IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
BEFORE,
SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No.5167/Del/2019
(ASSESSMENT YEAR 2015-16)

Delhi Tourism & Transportation Development Corporation Ltd. 18-A, DDA, SCO Complex Defence Colony New Delhi- 110 024 PAN-AAACD 0169J	Vs.	Addl.CIT Special Range-3 New Delhi
(Appellant)		**(Respondent)**

ITA No.4737/Del/2019
(ASSESSMENT YEAR 2015-16)

Addl.CIT Special Range-3 New Delhi	Vs.	M/s Delhi Tourism & Transportation Development Corporation Ltd. 18-A, DDA, SCO Complex Defence Colony New Delhi- 110 024 PAN-AAACD 0169J
(Appellant)		**(Respondent)**

ITA No.5920/Del/2019
(ASSESSMENT YEAR 2011-12)

Addl.CIT Special Range-3 New Delhi	Vs.	M/s Delhi Tourism & Transportation Development Corporation Ltd. 18-A, DDA, SCO Complex Defence Colony New Delhi- 110 024 PAN-AAACD 0169J
(Appellant)		**(Respondent)**

ITA No.5509/Del/2019
(ASSESSMENT YEAR 2011-12)

M/s Delhi Tourism & Transportation Development Corporation Ltd. 18-A, DDA, SCO Complex Defence Colony New Delhi- 110 024 PAN-AAACD 0169J	Vs.	DCIT Circle-10(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.4100/Del/2019
(ASSESSMENT YEAR 2013-14)
ITA No.184/Del/2019
(ASSESSMENT YEAR 2014-15)
ITA No.5922/Del/2019
(ASSESSMENT YEAR 2016-17)

Addl.CIT Special Range-3 New Delhi	Vs.	M/s Delhi Tourism & Transportation Development Corporation Ltd. 18-A, DDA, SCO Complex Defence Colony New Delhi- 110 024 PAN-AAACD 0169J
(Appellant)		**(Respondent)**

Appellant by	Mr. Pancham Sethi, CA
Respondent by	Mr. Vivek Kumar Upadhyay Sr. DR

Date of Hearing	17/08/2023
Date of Pronouncement	14/08/2023

ORDER

PER YOGESH KUMAR U.S., JM:

The ITA No. 5167/Del/2019 (A.Y 2015-16) and ITA No. 5509/Del/2019 (A.Y 2011-12) are filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), New Delhi ["Ld. CIT(A)", for short], dated 18/03/2019 and 19/04/2019 respectively. The ITA No. 5922/Del/2019, ITA No. 184/Del/2019, ITA No. 4100/Del/2019, ITA No. 5920/Del/2019 and ITA No. 4737/Del/2019 filed by the Revenue against the order of the CIT(A) dated 25/04/2019, 16/11/2018, 31/01/2019, 19/04/2019 and 18/03/2019 respectively.

2. The grounds of Appeal taken by the Assessee and the Revenue are as under:-

ITA No.5167/Del/2019 for AY 2015-16 (Assessee)

"1. Ld. CIT(A) has erred in confirming the addition made by Ld. AO of Rs.8,02,16,000/- out of amount under Capital Reserve on 31st March, 2015 and failed to appreciate that:

1.1 Out of Rs.8,02,16,000/-, only Rs.1,69,78,655 relates to AY 2015-16.
1.2 Rs.8,51,62,091/- has been added by Ld. AO in AY 2014-15 on this account for periods upto that date, and that addition was accepted by the appellant.
1.3 Addition already accepted in AY 2014-15 had resulted in double taxation.

2. Ld. CIT(A) has erred in disallowing the expenses of Rs.12,00,000/- being contingent liability booked for Rent to be paid to DISDC.

***ITA No.4737/Del/2019 for AY 2015-16* (Revenue)**

"1. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of advance excise deposited u/s 43B on Liquor Trade of Rs.7,85,53,053/- made by the Assessing Officer.

2. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance on account of unspent revenue grants of Rs.49,96,337/- made by the Assessing Officer.

3. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Net loss of DTTM of Rs.49,34,358/- made by the Assessing Officer.

4. Whether on facts and in circumstances of the case and in law, the CIT(A) has erred in directing to compute the disallowance of Proportionate disallowance of business expenses to rental receipts/income at Dilli Hatt INA of Rs.1,21,90,214/- made by the Assessing Officer.

Whether on facts and in circumstances of the case and in law, the CIT(A) has erred in deleting the disallowance on account of prior period expenses claim of Rs.43,96,415/- made by the Assessing Officer.

The appellant craves, leave, modify, add or forego in any ground(s) of appeal at any time before or during the haring of this appeal."

ITA No.5920/Del/2019 for AY 2011-12 (Revenue)

"1. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of advance excise deposit u/s 43B on Liquor Trade of Rs8,81,97,237/- made by the Assessing Officer.

2. Whether on facts and in circumstances of the case and in law, the CIT(A) has erred in deleting the disallowance on account of prior period expenses claim of Rs.13,05,668/- made by the Assessing Officer.

3. Whether on facts and in circumstances of the case and in law, the CIT(A) has erred in directing to compute the disallowance of Proportionate disallowance of business expenses to rental receipts/income at Dilli Haat INA of Rs.1,28,90,063/- made by the Assessing Officer.

4. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Net loss of DITTM of Rs.23,31,555/- made by the Assessing Officer.

5. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.26,46,058/- made by the AO on account of not furnished/expenses not supported by documentary evidences.

6. Whether on facts and in circumstances of the case. and in law, the Ld.CIT(A) has erred by restricting the disallowance of Rs.6,96,68,015/- to Rs.3,07,11,517/- on account of claim of Exemption/Deduction of income u/s 80IA of the IT Act made by the Assessing Officer.

7. The appellant craves, leave to add, amend or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

ITA No.5509/Del/2019 for AY 2011-12 (Assessee)

"1. Ld. CIT(A) has erred both in law and facts of the case in confirming the disallowance made by Ld. AO u/s 40A(3) on account of reimbursements made by the assessee to its employees towards LTC and Children's Tuition fees as per statutory entitlements amounting to Rs.11,37,541/-.

2. Ld. CIT(A) erred in confirming the rejection of claim of deduction u/s 80-IA to the extent of Rs.3,07,11,517/- being interest earned on mobilization advance given to sub-contractors and treating it as "Income from Other Sources" not eligible for deduction u/s 80-IA.

3. Ld. CIT(A) erred in remitting to Ld. AO to verify the claim of TDS credit of Rs.6,85,312/- deducted by Oriental Bank of Commerce and Form 16A provided to assessee.

ITA No.4100/Del/2019 for AY 2013-14 (Revenue)

"1. Whether on facts and in circumstances of the case and in law, the CIT(A) has erred in directing to compute the disallowance of Proportionate expenses related to rental receipts/income at Dilli Haat INA of Rs.87,69,084/- made by the Assessing Officer.

2. Whether on facts and in circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of Net loss claim of DTTM of Rs.41,55,259/- made by the Assessing Officer.

3. Whether on facts and in circumstances of the case and in law, the CIT(A) has erred in deleting the disallowance on account of reversal of damage charges of Rs.55,71,115/- made by the Assessing Officer.

4. Whether on facts and in circumstances of the case and in law, the Ld.CIT(A) is justified in deleting the disallowance of prior period expenses Rs.4,15,342/-.

The appellant craves, leave, modify, add or forego in any ground(s) of appeal at any time before or during the hearing of this appeal

ITA No.184/Del/2019 for AY2014-15 (Revenue)

"1. Whether on facts and in circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of advance excise deposited of Rs.17,89,87,198/- made by the Assessing Officer.

2. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance on account of writing off the liability of Rs.6,56,661/-made by the Assessing Officer.

3. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance on account of unspent revenue grants of Rs. 1,82,90,631/- made by the Assessing Officer.

4. Whether on facts and in circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of Net loss of DTTM of Rs.53,27,554/- made by the Assessing Officer.

5. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in directing to recompute the addition of Rs.85,02,849/- made by the Assessing Officer while determining the income from Dilli Haat.

6. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance on account of prior period expenses claim of Rs.1,01,05,594/- made by the Assessing Officer.

7. The appellant craves, leave, modify, add or forego in any ground(s) of appeal at any time before or during the hearing of this appeal.

ITA No.5922/Del/2019 for AY 2016-17 (Revenue)

"1. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Net loss of DITTM of Rs.42,08,388/- made by the Assessing Officer.

2. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance on account of unspent revenue grants of Rs.5,52,60,490/- made by the Assessing Officer.

3. Whether on facts and in circumstances of the case and in law, the CIT(A) has erred in deleting the disallowance on account of prior period expenses claim of Rs.43,96,415/- made by the Assessing Officer.

4. The appellant craves, leave, modify, add or forego in any ground(s) of appeal at any time before or during the hearing of this appeal."

3. The above seven appeals pertaining to single assessee for the assessment years 2011-12, 2013-14, 2014-15, 2015-16 and 2016-17, since the issues are identical, all the Appeals are clubbed and also heard together. For the sake of convenience, the brief facts of the assessment year 2015-16, are taken into consideration which are as per the order of the learned CIT(A). The brief facts are as under:

> *"The brief facts of the case are that the appellant company is wholly owned State Govt. Company (PSU under Govt. of NCT of Delhi). During the year, the appellant was engaged in the business of development of tourism, upgrading transportation infrastructure public utilities in and around Delhi, trading in Indian made foreign liquor, country liquor, construction work with other civil engineering activities o of construction on behalf of Govt. of NCT of Delhi etc. Return declaring an income of Rs. (-) 10,34,77,592/- was filed on 30.09.2015. The case was selected for scrutiny. The AO has completed the assessment u/s 143(3) vide order dated 25.12.2017 after disallowing capital reserve of Rs.8,02,16,000/-, claim of payment of advance excise u/s 43B on liquor trade at Rs.7,85,53,053/- disallowance of leave encashment Rs.82,16,920/- , disallowance of proportionate expenses related to rental income of Dilli Haat, INA Rs.1,21,90,214/-, disallowance of loss claimed DITTM Unit at Rs. 14,34,358/-, unspent revenue grants at Rs.49,96,37,337/-, disallowance of prior period expenses at Rs. 43,96,415/-, contingent nature of expenses at Rs.12,54,271/- and income tax refund at Rs.37,26,954/- at income assessed at Rs. 9,50,06,930/-. Against the order, appellant the appeal. During the course of appellate proceedings, Mr. Ajay Manager (Finance), Mr.*

Manoj Kumar, CA and Ms. Juli Batra attended the proceedings, filed written submission and made oral arguments."

4. As against the assessment order for the A.Y 2015-16, the Assessee preferred an appeal before the learned CIT (Appeals) and learned CIT (Appeals) vide order dated 18.03.2019, confirmed the addition made by the A.O. of Rs. 8,02,16,000/- out of amount under capital reserve on 31st March, 2015, disallowed the expenses claimed as contingent liability booked for rent to be paid to DSIDC. As against the above confirmation of disallowance/ addition, the assessee preferred the appeal in ITA No.5167/Del/2019 A.Y 2015-16. The CIT(A) has also deleted the disallowance of advance excise deposited under Section 43B of the Act on liquor trade of Rs. 7,85,53,053/- made by the Assessing Officer, deleted disallowance on account of unspent revenue grants of Rs. 49,96,337/-, deleted disallowance of net loss of DTTM of Rs. 49,34,358/- made by the A.O., remanded the issue of business expenses to rental receipts/income at Dilli Haat, INA of Rs. 1,21,90,214/- and deleted the disallowance on account of prior period expenses claim of Rs.43,96,415/- made by the Assessing Officer. Aggrieved by the above deletions, the Department of Revenue has preferred the appeal in ITA No.4737/Del/2019.

5. Learned counsel for the assessee filed separate Chart and also the written submission in all the Appeals by dealing with thirteen issues involved in the instant appeals. The LD. DR has also made submissions on the issues involved in the present Appeal.

Advance Excise Duty – Section 80B of the Act:

6. In Ground No.1 of ITA No.5920/Del/2019, ITA No.184/Del/2019 and ITA No.4737/Del/2019, for the A.Y 2011-12, 2014-15 and 2015-16 respectively, the department of Revenue contended that the learned CIT (Appeals) erred in deleting the disallowance of advance excise and deposit under Section 43B of the Act on liquor trade made by the Assessing Officer.

7. Learned counsel for the assessee submitted that on the issue involved in the above grounds for the above A.Ys is covered in Assessee's own case for the assessment years 2008-09 and 2009-10 and also in assessment year 2010-11 and 2012-13 and by relying on the order of the Tribunal, sought for dismissal for the Ground urged by the Revenue. The Ld. DR relied on the assessment order and sought for allowing the Ground of the Revenue.

8. Heard. The issue of allowability of advance excise duty paid by the Assessee is covered in assessee's own case for the assessment years 2008-09 and 2009-10 and also the assessment year 2010-11 as well, wherein, the Co-ordinate Bench of the Tribunal in ITA No.2814 & 4756/Del/2012 held as under:

> *"2.6 We have heard both the sides and considered the material on record as well as the case law cited and find that issue is squarely covered in favour of the assessee by Jurisdictional High Court's decision in the case of CIT Vs. Maruti Suzuki India Ltd. (supra) and held portion reads as under:-*

"++the Tribunal had, in a previous year, discussed the issue in detail and held that deduction of the amount should be allowed in the year in which it is adjusted against liability to pay excise duty on manufactured goods. Accordingly, it is pleaded that deduction should be allowed for the sum representing PLA balances on the last day of the previous year but adjusted in this year. Revenue agreed with such contention since such adjustment amounts to actual payment. Even the counsel for the revenue has no objection to such contention provided such deduction was not allowed in the preceding year since double deduction of the same amount cannot be allowed. Since it has been held that advance payment did not represent the payment of excise duty, the question of including the same in the closing stock does not arise;

++in the present case, the assessee had no option, but to keep the account, in respect of each excisable product. There was no doubt in the latter part of the main rule that the assessee has no choice in the obligation, and cannot remove the goods manufactured by it, unless sufficient amounts are kept in credit and the assessee shall periodically made credit in such account-current, by cash payment into the treasury, so as to keep the balances, in such account-current sufficient to cover the duty due on the goods intended to be removed at any time, and every such assessee shall pay the duty determined by him for consignment by debit to such account current before removal of the goods. The revenue's contention that the amounts in credit also relate to goods not manufactured, and therefore, not relatable to any "liability incurred" is, in the opinion of this Court, without any basis. The excess credit is likewise adjusted for the next day's clearances. The point to be underlined is that there is no choice, and the amounts relate to the assessee's duty liability, falling within the description u/s 43B;

++section 43B in clear terms provides that the deduction claimed by the assessee in respect of any sum paid by way of tax, duty, cess or fee, shall be allowed only in computing the income I.T.A. 6 No.2814-4756/Del/2012 referred to in section 28 of that previous year in which it was actually paid, irrespective of the previous year in which the liability was incurred for the payment of such sum as per the method of accounting regularly employed by the assessee. For the purpose of claiming benefit of deduction of the sum paid against the liability of tax, duty, cess, fee, etc., the year of payment is relevant and is only to be taken into account. The year in which the assessee incurred the liability to pay such tax, duty, etc., has no relevance and cannot be linked with the matter of giving benefit of deduction

u/s 43B. Ins this view of the matter, the appeal deserves to be allowed. This court also notices that the Supreme Court has upheld the view which allows assessee's to claim credits, such as Modvat, etc, falling within the description of liability paid, to escape the mischief of section 43B in CIT Vs. Shri Ram Honda Power Equipment Corporation. As a result of the above discussion, the first question is answered in favour of the assessee, and against the revenue;"

Therefore, following the above conclusion as drawn by Hon'ble High Court, which is fully applicable to the facts of the case in hand, therefore, order of learned CIT(A) is upheld and appeal of the revenue on this issue is dismissed in view of binding precedent."

9. By respectfully following the order of the Co-ordinate bench (supra) and finding the parity, we find no merit in the above grounds of appeals of the Revenue. Accordingly, Ground No.1 of the Revenue in ITA No.5920/Del/2019, ITA No.184/Del/2019 and 4737/De4l/2019 are dismissed.

Prior period expenses

10. Ground No. 2 in ITA No.5920/Del/2019 and Ground No.4 in ITA No.4100/Del/2019, Ground No. 6 in ITA No. 184/Del/2019, Ground No. 5 in ITA No.4737/Del/2019 and Ground No. 3 in ITA No.5922/Del/2019 of the Department of Revenue are regarding deletion of the disallowance made by the A.O. on account of prior period expenses claimed by the assessee.

11. Learned Departmental Representative, relied on the order of the Assessing Officer and submitted that the learned CIT (Appeals) erred in deleting disallowance of prior period expenses.

12. The learned counsel for the assessee submitted that the assessee is consistently following mercantile system of accounting as per the accounting

standard approved by the Institute of Chartered Accountants of India, the said system of accounting has been followed by the assessee since its inception. Since some of the expenses which could not be booked or provided for in the books of accounts on 31st March of the financial year due to non-receipt of vouchers/bills etc., which was received after 31st March of the financial year and as per the routine procedure, those expenses are recorded in the later year as prior period expenses which deserves to be allowed. The learned counsel for the assessee has placed reliance on the Judgment of Hon'ble jurisdictional High Court in CIT vs. Jagjit Industries Ltd. (2010) 194 Taxmann 195 and also the Judgment of Hon'ble Gujarat High Court in the case of Saurastra Cement & Chemicals Industries Ltd. vs. CIT (1995) 80 Taxman 61 (Guj.). Thus, submitted that the findings and the conclusions of the CIT(A) in deleting the disallowances deserves to be confirmed.

13. We have heard the parties and perused the material. The issue of allowability of prior period expenses involved in the above ground of appeals of the Revenue is no more *Res-integra*, the jurisdictional High Court in the case of CIT vs. Jagjit Industries Ltd. (2010) 194, Taxmann 158 held as under:

> *"The assessee had been debiting the expenditure spill over to the subsequent years and the Assessing Officer had been allowing the same. The said accounting practice had been consistently followed by the assessee and accepted by the department. If a particular accounting system has been followed and accepted and there is no acceptable reason to differ with the same, the doctrine of consistency would come into play. In the instant case, the said accounting system had been followed for a number of years and*

there was no proof that there had been any material change in the activities of the assessee as compared to earlier years. Nothing has been brought on record to show that there had been distortion of profit or the books of accounts did not reflect the correct picture. In the absence of any reason whatsoever, there was no warrant or justification to depart from the previous accounting system which was accepted by the department in respect of the previous years."

14. Further, the Hon'ble Gujarat High Court in the case of Sourastra Cement & Chemicals Industries Ltd. Vs. CIT (1995) 80 has held as under:

"Merely because an expense relates to a transaction of an earlier year it does not become a liability payable in the earlier ear unless it can be said that the liability was determined and crystallized in the year in question on the basis of maintaining accounts on the mercantile basis.

In each case where the accounts are maintained on mercantile basis, it has to be found in respect of any claim whether such liability was crystallized and quantified during the previous year as required to be adjusted in the books of account of that previous year. If any liability, though relating to the earlier year, depends upon making a demand and its acceptance by the assessee and such liability has been actually claimed and paid in the later previous years, it cannot be disallowed as deduction merely on the basis that accounts are maintained on mercantile basis and that it relates to a transaction of the previous year. The true profit and gain of a previous year are required to be computed for the purpose of determining tax liability. The basis of taxing income is accrual of income as well as actual receipt. If for want of necessary material crystallizing the expenditure is not in existence in respect of which such income or expenses relates, the mercantile system does not call for an adjustment in the books of account on estimate basis. It is actually known income or expenses, right to receive or liability to pay which has come to be crystallized is to be taken into account under mercantile system of maintaining books of account. An estimated income or liability, which is yet to be crystallized, can only be adjusted as contingency item but not as an accrued income or liability of that year."

> Thus, the Tribunal was not justified in holding that the impugned expenditure was not allowable in the relevant previous year on the ground that the liability had arisen in the earlier years."

15. Considering the facts of the present case and finding the parity, we find no error or infirmity in the order of the learned CIT (Appeals) in deleting the disallowance of prior period expenses, accordingly, we dismiss Ground No.2, 4, 6, 5 and 3 of Departmental Appeals in ITA Nos. 5920/Del/2019, 4100/Del/2019, 184/Del/2019, 4737/Del/2019 and 3922/Del/2019 respectively.

Dilii Haat Rental Income:

16. The Department's Ground No.3 in ITA No.5920/Del/2019, Ground No.1 in ITA No.4100/Del/2019, Ground No.5 in ITA No.184/Del/2019, Ground No.4 in ITA No.4737/Del/2019 are regarding disallowance of proportionate disallowance of business expenses to rental receipts/income at Dilii Haat.

17. Learned counsel for the assessee submitted that the Co-ordinate Bench of the Tribunal for assessment years 2004-05 to 2009-10, 2010-11 and 2012-13 held that the rental income from temporary structure as income from business and rental income from permanent structure as income from house property. Further submitted that no appeal has been preferred by the Department of Revenue, thus the order reached finality, therefore, prayed for dismissal of the above ground of appeals of the Revenue.

18. Per contra, learned Departmental Representative relied on the assessment order.

19. Heard the parties. The Co-ordinate Bench of the Tribunal in ITA No.3457/Del/2007 and connected Appeals (A.Y. 2004-05 to 2009-10) held as under:

> *"19. When we examine the facts of the instant case on the benchmark of the ratio decidendi in the above judgment from the Hon'ble Supreme Court laying down the twin conditions of objects and nature of activity, it clearly emerges that both the tests are satisfied inasmuch as the object of the assessee company is to promote tourism by providing entertainment to tourists through cultural events etc. Further, the nature of the business activity of the assessee unmistakably deciphers that it cannot be carried out without letting out stalls on regular frequency to different craftsmen. In the above hue, we have absolutely no doubt in our mind that income of Rs.1.82 crore earned by the assessee from use of craft stalls on 15 days basis is `Business income' and has been erroneously considered by the authorities below as 'Income from house property'. The impugned order is pro tanto vacated.*
>
> *20. Though the ld. AR denied to have deducted any tax at source on such receipts of Rs.3,000/- per person (Rs.200/- per day x 15 days from each craftsman), we find that the deduction or non-deduction of tax at source under a particular provision does not alter the character of an income to be considered for taxation under a particular head. Explanation to section 194-I dealing with deduction of tax at source on rent defines 'rent' to mean 'any payment under any lease, sub-lease, tenancy, etc., for the use of land, building, machinery, plant and furniture, etc.' whether or not any or all of the above are owned by the payee. On the other hand, section 22 of the Act categorically provides that the annual value of property consisting of any building or land pertaining thereto of which the assessee is the owner, shall, in certain circumstances, be chargeable under the head 'Income from house property.' When we consider the instruction of section 194-I in juxtaposition to that of section 22 of the Act, there apparently arise certain distinctions in both the provisions including the ownership or otherwise of property.*

To say that if tax is required to be deducted at source u/s 194-I and, hence, the income necessarily becomes chargeable under the head 'Income from house property', in our considered opinion, is not a universal proposition.

21. In view of our above decision in holding rental income from craftsmen as `Business income' on the first principles, we do not consider it expedient to discuss other issues raised by both the sides in support of their respective claims as to whether or not the assessee was owner of 'Dilli Haat', which is a mandatory condition for computing income under the head 'Income from house property' and rule of consistency etc.

22. Turning to the remaining amount of Rs.54.00 lac, we find that the same consists of Rs.41.00 lac, being, income from space rented on regular basis and Rs.12.99 lac, being, licence fee for allowing activities of food court, souvenir shops, bank and PCO. This amount of Rs.54 lac has been earned by the assessee from the letting out of its permanent structures. The same cannot be equated with income of Rs.1.82 crore discussed above, being, licence fee for use of craft stalls on 15 day basis. The ld. AR was fair enough not to contest the taxability of Rs.54.00 lac as income held by the lower authorities to be falling under the head 'Income from house property.'

23. To sum up, we hold that income of Rs.1.82 crore be considered as 'Business income' and Rs.54.00 lac as 'Income from house property.' The Assessing Officer is directed to allow necessary deductions against these incomes as per law, after allowing a reasonable opportunity of being heard to the assessee.

24. In the result, appeal of the assessee for the A.Y. 2004-05 is partly allowed for statistical purposes".

20. The above said order of the Tribunal for A.Y 2004-05 to 2009-10 has been followed in Assessee's own case for A.Y 2010-11 and 2011-12 as well. By respectfully following the order of the Tribunal dated 28/03/2018 in Assessee's own case, we direct the A.O. to allow necessary deductions against these incomes as per law, after allowing opportunity of being heard to the Assessee.

Accordingly, the Ground Nos. 3, 1, 5 and 4 of the Revenue's appeals for assessment years 2011-12, 2013-14 to 2015-16 are disposed off.

DITTM Loss:

21. The Department of Revenue has directed Ground Nos. 4 in ITA No.5920/Del/2019, Ground No.2 in ITA No.4100/Del/2019, Ground No.4 in ITA No.184/Del/2019, Ground No.3 in ITA No.4737/Del/2019 and Ground No.1 in ITA No.5922/Del/2019 against the deletion of the disallowance of net loss to Delhi Institute of Tourism and Travel Management (DITTM) made by the Assessing Officer.

22. The learned counsel for the assessee submitted that the said issue has been remanded by the Tribunal for A.Y 2004-05 to A.Y 2009-10 to the file of the Assessing Officer for assessment years 2004-05 to 2009-10 and after the remand, the Assessing Officer has decided the issue against the assessee and the learned CIT (Appeals) has decided the same in favour of the assessee, therefore, prayed for remanding the issue to the file of the Assessing Officer.

23. Per contra, learned Departmental Representative has not objected for remanding the issue to the file of the Assessing Officer for de nova adjudication.

24. We have heard the parties and perused the material. The similar issue of allowability of loss in respect of Institute of DITTM has been decided by the

Coordinate bench of the Tribunal for the Assessment Year 2007-08, wherein the Tribunal has remanded the issue to the file of the A.O. in following manners:-

> *"64. The only other ground which survives in the Revenue's appeal is against the deletion of addition of Rs. 46,21,175/- made by the AO on account of income from IITM, Delhi. During the course of assessment proceedings, the Assessing Officer noticed that the management of the ITA Nos. 3457/Del/2007, 1505/Del/2009, 4877/Del/2009, 1903/Del/2011, 1634/Del/2011, 2687/Del/2012 & 4910/Del/2012 Delhi Chapter of the Institute of Tourism and Travel Management (affiliated to IITTM- Gwalior) was given to the assessee on 1.1.1993 initially for a period of five years. On perusal of the Tax Audit Report, it was noticed that the excess of income over expenditure of IITTM-D for the year was Rs. 18,33,132/- and accumulated profit carried over was Rs. 27,88,043/- , both totaling Rs. 46,21,175/-. Since the income of this entity was not included by the assessee in its total income, the Assessing Officer made this addition. The learned CIT(A) deleted the addition.*
>
> *65. Having heard both the sides and perused the relevant material on record, it is observed that the assessee has claimed that income of IITTM-D was not liable to be included in the income of the assessee as has been set up by the Revenue. On the other hand, the learned DR submitted that the assessee has itself claimed deduction for loss of IITTM-D its return for the A.Y. 2012-13 on the premise that it was its own loss. On a specific query, the learned AR submitted that some change took place in the arrangement on 1.4.2009 as a result of which the income/loss of IITTM-D became that of the*

assessee. The Revenue is aggrieved in its appeal for the A.Y. 2012-13 against the allowability of loss of IITTM-D against the assessee's income. Though the appeal for the A.Y. 2012-13 is also fixed before the Tribunal today itself, the learned AR was not prepared with the matter and sought an adjournment. In view of the fact that loss of IITTM Delhi has been incorporated in the assessee's profit and loss account for the A.Y. 2012- 13, what transpired on 1.4.2009, in so far as a running of IITTM-D is concerned, is relevant. Necessary details about the changes made from 1.4.2009 are not readily available with leaned AR. We, therefore, set aside the impugned order on this issue and send the matter back to the file of the Assessing Officer for examining the assessee's contention about the change taking place from 1.4.2009 and then deciding the impact of such change on the income of the assessee before and after this change."

By respectfully following the order of the Coordinate Bench in Assessee's own case (supra) and finding the parity we remand the matter to the file of the A.O. for examining the assessee's contention about the change taken palce from 01/04/2009 and then decide the issue in accordance with law, accordingly, the Grounds No. 4 in ITA No. 5920/Del/2019, Ground No.2 in ITA No.4100/Del/2019, Ground No.4 in ITA No.184/Del/2019, Ground No.3 in ITA No.4737/Del/2019 and Ground No.1 in ITA No.5922/Del/2019 of the Department are partly allowed for statistical purpose.

TOURISM PROMOTION AND TENT EXPENSES

25. The Department of Revenue's Ground No.5 in ITA No. 5920/Del/2019 regarding deletion of disallowance of Rs. 26,46,058/- of Tourism Promotion and Tent Expenses made by the A.O. The Ld. Departmental Representative contended that the CIT(A) committed error by deleting the disallowance of Rs. 26,46,058/-, though the assessee has not furnished details/documentary evidences in relation to the expenses which were sought in the questionnaire. In the absence of the evidence supporting the claim of the Assessee, the Assessing Officer has rightly deleted 50% of the expenses which has been erroneously deleted by the CIT(A).

26. The Ld. Counsel for the assessee submitted that during the course of appellate proceedings, the Assessee filed copy of the ledger account along with supporting bills and vouchers on sample basis and all the payment were made through the cheques, therefore, the CIT(A) has rightly deleted the addition.

27. We have heard both the parties and perused the material available on record. It is the specific contention of the assessee that during the assessment proceedings the A.O. has not provided reasonable opportunity of being heard to the assessee and the A.O. had not asked documentary evidence in support of the expenses and disallowed 50% of the expenditure on ad-hoc basis. Before the CIT(A), the assessee had filed copy of the ledger account of the expenses along with supporting bills and vouchers on sample basis. The expenses

claimed by the assessee has been made through cheques and the assessee had incurred the expenses on tourism promotion and hiring of tent and all the expenses are accounted for in the books of accounts. Assessee being corporation which is a Government undertaking requires to maintain proper account and also require to be audited by qualified CA/CAG, despite of the same, the CIT(A) has taken very reasonable view on this issue, since the Assessee is not in appeal before us, we are constrained to confirm the order of the CIT(A). Accordingly, we find no merit in the Ground No. 5 of the Revenue in ITA No. 5920/Del/2019, accordingly, the same is dismissed.

EXEMPTION/DEDUCTION OF INCOME U/S 80-IA

28. The Revenue vide Ground No. 6 in ITA No. 5920/Del/2019 for A.Y 2011-12 contended that the CIT(A) has erred in restricting the disallowance of Rs. 6,96,68,015/- to Rs. 3,07,11,517/- on account of claim of exemption/deduction of income u/s 80-IA of the Act. The assessee vide Ground No. 2 in ITA No. 5509/Del/2019 for the Assessment Year 2011-12 has directed the ground against confirming the rejection of claim of deduction u/s 80-IA of the Act to the extent of Rs. 3,07,11,517/- being interest earned around on mobilization advance given to sub contractor and treating the same as 'income from other sources' and holding that the same as not allowable for deduction u/s 80-IA of the Act by the A.O.

29. The Ld. Departmental Representative by relying on the order of the A.O. submitted that the CIT(A) committed grave error in restricting the disallowance which cannot be sustained and the same is deserves to the reversed.

30. Per contra, the Assessee's Representative contended that the CIT(A) committed error in confirming the rejection of claim of deduction u/s 80-IA to the extent of Rs. 3,07,11,517/- being interest earned on mobilization addition given to sub-contractor.

31. We have heard both the parties and perused the material available on record. During the assessment proceedings, the claim of exemption/deduction of income under 80-IA has been dealt by the A.O. as under:-

> *"**Claim of Exemption/Deduction of Income u/s 80IA:***
> *The assessee Corporation filed a Claim of Exemption/Deduction of Income u/s 801A: revised statement of assessable income declaring 'NIL' income after making a fresh claim of deduction of income u/s 801A restricting the claim to total income of Rs.6,20,48,900/0. The Assessee Corporation vide letter dt. 14/17.2.2014 made this fresh claim with following facts:-*
> *That assessee Corporation has been executing the development of following infrastructure Delhi/New Delhi assigned under the authority of State Govt. of NCT, facilities in & around Delhi under MOUs:-*
>
> *1. Development of Signature Bridge at Wazirabad Yamuna River - refer MOU dt. 27th August, 2004 between DTTDC Ltd. vs Govt. of NCT, Delhi with letter no.F.8(189)/2001-*

02/PWD-III/6063-6075 dt. 26.2.2010.

2. Development of Road under and Road over Bridge (RUB & ROB) at Nand MOU dt. 19.12.2008 with No.F4(3)/49/2005/PWD-III/48 vide letter No.68 (Refer issued by Deptt. of PWD of State Govt. of NCT of Delhi).

3. That out of the margin/gross income in the form of 5% development charges allowed to the assessee on value work done, there shall be met out the consultancy and establishment cost as per terms.

4. That during the year under assessment, the net income earned by assessee Corporation as per audited accounts was Rs.5,52,84,970/- for signature bridge and Rs.1,53,57,300/- towards RUB & ROB at Nand Nagri, Road No.68.

That both these income were included in the net audit profit of Rs.16,30,33,565/- shown and certified by Statutory Auditors in the annual accounts for the previous year ending 31.3.2011 and also reflected in the statement of assessable filed with returned income on 30.9.2011.

5. That above infrastructure income of assessee is fully derived from the eligible business as defined u/s 80IA(4) of ITA.

6. That assessee Corporation DTTDC Ltd. has assigned the construction job to various contractors based on competitive successful tenders/bids.

Thus, the income restricted at Rs.6,20,48,900/- may please be considered for allowing the claim of deduction against the gross total income determined before this deduction restricted to gross total

income of Rs.6,20,48,900/-. Necessary books of accounts and related papers and documents can be verified as per your convenience. This is the first year of claim made by the assessee.

The assessee also subsequently filed the 10CCB audit report dt. 21.2.2014 duly certified eligible business profits as under vide letter dt. 24.2.2014 as well as vide another letter dt. 26.2.2014.

Eligible business profits from Development of Infrastructure facilities:-

i Development of Signature Bridge Rs.5,43,10,716/-

ii. Development of RUB & ROB at Road No.68, Nand Nagri Rs.1,53.57,300/-.

Total eligible business profits u/s 80IA Rs.6,96,68,016/-

The claim of the assessee with other related facts were examined. It was noticed that income of above development work related to infrastructures facilities are included in the audited net profit reflected in the P&L A/c of DTTDC. The MOUS provided were also considered and examined.

However, while examining the provision of section 801A, the following was found provided:-

Subsection (7) provides -The deduction under sub-section(1) from profits and gains derived from an (undertaking) shall not be admissible unless the assessee furnishes along with his return of income, the report of such audit in the prescribed form"

The annual accounts of Tax return was filed by assessee on 30.9.2011. The audit report under Form 10CCB is filed on 24.2.2014 bearing dt. 21.2.2014. Thus audit has been done much after the filing of income tax return on due date i.e. 30.9.2011. The assessee

has made a fresh claim of 801A deduction vide letter dt.14/17/2/2014 as well as letter dt. 24/2 and 26/2/2014 much later after the date of filing return. The audit as required u/s sub-section (7) has been got done in Feb., 2014 as per the facts on record and as per audit documents submitted during assessment proceedings. Considering this above stated technical defect and legal infirmity in compliance of procedure are of the considered firm view that assessee is not eligible for this deduction being not made in returned income and also with prescribed audit report has not been filed with return of income. In fact compliance in prescribed form audit report has been done after a gap of around 2¼ years of the due date of filing return.

Moreover, for this claim, the assessee could have revised the return in time as per provision u/s 139(5) of ITA. The assessee on being asked the reason why this claim could not be filed earlier by revising the return within the prescribed time period, could not furnish any bonafide satisfactory reply.

Viewing these facts, this fresh claim of assessee is rejected due to infirmity in timely compliance of legal requirements and procedure of tax laws u/s 801A of ITA."

32. During the appellate proceedings, the CIT(A) restricted the disallowance of Rs. 6,96,68,015/- made by the A.O. to Rs. 3,07,11,517/- in following manners:-

"15.4 I have considered the facts of the case, finding of the AO and submission of the appellant. During the course of assessment proceedings, appellant has made fresh claim of deduction u/s 80IA

on the infrastructural facilities developed by it during the year. It is submitted by the appellant that it has undertaken the project of signature bridge at Wazirabad and RUB & ROB at Nand Nagri, Delhi. This is the first year of operation when appellant has earned income from infrastructure facilities developed by it, but did not AY 2011-12, 143(3) Delhi Tourism & Transport M/S Development 2011-12; 14 11-12; 143(3) and Wazirabad and make any claim of deduction in the return u/s 801A and not obtained the certificate in Form 10CCB of Chartered Accountants which is mandatorily to be obtained as per the provision of section 801A(7) for availing any deduction u/s 80IA. The AO has not accepted the claim of the appellant as appellant has not made the claim in the original return and also not filed the revised return. The certificate in Form 10CCB was not enclosed along with its return of income. In the remand report AO has submitted that appellant has made fresh claim of deduction of Rs. 6,20,48,900/- u/s 801A and audit report under Form 10CCB was filed on 24.02.2014 whereas appellant had sufficient time to file the tax audit report as the due date of filing of the ITR was 30.09.2011. The appellant fails to fulfil the statutory condition as per the provisions of section 801A(7). Moreover appellant is not having duly audited separate profit and loss account and balance sheet for both the eligible units. In the rejoinder, appellant has submitted that AO had only sought 10CCB certificate which were duly placed before the AO. During the appellate proceedings, appellant has filed the copies of audited profit and loss account, balance sheet, agreement with the State Govt. and agreement with sub contractor i.e. Gammon India in support of its contention with respect of both the projects i.e. signature bridge Wazirabad and ROB and RUB Nand Nagr.

15.5 It is observed that appellant has filed certificate in Form 10CCB in respect of both the projects and claimed deduction as certified by the auditor. The appellant has filed the audited profit and loss account and balance sheet for both the projects separately alongwith the agreement entered with the Govt. The appellant is a corporation established under the State Act and has developed the infrastructure facility. For this purpose it has entered into an agreement with the Govt. of Delhi for the development of the bridges and after the completion of infrastructure facility it has transferred the bridge to the Govt. of Delhi. The appellant fulfils the conditions as stipulated in section 801A(4)(i). The relevant provision of section 801A is reproduced as under:-

"(1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years.

(2) The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking or the enterprise develops and begins to operate any infrastructure facility or starts providing telecommunication service or develops an industrial park or develops a special economic zone referred to in clause (ii) of sub-section (4) or generates power or commences transmission or distribution of power or undertakes

substantial renovation and modernization of the existing transmission or distribution lines" Provided that where the assessee develops or operates and maintains or develops, operates and maintains any infrastructure facility referred to in clause (a) or clause (b) or clause (c) of the Explanation to clause (1) of sub-section (4), the provisions of this sub-section shall have effect as if for the words "fifteen years", the words "twenty years" had been substituted.

.....

(4) This section applies to-

(1) any enterprise carrying on the business of (i) developing or (11) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility which fulfils all the following conditions, namely:

(a) it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act; (b) it has entered into an agreement with the Central Government
or a State Government or a local authority or any other statutory body for (1) developing or (ii) operating and maintaining or (III) developing, operating and maintaining a new infrastructure facility;

(c) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995: Provided that where an infrastructure facility is transferred on or

after the 1st day of April, 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the

transferor enterprise) to another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place. Explanation. For the purposes of this clause, "Infrastructure facility" means-

(a) a road including toll road, a bridge or a rail system;
(b) a highway project including housing or other activities being an integral part of the highway project;
(c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;
(d) a port, airport, inland waterway, inland port or navigational channel in the sea.

……..

……..

(7) The deduction under sub-section (1) from profits and gains derived from an undertaking shall not be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the Explanation below sub- section (2) of section 288, and the assessee furnishes, along with his return of income, the report of such

audit in the prescribed form 82 duly signed and verified by such accountant."

15.6 The appellant is involved in the development of infrastructure facilities at Nand Nagri and Wazirabad, as per the provisions of section 80IA(4)(1), the appellant satisfies the condition contained therein. It has maintained separate books of account and has duly get them audited and obtained certificate of CA in Form 10CCB as per requirements of sub section (7) of section 801A. The claim of the deduction u/s 801A may be allowed to the assessee even if it has been made during the assessment proceedings if it is eligible for claiming deduction as per the provisions of the Act. It is held by the judicial authorities that assessing authorities are bound to compute the correct income only and collect only legitimate tax, hence merely for a procedural lapse or technicalities the appellant should not be compelled to pay more tax than what is due from him.

15.7 Hon'ble Punjab and Haryana High Court in the case of Ramco International Vs CIT 2009 180 taxmann 584 held as under:-

"3. Learned counsel for the revenue submits that the assessee made claim by way of an application without filing a revised return and in such a situation, judgment of the Hon'ble Supreme Court in Goetze (India) Ltd. v. CIT [2006] 284 ITR 323 was applicable and deduction could not be allowed.

4. We are unable to accept the submission. The Tribunal has considered this issue and found that as per Form 10CCB filed during assessment proceedings, the claim of the assessee was admissible. Finding of the Tribunal is as under-

"19. In view of the above, we find no error in the order of the learned CIT(A). It has correctly been held by the first appellate authority, inter alia that as per Form No. 10CCB filed during the assessment proceedings, the claim made by the assessee was admissible and the same remained to be allowed. The order of the learned CIT(A) is hereby upheld in view of the above discussion. The grievance of the department stands rejected."

5. In view of the finding that the assessee was not making any fresh claim and had duly furnished the documents and submitted Form for claim under section 80-IB. there was no requirement for filing any revised return. The judgment relied upon was not applicable."

15.8 Hon'ble ITAT Pune in the case of MSEB Employees Cooperative Credit Society Ltd. VS ITO (2014) 50 taxmann.com 210 held that, "In view of above discussion, the CIT(A) was justified in holding that the assessee is entitled for deduction u/s 80P(2)(a)(i) of the Act though the same has not been claimed by the assessee in return of income. It is settled law that correct income of the assessee is to be assessed as per provisions of Income Tax Act, 1961 in spite of higher income incorrectly declared by the assessee in the return of income. This view was fortified by the decision of Hon'ble Bombay High Court in the case of CIT v. Smt. Archana R. Dhanwatey [1981] 136 ITR 355/[1981] 7 Taxman 121, wherein it was held that "under the I.T. Act, 1961, the authorities are obliged to act in accordance with law. Tax has to be collected as per the provision of the Act. If an assessee, under a mistake, misconceptions or on being not properly

instructed is over assessed, the concerned authority under the Act is obliged, required to assist such an assessee by ensuring that only legitimate taxes are determined as collectible. If particular levy is not permissible under the Act, the tax cannot be collected. In view of above, the CIT(A) was justified in holding that the assessee is eligible for deduction u/s.80P(2)(a)(i) of the Act and the assessee society is eligible for deduction u/s 80P(2)(a)(i) of the Act on merit as well, as discussed above. This reasoned finding of CIT(A) needs no interference from our side. We uphold the same

15.9 Hon'ble Delhi High Court in the case of CIT vs. Contimeters Electricals (P.) Ltd. [(2009) 178 TAXMAN 422], taken a view regarding the non-filing of Form 10CCB with the Income Tax Return and observed at Para 8 of the order that:

> *8. In view of this long line on decisions of various High Courts in considering the provisions of section 80J(6A) which are similar to the provisions of section 80-IA(7), we feel that the Tribunal has arrived at the correct conclusion that the requirement of filing the audit report along with the return is not mandatory but directory and that if the audit report is filed at any time before the framing of the assessment, the requirement of section 80-1A(7) would be met."*

15.10 Considering the above facts, appellant is entitled to claim deduction u/s 801A as it satisfies the conditions as per the provisions of section 80IA(4)(1). It is observed in Form 10CCB that appellant has claimed deduction on interest income also which it has earned from mobilization advance, the interest income falls

under the head "income from other sources" and not "income from business or profession" and should not be part of the profit on which appellant is claiming deduction u/s 801A. The appellant has filed the revised computation after excluding the interest on mobilization advance and other interest and deduction u/s 801A worked out at Rs.3,89,56,498.40/- whereas as per Form 10CCB deduction u/s 801A is worked out at Rs.6,96,68,015.18/-, thus appellant has made excess claim of Rs.3,07,11,517.18/- which is disallowed. Thus claim of the appellant is restricted to the extent of Rs.3,89,56,498,40/-."

33. We have heard both the parties and perused the material available on record. It is seen from the facts of the case, it is clear that although the assessee did not file Form No.10CCB along with the return of income on or before the due date prescribed u/s 139 (1) of the Act, but the Audit Report in Form No. 10CCB was made available before the A.O. before he completes the assessment u/s 143(3) of the Act, therefore, we are of the view that the A.O. ought to have considered the said Audit Report filed by the assessee and allow the deduction claimed by the Assessee u/s 80IA of the Act. This view of ours is fortified by the judgment of Hon'ble Supreme Court in the case of CIT Vs. M/S G. M. Knitting Industries Ltd. 376 ITR 456 (S.C.), wherein held that even though necessary certificate in Form No. 10CCB along with the return of income had not been filed but the same was made available to the A.O. before passing of final assessment order, the assessee is entitled to claim the deduction u/s 80IA of the Act, in view of the above ratio, we do not find any

infirmity in granting 80IA deduction by the CIT(A), accordingly, Ground No. 6 of the Revenue in ITA No. 5920/Del/2019 is dismissed.

34. The assessee in Ground No. 2 in ITA No. 5509/Del/2019 has challenged the rejection of claim of deduction in 80IA to the extent of Rs. 3,07,11,517/- being interest earned on mobilization advance given to sub contractor and treating the same as income from other sources not allowable for deduction u/s 80IA of the Act.

35. Originally the assessee claimed deduction u/s 80IA at Rs. 6,96,68,015/, however, it was revised by the assessee at Rs. 3,89,56,498/- and thereby reduced the said claim by Rs. 3,07,11,517/- wherein excluded the interest earned on mobilization advance and other interest. In our opinion, mobilization advance is having direct proximate relationship with business of the assessee. In other words, it is integral and directly related to the business of the assessee which emerged from the business activities of the assessee and the same has to be considered as business income of the assessee and not otherwise. Accordingly, the assessee is entitle for deduction u/s 80IA of the Act. The other interest for which details are not furnished by the assessee, the assesssee is not entitled for deduction u/s 80IA of the Act, on the said interest income. The A.O. has to verify the records and grant the deduction accordingly. The Ground No. 2 of the assessee in ITA No. 5509/Del/2019 is partly allowed for statistical purpose.

40A(3) of the Act Cash reimbursement of employee

36. The assessee's Ground No. 1 in ITA No. 5509/Del/2019 (A.Y 2011-12) is regarding disallowance made u/s 40A(3) of the Act on account of cash reimbursement made by the assessee to its employees towards LTC and Children Tuition Fees amounting to Rs. 11,37,541/-.

37. The Ld. Counsel for the assessee submitted that the Lower Authorities have committed error cash in disallowing the reimbursements made by the assessee to its employees towards LTC and Children Tuition Fee as per statutory entitlement amounting to Rs. 11,37,541/-.

38. Per contra, the Ld. Departmental Representative relying on the findings, observations and the conclusion of the CIT(A) sought for dismissal of the Ground No. 1 of the assessee for Assessment Year 2011-12.

39. We have heard both the parties and perused the material available on record. The Ld. A.O. while making the above addition has observed as under:-

> *"4. **Amounts inadmissible u/s40A(3) of the IT Act:***
> *Perusal of Para 17(b)(b) of Tax Audit Report along with Schedule-VI, it reveals that a sum of Rs. 11,37,541/- has been paid in cash by way of reimbursement to the employees towards LTC, Tuition Fees and Children Education Allowance exceeding the limit of Rs.20,000/- (Rs. twenty thousand only) therefore, it is covered u/s 40A(3) for disallowance. The assessee was asked as to why this expense should not be disallowed. The assessee during the course*

of hearing explained based on facts that this expense is actual not covered u/s 40A(3) of IT Act, and has been reported by tax auditor incorrectly. It was submitted that it relates to reimbursement of tuition fees of children of employees as per VI Pay Commission entitlement norms to Govt. Employees i.e. monthly tuition fees of two children with a maximum limit not exceeding Rs. One thousand per child per month per payment receipt. Further, there has been reimbursement-facility to every employee towards medical expenses @Rs.800 p.m. which even does not qualify for addition u/s 17(2)(VI) of ITA upto payment of Rs. Fifteen thousand from the taxable perquisite of salary; a statement showing employee-wise reimbursement of tuition fees and medical expenses was also furnished by assessee. The claim of assessee was examined but not found tenable when even tax auditor has covered for disallowance. Accordingly, relying upon the Tax Audit Report, a sum of Rs.11,37,541/- is disallowed and added to the income of the assessee. Since the assessee furnished inaccurate particulars, penalty proceeding u/s 271(1)(c) of the Act, are initiated .separately."

40. During the appellate proceedings, the above said addition made by the A.O. has been confirmed by the CIT(A) in following manners:-

"6.3 During the course of appellate proceedings, appellant has submitted that as per appellant's internal company policy, during the year the appellant reimburses to its employees the payment of school tuition of their children to the extent of Rs.1000/- per month per child subject to maximum of two children. The appellant has reimbursed the same once in a year on an aggregate basis. Further in view of the provision of clause (vill) of sub section (2) to section 17

of the Act read with clause (ix) of sub rule (7) to rule 3 of Income Tax Rules, these reimbursement of school tuition fees paid by the employees for their children is a perquisites in the hands of the employees and is forming part of salary which is offered to tax. The appellant has submitted that provision of section 40A(3) shall not be attracted as the reimbursement is against the aggregate of expenditure, which individually does not exceed to Rs.20,000/- and case of the appellant impliedly falls within the exceptions of Rule 6DD(j).

6.4 I have considered the facts of the case, finding of the AO and submission of the appellant. The appellant has paid a sum of Rs.11,37,541/- in cash by way of reimbursement of employees towards tuition fee, medical expenses and children educational allowance exceeding the limit of Rs. 20,000/-. It is submitted by the appellant that it is only the reimbursement of expenses and individually does not exceed to Rs. 20,000/- and case of the appellant falls within the exception of Rule 6DD(j) read with section 40A(3). The appellant has enclosed the copy of the receipts of the tuition fee reimbursed in support of its contention. The appellant has reimbursed tuition fee Rs. 1000/- per month for two child on aggregate basis and also reimburse medical expenses @ Rs. 800/- per month on aggregate basis, thus cash payment each employee exceeds Rs. 20,000/-. The contention of the appellant that its case falls under the exception of Rule 6DD()) but it failed to brought any evidence on record which may prove that the case of the appellant covered as per the provisions of Rule 6DD(j, Further in the audit report, auditor has qualified that this amount falls u/s 40A(3) as the cash payments exceeds to Rs. 20,000/- made to a person in a day and appellant is not entitled to claim deduction on account of such

expenditure. Considering the above facts, AO is justified in making addition of Rs.11,37,541/- u/s 40A(3) and addition made by the AO is hereby confirmed."

41. It is found that the assessee had claimed to have paid a total sum of Rs. 11,37,541/- by way of cash as reimbursement to the employees towards tuition fee, medical expenses and children educational allowances which exceeding the limit of Rs. 20,000/-. It is the case of the assessee that the reimbursement of expenses does not exceed Rs. 20,000/- and the case of the assessee falls within the exemptions of Rule 6DD(j) of I.T. Rules read with Section 40A(3) of the Act. The CIT(A) found that the reimbursed tuition fees Rs. 1,000/- per month for two children on aggregate basis and also reimbursement medical expenses at Rs. 800/- per month at aggregate basis, thus, cash payment of each employees exceeds Rs. 20,000/-. The assessee has not brought on record any evidence which proves that the case of the assessee is covered as per the proviso of Rule 6DD (j) of the Rules, apart from the same, in the auditor report, the auditor has qualified that the said amount falls u/s 40A(3) of the Act as the cash payment exceeds Rs. 20,000/- made to a person and therefore, the assessee is not entitled to claim deduction on account of such expenditure. Considering the above facts and circumstances, we find no error or infirmity in the order of the CIT(A) in confirming the disallowance of Rs.11,37,541/- u/s 40A(3) of the Act and find no merit in Ground No. 1 of the assessee. Accordingly, Ground No. 1 in ITA No. 5509/Del/2019 for Assessment Year 2011-12 is dismissed.

TDS CREDIT

42. The assessee vide Ground No. 3 in ITA No. 5509/Del/2019 for Assessment Year 2011-12 has contended that the CIT(A) has erred in remanding the issue of claim of TDS Credit of Rs. 6,85,315/- deducted by Oriental Bank of Commerce and also the Form No. 16A provided by the assessee.

43. The Ld. Assessee's Representative submitted that the CIT(A) committed error in remanding the issue to the file of the A.O. to verify the claim of TDS Credit.

44. Per contra, the Ld. Departmental Representative submitted that the issue has been rightly remanded to the file of the A.O. which requires no interference.

45. Since, the CIT(A) has remanded the issue to the file of the A.O. for allowing the claim of TDS to the Assessee after verifying the records as per law, which requires no interference as we find no error in the direction given the CIT(A). Accordingly, Ground No. 3 in Assessee's Appeal in ITA No. 5509/Del/2019 is dismissed.

REVERSAL OF DAMAGE CHARGES

46. The Revenue's Ground No. 3 of ITA No. 4100/Del/2019 for A.Y 2013-14 is regarding the deletion of the disallowance on account of reversal damage

charges of Rs. 55,71,115/- made buy the A.O. The Ld. Departmental Representative relying on the assessment order submitted that the CIT(A) committed error in deleting the disallowance made by the A.O. and order of the CIT(A) being perverse which requires to be reversed.

47. Per contra, the Ld. Assessee's Representative not contested the Ground No. 3 of the Department in ITA No. 4100/Del/2019.

48. We have heard both the parties and perused the material available on record. During the year under consideration, the assessee booked revenue of Rs. 55,71,115/- over and above normal licenses fee following the agreement clause towards 'damage charges' claim as the license was found in default of compliance of terms and conditions of agreement as well as making regular payment of license fee, it is the case of the assessee before the A.O. is that the said Revenue has not been received till passing of the Assessment order. The entire revenue booked for damage charges for F.Y 2011-12 and 2012-13 has been reversed in the Annual Accounts for the F.Y 2013-14 being found contrary to the AS-9 applicable to Assessee Corporation. The Company has been following mercantile system of accounting with compliance of mandatory AS as announced by ICAI from time to time. The AS-9 titled 'revenue recognization' does not warrant he accounting of this abnormal revenue reorganization. But it was accounted for inadvertently due to mistake of conception of accounting standards.

Furthermore, there has been litigation is also pending in the High Court, Delhi wherein in the interim order passed by Court on dated 23/09/2013 directs the licensee i.e. M/s ITE India (P) Ltd. to continue to pay license fees and other dues regularly.

49. The CIT(A) while deleting the addition held as under:-

> *" 9.4. I have considered facts of the case, finding of the AO. and submission of the Appellant. The A.O. has disallowed the claim of deduction on the basis that income has been duly certified by the audited accounts and covered by the clauses of the agreement. No reason was given by the AO for not accepting the submission of the appellant. The appellant has tried to justify the reversal on the basis that no recovery was made by that amount and inadvertently it debited the income on accrual basis as per AS-9. This income was in penal in nature i.e. damage charges on violation of the clauses of the agreement. The matter went up to High Court and in interim order High Court directed the licensee to continued to pay license fee and other dues regularly. Since appellant has not received any income in FY 2011-12 and 2012-13 on account damage charges and which was reversed by it during the year under consideration, the AO is not justified in rejecting the claim of deduction of income of Rs. 55,71,115/- on account of reversal of income and addition made by the AO is not sustainable and it is hereby deleted.*

50. We have heard the parties and perused the material on record. Considering the fact that since the said income of the assessee has been duly certified by the audited accounts and covered by the Clauses of the agreement,

we are of the opinion that the CIT(A) has committed error in deleting the addition, accordingly, we deem it fit to remand the issue to the file of the A.O. to decide the same on the basis of final outcome of the decision of the Hon'ble High Court, which was pending for final order at the state of first Appellate Authority. Thus, the Ground No. 3 in ITA No. 4100/Del/2019 for Assessment Year 2013-14 is partly allowed for statistical purpose.

LIABILITY WRITTEN OFF

51. The Department vide Ground No. 2 in ITA No. 184/Del/2019 is aggrieved by the deletion of the disallowance on account of writing off the liability of Rs. 6,56,661/- made by the A.O., The Ld. A.O. while making the addition has held as under:-

"6. Liabilities no longer required/ excess provision written back

It was noticed from the sundry creditors/ liabilities appearing in the audited accounts that the ability to M/s Utopia Consultancy Services Pvt. Ltd. for Rs. 6,56,661/- has ceased to exist and is required to be liquidated. The assessee has written back this liability in the subsequent financial year without furnishing any explanation on the query why this should not written back in the previous year. As per the audited accounts, this liability has ceased to exist in this year. As such it was required to be added to the income in the previous year, rather than postponing it to the subsequent years. In case, the assessee does not challenge may follow the due course of procedure for remedy in law under the income tax act, 1961 for claim in the subsequent assessment year when it was offered to income

(Addition of Rs. 6,56,661/-)"

52. The CIT(A) has deleted the addition in following manners:-

> *"8.1 The brief facts are that the AO observed that the appellant has shown a sundry creditor of Rs. 6,56,661/- by name M/s Utopia Consultancy Services Pvt. Ltd. The AO observed that the appellant has written back this liability in the subsequent financial year. The AO has made the addition in this year by observing that the said party had ceased to exist during the year under consideration. In appeal, the AR has submitted that this liability was written back by the appellant only on 31.03.2015 and the corresponding amount has been shown as income in AY 2015-16. As the appellant has written back by the appellant only on 31.03.2015 and the corresponding amount has already been shown as income in AY 2015-16, the addition made in this year is deleted and the ground of appeal is allowed."*

53. We have heard the parties perused the material on record. During the assessment proceedings the A.O. noticed from the sundry creditors/ liabilities appearing in the audited accounts that the ability to M/s Utopia Consultancy Services Pvt. Ltd. for Rs. 6,56,661/- has ceased to exist and is required to be liquidated. The assessee had written back the said liability in the subsequent financial year without furnishing any explanation on the query why this should not written back in the previous year. As per the audited accounts, the said liability has ceased to exist in this year as such the same was required to be added to the income in the previous year, rather than postponing it to the subsequent years. Thus, in our opinion, the CIT(A) has committed error in

deleting the said addition, further the Ld. AR/Assessee has also not contested the above grounds of Appeal of the Department by not pressed/ not contested the Ground No. 2 of the Department in ITA No. 184/Del/2019 accordingly, we allow the Ground No. 2 of the Department in ITA No. 184/Del/2019 and confirmed the addition made by the A.O.

UNSPENT REVENUE GRANT

54. The Department of Revenue in Ground No. 3 of ITA No. 184/Del/2019 (A.Y 2014-15), Ground No. 2 in ITA No. 4737/Del/2019 (A.Y. 2015-16) and Ground No. 2 in ITA No. 5922/Del/2019 (A.Y 2016-17) raised the ground that the CIT(A) has erred in deleting the disallowance of unspent Revenue grant made by the A.O. Since the above issue is identical in A.Y 2014-15, 2015-16 and 2016-17 for the sake of convenience the facts of the A.Y 2014-15 narrated in the assessment order are as under:-

> *"During the previous year a sum of Rs 1,82,90,631/- has been shown as unspent revenue grant in the current liabilities and a statement to this fact titled "Revenue Grants has been furnished by the assessee showing that these grants were received in different previous years including this year and are revenue in nature. These grants were for the different activities related to promotion of tourism, exhibitions etc. At the close of the previous year, the aggregate of different unspent revenue grants has been carried forward under the head current liabilities."*

55. The A.O. while making the addition has observed as under:-

> *"The reply filed by the assessee has been considered but is not acceptable. In the absence of any substantial documentary evidence in confirmation from the related grant sanctioning governments Authorities allowing the revival of unspent grants the amount of Rs 1.82,90,631/- is purely of the revenue nature based on the self-acceptance given by the assessee and therefore liable to be treated as income of the current year. Since, revenue grants are to be treated as income as per the generally accepted accounting principles and relating approved accounting standards, an addition of Rs. 1,82,90.631/- is hereby made to the income of the assessee."*

56. The said addition of the A.O. has been deleted by the CIT(A) in following manners:-

> *"9.3. I have considered the facts of the case and the submission made by the Assessee's Representative. It has been submitted that the appellant receives various grants for promotion of tourism related activities every year. Immediately after completion of work, the appellant is required to submit utilization certificate to the Delhi Government and the funds are utilized for the prescribed purpose only. In case of any unspent grants, the same are shown as liability in the balance sheet as per the accounting standard 12 and these unspent grants are adjusted by the government from the future grants to be received in subsequent years. The appellant has also shown sanction orders in this regard from which this fact is verifiable. It is observed that the appellant on a consistent basis, is treating the utilized amount as income and the unspent grant as liability and the same is treated as income in the year in which it is*

spent. The AR has argued on the basis of matching concept in order to recognize revenue and related expenditure in the same financial year. After perusal of the complete facts, it is observed that the appellant is following the consistent method of accounting the grants received, utilized by it as well as the unspent grants. Merely because the grant could not be utilized in the year of receipt, the same cannot be treated as the income of the appellant as the unspent grant is adjusted by the government against the future grants to be given to the appellant in order to fulfill the various objectives of the appellant. In view of these facts and also in the absence of any reason specified by the AO for making the addition, the addition made is deleted and the ground of appeal is allowed."

57. We have heard the parties and perused the material on record. It is found that the assessee had received grants from Government Agencies for carrying out day to day operations of the assessee which is in revenue field. In the course of carrying out of the business activities of the assessee, the amount received through grant from the Government Agencies, a certain portion was unspent and the same cannot lead to taxing the unspent balance, the assessee being an ongoing concern and following mercantile system of accounting and the activities for which the grant has been received has not been over and there was an obligation on the part of the assessee to spent the amount in whole for the purpose of which it has been received. Taxing of the said unspent revenue grant amounts to penalizing the assessee which cannot be permitted. Accordingly, we find no error or infirmity in the order of the CIT(A) in deleting

the addition and find no merit in grounds of Appeal of the Revenue. Accordingly, Ground No. 3 of ITA No. 184/Del/2019 (A.Y 2014-15), Ground No. 2 in ITA No. 4737/Del/2019 (A.Y. 2015-16) and Ground No. 2 in ITA No. 5922/Del/2019 (A.Y 2016-17) of the Revenue are dismissed.

Capital Reserve-Advance Rent received from Ministry of External Affairs and Ministry of Tourism.

58. The Assessee's Ground No. 1 in ITA No. 5167/Del/2019 (A.Y 2015- 16) is regarding capital reserve confirming the addition made by the A.O. of Rs. 8,02,16,000/- out of amount capital reserve as on 31st March, 2015. The Ld. Counsel for the assessee vehemently submitted that the authorities have failed to appreciate that out of Rs. 8,02,16,000/- only Rs. 1,69,78,655/- related to Assessment Year 2015-16, Rs. 8,51,62,091/- has been added by the Ld. A.O. in Assessment Year 2014- 15 on this account for periods up to date and that addition was accepted by the assessee, therefore, the addition already accepted in Assessment Year 2014-15 had resulted in double taxation.

59. Per contra, the Ld. Departmental Representative submitted that the contention of the assessee is not acceptable as the independent auditor have qualified the amount for the year under consideration at Rs. 8,02,16,000/- on the basis of financial statements of the assessee and the A.O, has correctly made addition on the basis of the observation of the auditors, therefore, sought for dismissal of the above ground.

60. We have heard both the parties and perused the material available on record. The CIT(A) while confirmed the addition made by the A.O. in following manners:-

> *"5.4 I have considered the facts of the case, finding of the AO and submissions of the appellant. In the case of the appellant addition was made on account upfront money received by the appellant from various Ministries and its authorized agencies for allotment of stalls of Delhi Haat Pitampura in different AYS. The statutory auditors qualified that such onetime payment needs to be spread over the period of lease which is up to the date of lease with DDA i.e. June 2023. The statutory auditors made qualification in the FY 2013-14 and said qualification continued in the FY 2014-15. On the basis of the qualifications relates to financial statements for the year ended 31st March, 2014 AO has made the addition of Rs. 8.51 Crore which was accepted by the appellant and not pressed this ground of appeal before the CIT(A). The auditors have determined an amount of Rs. 8,02,16,000/- which has been shown less by the assessee in the year under consideration. The observations of the auditors based upon the fact that assessee has taken the income directly in the reserve account instead of routing through profit and loss account. The appellant has stated that AO has already taxed the*

spreaded income up to FY 2013-14 in FY 2013-14 itself while corporation paid tax on recognizing the spreaded income up to FY 2015-16 itself. The appellant has worked out that income to be spreaded over for the year under consideration at Rs.1.70 Crore in view of the auditor's qualification as gross income during the year Rs.2 Crore and the share of DTTDC is Rs. 1.70 Crores. But the contention of the appellant is not acceptable as independent auditors have qualified the amount for the year under consideration at Rs.8,02, 16,000/- on the basis of the financial statements of the appellant and AO has correctly made the addition on the basis of the observations of the independent auditors Rs.8,02,16,000/-. Hence addition made by the A.O is hereby confirmed."

61. We have heard both the parties and perused the material available on record. The assessee in the present case following mercantile system of accounting and there is no dispute on the said fact. Being so, the income accrued and received relating to the year under consideration has to be taxed. In the present case, the assessee received advance rent from the Government Agencies which is not accrued to the assessee and the same has to be taxed in the assessment year for which the same is related. Therefore, it cannot be taxed in the hands of the assessee in the

year under consideration. The said advance rent is subject to taxation in the subsequent Assessment Year, being so, the same cannot be taxed in the year under consideration. Accordingly, we allow the Ground No. 1 in ITA No. 5167/Del/2019 (for Assessment Year 2015-16) and delete the addition.

Contingent Liability for rent of DSIDC

62. The Ground No. 2 of the assessee in ITA No. 5167/Del/2019 is regarding disallowance of expenses of Rs. 12,00,000/-being contingent liability booked for rent with paid to DSIDC. The Ld. Counsel for the assessee submitted that he will not be pressing the said Ground, accordingly, the Ground No. 2 in ITA No. 5167/Del/2019 is dismissed.

63. In the result, Appeal filed by the Department in ITA No. 5920/Del/2019 (A.Y 2011-12), ITA No. 4100/Del/2019 (A.Y 2013-14), ITA No. 184/Del/2019 (A.Y 2014-15), ITA No. 4737/Del/2019 (A.Y 2015-16) &, ITA No. 5922/Del/2019 (A.Y 2016-17) are partly allowed for statistical purpose.

ITA No. 5509/Del/2019 (A.Y 2011-12) and ITA No. 5167/Del/2019 (A.Y 2015-16) filed by the Assessee are partly allowed for statistical purpose.

Order pronounced in open Court on 14th September, 2023

Sd/-	Sd/-
(N. K. BILLAIYA)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 14/09/2023
Pk/R. N, SR ps
Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI