hon'ble Apex Court is the law of land and applies retrospectively w.e.f. the date when the provision of section 36(1)(va) came into statute. Therefore, Ld. DR claimed that the disallowance made by AO deserves to be upheld and CIT(A)'s action deserves to be reversed.

23. On this issue, Ld. AR for the assessee accepted very frankly that the **Checkmate Service (supra)** is against assessee. However, he carried us to a different corner. He placed reliance on a decision taken by **ITAT, Cuttack Bench in M/s BBG Metal Syndicate Pvt. Ltd. Vs. DCIT, ITA No. 112/CTK/2022 order dated 17.11.2022**, which is a decision subsequent to and after considering the **Checkmate Service (supra)**. Ld. AR argued that the ITAT has, although not expressed its own opinion, remanded the matter to AO to examine the allowability of deduction under residuary provision of section 37(1) of the act. Accordingly, Ld. AR too prayed us to remand the issue to AO in the same terms i.e. to examine allowability u/s 37(1). Ld. DR strongly opposed the prayer of Ld. AR.

24. We have considered rival submissions of both sides. First of all, both sides agree that after decision of Hon'ble Supreme Court in **Checkmate Services (supra)**, the issue is very much clear that the deduction is not allowable to assessee in terms of section 36(1)(va)/43B. Now, coming to the issue of allowability u/s 37(1), we firstly refer the verdict of section 37(1) which reads as under:

> "37. General
>
> (1) any expenditure **(not being expenditure of the nature described in sections 30 to 36** and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head, "Profits and Gains of Business or Profession".
>
> **[Emphasis supplied]**

Thus, the language of section 37(1) is very clear and leaves no room for any doubt or otherwise interpretation. The words *"not being expenditure of the nature described in section 30 to 36"* mentioned therein are clear enough to demonstrate that any expenditure of the nature described in section 30 to 36, cannot come within the scope and ambit of section 37(1). To make it more clear, once the expenditure is *"of the nature described in section 30 to 36"*, it cannot fall within section 37(1) irrespective of whether it is allowed or

allowed as deduction u/s 30 to 36. There is no doubt that "employees' contribution to staff welfare funds like PF" is nature-wise covered u/s 36(1)(va) and thereafter deduction is not allowed because of failure by assessee to satisfy the requirement of payment by due date under PF law. When the expenditure of employees' contribution to PF is of the nature described in section 36(1)(va), which is so, it cannot fall u/s 37(1) at all. We arrive at the same interpretation by one more logic. The scheme of section 30 to 36 is such that several expenses, described therein, are to be considered under respective and specific provisions of those sections only. Section 37(1) is a residuary section to cater those expenses which have different nature and cannot fall u/s 30 to 36. This is implied in the very scheme of sections and there was no necessity to speak on this aspect in section 37(1) but the Parliament has still mentioned to keep the scope of section 37(1) clear and doubt-free. In fact, in the very decision of **Checkmate Services (supra)**, the Hon'ble Supreme Court has also interpreted the scheme of deductions under the heading "*Analysis and Conclusions"* as under:

> "32. The scheme of the provisions relating to deductions, such as Sections 32-37, on the other hand, deal primarily with business, commercial or professional expenditure, under various heads (including depreciation). **Each of these deductions, has its contours, depending upon the expressions used, and the conditions that are to be met. It is therefore necessary to bear in mind that specific enumeration of deductions, dependent upon fulfilment of particular conditions, would qualify as allowable deductions: failure by the assessee to comply with those conditions, would render the claim vulnerable to rejection.** In this scheme the deduction made by employers to approved provident fund schemes, is the subject matter of Section 36 (iv)……"
>
> [Emphasis supplied]

25. Therefore, we are of the considered view that the employees' contribution to PF falls, nature-wise and specifically, u/s 36(1)(va) and the same goes out of scope of section 37(1). Being so, we not inclined to remand this issue back to AO for any re-adjudication as prayed for by Ld. AR. As

held by Hon'ble Supreme Court in **Checkmate Service (supra)**, we approve the disallowance made by AO. Revenue's ground is allowed.

Ground No. 2:

26. This ground relates to the disallowance of Rs. 4,50,271/- made by AO on account of prior period expenses claimed by assessee.

27. The AO has made this disallowance, in Para No. 4 of assessment-order, by observing that the assessee has claimed 'prior period expenses' which did not relate to the year under consideration. When the AO confronted the assessee to show justification of deduction, the assessee submitted that the expenses have crystallised during the year but the AO was not satisfied with the plea of assessee. During first-appeal, Ld. CIT(A) allowed deduction by observing as under:

> "6.1 It is clear from the above facts of the case that **the said expenses do not pertain to the year under consideration**; therefore, the addition on the same cannot be sustained. Hence, the addition so made by the AO is hereby deleted and accordingly, this ground of appeal is allowed."

28. Ld. DR for the revenue took lead to argue on this issue. He submitted that the order passed by CIT(A) is very much contradictory. In the opening part of said para, the CIT(A) has himself mentioned *"the said expenses do not pertain to the year under consideration"* but in the later part he mentioned *"therefore the addition on the same cannot be sustained. Hence, the addition so made by the AO is hereby deleted"*. Ld. DR submitted that from a bare reading of para, it is very clear that the CIT(A) has given a finding that the expenses did not pertain to current year, which clearly means that he intended to uphold the disallowance rather than deleting, but some mistake has crept into in the final verdict while drafting order and he has deleted rather than upholding. Ld. DR submitted that the same issue has come in immediate next AY 2013-14 where the CIT(A) has upheld identical disallowance and now the assessee is in appeal. Therefore, Ld. DR

submitted, the adjudication by CIT(A) in both the years was against assessee, hence the revenue's ground should be allowed.

29. Per contra, Ld. AR strongly prayed to delete the disallowance on the reasoning that the expenditure had crystallised in current year.

30. We have considered rival submissions of both sides. Firstly, we find merit in the submission of Ld. DR that there is a contradiction in the order of CIT(A). It is further visible from his order that he intended to uphold disallowance made by AO but somehow a mistake crept into later part of his order. It is further fortified by CIT(A)' order in next AY 2013-14 where he has upheld identical disallowance made by AO. Furthermore, when the Ld. AR claimed that the impugned expenditure has crystallised during the year, we asked Ld. AR to show the details of expenditure. In reply, the Ld. AR submitted his inability to submit details for the reason that the assessee-company has already closed functioning much earlier, it has become a sick company and no details are forthcoming from assessee. Since it is an undisputed fact that the expenditure are prior-period and no assistance is coming from assessee on the details of expenditure, much less having crystallised in current year, we have no reason to interfere with the orders of lower-authorities. Therefore, we uphold the disallowance made by AO. Revenue's ground is allowed.

Ground No. 3:

31. This ground relates to the disallowance of depreciation on plant and machinery. In fact, this ground is counter-part of ground No. 2 raised in Assessee's appeal for AY 2012-13 adjudicated by us in earlier part of this order. As noted by us there, the AO made full disallowance of depreciation of Rs. 3,89,37,375/- but the CIT(A) restricted/upheld disallowance partly to the extent of Rs. 1,82,66,673/- only qua the assets acquired pre-OTS and deleted extra disallowance qua the assets acquired post-OTS. Now, the revenue's grievance is such that the CIT(A) ought to have upheld full

disallowance of Rs. 3,89,37,375/- since there was no details available with him for working of pre-OTS and post-OTS components.

32. We have already discussed this issue at length while adjudicating Ground No. 2 of Assessee's appeal for AY 2012-13 in earlier discussion and held that the lower-authorities were not justified to make disallowance of any part of depreciation, not even that part of depreciation which was referrable to the assets acquired pre-OTS. Therefore, the Revenue's ground does not have any merit and the same is dismissed.

Assessee's ITA for AY 2013-14:

Ground No. 1:

33. This ground relates to the disallowance of depreciation on plant and machinery. The ground is similar to Ground No. 2 of Assessee's appeal for AY 2012-13 already adjudicated by us in foregoing paragraph. Hence, our same view shall apply *mutadis mutandis*. Respectfully applying the same, Assessee's ground is allowed.

Ground No. 2:

34. This grounds relates to disallowance of prior period expenses of Rs. 1,50,946/-. Lower-authorities have disallowed this item for the reason that the assessee could not file any detail to substantiate that the expenditure was crystallised during current year. Before us also, Ld. AR showed inability to furnish any detail. Being so, we do not have any reason to interfere with the conclusion taken by lower-authorities. The disallowance is upheld. Assessee's ground is dismissed.

Revenue's ITA for AY 2013-14:

Ground No. 1:

35. This ground relates to the disallowance of depreciation on plant and machinery. The ground is similar to Ground No. 3 of Revenue's appeal for

AY 2012-13 already adjudicated by us in foregoing paragraph. Hence, our same view shall apply *mutatis mutandis*. Respectfully applying the same, Revenue's ground is dismissed.

Ground No. 2:

36. This ground relates to the addition of Rs. 8,41,705/- made by AO u/s 41(1) in respect of sundry creditors.

37. The AO has made addition vide Para No. 6 of assessment-order on the simple reasoning that the amounts payable to 11 creditors (list is made by AO in assessment-order) were due for last three years. Because of time-factor alone, the AO has presumed that there is a cessation of liability which attracted addition u/s 41(1).

38. During first-appeal, Ld. CIT(A) deleted the addition by observing and holding thus:

> "7.0 This ground of appeal is with regard to making addition of Rs. 8,41,705/- u/s 41(1) of the I.T.Act,1961. I have carefully gone through the assessment order as well as submission of the appellant in this regard.
>
> 7.1 While passing the Assessment order the AO had observed that some of the Sundry Creditors parties had outstanding balance for more than 3 years and the appellant was not required to pay the said liabilities any more therefore he had taxed the old outstanding balance of following parties though these were shown as liabilities in the Balance Sheet.

S.No.	Name	Amount
1.	M/s.Shree Enterprises	35,751
2.	M/s. New Tech P.Ltd.	64,899
	Total	1,00,650

> 7.2 The appellant had submitted that merely balance outstanding for more than 3 years cannot be the reason for taxing the amount to the income of the appellant by invoking the provision of section 41(1) of the I.T. Act.

7.3 Let us understand what does section 41(1) says. The language of provision of section 41(1) of the I.T. Act read as under :-

> "5(1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,-
>
> (a) the first- mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income- tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or"

7.4 The limitation of time is not a determining factor in the matters relating to remission or cessation of liabilities. This view is supported by the Apex Court judgments in the case of Chief CIT vs. Kesaria Tea Company Limited, 254 ITR 434. This judgment in the case of Keasaira Tea Co. Ltd.(supra) was delivered after following the Apex Court Judgment in the case of CIT vs. Sugauli Sugar Works (P) Ltd, (1999) 152 CTR (SC) 46: (1999) 236 ITR 518(SC) and aftger distinguishing the judgment in the case of CIT vs. T. V. Sundaram Iyengar & Sons Limited, (1996) 136 CTR (S.C.) 444: (1996) 222 ITR 344 (SC).

7.5 Relying upon the above decisions, the Hon'ble Jurisdictional Bench of ITAT Indore vide its Order dated 16.03.2017 in the case of Smt. Abha Devi Agrawal in I.T.A.No. 58/Ind/2015 has allowed the appeal on similar issue and deleted the entire amount of addition as made by the AO u/s 41(1) of the Act. The Hon'ble ITAT in para 2.5 has observed and held as under :-

> "We have considered the facts, rival submissions and perused the material available on record. We find that the provision of Section 41(1)(a) provides that where the assessee had obtained, whether in case in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him shall be deemed to be profits chargeable to tax. Thus, the Section contemplates that by obtaining any benefit by an amount either in cash or in any other manner whatsoever, whether benefit by way of

> remission or cessation and it should be of a particular amount obtained by him. Thus, obtaining benefit by virtue of remission or cessation is sine-quo-non for the application of Section unless such liability is written off in books of accounts by unilateral act of the assessee. We find that the liability of Rs. 6,76,266/- in respect of Mahima Porsepun was outstanding for more than three years, but the same has not been written off in the books of accounts by the assessee. Therefore, there was no basis by treating the said amount as remission or cessation of a trading liability of the assessee when it was not unilateral written off by the assessee. We find that the AO has made this addition merely on the basis of expiry of limitation to file the suit by creditor, where he cannot who come up with a proceedings for enforcement of debt. However, we find that this amount was subsequently settled by the assessee in the succeeding years therefore, the assessee has not derived or obtained any benefit in respect of such trading liability. Therefore, the addition made on the basis of presumption cannot be sustained in the eyes of law. The Ld. AR has relied in the case of CIT v/s Southern Roadways Ltd. 282 ITR 379 wherein the decision of the Apex Court in the case of CIT v/s Sugauli Sugar Works (P) Ltd., (1999) 152 CTR (SC) 46: (1999) 236 ITR 518(SC) was considered and it was held that the principle that expiry of period of limitation prescribed under the Limitation Act, could not extinguish the debt but it would only prevent the creditor from enforcing the debt, has been well settled. If that principle is applied it is clear that some entry in the books of accounts of the debtor made unilaterally without any act on the part of the creditor will not enable the debtor to say that the liability has come to an end. Apart from that, that will not by itself confer any benefit on the debtor as contemplated by the Section. The other decision as relied by the Ld. AR has mentioned above are also supports his view. Therefore, we are of the considered opinion that the provision of Section 41(1)(a) of the Act can only be invoked when the assessee has written off the liability in its books of accounts by unilateral act. Since, the assessee has not written off the aforesaid amount in its books of accounts and the payment has been settled in the subsequent year, therefore, the addition so made by the AO, is not sustainable in the law. Accordingly, the same is deleted. This ground of appeal is therefore allowed."

7.6. Thus, it is clear from the above discussions that the period of limitation prescribed under the Limitation Act is for sundry creditors for the limited purpose of filing of suit. It has no relevance as far as cessation of liabilities is concerned. Thus, I find that there is no reason for invoking the provision of section 41(1) of the Income-tax Act in this particular case. Hence, in light of the above facts and circumstances of the case, the

addition so made by the AO is hereby deleted and accordingly, this ground of appeal is hereby allowed."

39. Before us, Ld. DR supported the order of AO as against which Ld. AR supported the order of CIT(A). We have considered rival submissions of both sides and also perused the orders of lower-authorities. We find that the AO has simply invoked section 41(1) because the amounts were outstanding for three years but there is no evidence brought by him that the liability has really ceased to exist. It is now a settled judicial view that the time-factor is not relevant for the purpose of section 41(1), the revenue has to either demonstrate that the liability has really ceased to exist or the assessee has written off liability in books of account. But, in present case, there is none. Therefore, Ld. CIT(A) is very much correct in deleting the addition. We subscribe to the order of CIT(A). Revenue's ground is dismissed.

Assessee's ITA for AY 2014-15:

Ground No. 1:

40. This ground relates to the disallowance of depreciation on plant and machinery. The ground is similar to Ground No. 2 of Assessee's appeal for AY 2012-13 already adjudicated by us in foregoing paragraph. Hence, our same view shall apply *mutadis mutandis*. Respectfully applying the same, Assessee's ground is allowed.

Revenue's ITA for AY 2014-15:

Ground No. 1:

41. This ground relates to the disallowance of depreciation on plant and machinery. The ground is similar to Ground No. 3 of Revenue's appeal for AY 2012-13 already adjudicated by us in foregoing paragraph. Hence, our same view shall apply *mutadis mutandis*. Respectfully applying the same, Revenue's ground is dismissed.

Ground No. 2:

42. This ground relates to the disallowance delayed payment of employees' contribution to Provident Fund (PF) made by AO but deleted by CIT(A). The ground is similar to Ground No. 1 of Revenue's appeal for AY 2012-13 already adjudicated by us in foregoing paragraph. Hence, our same view shall apply *mutadis mutandis*. Respectfully applying the same, Revenue's ground is allowed.

Assessee's ITA for AY 2015-16:

Ground No. 1:

43. This ground relates to the disallowance of depreciation on plant and machinery. The ground is similar to Ground No. 2 of Assessee's appeal for AY 2012-13 already adjudicated by us in foregoing paragraph. Hence, our same view shall apply *mutadis mutandis*. Respectfully applying the same, Assessee's ground is allowed.

Revenue's ITA for AY 2015-16:

Ground No. 1:

44. This ground relates to the disallowance of depreciation on plant and machinery. The ground is similar to Ground No. 3 of Revenue's appeal for AY 2012-13 already adjudicated by us in foregoing paragraph. Hence, our same view shall apply *mutatis mutandis*. Respectfully applying the same, Revenue's ground is dismissed.

Ground No. 2:

45. This ground relates to the disallowance delayed payment of employees' contribution to Provident Fund (PF) made by AO but deleted by CIT(A). The ground is similar to Ground No. 1 of Revenue's appeal for AY 2012-13 already adjudicated by us in foregoing paragraph. Hence, our same view shall apply *mutatis mutandis*. Respectfully applying the same, Revenue's ground is allowed.

46. In the final result, these appeals are disposed of as under:

Appeal No.	Appeal by	AY	Result
I.T.A.No.11/Ind/2019	Assessee	2012-13	Allowed
I.T.A.No.22/Ind/2019	Revenue	2012-13	Partly allowed
I.T.A.No.850/Ind/2019	Assessee	2013-14	Partly allowed
I.T.A.No.784/Ind/2019	Revenue	2013-14	Dismissed
I.T.A.No.12/Ind/2019	Assessee	2014-15	Allowed
I.T.A.No.23/Ind/2019	Revenue	2014-15	Partly allowed
I.T.A.No.13/Ind/2019	Assessee	2015-16	Allowed
I.T.A.No.24/Ind/2019	Revenue	2015-16	Partly allowed

Order pronounced in the open court on 24.08.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore
दिनांक/ Dated : 24.08.2023
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore