

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वुखारएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.25/Viz/2014

(निर्धारणवर्ष/ Assessment Year :2010-11)

Visakhapatnam Port Authority,
(Formerly known as M/s.
Visakhapatnam Port Trust)
Visakhapatnam.
PAN: AAALV0035C
(अपीलार्थी/ Appellant)

Vs. Addl. CIT,
Range-1,
Visakhapatnam.
(प्रत्यर्थी/ Respondent)

आयकरअपीलसं./ I.T.A. No.26/Viz/2014

(निर्धारणवर्ष/ Assessment Year :2011-12)

Visakhapatnam Port Authority,
(Formerly known as M/s.
Visakhapatnam Port Trust)
Visakhapatnam.
PAN: AAALV0035C
(अपीलार्थी/ Appellant)

Vs. Asst. Commissioner of
Income Tax, Circle-1(1),
Visakhapatnam.
(प्रत्यर्थी/ Respondent)

आयकरअपीलसं./ I.T.A. No.396/Viz/2014

(निर्धारणवर्ष/ Assessment Year :2010-11)

Visakhapatnam Port Authority,
(Formerly known as M/s.
Visakhapatnam Port Trust)
Visakhapatnam.
PAN: AAALV0035C

Vs. ACIT,
Circle-1(1),
Visakhapatnam.

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

C.O. No. 26/Viz/2022
(In आयकरअपीलसं./ I.T.A. No.396/Viz/2014
(निर्धारणवर्ष/ Assessment Year :2010-11)

Asst. Commissioner of Income
Tax, Circle-1(1),
Visakhapatnam.

Vs. Visakhapatnam Port
Authority,
(Formerly known as M/s.
Visakhapatnam Port Trust)
Visakhapatnam.
PAN: AAALV0035C
(Appellant in appeal)

(Cross Objector)

आयकरअपीलसं./ I.T.A. No.397/Viz/2014
(निर्धारणवर्ष/ Assessment Year :2011-12)

Visakhapatnam Port Authority,
(Formerly known as M/s.
Visakhapatnam Port Trust)
Visakhapatnam.
PAN: AAALV0035C

Vs. ACIT,
Circle-1(1),
Visakhapatnam.

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

C.O. No. 27/Viz/2022
(In आयकरअपीलसं./ I.T.A. No.397/Viz/2014
(निर्धारणवर्ष/ Assessment Year :2011-12)

Asst. Commissioner of Income
Tax, Circle-1(1),
Visakhapatnam.

Vs. Visakhapatnam Port
Authority,
(Formerly known as M/s.
Visakhapatnam Port Trust)
Visakhapatnam.
PAN: AAALV0035C
(Appellant in appeal)

(Cross Objector)

आयकरअपीलसं./ I.T.A. No.12/Viz/2015
(निर्धारणवर्ष/ Assessment Year :2011-12)

Visakhapatnam Port Authority, Vs. Asst. Commissioner of
(Formerly known as M/s. Income Tax, Circle-1(1),
Visakhapatnam Port Trust), Visakhapatnam.
Visakhapatnam.
PAN: AAALV0035C

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

आयकरअपीलसं./ I.T.A. No.235/Viz/2020
(निर्धारणवर्ष/ Assessment Year :2015-16)

Visakhapatnam Port Authority, Vs. Asst. Commissioner of
(Formerly known as M/s. Income Tax, Circle-1(1),
Visakhapatnam Port Trust) Visakhapatnam.
Visakhapatnam.
PAN: AAALV0035C

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

आयकरअपीलसं./ I.T.A. No.325/Viz/2017
(निर्धारणवर्ष/ Assessment Year :2012-13)

Visakhapatnam Port Authority, Vs. Asst. Commissioner of
(Formerly known as M/s. Income Tax, Circle-1(1),
Visakhapatnam Port Trust) Visakhapatnam.
Visakhapatnam.
PAN: AAALV0035C

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

आयकरअपीलसं./ I.T.A. No.236/Viz/2020
(निर्धारणवर्ष/ Assessment Year :2016-17)

Visakhapatnam Port Authority, Vs. Asst. Commissioner of
(Formerly known as M/s. Income Tax, Circle-1(1),

Visakhapatnam Port Trust),
Visakhapatnam.
PAN: AAALV0035C

Visakhapatnam.

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

आयकरअपीलसं./ I.T.A. No.324/Viz/2017

(निर्धारणवर्ष/ Assessment Year :2012-13)

Visakhapatnam Port Authority,
(Formerly known as M/s.
Visakhapatnam Port Trust),
Visakhapatnam.
PAN: AAALV0035C

Vs. The Joint Commissioner of
Income Tax, Range-1,
Visakhapatnam.

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

CO. No. 28/Viz/2022

(In आयकरअपीलसं./ I.T.A. No.324/Viz/2017)

(निर्धारणवर्ष/ Assessment Year :2012-13)

Asst. Commissioner of Income
Tax, Circle-1(1),
Visakhapatnam.

Vs. Visakhapatnam Port
Authority,
(Formerly known as M/s.
Visakhapatnam Port Trust),
Visakhapatnam.
PAN: AAALV0035C
(Appellant in appeal)

(Cross Objector)

आयकरअपीलसं./ I.T.A. No.399/Viz/2014

(निर्धारणवर्ष/ Assessment Year :2011-12)

Asst. Commissioner of Income
Tax, Circle-1(1),
Visakhapatnam.

Vs. Visakhapatnam Port Authority,
(Formerly known as M/s.
Visakhapatnam Port Trust),
Visakhapatnam.
PAN: AAALV0035C

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

आयकरअपीलसं./ I.T.A. No.67/Viz/2021
(निर्धारणवर्ष/ Assessment Year :2016-17)

Asst. Commissioner of Income Tax, Circle-1(1),
Visakhapatnam. Vs. Visakhapatnam Port Authority,
(Formerly known as M/s.
Visakhapatnam Port Trust),
Visakhapatnam.
PAN: AAALV0035C

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

C.O. No.51/Viz/2021
(In आयकरअपीलसं./ I.T.A. No. 67/Viz/2021
(निर्धारणवर्ष/ Assessment Year : 2016-17)

Visakhapatnam Port Authority,
(Formerly known as M/s.
Visakhapatnam Port Trust),
Visakhapatnam.
PAN: AAALV0035C
(Cross Objector) Vs. Asst. Commissioner of Income
Tax, Circle-1(1),
Visakhapatnam.
(Appellant in appeal)

आयकरअपीलसं./ I.T.A. No.49/Viz/2021
(निर्धारणवर्ष/ Assessment Year :2015-16)

Asst. Commissioner of Income Tax, Circle-1(1),
Visakhapatnam. Vs. Visakhapatnam Port Authority,
(Formerly known as M/s.
Visakhapatnam Port Trust),
Visakhapatnam.
PAN: AAALV0035C

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

C.O. No.50/Viz/2021
(In आयकरअपीलसं./ I.T.A. No. 49/Viz/2021
(निर्धारणवर्ष/ Assessment Year :2015-16)

Visakhapatnam Port Authority,
(Formerly known as M/s.
Visakhapatnam Port Trust),
Visakhapatnam.
PAN: AAALV0035C
(Cross Objector)

Vs. Asst. Commissioner of Income
Tax, Circle-1(1),
Visakhapatnam.

(Appellant in appeal)

अपीलार्थीकीओरसे/ Assessee by : Sri GVN Hari, AR
प्रत्यार्थीकीओरसे/ Revenue by : Sri MN Murthy Naik, CIT-DR

सुनवाईकीतारीख/ Date of Hearing : 13/07/2023
घोषणाकीतारीख/Date of
Pronouncement : 27/09/2023

ORDER

PER BENCH :

ITA No. 25/Viz/2014 & ITA No. 26/Viz/2014

(Assessee's Appeals)

The captioned appeals are filed by the assessee against the order of the Ld. Commissioner of Income Tax-1, Visakhapatnam [Ld. CIT-1] passed U/s. 263 of the Income Tax Act, 1961 [the Act] vide F.No. CIT-1/VSP/263/2013-14, dated 21/11/2013 and F.No. CIT-1/VSP/263/2013-14, dated 21/11/2013 for the AYs 2010-11 and 2011-12 respectively. Since the issues raised in both the appeals are identical, we shall first take up ITA No. 25/Viz/2023 as a lead appeal.

ITA No. 25/Viz/2014 (By assessee)
AY: 2010-11

2. Briefly stated the facts of the case are that the assessee is a Port Trust which came into existence under the Major Port Trust Act, 1963 and has been carrying on commercial activities and services of a port and allied facilities relating to maritime trade and commerce since inception. The assessee being a Local Authority was exempted U/s. 10(20) of the Act up to the AY 2002-03. From AY 2003-04 to 2008-09, total income of the assessee was exempted U/s. 11 of the Act. Consequent to amendment to section 2(15) of the Act, the assessee filed its return of income for the AY 2009-10 onwards admitting its income under the head 'business income'. Further, the registration U/s. 12AA of the Act was cancelled w.e.f. 1/4/2009 vide proceedings of the Ld. CIT-1, Visakhapatnam dated 11/09/2012. The assessee filed its return of income for the AY 2010-11 on 29/9/2010 admitting a total income of Rs. 81,20,30,260/-. The case was selected for scrutiny under CASS and accordingly notice U/s. 143(2) dated 5/9/2011 was issued and served on the assessee on 8/9/2011 by the DCIT, Circle-1(1), Visakhapatnam. The assessee in response to the notice, filed a revised return of income admitting the same income however, by

claiming a higher TDS credit. Thereafter, the case has been assigned to the Addl. CIT, Range-1, Visakhapatnam by the Ld. CIT-1, Visakhapatnam vide letter in F.No. CIT-1/CAP/Security/2012-13, dated 31/7/2012. Thereafter, notice U/s. 143(2) and 142(1) of the Act dated 29/08/2012 were issued afresh and duly served on the assessee on the same date. In response to the notices, the assessee's Authorized Representative appeared from time to time and filed the details called for. After examining the books of accounts and discussing the facts of the case with the assessee's Authorized Representative, the Ld. AO passed an order U/s. 143(3) of the Act by assessing the total income at Rs. 190,60,45,090/-. The Ld. CIT-1, Visakhapatnam duly exercising his powers U/s. 263 of the Act noticed from the tax audit report annexed to the return of income that the assessee has claimed a sum of Rs. 10,15,39,759/- U/s. 43B of the Act on payment basis which included a sum of Rs. 5,09,64,466/- pertaining to the Asst. Years 2007-08, 2006-07 and earlier assessment years as per the table extracted below:

SI No.	Nature of liability	Amount (Rs.)	Liability pertaining to the FY	Relevant AY

1.	Seigniorage Charges	11,33,437	Upto 2007-08	Upto 2008-09
		4,21,233	2008-09	2009-10
2.	Productivity Linked Bonus	36,90,328	Upto 2006-07	Upto 2007-08
		12,27,664	2007-08	2008-09
3.	Leave Encashment	4,44,91,804	Upto 2007-08	Upto 2008-09
		5,09,64,466		

3. The Ld. CIT-1, Visakhapatnam observed that since the assessee has been granted registration U/s. 12A of the Act up to the AY 2007-08, the entire income of the assessee was exempted from income tax. Therefore, the Ld. CIT-1, Visakhapatnam observed that in the light of the provisions of section 14A of the Act, the expenditure of Rs. 5,09,64,466/- pertaining to the AY 2007-08 and earlier assessment years, where exemption u/s 11 was claimed by the assessee, the expenditure pertaining to those assessment years clearly disqualified for being granted deduction on payment basis U/s. 43B of the Act on the reasoning that such disallowance made in the earlier years in the respective computation of income of the assessee did not materially affect the non-taxable status of the assessee which claimed and enjoyed the total exemption from taxation on account of its status as a Charitable Trust / institution. The Ld. CIT-1, Visakhapatnam observed that allowing the deduction of expenditure relating to the earlier assessment years during the AY 2010-11 amounted to grant of double benefit to the assessee and therefore the order of

the Ld. AO is erroneous and also prejudicial to the interests of the Revenue. The Ld. CIT-1, Visakhapatnam further observed that once the income of the assessee is computed or deemed to have been computed as per the aforesaid method for the earlier years during which it obtained the benefit of exemption, the profit / loss computed under the head "profits and gains of business or profession" wherein the disallowance U/s. 43B has been made becomes irrelevant and as such no consequential effect would be given to the disallowed amount on payment basis in the subsequent year. Therefore, the Ld. CIT-1, Visakhapatnam was of the opinion that such expenditure having no correlation with the income of the assessee earned during the relevant assessment year, the same is clearly disallowable U/s. 14A of the Act. Further, the Ld. CIT-1, Visakhapatnam also observed that the assessee has made excess claim of deduction for an amount of Rs. 4,21,233/- and considered that the assessee has willfully concealed its particulars to that extent. The Ld. CIT-1, Visakhapatnam therefore directed the Ld. AO to verify the disallowability of the expenditure relatable to the exempt income in terms of the provisions of section 14A of the Act thereby setting aside the order of the Ld. AO passed U/s. 143(3) of the Act, dated 30/11/2012 by providing a reasonable opportunity of

being heard to the assessee. Aggrieved by the order of the Ld. CIT-1, Visakhapatnam, the assessee is in appeal before the Tribunal.

4. The assessee has raised the following grounds of appeal:

- "1. The order of the Ld. CIT is contrary to the facts and also the law applicable to the facts.*
- 2. The Ld. CIT is not justified in invoking the provisions of section 263 of the Act in as much as the order of the Assessing Officer U/s. 143(3) of the Act is neither erroneous nor prejudicial to the interests of the Revenue.*
- 3. The Ld. CIT is not justified in directing the Assessing Officer to consider for disallowance U/s. 14A a sum of Rs. 5,09,64,466/-.*
- 4. The Ld. CIT ought to have appreciated that the Assessing Officer was justified in allowing this amount at the time of completing the assessment U/s. 143(3) of the Act.*
- 5. The Ld. CIT erred in observing that the provisions of section 14A would be attracted even in a year where no exemption is claimed in respect of the income of the relevant assessment year.*
- 6. The Ld. CIT ought to have appreciated that view taken by the Assessing Officer to allow the above sum of expenditure is one of the possible views and hence the order of the Assessing Officer cannot be terms as erroneous.*
- 7. The Ld. CIT erred in observed that the appellant admitted excess claim of deduction to the extent of Rs. 4,21,233/- and directing the Assessing Officer to*

consider initiation of penalty proceedings U/s. 271(1)© of the Act in respect of this amount.

8. *The Ld. CIT ought to have appreciated that the above sum of Rs. 4,21,233/- pertains financial year 2008-09 in respect of which the appellant did not claim any exemption and such the provisions of section 14A are not at all applicable in respect of this amount even as per the view taken by the Ld. CIT.*
9. *Any other ground that may be urged at the time of appeal hearing."*

5. As per the grounds of appeal raised by the assessee, we find that the core issue is with respect to disallowance of Rs. 5,09,64,466/- U/s. 14A of the Act.

6. The Ld. AR in his written submissions filed before us has stated that the assessee is eligible to claim deduction U/s. 43B of the Act on payment basis based on the provisions as laid down U/s. 43B of the Act. Further, the Ld. AR also submitted that the Ld. AO has allowed the deduction claimed U/s. 43B of the Act after obtaining all relevant details and after due application of mind. The Ld. AR further submitted that the Ld. AO has issued various letters during the scrutiny assessment proceedings calling for various information after perusing the tax audit report and financials submitted by the assessee. The Ld. AR further also submitted that the Ld. AO, after detailed examination of the

submissions of the assessee, made additions only with respect to prior period expenses, arrear salaries and wages, arrear pension and ex-gratia payment U/s. 14A of the Act while framing the assessment U/s. 143(3) of the Act. The Ld. AR also referred to the order of the Ld. AO wherein the Ld. AO has observed as follows:

"(ii). The expenditure is allowable in the year to which it relates. Except certain expenses e.g described U/s. 43B, the same are allowed in the year of payment only." (last part of para 2.1 of the order)."

7. Therefore, the Ld. AR vehemently argued that the Ld. AO has applied his mind while considering the allowance claimed by the assessee U/s. 43B of the Act on payment basis and he has also examined the issue in the context of the provisions of section 14A of the Act also and therefore the Ld. AR submitted that the order of the Ld. AO cannot be termed as erroneous or prejudicial to the interest of the Revenue. The Ld. AR also relied on the following case laws:

- (i) CIT vs. Chettinad Logistics (P.) Ltd [2017] 248 Taxman 55 (Mad) (SLP filed by the revenue was dismissed by the Hon'ble Supreme Court in [2018] 257 Taxman 2 (SC)
- (ii) Redington (India) Ltd vs. Addl. CIT [2017] 392 ITR 633 (Mad.)

- (iii) Decision of this Hon'ble Bench in the case of D. Veerabhadra Reddy (HUF) vs. DCIT in ITA No. 263/Viz/2014.

8. The Ld. AR submitted that in the above mentioned case laws, it was held that no disallowance U/s. 14A can be made when there is no exempt income during the relevant assessment year. The Ld. AR further submitted that during the AY 2010-11, the assessee has not earned any exempt income and hence invoking the provisions of section 14A is not valid in law. The Ld. AR further relied on the following case laws with respect to invoking of the provisions of section 263 by the Ld. CIT-1, Visakhapatnam.

- (i) CIT vs. Chettinad Logistics Pvt Ltd [2017] 248 Taxamn 0055 (Madras)
- (ii) Order of the Hon'ble ITAT in the case of D. Veerabhadra Reddy (HUF) in ITA No. 263/Viz/2014, dated 23/06/2017.
- (iii) Malabar Industrial Co. Ltd vs. CIT [2000] 243 ITR 83 (SC)
- (iv) CIT vs. Small Industries Development Bank of India [2012] 211 Taxman 341

9. The Ld. AR therefore pleaded that the order of the Ld. CIT-1, Visakhapatnam may be quashed.

Per contra, the Ld. Departmental Representative (Ld DR) relied on the orders of the Ld. PCIT and argued in support of the same.

10. We have heard both the sides and perused the material available on record as well the orders of the Ld. Revenue Authorities. In the instant case, we find that there was a complete scrutiny assessment with respect to the AY 2010-11 wherein various details were called for by the Ld. AO before concluding the assessment order U/s. 143(3) of the Act. The Ld. AO in his detailed order has made various disallowances U/s. 14A of the Act and further has also observed that certain expenses as described U/s. 43B are allowed in the year of payment only. From this observation of the Ld. AO which was also relied on by the Ld. AR, we find that the Ld. AO has applied his mind on the claim made by the assessee U/s. 43B of the Act for allowance of expenditure on payment basis pertaining to the AY 2007-08 and earlier years. The reliance placed by the Ld. AR in the decision of the **Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd vs. CIT reported in [2000] 243 ITR 0083 (SC) wherein it was held that both the conditions i.e., the order must be erroneous and also prejudicial to the**

interest of the Revenue should be present while invoking the provisions of section 263 of the Act by the Ld. CIT-1, Visakhapatnam. In the instant case, the order of the Ld. AO is not erroneous as the Ld. AO has applied his mind while allowing the deduction claimed by the assessee U/s. 43B of the Act and therefore one of the conditions as laid down U/s. 263 of the Act is absent. Further, in the case of **CIT vs. Chettinad Logistics Pvt Ltd reported in [2017] 248 Taxman 0055 (Madras)** the **Hon'ble High Court of Madras held that if no exempt income forming part of the total income of the assessee was earned in the relevant assessment year, additions made by the Ld. AO by relying upon section 14A of the Act read with Rule 8D is beyond the scope and content of the main provisions.** Further, in the case of *Redington (India) Ltd vs. Addl. CIT [2017] 392 ITR 633 (Mad.)*, the same view was upheld by the Hon'ble Madras High Court. In view of these facts and circumstances of the instant case and relying on the judicial pronouncements as discussed above, we considered it deemed to be fit that exercise of powers U/s. 263 of the Act by the Ld. CIT-1, Visakhapatnam is not valid in law and deserves to be quashed.

11. Further, with respect to **Ground No.8**, wherein the assessee has submitted that an amount of Rs. 4,21,233/- pertaining to deduction U/s. 43B of the Act, we find from the written submissions made by the Ld. AR that the assessee has submitted before the Ld. CIT-1, Visakhapatnam that the expenditure of Rs. 4,21,233/- is in respect of Seigniorage Charges. Since the same was pertaining to the AY 2009-10 for which no exemption was claimed, the Ld. CIT-1, Visakhapatnam while passing the order U/s. 263 of the Act has erroneously considered the said amount of Rs. 4,21,233/- pertaining to **AY 2009-10** as an excess claim of deduction made by the assessee and had directed the Ld.AO to initiate concealment and penalty proceedings for excess claim of deduction U/s. 43B of the Act. We find merit in the submissions of the Ld. AR that this expenditure pertains to the AY 2009-10 whereas the Ld. CIT-1, Visakhapatnam has considered it as an expenditure pertaining to the AY 2007-08 and earlier years. Since the order of passed U/s. 263 by the Ld. CIT-1, Visakhapatnam is quashed as per the preceding paragraphs of this order, this ground raised by the assessee needs no separate adjudication and hence this ground is dismissed as infructuous.

12. In the result, **appeal of the assessee (ITA No. 25/Viz/2014) is allowed.**

ITA No.26/Viz/2014 (By assessee)
AY: 2011-12

13. This appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax-1, Visakhapatnam [Ld. CIT-1] passed U/s. 263 of the Income Tax Act, 1961 [the Act] vide F.No. CIT-1/VSP/263/2013-14, dated 21/11/2013 for the AY: 2011-12.

14. The assessee has raised the following grounds of appeal:

- "1. The order of the Ld. CIT is contrary to the facts and also the law applicable to the facts.*
- 2. The Ld. CIT is not justified in invoking the provisions of section 263 of the Act in as much as the order of the Assessing Officer U/s. 143(3) of the Act is neither erroneous nor prejudicial to the interests of the Revenue.*
- 3. The Ld. CIT is not justified in directing the Assessing Officer to consider for disallowance U/s. 14A a sum of Rs. 8,51,10,123/-.*

4. *The Ld. CIT ought to have appreciated that the Assessing Officer was justified in allowing this amount at the time of completing the assessment U/s. 143(3) of the Act.*
5. *The Ld. CIT erred in observing that the provisions of section 14A would be attracted even in a year where no exemption is claimed in respect of the income of the relevant assessment year.*
6. *The Ld. CIT ought to have appreciated that view taken by the Assessing Officer to allow the above sum of expenditure is one of the possible views and hence the order of the Assessing Officer cannot be terms as erroneous.*
7. *Any other ground that may be urged at the time of appeal hearing."*

15. As per the grounds of appeal raised by the assessee, we find that the core issue is with respect to disallowance of Rs. 8,51,10,123/- U/s. 14A of the Act. This issue is identical to that of the issue raised by the assessee in ITA No. 25/Viz/2014, AY 2010-11, which is adjudicated by us in the foregoing paragraphs of this order. Considering the identical nature of the issues involved in both the appeals, our decision given on the issue of disallowance U/s. 14A in ITA No.25/Viz/2014 (AY: 2010-11) *mutatis mutandis* applies to the issue raised in ITA No. 26/Viz/2014 (AY:2011-12) also. Accordingly, grounds raised by the assessee are allowed.

16. In the result, **appeal of the assessee (ITA No. 26/Viz/2014) is allowed.**

ITA No.396/Viz/2014 (By assessee)
(AY:2010-11)

17. This appeal filed by the assessee against the combined order of Ld. Commissioner of Income Tax (Appeals), Visakhapatnam in ITA No.0266/12-13/Addl.CIT, R-1/VSP/13-14 & ITA No. 0362/12-13/ACIT,C-1/VSP/2013-14 dated 28/03/2014 arising out of the order passed U/s. 143(3) of the Act for the AYs:2010-11 and 2011-12.

18. Briefly stated the facts of the case are that the assessee is a Port Trust came into existence under the Major Port Trust Act, 1963 and has been carrying on commercial activities and services of a port and allied facilities relating to maritime trade and commerce since inception. The assessee being a Local Authority was exempted U/s. 10(20) of the Act up to the AY 2002-03. From AY 2003-04 to 2008-09, total income of the assessee was

exempted U/s. 11 of the Act. Consequent to amendment to section 2(15) of the Act, the assessee filed its return of income for the AY 2009-10 onwards admitting its income under the head 'business income'. Further, the registration U/s. 12AA of the Act was cancelled w.e.f 1/4/2009 vide proceedings of the Ld. CIT-1, Visakhapatnam dated 11/09/2012. The assessee filed its return of income for the AY 2010-11 on 29/9/2010 admitting a total income of Rs. 81,20,30,260/-. The case was selected for scrutiny under CASS and accordingly notice U/s. 143(2) dated 5/9/2011 was issued and served on the assessee on 8/9/2011 by the DCIT, Circle-1(1), Visakhapatnam. The assessee in response to the notice, filed a revised return of income admitting the same income however, by claiming a higher TDS credit. Thereafter, the case has been assigned to the Addl. CIT, Range-1, Visakhapatnam by the Ld. CIT-1, Visakhapatnam vide letter in F.No. CIT-1/CAP/Security/2012-13, dated 31/7/2012. Thereafter, notice U/s. 143(2) and 142(1) of the Act dated 29/08/2012 were issued afresh and duly served on the assessee on the same date. In response to the notices, the assessee's Authorized Representative appeared from time to time and filed the details called for. After examining the books of accounts and discussing the facts of the case with the assessee's Authorized

Representative, the Ld. AO passed an order U/s. 143(3) of the Act by assessing the total income at Rs. 190,60,45,090/- and made the following additions to the returned income:

Sl No	Nature of addition	Amount (Rs.)
1	Disallowance of prior period expenses offered for addition by the assessee, discussed at para 2 of the Asst. Order	2,23,93,529
2.	Disallowance of prior period expenditure as discussed at para 2.1 of the Asst. Order	59,10,545
3.	Expenditure on arrear salaries and wages disallowed U/s. 14A as per para 3.1 of the Asst Order	14,71,75,096
4.	Expenditure on arrear pensions disallowed U/s. 14A as per para 3.2	14,63,03,516
5.	Expenditure exgratia payment on VRS disallowed U/s. 14A as per para 3.3	32,34,518
6.	Depreciation pertaining to earlier years disallowed U/s. 14A as per para 3.4	54,43,04,818
7.	Disallowance of excess claim of depreciation on capital dredging as per para 4.0 to 4.7	5,20,74,400
8.	Disallowance of excess claim of depreciation on railway permanent way as per para 5.0 to 5.4	2,60,35,204
9.	Upfront premium / unexpired discounts added as income as per para 6.0 to 6.4	13,77,54,997
10.	Disallowance of donation and contribution as per para 7.0	79,13,206
11.	Unaccounted sundry debtors added as per para 8.0	9,15,000

19. Aggrieved by the order of the Ld.AO, the assessee filed an appeal before the Ld. CIT(A), Visakhapatnam. After considering the submissions made by the assessee from time to time and after discussing the case with the Ld. AR, the Ld. CIT(A) partly allowed the appeals of the assessee for the AY 2010-11 & 2011-

12. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising the following grounds of appeal:

- "1. The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts.
2. (a) The Ld. CIT(A) is not justified in confirming the disallowance of prior period expenses of Rs. 59,10,546/- comprising the following
- | | | |
|------------------------------|---|----------------------|
| (i) Operating expenses | - | Rs. 14,46,646 |
| (ii) Staff Cost | - | Rs. 43,96,606 |
| (ii) Miscellaneous expenses- | | <u>Rs. 67,294</u> |
| | - | <u>Rs. 59,10,546</u> |
- (b) The Ld.CIT(A) ought to have appreciated that out of the above expenses a sum of Rs. 45,55,948 crystallized during the impugned assessment year and hence it is not a prior period expenditure.
- (c) Alternatively the Ld. CIT (A) ought to have held that the AO having chosen to consider for taxation prior period income of Rs. 2,83,04,075/- is not justified in disallowing prior period expenses.
3. (a) The Ld. CIT(A) is not justified in confirming the disallowance of arrears of salaries & wages amounting to Rs. 14,71,75,096 and arrears of pension amounting to Rs. 14,63,03,516.
- (b) The Ld. CIT(A) erred in holding that the above expenses are to be disallowed U/s. 14A of the Act.
- (c) The Ld. CIT(A) ought to have appreciated that the above expenses crystallized during the impugned assessment year and that in the absence of any exempted income for the impugned assessment year, provisions of section 14A are not applicable.
4. (a) The Ld. CIT(A) is not justified in confirming the disallowance of alleged excess depreciation of Rs. 5,20,74,400/- claimed in respect of capital dredging.
- (b) The Ld. CIT(A) ought to have appreciated that capital dredging is a plant and machinery and hence the appellant is entitled for depreciation @ 15% as against 10% allowed by the Assessing Officer.
5. (a) The Ld. CIT(A) is not justified in confirming the addition of Rs. 13,77,54,997 towards upfront premium received on lease of lands.

(b) *The Ld. CIT(A) ought to have appreciated that the entire upfront premium cannot be said to have accrued during the impugned assessment year*

(c) *The Ld. CIT(A) ought to have appreciated that the appellant consistently followed mercantile system of accounting and hence upfront premium could not be taxed on receipt basis.*

6. (a) *The Ld. CIT(A) is not justified in confirming the addition of Rs. 9,15,000 made by the Assessing Officer towards sundry debtor not brought into account.*

(b) *The Ld. CIT(A) ought to have appreciated that in the absence of knowledge about the whereabouts of the debtor M/s. PS And Company it would be futile to recognize the claim and then write it off.*

7. *Any other ground that may be urged at the time of appeal hearing."*

20. The assessee has also raised an **additional ground** which reads as under:

"On the facts and in the circumstances of the case whether the Assessing Officer is justified in assessing the total income of the appellant without granting exemption U/s 11 of the Income Tax Act, 1961?"

21. **Grounds No.1 & 7** are general in nature and they need no adjudication.

22. With respect to **Ground No.2** regarding the disallowance of **prior period expenses** of Rs. 59,10,546/-, the Ld. AR submitted

that these expenses even though relates to previous years have been crystallized only during the impugned assessment years. The Ld. AR referred to Accounting Standard-5 (AS-5) issued by the Institute of Chartered Accountants of India [ICAI] and stated that *"prior period items are defined as income or expenses which arise in the current period as a result of errors or omission in the preparation of the financial statements of one or more periods"*. The Ld. AR further submitted that as per the definition of prior period item *'only errors or omissions in the earlier periods which are accounted in the current assessment year shall be considered as prior period items'*. The Ld. AR further submitted that in the instant case, the liability for the wages, operating expenses and other expenses only crystallized during the impugned assessment year and hence it does not fall within the definition of prior period expenses. The Ld. AR also further referred to paper book page No.175 wherein a Memorandum of Settlement of Wages has been arrived between the Major Ports and All India Port & Dock Workers Federation (HMS). The Ld. AR also referred to Wage Settlement Memorandum and stated that the arrears due to the employees / workers have been agreed w.e.f 1/1/2007 onwards. The Ld. AR further submitted that this Wage Settlement was signed on 19/1/2010 and hence the arrears payable w.e.f

1/1/2007 has been provided in the books of account during the AY 2010-11. The Ld. AR relied on the various case laws as submitted in the paper book.

Per contra, the Ld. DR fully supported the order of the Ld. Revenue Authorities.

23. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. We find from the submissions made by the Ld. AR that the Memorandum of Wage Settlement was signed on 19/1/2010 giving retrospective effect from 1/1/2007. The Memorandum of Settlement which was arrived at U/s. 12(3) of the Industrial Disputes Act, 1947 between the Five Major Federations operating in Major Port Trusts and Dock Labour Boards and the Management. Further, we also find that AS-5 issued by the ICAI clearly defines prior period items as follows:

"Prior period items are defined as income or expenses which arise in the current period as a result of errors or omission in the preparation of the financial statements of one or more periods".

24. However, in the instant case, the assessee is following the mercantile system of accounting. These items of prior period

expenses raised in the grounds are crystallized during the impugned assessment year 2010-11 and accordingly, the assessee has claimed it as an expenditure during the impugned assessment year. We also find that these prior period items are not a result of errors or omissions in the financial statements of one or more prior periods. These items / adjustments are necessitated by the circumstances which are determined in the current accounting period. Even though it relates to the prior periods, it needs to be allowed as an expenditure in the impugned assessment year as it has been crystallized only during the AY 2010-11. The only contention of the Ld. AO is that these expenditures related to prior period where the assessee has claimed exemption of income and hence disallowance U/s. 14A of the Act is applicable to the instant case. Based on the discussion above, we find that even though the items of expenditure pertain to the earlier period where exemption U/s. 11 was claimed by the assessee these items of expenditure was crystallized only during the current assessment year and hence cannot be accrued in the previous assessment years. We therefore have no hesitation to delete the addition made by the Ld. Revenue Authorities on this ground and thereby **allow the ground raised by the assessee.**

25. Further, with respect to **Ground No.3** wherein the Ld. Revenue Authorities have disallowed arrears of salaries and wages and arrears of pension, the Ld. AR placed similar arguments as above while making submissions with respect to Ground No.2. The Ld. AR relied on the decision of the CIT vs. Small Industries Development Bank of India reported in [2012] 211 Taxman 0341 (Bom.). The Ld. AR also further submitted that the assessee has offered prior period income of Rs. 2,83,04,075/- whereas the Revenue has not allowed as deduction of this income pertains to previous year where the exemption was claimed by the assessee. He therefore pleaded that a similar treatment shall also be given to the prior period expenditure.

Per contra, the Ld. DR fully supported the orders of the Ld. Revenue Authorities and stated that since the expenditure pertains to the earlier years where the assessee is entitled for exemption U/s. 11 of the Act, this expenditure needs to be disallowed U/s. 14A of the Act in the current assessment year.

26. We have heard both the parties and perused the material available on record as well as the orders of the Ld. Revenue Authorities. We find from the submissions made by the Ld. AR that the Memorandum of Wage Settlement was signed on

19/1/2010 giving retrospective effect from 1/1/2007. The Memorandum of Settlement which was arrived at U/s. 12(3) of the Industrial Disputes Act, 1947 between the Five Major Federations operating in Major Port Trusts and Dock Labour Boards and the Management. Further, we also find that AS-5 issued by the ICAI clearly defines prior period items as follows:

"Prior period items are defined as income or expenses which arise in the current period as a result of errors or omission in the preparation of the financial statements of one or more periods".

27. However, in the instant case, the assessee is following the mercantile system of accounting. These items of prior period expenses raised in the grounds are crystallized during the impugned assessment year 2010-11 and accordingly, the assessee has claimed it as an expenditure during the impugned assessment year. We also find that these prior period items are not a result of errors or omissions in the financial statements of one or more prior periods. These items / adjustments are necessitated by the circumstances which are determined in the current accounting period. Even though it relates to the prior periods needs to be allowed as an expenditure in the impugned assessment year as it has been crystallized only during the AY

2010-11. The only contention of the Ld. AO is that these expenditure related to prior period where the assessee has claimed exemption of income and hence disallowance U/s. 14A of the Act is applicable to the instant case. Based on the discussion above, we find that even though the items of expenditure pertain to the earlier period where exemption U/s. 11 was claimed by the assessee these items of expenditure was crystallized only during the current assessment year and hence cannot be approved in the previous assessment years. We therefore have no hesitation to delete the addition made by the Ld. Revenue Authorities on this ground and thereby allow the ground raised by the assessee.

28. **Ground No.4** pertains to disallowance of excess depreciation of Rs. 5,20,74,400/- as claimed by the assessee in respect of capital dredging. The Ld. AR argued that the assessee has incurred a certain capital expenditure on capital dredging of the Port to facilitate free movements of Ships and hence to be considered as Plant & Machinery and accordingly the assessee is entitled for depreciation @ 15%. The Ld. AR relied on the order of the Coordinate Bench of Hyderabad decision in the case of DCIT, Circle-2(1), Hyderabad vs. Kakinada Sea Ports Limited in ITA Nos. 36 to 39/Hyd/2015 (AYs: 2007-08 to 2010-11), dated

4/09/2015 and submitted that the Coordinate Bench by relying on various case laws considered the assessee's claim of depreciation @ 15% on capital dredging and hence pleaded that the same decision may be applied to the instant case.

Per contra, the Ld. DR submitted that the capital dredging is akin to roads being developed on land for free facilitation of the vehicles and hence it should be treated as buildings and the assessee is entitled for depreciation @ 10% only. The Ld. DR relied on the decision of the Hon'ble High Court of Bombay in the case of CIT vs. Mazagaon Dock Ltd reported in [1994] 206 ITR 260 (Bom.).

29. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. Admittedly, the assessee has incurred expenditure of capital dredging on which the assessee claimed depreciation @ 15% considering the capital dredging as "Plant & Machinery". The Ld. AO disallowed the excess depreciation claimed by the assessee and observed that the assessee is entitled for depreciation @ 10% on capital dredging as it has to be considered as "buildings". We also find that the Ld. CIT(A) by relied on the

decision of the Hon'ble High Court of Bombay in the case of CIT vs. Mazagaon Dock Ltd (supra) wherein it was held as under:

"11. On a careful consideration of the rival submissions of the counsels for the parties, we find ourselves in agreement with the counsel for the revenue that the approach channel made by dredging the sea is more akin to 'road' than 'plant'. We are not impressed by the submission of the learned counsel for the assessee that judging from functional test the approach channel constructed by dredging the sea can be treated as a 'plant'. In our opinion, the functional test has to be applied rationally. Too liberal application of this test may bring in everything including the roads within the factory which have already been held by the Supreme Court to be 'building' within the expression 'plant'. On such liberal interpretation, even the 'factory building' itself may have to be held to be a 'plant' because without it the 'plant' cannot be operated in the open. But that is not so. Structures which fall within the expression 'building' or pathways like roads, etc., required for providing approach to the factory have been held to be buildings or roads and not 'plant'. This controversy, as rightly pointed out by counsel for the revenue, has now been set at rest by the Supreme Court in Gwalior Rayon Silk Mfg. Co. Ltd.'s case (supra). In that case, the Supreme Court considered the decisions of various Courts some of which had treated roads as 'plant' and it was held that:

"We have no hesitation to hold that the roads laid within the factory premises as links or providing approach to the buildings are necessary adjuncts to the factory buildings to carry on the business activity of the assessee and would be building within the meaning of section 32 of the Act. The capital expenditure incurred thereon is admissible to depreciation as per the provisions of the Act read with Rules in the Appendix."

12. To our mind, there is no material difference between an approach road to the factory which has been treated as a building or approach road or channel to a dry dock or wet dock from surface or the sea. The learned counsel for the assessee tried to get out of the above Supreme Court judgment by pointing out that in the instant case there is a 'finding of fact' by the Tribunal that the channel is necessary for the purpose of working of the dock and, as such, functional test is satisfied. We find it difficult to accept this submission because, in our opinion, the ratio of the decision of the Supreme Court squarely applies to the present case. It makes no difference whether the approach road is for a dry dock, wet dock or

a factory or for any other premises because the basic fact that it provides approach to the dock or the factory remains the same. The Supreme Court has clearly held that such approach road should be treated at par with factory building and not as 'plant'. In that view of the matter, we do not find any force in the submission of the counsel for the assessee that the approach channel should be treated not as 'road' but 'plant'. In our opinion, the distinction sought to be made between the Supreme Court case and the present case is not well-founded. Accordingly, we hold that the approach channel constructed by dredging the sea is at par with the roads and culverts constructed in the factory premises and the depreciation allowable at the rates applicable to the factory will be allowable thereon. It cannot be held to be 'plant' as contended by the assessee. In that view of the matter, question No. 2 referred to us is answered in the negative, i.e., in favour of the revenue and against the assessee. The other three questions have already been answered in favour of the assessee and against the revenue by us earlier. This reference is, therefore, disposed of accordingly. On the facts and circumstances of the case, we make no order as to costs."

30. After taking into account the facts of the instant case, we find that the ship way constructed for dredging is on par with the construction of roads and culverts constructed in the premises of the factory and by placing reliance on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Mazagaon Dock Ltd (supra), we have no hesitation to confirm the order of the Ld. Revenue Authorities on this ground and thereby **dismiss the grounds** raised by the assessee.

31. With respect to **Ground No.5** wherein the Ld. Revenue Authorities confirmed the addition of Rs. 13,77,54,997/- towards **upfront premium** received on lease of lands, the Ld. AR submitted that the assessee is following the mercantile system of accounting and in accordance with the

Accounting Standard on leases (AS-19) issued by the ICAI upfront premium received on leasing of lands which is amortized over the period of lease. The Ld. AR further referred to the land policy guidelines issued by the Government of India, Ministry of Shipping for the allotment of land by the various Ports to various lessees and stated that the upfront premium is collected from lessees does not pertain to one Financial Year and hence credited to the current liabilities and the proportionate land rental revenue of the financial year is recognized as revenue in the P & L Account for the particular year. The Ld. AR also referred to the agreement entered into with M/s. Indian Potash Limited by the assessee. It is further submitted that the lease is not automatically renewable and risk & rewards incidental to the ownership were not transferred to the lessee. It was submitted by the Ld. AR that in the mercantile system of accounting being regularly followed by the assessee recognizing the rent which was received on upfront for a period of 30 years over the lease period is in accordance with the accounting policy and also complying with the provisions of section 145 of the Act. On this issue, the Ld. AR relied on the following case laws:

- (i) CIT vs. McMillan & Co. [1958] 33 ITR 182 (SC).
- (ii) Investment Ltd vs. CIT [1970] 77 ITR 533 (SC)
- (iii) MKB Asia (P.) Ltd vs. CIT [2008] 167 Taxman 256 (Gau.)

- (iv) JuggilalKamlaat Bankers vs. CIT [1975] 101 ITR 40 (All.)
- (v) CIT vs. Smt. Vimala D. Sonwand [1994] 75 Taxman 335 (Bom.)

32. The Ld. AR further submitted that the assessee can cancel the agreement and reassume the possession of the land by giving six months prior notice, and in case of such cancelation necessary compensation has to be paid to the lessee. The Ld. AR further submitted that in the case law relied on by the Ld. AO in the case of P.L. Ganapathi Rao & ANR vs. CIT [2006] 285 ITR 501 (AP), cash basis accounting system was followed. Further, the Ld. AR also in his written submissions stated that the Ld. Assessing Officers in the earlier assessment years have accepted the amortization of income and without prejudice an amount of Rs. 9,14,57,284/- which was received in earlier years as upfront premium and accrued as income proportionately during the current AY, cannot be subjected to tax in the impugned assessment year.

Per contra, the Ld. DR in his written submissions relied on the decision of the ITAT, Bangalore Bench in the case of New Mangalore Port Trust vs. ACIT, Circle-1(1), Mangalore reported in [2016] 65 taxmann.com 210 (Bangalore-Trib). The Ld. DR referred to para 9.4 of the said order wherein it was stated that under similar circumstances, the consideration received by the assessee in that case as upfront premium for 30 years was considered as revenue receipt. Countering the

arguments of the Ld. DR, the Ld. AR referred to para 9.4 and submitted that in the said para 9.4 it was clearly mentioned that "this upfront premium amount is admittedly non-refundable amount irrespective of premature termination of the concession / lease agreement". Therefore, he pleaded that this cannot be applied to the instant case as in this case it is not a non-refundable upfront premium.

33. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. In the instant case, the assessee has received an upfront premium towards lease of land for a period of 30 years from M/s. Indian Potash Limited a sum of Rs. 13,77,54,997/- and from Hindustan Petroleum Corporation Limited a sum of Rs. 3,97,586/-. The assessee company as per the accounting policy regularly followed by them has amortized this upfront premium received over the period of lease and has recognized the income for the entire period of 30 years. On perusal long term lease agreement entered into by the parties on 29/03/2010, we find that the assessee has also paid an amount of Rs. 31,77,599.84 as non-refundable premium to the lessor in addition to the provisional upfront free for a period of 30 years from the date of taking possession of land. It is also observed from the recitals of the lease agreement that a nominal rent of Rs. 1/- per sqmt per annum up to 30 years from the date of handing over of the land is

payable by the lessee in advance on or before of 01st April of each year. Further, we observed that the assessee is following mercantile system of accounting and has also followed consistent policy of treating the revenue from upfront premium over the period of lease. **This method of accounting is being followed by the assessee on regular basis which was not disputed by the Revenue in earlier years.**The Hon'ble High Court of Gauhati in the case of MKB (Asia) (P.) Ltd. v. Commissioner of Income-tax [167 Taxman 256] held as follows:

"13. We, therefore, hold that the income-tax authority has no option/jurisdiction to meddle in the matter either by directing the assessee to maintain its accounts in a particular manner or adopted different method for valuing the work-in-progress. We reiterate the decision in Doom Dooma India Ltd.'s case (supra) and hold that an assessee has as the option/liberty to adopt any recognized method of accounting for his business and the income shall be computed in accordance with such regularly maintained accounting system."

The following are observations of the hon'ble Supreme Court in Investment Ltd.'s case (supra):

"...A taxpayer is free to employ, for the purpose of his trade, his own method of keeping accounts, and for that purpose to value his stock-in-trade either at cost or market price. A method of accounting adopted by the trader consistently and regularly cannot be discarded by the departmental authorities on the view that he should have adopted a different method of keeping account or of valuation. The method of accounting regularly employed may be discarded only if, in the opinion of the taxing authorities income of the trade cannot be properly deduced therefrom. Valuation of stock at cost is one of the recognized methods. No inference may, therefore,

arise from the employment by the company of the method of valuing stock at cost, that the stock valued was not stock-in-trade...." (p. 537)

The alternative plea made by the Ld. AR in his written submissions wherein an amount of Rs. 9,14,57,284/- which was credited to the P & L Account in respect of proportionate upfront premium received on lease of land in earlier years, then the Revenue authorities should have adopted similar treatment upfront lease premium declared as income during the impugned assessment year. In these circumstances of the instant case, respectfully following the ratio laid down in the judicial precedents discussed as above, we are of the considered view that since the assessee is consistently following a method of recognizing the revenue over the period of lease, the treatment of upfront premium received by the assessee during the impugned assessment year by considering it as a revenue income deserves to be deleted and we direct the Ld. AO to delete the addition made on account of upfront premium received during the assessment year. We are therefore inclined to allow this ground raised by the assessee.

34. With respect to **Ground No.6** regarding addition of Rs. 9,15,000/- towards unaccounted sundry debtors the Ld. AR submitted that the assessee has rendered dry dock services to M/s. P.S. & Company amounting to Rs. 9,15,000/- but was not accounted for in the books of

accounts since whereabouts of the said firm are not known. The Ld.AR argued that entering into books of account and in order to avoid later claiming it as bad debts, the assessee has not accounted for the same invoice.

Per contra, the Ld. DR relied on the orders of the Ld. Revenue Authorities.

35. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities and also perused the written submissions made by both the parties. From the annual report, we find that the assessee has rendered services to M/s. P.S & Co., and has not considered an amount of Rs. 9,15,000/- as receivable from the firm since whereabouts the firm were not known. It is an admitted fact that invoice was not accounted in the books of accounts and recognized as a revenue during the impugned assessment year. The argument of the Ld. AR could not be accepted due to the fact that accounting the same in the impugned assessment year and later claiming it to be a bad debt since the whereabouts of the firm is not known is not a valid argument. Income has to be recognized when the services are rendered as per the AS-9 issued by the ICAI. Merely non-accounting of income due to the fact that the party could not be traceable is not a valid accounting procedure. Accordingly, we are of the

considered view that the income has to be recognized in the books of accounts and the Ld. AO has rightly added the amount of Rs. 9,15,000/- which was also confirmed by the Ld. CIT(A). Thus, we do not want to interfere in the order of the Ld. Revenue Authorities.

36. With respect to the **additional ground** raised by the assessee, the Ld. AR did **not press** this ground and therefore the same is **dismissed as infructuous**.

37. In the result, appeal of the assessee (**ITA No. 396/Viz/2014**) is **partly allowed**:

C.O. No. 26/Viz/2022 (By Revenue)

(AY:2010-11)

38. This Cross Objection is raised by the Revenue against the additional ground raised by the assessee. Since the additional ground raised by the assessee in its appeal ITA No. 396/Viz/2014 (AY 2010-11) is not pressed by the assessee, the adjudication of the Cross Objection raised by the Revenue with respect to allowability of additional ground becomes infructuous. Accordingly, the grounds raised by the Revenue in its CO are dismissed as infructuous.

39. In the result, **CO raised by the Revenue is dismissed as infructuous.**

ITA No. 397/Viz/2014 (By assessee)
(AY: 2011-12)

40. This appeal filed by the assessee against the combined order of Ld. Commissioner of Income Tax (Appeals), Visakhapatnam in ITA No.0266/12-13/Addl.CIT, R-1/VSP/13-14 & ITA No. 0362/12-13/ACIT,C-1/VSP/2013-14 dated 28/03/2014 arising out of the order passed U/s. 143(3) of the Act for the AYs: 2010-11 & 2011-12.

41. Briefly stated the facts of the case are that the assessee is a Port Trust came into existence under the Major Port Trust Act, 1963 and has been carrying on commercial activities and services of a port and allied facilities relating to maritime trade and commerce since inception. The assessee being a Local Authority was exempted U/s. 10(20) of the Act up to the AY 2002-03. From AY 2003-04 to 2008-09, total income of the assessee was exempted U/s. 11 of the Act. Consequent to amendment to section

2(15) of the Act, the assessee filed its return of income for the AY 2009-10 onwards admitting its income under the head 'business income'. Further, the registration U/s. 12AA of the Act was cancelled w.e.f.1/4/2009 vide proceedings of the Ld. CIT-1, Visakhapatnam dated 11/09/2012. The assessee filed its return of income for the AY 2010-11 on 29/9/2010 admitting a total income of Rs. 210,79,75,050/-. The case was selected for scrutiny under CASS and accordingly notice U/s. 143(2) dated 03/08/2012 was issued and served on the assessee on 9/8/2012. Thereafter, notice U/s. 142(1) of the Act along with a questionnaire calling for certain information was issued on 28/09/2012 and duly served on the assessee on 6/10/2012. In response to the notices, the assessee's Authorized Representative appeared from time to time and filed the details called for. After examining the books of accounts and discussing the facts of the case with the assessee's Authorized Representative, the Ld. AO passed an order U/s. 143(3) of the Act by assessing the total income at Rs. 329,92,79,523/- and made the following additions:

SI No	Nature of addition	Amount (Rs.)
1.	Upfront premium / unexpired discounts added as income as per para-2	54,86,32,514
2.	Disallowance of excess claim of depreciation as per para-3 (para 3.1, paraj 3.2 and para 3.3)	45,66,68,986

3.	Disallowance of prior period expenditure as per para 4	3,82,46,499
4.	Disallowance of donation and contribution as per para 5	5,28,847
5.	Disallowance of excess claim on account of contribution to pension fund as per para-6	14,72,27,627
	Assessed income	329,92,79,523

42. Aggrieved by the order of the Ld.AO, the assessee filed an appeal before the Ld. CIT(A), Visakhapatnam. After considering the submissions made by the assessee from time to time and after discussing the case with the Ld. AR, the Ld. CIT(A) partly allowed the appeals of the assessee for the AY 2010-11 & 2011-12. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising the following grounds of appeal:

- "1. *The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts.*
2. (a) *The Ld. CIT(A) is not justified in confirming the disallowance of prior period expenses of Rs. 3,82,46,499/- U/s. 14A of the Act.*

(b) *The Ld. CIT(A) ought to have appreciated that the above expenses crystallized during the impugned assessment year and that in the absence of any exempted income for the impugned assessment year, provisions of section 14A are not applicable.*

(c) *The Ld. CIT(A) ought to have considered the fact that the prior period expenses included a sum of Rs. 3,87,63,120/- towards reversal of income offered to tax for the AY 2009-10 and hence this amount could not be disallowed U/s. 14A of the Act.*

(d) *The Ld. CIT(A) ought to have appreciated that expenditure to the extent of Rs. 37,55,082/- crystallized during the impugned assessment year and hence the same cannot be considered as prior period expenses.*

3. (a) *The Ld. CIT(A) is not justified in confirming disallowance of alleged excess depreciation claimed in respect of capital dredging.*

(b) *The Ld. CIT(A) ought to have appreciated that capital dredging is a plant and machinery and hence the appellant is entitled for depreciation @ 15% as against 10% allowed by the Assessing Officer.*
4. (a) *The Ld. CIT(A) is not justified in confirming the addition of Rs. 54,86,32,514/- towards upfront premium received on lease of lands.*

(b) *The Ld. CIT(A) ought to have appreciated that the entire upfront premium cannot be said to have accrued during the impugned assessment year in as much as the lease is for a period of 30 years.*

(c) *The Ld. CIT(A) ought to have appreciated that the appellant consistently followed mercantile system of accounting and hence upfront premium could not be taxed on receipt basis.*
5. *The Ld. CIT(A) is not justified in rejecting the alternative contention of the appellant that contribution to pension fund is allowable U/s. 43B on payment basis without reference to the annual limit of 27% of salaries & wages.*
6. *Any other ground that may be urged at the time of appeal hearing."*

43. The assessee has also raised **additional ground** which reads as under:

"On the facts and in the circumstances of the case, whether the Assessing Officer is justified is justified in assessing the total income of the appellant without granting exemption U/s. 11 of the Income Tax Act, 1961?"

44. **Grounds No. 1 & 6** are general in nature and they need no adjudication.

45. **Ground No.2** is with respect to the disallowance of prior period expenses of Rs. 3,82,46,499/- U/s. 14A of the Act. **This issue is identical to that of the issue raised by the assessee in its appeal ITA No.396/Viz/2014 (Ground No.2) for the AY 2010-11.** Since the facts and circumstances pertaining to this in both the appeals i.e., ITA No. 396/Viz/2014 and ITA No. 397/Viz/2014 are same, our decision given while adjudicating the issue with respect to the disallowance of prior period expenses in ITA No. 396/Viz/2014 (AY: 2010-11) *mutatis mutandis* applies to the similar issue involved in Ground No.2 of ITA No. 397/Viz/2014 also. Accordingly, this ground raised by the assessee is allowed.

46. **Ground No.3** raised by the assessee is with respect to disallowance of excess depreciation of Rs.45,66,68,986/- on treating the capital dredging as Plant & Machinery instead of treating it as Buildings. This issue has already been decided in **ITA No. 396/Viz/2014 vide Ground No.4** and our decision given therein applies *mutatis mutandis* to issue involved in Ground No. 3 of ITA No. 397/Viz/2014 also. Accordingly, this ground raised

by the assessee with respect to excess claim of depreciation in respect of capital dredging is dismissed.

47. With respect to **Ground No.4** wherein the Ld. Revenue Authorities confirmed the addition of Rs. 54,86,32,514/- towards upfront premium received on lease of lands, we find that this **issue is identical to that of the issue raised by the assessee in its appeal ITA No.396/Viz/2014 (Ground No.5) for the AY 2010-11**. Since the facts and circumstances pertaining to this issue in both the appeals i.e., ITA No. 396/Viz/2014 and ITA No. 397/Viz/2014 are same, our decision given while adjudicating the issue with respect to addition made by the Ld.AO and confirmed by the Ld. CIT(A) towards upfront premium received on lease of lands in ITA No. 396/Viz/2014 (AY: 2010-11) *mutatis mutandis* applies to the similar issue involved in Ground No.4 of ITA No. 397/Viz/2014 also. Hence, we hereby **allowed the grounds** raised by the assessee on this issue.

48. **Ground No.5** is with respect to the **contribution to pension fund** in excess of the annual limit of 27% of the salaries and wages. Before us, it was submitted by the Ld. AR that the provisions to the Pension Fund is based on actuarial valuation based on scientific principles. This

provision has been made in the books of account during the impugned assessment year to cover all the employees including retired employees. The Ld. AR relied on the decision of the Coordinate Bench decision in ITA No. 6444/Mum/2007, dated 28/01/2011 in the case of Glaxo Smithkline Pharmaceuticals. Further, Ld. AR submitted that the view taken by the ITAT, Mumbai Bench in the case of Glaxo Smithkline Pharmaceuticals (supra) was also affirmed by the Hon'ble High Court of Bombay in CIT-6 vs. Glaxo Smithkline Pharmaceuticals. He therefore pleaded that the addition made and confirmed by the Ld. Revenue Authorities may please be deleted.

Per contra, the Ld. DR relied on the orders of the Ld. Revenue Authorities and argued in support of the same.

49. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. During the appellant proceedings, it was submitted by the Ld. AR that the contribution to the Pension Fund was made with respect to salaries and wages and also for the pension payments. It is found that the Ld. AO has computed the 27% on the total salaries and wages paid during the year to compute the disallowance of Rs. 14,72,27,627/-. In submissions made by the Ld. AR we find that similar contributions have also made with respect to pension payments made during the year. Further, we also

accept the contention of the Ld. AR that the actuarial valuation as on 31/3/2011 works out to Rs. 1,896.07 Crs and the assessee due to the cash flow issues is providing the contribution to Pension Fund over a number of years subject to availability of funds. The case law relied by the Ld. AR in GlaxoSmithkline Pharmaceuticals (supra), the Hon'ble High Court of Bombay Held as follows:

- "3. *Similar issue had been raised by the Revenue in the matter of Commissioner of Income Tax vs. Suashish Diamonds Limited being Income Tax Appeal No. 568 of 2012. By an order dated 1st March, 2013 in the matter of Suashish Diamonds Limited (supra), this Court has held that even if the expenditure as claimed is not allowable U/s. 36(1)(iv) of the Act, the same is allowable U/s. 37 of the Act. The Tribunal in the above case had followed the decision of this Court in the matter of Commissioner of Income Tax vs. Western India Paper and Paperboard Private Limited reported in 189 ITR 309.*
4. *In view of the above, we see no reason to entertain the question of law as proposed as the assessee in any view of the matter is entitled to the deduction U/s. 37 of the Act. Therefore, the question as raised is academic."*

50. From the judicial pronouncements as relied on by the Ld. AR as extracted above, we find that the Hon'ble High Court of Bombay has held that even if the expenditure is not allowable U/s. 36(1)(iv) of the Act, but the same is allowable U/s. 37 of the Act. Respectfully following the above decision, we are inclined to allow the contribution to Pension Fund in excess of 27% on account of salaries, wages and pension U/s. 37 of the Act and hence this ground raised by the assessee is allowed. Since, the

expenditure is allowed on contribution basis, we are of the opinion that the provisions of section 43B of the Act are not applicable. It is ordered accordingly.

51. The **additional ground** raised by the assessee is not pressed and therefore the same is **dismissed as not pressed**.

52. In the result, appeal of the assessee (**ITA No. 397/Viz/2014**) is partly allowed.

C.O. No. 27/Viz/2022 (By Revenue)
(AY:2011-12)

53. This Cross Objection is raised by the Revenue additional ground raised by the assessee. Since the additional ground raised by the assessee in its appeal ITA No. 397/Viz/2014 (AY 2010-11) is not pressed by the assessee, the adjudication of the Cross Objection raised by the Revenue with respect to allowability of additional ground becomes infructuous. Accordingly, the grounds raised by the Revenue in its CO are dismissed as infructuous.

54. In the result, **CO filed by the Revenue is dismissed as infructuous**.

ITA No.12/Viz/2015 (By Assessee)

(AY: 2011-12)

55. This appeal filed by the assessee against the order of the Ld. CIT(A), Visakhapatnam in ITA No. 1216/2013-14/AC,C-1(1),VSP/2014-15, dated 14/11/2014 arising out of the order passed U/s. 143(3) r.w.s 263 of the Act for the AY: 2011-12.

56. Briefly stated the facts of the case are that the assessee is a Port Trust came into existence under the Major Port Trust Act, 1963 and has been carrying on commercial activities and services of a port and allied facilities relating to maritime trade and commerce since inception. The assessee being a Local Authority was exempted U/s. 10(20) of the Act up to the AY 2002-03. From AY 2003-04 to 2008-09, total income of the assessee was exempted U/s. 11 of the Act. Consequent to amendment to section 2(15) of the Act, the assessee filed its return of income for the AY 2009-10 onwards admitting its income under the head 'business income'. Further, the registration U/s. 12AA of the Act was

cancelled w.e.f1/4/2009. The assessee filed its return of income for the AY 2011-12 admitting a total income of Rs. 2,10,79,75,050/-. The case was taken up for scrutiny under CASS and the assessment was completed U/s. 143(3) on 31/1/2013 determining the total income at Rs. 3,29,92,79,523/-. Subsequently, the Ld. CIT-1, Visakhapatnam initiated the revisionary proceedings U/s. 263 of the Act setting aside the order passed U/s. 143(3) with a direction to the Ld.AO to consider the disallowance of expenditure of Rs. 8,51,10,123/- in terms of section 14A of the Act. Accordingly, the Ld. AO completed the assessment making an addition of Rs. 8,51,10,123/-. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee made various written submissions. The Ld. CIT(A) after considering the submissions, partly allowed the appeal directing the Ld. AO to make an addition of Rs. 8,47,67,472/-. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising the following grounds of appeal:

- "1. The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts.*
- 2. The Ld. CIT(A) is not justified in sustaining the addition of following amounts made by the AO towards disallowance U/s. 14A of the Act.*

(a)	Gratuity	-	Rs. 2,75,84,078/-
(b)	Provident Fund	-	Rs. 5,71,83,394/-

3. *The Ld. CIT(A) ought to have appreciated that the above amounts are to be allowed U/s. 43B of the Act.*
4. *Any other ground that may be urged at the time of appeal hearing."*

57. At the outset, we find that the assessee has agitated before us in ITA No.25 & 26/Viz/2014 (AY 2010-11 & 2011-12) regarding the powers exercised by the Ld. CIT U/s. 263 of the Act. We have adjudicated that appeal in ITA No.25/Viz/2014 (AY: 2010-11) in favour of the assessee by quashing the order of the Ld.CIT passed U/s. 263 of the Act in the above paragraphs of this order. Since the order passed by the Ld.CIT U/s. 263 has been quashed and hence the consequential order passed by the Ld. AO U/s. 143(3) r.w.s 263 as well as the order of the Ld. CIT(A) passed U/s. 250 of the Act have no legs to stand. It is ordered accordingly.

58. In the result, appeal of the assessee (ITA No. 12/Viz/2015) is allowed.

ITA No. 235/Viz/2020 (By assessee)
(AY: 2015-16)

59. This appeal filed by the assessee against the order of the Ld. CIT(A)-1, Visakhapatnam in ITA No. 10251/2017-18/CIT(A)-1/VSP/2019-20, dated 21/09/2020 arising out of the order passed U/s. 143(3) of the Act.

60. Briefly stated the facts of the case are that the assessee is a Port Trust came into existence under the Major Port Trust Act, 1963 and has been carrying on commercial activities and services of a port and allied facilities relating to maritime trade and commerce since inception. The assessee being a Local Authority was exempted U/s. 10(20) of the Act up to the AY 2002-03. From AY 2003-04 to 2008-09, total income of the assessee was exempted U/s. 11 of the Act. Consequent to amendment to section 2(15) of the Act, the assessee filed its return of income for the AY 2009-10 onwards admitting its income under the head 'business income'. Further, the registration U/s. 12AA of the Act was cancelled w.e.f 1/4/2009. The assessee had filed its original return of income for the AY 2015-16 on 29/09/2015 declaring NIL income. Subsequently, a revised return was filed for the AY 2015-16 on 28/03/2017 admitting NIL income. The case was selected for scrutiny under CASS and accordingly notice U/s. 143(2) was issued on 27/7/2016 which was duly served on the

assessee on 4/8/2016. Further, a notice U/s. 142(1) of the Act dated 6/2/2017 was issued and duly served on the assessee on 9/2/2017. Thereafter, a letter dated 21/8/2017 was issued to the assessee informing the assessee regarding the conversion of 'limited scrutiny' to 'complete scrutiny' with the approval of the Pr. CIT-1, Visakhapatnam as the case falls under the categories prescribed under the CBDT's Instruction No. 20/2015 dated 29/12/2014 and Instruction No.5/2016 dated 14/7/2016. Subsequently, notice U/s. 142(1) of the Act has been issued on 28/09/2017. In response to the notice, the assessee's Authorized Representative appeared from time to time and filed the submissions as called for. The Ld. AO after discussing the facts and examining the books of accounts, submissions of the assessee, completed the assessment U/s. 143(3) of the Act by making the following additions:

SI No	Nature of addition	Amount (Rs.)
1.	Upfront premium added as income as per Para-4	26,39,48,118
2.	Disallowance of excess claim of depreciation as per para-5	5,16,08,835
3.	Disallowance of donation and contribution as per para-6	1,56,99,298
4.	Disallowance of excess claim on account of 'contribution to pension fund' as per para 7	4,57,93,453

61. Aggrieved by the order of the Ld.AO, the assessee filed an appeal before the Ld. CIT(A)-1, Visakhapatnam. After considering the submissions made by the assessee from time to time and after discussing the case with the Ld. AR, the Ld. CIT(A) partly allowed the appeal of the assessee for the AY 2015-16. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising the following grounds of appeal:

- "1. The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The Ld. CIT(A) is not justified in sustaining the addition of Rs. 26,39,48,118/- made by the Assessing Officer by treating entire upfront premium received on leasing of lands as revenue receipt as against the amount recognized by the appellant over the lease period.*
- 3. The Ld. CIT(A) is not justified in sustaining the addition of Rs. 2,85,45,401/- made by the Assessing Officer towards excess claim of depreciation in respect of capital dredging by restricting the rate of depreciation to 10% as against 15% claimed by the appellant.*
- 4. The Ld. CIT(A) is not justified in partly sustaining the addition to the extent of Rs. 1,49,325/- out of total addition of Rs. 1,56,99,298/- made by the Assessing Officer towards disallowance of donations and contributions.*
- 5.(a) The Ld. CIT(A) is not justified in sustaining the disallowance of Rs. 4,57,93,453/- made by the Assessing Officer U/s. 36(1)(iv) of the Act towards alleged excess claim towards contribution of Pension Fund.*

- (b) *The Ld. CIT(A) ought to have directed the Assessing Officer to allow the expenditure U/s. 37(1) of the Act.*
6. *Any other grounds that may be urged at the time of hearing."*

62. The assessee has also raised an **additional ground** in its appeal which reads as under:

"On the facts and in the circumstances of the case, whether the total income of the appellant is eligible for exemption U/s. 11 of the Act"

63. **Grounds No. 1 and 6 are general nature** and therefore they need no adjudication.

64. **Ground No.2** is with respect to the treatment by the Ld. Revenue Authorities theupfront premium received on leasing of lands as revenue receipt. This issue identical to that of the issue raised by the assessee in its appeal **ITA No. 396/Viz/2014 vide Ground No.5**. Since the facts and circumstance of the case as well as the issue involved in both the appeals are identical our decision given on Ground No.5 of the assessee's appeal in ITA No. 396/Viz/2014 *mutatis mutandis* applies to the Ground No.2 of the instant appeal (ITA No.235/Viz/2020) also. Accordingly, we

direct the Ld. AO to delete the addition made on account of upfront premium received during the assessment year. We are therefore inclined to allow this ground raised by the assessee.

65. **Ground No.3** pertains to disallowance of excess depreciation of Rs. 2,85,45,401/- as claimed by the assessee in respect of capital dredging. This issue identical to that of the issue raised by the assessee in its appeal **ITA No. 396/Viz/2014 vide Ground No.4**. Since the facts and circumstance of the case as well as the issue involved in both the appeals are identical our decision given on Ground No.4 of the assessee's appeal in ITA No. 396/Viz/2014 *mutatis mutandis* applies to the Ground No.3 of the instant appeal (ITA No.235/Viz/2020) also. Accordingly, we hereby confirm the order of the Ld. Revenue Authorities on this ground and thereby dismissed the grounds raised by the assessee.

66. **Ground No.4** is with respect to with respect to sustenance of addition of Rs. 1,49,325/- being the expenditure incurred towards donations and contributions. Before us, the Ld. AR submitted that the assessee has incurred contribution to the Major Ports Sports Council Board (MPSCB) and also expenditure on compassionate grounds, disaster management plant, cultural activities, Teacher's Day celebrations etc. The Ld. AR submitted that Rs. 1,55,49,973/- was

incurred towards contribution to the MPSCB stands for other expenditure. The Ld. AR therefore pleaded that the other expenditure is also in connection with the business activities of the assessee and therefore it should be allowed.

Per contra, the Ld. DR relied on the of the Ld. Revenue Authorities on this issue and supported their decision.

67. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue on this issue. In the instant case, it was accepted by the assessee that certain expenditure amounting to Rs. 1,49,325/- was incurred towards disaster management plan, cultural activities, Teacher's Day Celebrations etc. The Ld. CIT(A) also adjudicated this issue after verification of the submissions made by the assessee and has held that out of Rs. 1,56,99,298/-, Rs. 1,49,325 [Rs. 1,56,99,298 – Rs. 1,55,49,973] pertains to the expenditure which are not related to the business activities of the assessee and thereby disallowed a sum of Rs. 1,49,325/-. From the submissions made before us by the Ld. AR we are of the opinion that cultural activities, Teacher's Day Celebrations etc. are not in the nature of expenditure for business purposes and therefore concur with the findings of the Ld. CIT(A) on this issue and we find no infirmity in the order of the Ld. CIT(A). Thus, this ground raised by the assessee is **dismissed**.

68. **Ground No.5** is with respect to allowance of **contribution to pension fund** in excess of the annual limit of 27% of the salaries and wages. This issue identical to that of the issue raised by the assessee in its appeal **ITA No. 397/Viz/2014 vide Ground No.5**. Since the facts and circumstance of the case as well as the issue involved in both the appeals are identical our decision given on Ground No.4 of the assessee's appeal in ITA No. 397/Viz/2014 *mutatis mutandis* applies to the Ground No.5 of the instant appeal (ITA No.235/Viz/2020) also. Accordingly, from the judicial pronouncements as relied on by the Ld. AR on this issue, we find that the Hon'ble High Court of Bombay in the case of ACIT vs. Glaxo Smithkline Pharmaceuticals in ITA No. 2232 of 2011 has held that even if the expenditure is not allowable U/s. 36(1)(iv) of the Act, but the same is allowable U/s. 37 of the Act. Respectfully following the above decision, we are inclined to allow the contribution to Pension Fund in excess of 27% on account of salaries, wages and pension U/s. 37 of the Act and hence this ground raised by the assessee is allowed. Since, the expenditure is allowed on contribution basis, we are of the opinion that the provisions of section 43B of the Act are not applicable. It is ordered accordingly.

69. In the result, appeal filed by the assessee (**ITA No.235/Viz/2020**) is partly allowed.

ITA No. 325/Viz/2017 (By Assessee)

(AY: 2012-13)

70. This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A)-1, Visakhapatnam in ITA No. 144/2015-16/AC,C-1(1),VSP/2016-17, dated 13/3/2017 arising out of the order passed U/s. 154 of the Income Tax Act, 1961 [the Act] for the AY 2012-13.

71. The brief facts of the case are that the Ld. AO while passing the order U/s. 143(3) of the Act dated 23/3/2015 for the AY 2012-13 disallowed a provision for payment of gratuity for Rs. 30.17 Crs U/s. 40A(7) of the Act. The Ld. AO observed that this amount of Rs. 30.17 Crs was quantified by the Statutory Auditors in Point No. 17B(i) of Form-3CD as not allowable as deduction U/s. 40A(7) of the Act. The Ld. AO observed that while passing the order U/s. 143(3) this was not disallowed which is a mistake

apparent from record and therefore issued a notice U/s. 154 of the Act. In response, the assessee submitted that to match with the actuarial liability of gratuity fund of Rs. 133.03 Crs, an addition contribution of Rs. 30.17 Crs was made in addition to the contribution made @ 8.33% of the salaries pursuant to the provisions of Income Tax Rules, 1962. The Ld. AR submitted before the Ld. AO, that due to lack of availability of sufficient surplus funds this initial contribution has been provided in subsequent year depending on the availability of surplus funds. The Ld. AR also submitted before the Ld. AO that the contribution to the Gratuity Fund is governed by section 36(1)(v) of the Act and Rules 103 and 104 of the Income Tax Rules, 1962. Alternatively, the Ld. AR also submitted that contribution to Gratuity Fund qualifies for deduction U/s. 37(1) of the Act as a condition specified therein has been fulfilled and it has been incurred exclusively for carrying on the business of the assessee. Rejecting the submissions made before the Ld. AO, the Ld. AO relying on various case laws as discussed in the order U/s. 154 of the Act, disallowed the payment of Rs. 30.17 Crs. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). On appeal, considering the submissions made by the Ld. AR before the Ld. CIT(A), the Ld. CIT(A) dismissed the appeal

of the assessee and upheld the disallowance made by the Ld. AO. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising the following grounds:

1. *The order of the Ld.CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
2. *The Ld. CIT (A) is not justified in sustaining the addition of Rs. 30,17,00,000/- made by the Assessing Officer towards disallowance of provision for payment of gratuity.*
3. *The Ld. CIT(A) ought to have held that the addition made by the Ld. AO is beyond the scope of 'rectification' as contemplated in Section 154 of the Act.*
4. *Without prejudice to the above, the Ld. CIT(A) ought to have held that the claim of the appellant towards provision for payment of gratuity is eligible for deduction under the provisions of the IT Act.*
5. *Any other ground that may be urged at the time of appeal hearing."*

72. The assessee has also raised an additional ground which read as under:

"On the facts and in the circumstances of the case, whether the Assessing Officer is justified in assessing the total income of the appellant without granting exemption U/s. 11 of the Income Tax Act, 1961?"

73. The only issue raised from the above original grounds of appeal is with respect to disallowance of provision for payment of Gratuity for Rs. 30.17 Crs which is beyond the scope of the

rectification U/s. 154 of the Act. Before us, the Ld. AR reiterated the submissions made before the Ld. Revenue Authorities and stated that the contribution to Gratuity Fund in addition to the ordinary contributions shall be allowed as deduction U/s. 37(1) of the Act. Alternatively, the deduction shall also be otherwise allowable U/s. 43B of the Act. The Ld. AR pleaded before us that since there was non-availability of funds to match the actuarial liability during the initial period when the Gratuity Fund was approved by the Ld. CIT during the AY 2002-03, the assessee could not make contributions initially and therefore has made contribution of Rs. 30.17 Crs during the impugned assessment year. The Ld. AR therefore pleaded that this shall be allowed as an expenditure.

Per contra, the Ld. DR relied on the orders of the Ld. Revenue Authorities.

74. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is admitted fact that the assessee has made contribution towards Gratuity fund during the year in addition to the contribution made @ 8.33% of the salaries as per the provisions of IT Rules, 1962. The contention of the Ld. AO is

that the amount of Rs. 30.17 Crs being initial contribution as claimed by the assessee is not allowable as an expenditure in accordance with the Rule 104 of the IT Rules, 1962 which was clarified by Circular No.14, dated 23/4/1969. However, the contention of the Ld. AR is that this is an additional contribution to match with the actuarial valuation and an amount of Rs. 30.17 Crs was made during the current year subject to availability of surplus funds with the assessee. This payment has been necessitated due to shortfall to meet the actuarial valuation of the Fund to ensure that there is sufficient balance in Gratuity Fund to discharge its obligation at a future date. It is neither an annual contribution nor an ordinary contribution. Even though the contribution is in excess of the specified limit, in our opinion these are incurred for the purpose of business of the assessee and hence are deductible U/s. 37(1) of the Act. We therefore do not concur with the opinion of the Ld. CIT(A) and we are inclined to set-aside the order of the Ld. CIT(A) and allow the grounds raised by the assessee.

75. With respect to **additional ground**, the Ld. AR submitted that it is not pressed and therefore the additional ground raised by the assessee is **dismissed as not pressed**.

76. In the result appeal of the assessee(**ITA No. 325/Viz/2017**) **is allowed.**

ITA No.236/Viz/2020 (By Assessee)
(AY: 2016-17)

77. This appeal filed by the assessee against the order of the Ld. CIT(A)-1, Visakhapatnam in ITA No. 10269/2018-19/CIT(A)-1/VSP/2020-21, dated 21/09/2020 arising out of the order passed U/s. 143(3) of the Act for the AY 2016-17.

78. Briefly stated the facts of the case are that the assessee is a Port Trust came into existence under the Major Port Trust Act, 1963 and has been carrying on commercial activities and services of a port and allied facilities relating to maritime trade and commerce since inception. The assessee being a Local Authority was exempted U/s. 10(20) of the Act up to the AY 2002-03. From AY 2003-04 to 2008-09, total income of the assessee was exempted U/s. 11 of the Act. Consequent to amendment to section 2(15) of the Act, the assessee filed its return of income for the AY 2009-10 onwards admitting its income under the head 'business income'. Further, the registration U/s. 12AA of the Act was

cancelled w.e.f 1/4/2009 vide proceedings of the Ld. CIT-1, Visakhapatnam dated 11/09/2012. The assessee filed its original return of income for the AY 2016-17 on 13/10/2016 admitting NIL income. Subsequently, the assessee filed revised return of income for the AY 2016-17 on 22/03/2017 admitting NIL income. The case of the assessee was selected for scrutiny under CASS. Accordingly, notice U/s. 143(2) of the act was issued on 17/7/2017 which was duly served on the assessee on 25/07/2017. A notice U/s. 142(1) of the Act dated 9/2/2018 was issued which was duly served on the assessee on 15/2/2018. Due to change in incumbent, notice U/s. 143(2) of the act was issued through ITBA module on 14/08/2018. Thereafter a notice U/s. 1242(1) of the Act calling for certain information was also issued to the assessee on 31/8/2018. Thereafter, a show cause notice dated 9/11/2018 was also issued to the assessee through online. In response, the assessee filed the submissions / information through e-proceedings module from time to time. After examining the relevant information / written submissions filed by the assessee through ITBA module, the Ld. AO completed the assessment by making the following additions / disallowances:

Sl No	Nature of addition	Amount (Rs.)
1.	Upfront premium added as income as per para-4	212,96,25,561
2.	Disallowance of excess claim of depreciation as per para 5	13,11,29,794
3.	Disallowance of excess claim on account of contribution to Pension Fund as per para 6	118,00,00,000
4.	Disallowance of provision for interest on government loan for outer harbour as per para-7	7,00,00,000
5.	Disallowance of Prior period expenditure as per para 8	86,96,880
		237,77,54,960

79. Aggrieved by the order of the Ld.AO, the assessee filed an appeal before the Ld. CIT(A)-1, Visakhapatnam. After considering the submissions made by the assessee from time to time and after discussing the case with the Ld. AR, the Ld. CIT(A) partly allowed the appeal of the assessee for the AY 2016-17. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising the following grounds of appeal:

- "1. *The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
- 2.a) *The Ld. CIT(A) is not justified in sustaining the addition of Rs. 212,96,25,561/- made by the AO by treating entire upfront premium received on leasing of lands as revenue receipt as against the amount recognized by the appellant over the lease period.*
- b) *Without prejudice to the above, the Ld. CIT(A) ought to have appreciated that to the extent of Rs. 8,97,03,423/- the income was subjected to the tax twice i.e., once in the year of receipt and again in the impugned assessment year on amortization basis.*
3. *The Ld. CIT(A) is not justified in sustaining the addition of Rs. 10,11,32,350/- made by the Assessing*

Officer towards excess claim of depreciation in respect of capital dredging by restricting the rate of depreciation to 10% as against 15% claimed by the appellant.

4. *The Ld. CIT(A) is not justified in sustaining the addition of Rs. 7,00,00,000/- made by the Assessing Officer towards disallowance of provision made towards interest payable on Government Loans.*
5. *Any other grounds that may be urged at the time of hearing."*

80. The assessee has also raised an **additional ground** in its appeal which reads as under:

"On the facts and in the circumstances of the case, whether the total income of the appellant is eligible for exemption U/s 11 of the Income Tax Act, 1961?"

81. **Grounds No. 1 & 5** are general in nature and therefore they need no adjudication.

82. With respect to **Ground No.2** wherein the Ld. Revenue Authorities confirmed the addition of Rs. 212,96,25,561/- towards upfront premium received on lease of lands, we find that this **issue is identical to that of the issue raised by the assessee in its appeal ITA No.396/Viz/2014 (Ground No.5) for the AY 2010-11**. Since the facts and circumstances pertaining to this issue in both the appeals i.e., ITA No. 396/Viz/2014 and ITA No. 236/Viz/2020 are same, our decision given while adjudicating the issue with

respect to addition made by the Ld.AO and confirmed by the Ld. CIT(A) towards upfront premium received on lease of lands in ITA No. 396/Viz/2014 (AY: 2010-11) *mutatis mutandis* applies to the similar issue involved in Ground No.2 of ITA No. 236/Viz/2020 also. Hence, we hereby allow the grounds raised by the assessee on this issue.

83. **Ground No.3** raised by the assessee is with respect to **disallowance of excess depreciation** of Rs.10,11,32,350/- on treating the capital dredging as Plant & Machinery instead of treating it as Buildings. This issue has already been decided in **ITA No. 396/Viz/2014 vide Ground No.4** and our decision given therein applies *mutatis mutandis* to issue involved in Ground No. 3 of ITA No. 236/Viz/2020 also. Accordingly, this ground raised by the assessee with respect to excess claim of depreciation in respect of capital dredging is dismissed.

84. **Ground No.4** is with respect to disallowance of provision made towards interest payable on Government Loans for Rs. 7 Crs. Before us, on this issue the Ld. AR argued that interest is payable by the assessee on the loans obtained from Government of India and hence the provisions of section 43B of the Act are not applicable. The Ld. AR further submitted that as per the

provisions of section 43B of the Act, interest payable on loans borrowed from any Financial Institutions and Banks only are covered. He therefore pleaded that the interest payable on the loans obtained from Government of India are not covered under the provisions and accordingly no disallowance can be made. The Ld. AR relied on the case of CIT-1, Lucknow vs. U.P. Rajya Vidyut Utpadan Nigam Ltd reported in [2013] 37 taxmann.com 164 (Allahabad).

Per contra, the Ld. DR relied on the orders of the Ld. Revenue Authorities and pleaded that they may be upheld.

85. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. The main contention of the Ld. AO is that whether the interest is payable on loans borrowed from Government of India are eligible for deduction U/s. 43B of the Act in respect of its non-payment. The Ld. Revenue Authorities contention is that the outstanding liability being interest payable was not paid to the Government by the assessee before the due date and hence is not an allowable expenditure U/s. 43B of the Act. Further, the Ld. CIT(A) has also stated that the Governments are custodians of funds and the Banks and Financial Institutions are also

organs of the Government and hence non-payable of interest in accordance with the provisions of section 43B shall be disallowed. In this regard, for the sake of brevity, we extract below section 43B of the Act:

“Sec. 43B: (d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State financial corporation or a State industrial investment corporation, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or

(da) any sum payable by the assessee as interest on any loan or borrowing from [a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company], in accordance with the terms and conditions of the agreement governing such loan or borrowing, or

(e) any sum payable by the assessee as interest on any loan or advances from a scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank in accordance with the terms and conditions of the agreement governing such loan or advances, or”

86. Further, the Explanation-4 to section 43B of the Act is also extracted below:

“Explanation 4.—*For the purposes of this section,—*

4. “public financial institutions” shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956);

(aa) “scheduled bank” shall have the meaning assigned to it in the Explanation to clause (iii) of sub-section (5) of section 11;

(b) “State financial corporation” means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);

l“State industrial investment corporation” means a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), engaged in the business of providing long-term

finance for industrial projects and eligible for deduction under clause (viii) of sub-section (1) of section 36;

- (d) "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank" shall have the meanings respectively assigned to them in the Explanation to sub-section (4) of section 80P;
- (e) "deposit taking non-banking financial company" means a non-banking financial company which is accepting or holding public deposits and is registered with the Reserve Bank of India under the provisions of the Reserve Bank of India Act, 1934 (2 of 1934);

Following clause (e) shall be substituted for the existing clause (e) of Explanation 4 to section 43B by the Finance Act, 2023, w.e.f. 1-4-2024:

- (e) "micro enterprise" shall have the meaning assigned to it in clause (h) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006);
- (f) "non-banking financial company" shall have the meaning assigned to it in clause (f) of section 45-1 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (g) "systemically important non-deposit taking non-banking financial company" means a non-banking financial company which is not accepting or holding public deposits and having total assets of not less than five hundred crore rupees as per the last audited balance sheet and is registered with the Reserve Bank of India under the provisions of the Reserve Bank of India Act, 1934 (2 of 1934).

Following clause (g) shall be substituted for the existing clause (g) of Explanation 4 to section 43B by the Finance Act, 2023, w.e.f. 1-4-2024:

- (g) "small enterprise" shall have the meaning assigned to it in clause (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)."

87. From the bare reading of the above provisions and Explanation to Section 43B, the terms "public financial institutions"; "scheduled bank"; "State industrial investment corporation"; "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank"; "deposit taking non-banking financial company";

"micro enterprise" etc., have been defined. The intention of the Legislature is to disallow the interest if not paid within due date and remains payable to the above entities. Nowhere in the Explanation-4 to section 43B of the Act, the term "Government of India" has been used.

88. Further, from the case law relied on by the Ld. AR the Head Note is reproduced below:

"III. Section 43B of the Income-tax Act, 1961 – Business disallowance – Certain deductions to be allowed only on actual payment [Interest on unsecured loan] Assessment year 2002-03 – Assessee had received a loan from State Government for purpose of distribution of dearness allowance which could not be paid to employees before prescribed date – Deduction on account of short provision of DA arrears of employees in accounts was claimed by assessee but same was disallowed by Assessing Officer – Whether since section 43B is not applicable to interest on Government loans and for DA arrears of employees, assessee's claim was to be allowed – Held, yes [Para 11] [In favour of assessee]"

89. In the instant case the interest is payable on loans taken from Government of India. In our opinion interest payable on loans taken from Government of India is not covered u/s 43B of the Act. Respectfully following the decision of the Hon'ble High Court of Allahabad (supra), we have no hesitation to delete the addition of Rs. 7 Crs made on account of interest payable to Government of India during the impugned assessment year. Accordingly, this ground raised by the assessee is allowed.

90. The **additional ground** raised by the assessee is not pressed by the Ld. AR and therefore it is **dismissed as not pressed**.

91. In the result, appeal of the assessee (**ITA No. 236/Viz/2020**) is **partly allowed**.

ITA No.324/Viz/2017 (By Assessee)

(AY: 2012-13)

92. This appeal filed by the assessee is against the order of the Ld. CIT(A)-1, Visakhapatnam in ITA No. 34/2015-16/AC,C-1(1),Vsp/2016-17, dated 30/03/2017 arising out of the order passed U/s. 143(3) of the Act for the AY 2012-13.

93. Briefly stated the facts of the case are that the assessee is a Port Trust came into existence under the Major Port Trust Act, 1963 and has been carrying on commercial activities and services of a port and allied facilities relating to maritime trade and commerce since inception. The assessee being a Local Authority was exempted U/s. 10(20) of the Act up to the AY 2002-03. From AY 2003-04 to 2008-09, total income of the assessee was exempted U/s. 11 of the Act. Consequent to amendment to section 2(15) of the Act, the assessee filed its return of income for

the AY 2009-10 onwards admitting its income under the head 'business income'. Further, the registration U/s. 12AA of the Act was cancelled w.e.f 1/4/2009 vide proceedings of the Ld. CIT-1, Visakhapatnam dated 11/09/2012. The assessee had filed its original return of income for the AY 2012-13 on 27/09/2012 declaring total income of Rs. 45,68,31,160/-. Subsequently, the assessee filed revised return of income for the AY 2012-13 on 8/2/2014 admitting total income of Rs. 45,68,31,160/-. The case was selected for scrutiny manually with the approval of the Chief Commissioner of Income Tax, Visakhapatnam in F.No. 64/CCIT/VSP/Tech/12-13, dated 19/03/2013. Accordingly, the statutory notice U/s. 143(2) of the Income Tax Act 1961 dated 26/03/2013 was issued by the then ACIT, Circle-1(1), Visakhapatnam which was duly served on the assessee on 1/4/2013. Further notice U/s. 142(1) dated 25/4/2013 along with questionnaire calling for certain information / details was issued by the then ACIT, circle-1(1), Visakhapatnam which was duly served on the assessee. Subsequently, the case was assigned to Addl. CIT, Range-1, Visakhapatnam vide order U/s. 120(4)(b) of the Act by the then CIT-1, Visakhapatnam in F.No. Tech/120(4)(b)/CIT-1/VSP/2013-14, dated 24/10/2013. Due to change in the incumbency, the statutory notice U/s. 143(2) dated

29/11/2013 and notice U/s. 142(1) dated 29/11/2013 along with questionnaire calling for certain information / details were issued by the then Addl. CIT, Range-1, Visakhapatnam which were duly served on the assessee. As per the direction of the Ld. CIT-1, Visakhapatnam vide his letter dated 22/09/2014 and due to change in incumbency, the statutory notice U/s. 143(2) dated 20/11/2014 and notice U/s. 142(1) along with questionnaire calling for certain information / details were issued and duly served on the assessee. In response, the Authorized Representative of the assessee appeared and filed the submissions as called for from time to time. After discussing the facts of the case and examining the books of accounts, the Ld. AO completed the assessment by making the following disallowances:

SI No	Nature of addition	Amount (Rs.)
1.	Upfront premium / unexpired discounts added as income as per para-4	3,07,59,772
2.	Disallowance of excess claim of depreciation as per para 5	4,94,74,344
3.	Disallowance of prior period expenditure as per para 6	1,17,61,944
4.	Disallowance of donation and contribution as per para 7	81,23,864
5.	Disallowance of excess claim on account of contribution to pension fund as per para 8	78,60,27,634
		88,61,47,558

94. Aggrieved by the order of the Ld.AO, the assessee filed an appeal before the Ld. CIT(A)-1, Visakhapatnam. After considering the submissions made by the assessee from time to time and after discussing the case with the Ld. AR, the Ld. CIT(A) partly allowed the appeal of the assessee for the AY 2012-13. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising the following grounds of appeal:

- "1. The order of the Ld.CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The Ld. CIT (A) is not justified in sustaining the addition of Rs. 3,07,59,772/- made by the Assessing Officer by treating the entire upfront premium on lease of land as income of the appellant as against income admitted by the appellant on amortization basis.*
- 3. The Ld. CIT(A) is not justified in sustaining the addition of Rs. 1,34,42,478/- made by the Assessing Officer towards alleged excess claim of depreciation on capital dredging by holding that the eligible rate of depreciation would be 10% as applicable to building and not 15% as applicable to plant.*
- 4. The Ld. CIT(A) is not justified in sustaining the addition of Rs. 1,17,61,944/- made by the AO towards disallowance of prior period expenses.*
- 5. The Ld. CIT(A) is not justified in sustaining the addition of Rs. 28,79,099/- made by the Assessing Officer towards disallowance of contribution to VPT employees family security fund.*
- 6. The Ld. CIT(A) is not justified in sustaining the addition of Rs. 78,60,27,634/- made by the Assessing Officer towards alleged excess contribution to pension fund.*

7. *Any other ground that may be urged at the time of appeal hearing."*

95. The assessee has also raised an additional ground in its appeal which reads as under:

"On the facts and in the circumstances of the case, whether the assessing Officer is justified in assessing the total income of the appellant without granting exemption U/s. 11 of the Income Tax Act, 1961?"

96. **Grounds No. 1 and 7** are general in nature and therefore they need no adjudication.

97. With respect to **Ground No.2** wherein the Ld. Revenue Authorities confirmed the addition of Rs. 3,07,59,772/- towards **upfront premium** received on lease of lands, we find that this **issue is identical to that of the issue raised by the assessee in its appeal ITA No. 396/Viz/2014 (Ground No.5) for the AY 2010-11**. Since the facts and circumstances pertaining to this issue in both the appeals i.e., ITA No. 396/Viz/2014 and ITA No. 324/Viz/2017 are same, our decision given while adjudicating the issue with respect to addition made by the Ld.AO and confirmed by the Ld. CIT(A) towards upfront premium received on lease of lands in ITA No. 396/Viz/2014 (AY: 2010-11) *mutatis mutandis* applies to the similar issue involved in Ground No.2 of ITA No. 324/Viz/2017

also. Hence, we hereby **allowed the ground** raised by the assessee on this issue.

98. **Ground No.3** pertains to **disallowance of excess depreciation** of Rs. 1,34,42,478/- as claimed by the assessee in respect of capital dredging. This issue identical to that of the issue raised by the assessee in its appeal **ITA No. 396/Viz/2014 vide Ground No.4**. Since the facts and circumstance of the case as well as the issue involved in both the appeals are identical our decision given on Ground No.4 of the assessee's appeal in ITA No. 396/Viz/2014 *mutatis mutandis* applies to the Ground No.3 of the instant appeal (ITA No.324/Viz/2017) also. Accordingly, we hereby confirm the order of the Ld. Revenue Authorities on this ground and thereby dismissed the grounds raised by the assessee.

99. **Ground No.4** is with respect to **disallowance of prior period expenses** amounting to Rs. 1,17,61,944/-. On this ground, the Ld. AR in his written submissions stated that these expenses comprise Staff Cost and Miscellaneous Expenses amounting to Rs. 1,17,51,950/- and Rs. 9,994/- respectively. The Ld. AR further submitted that due to non-finalization of bills and non-granting of approvals due to various administrative reasons, these expenditure could not be provided in the books of account in the respective accounting years and therefore

provided during the FY 2011-12 being the year of finalization of expenses. On this issue, the Ld. AR relied on the case of Addl. CIT vs. Jay Engineering Works Ltd [1978] 113 ITR 389 (Del.) and CIT vs. Marshall Sons Co. (I) Ltd [1995] 124 CTR 213. The Ld. AR further in his written submissions has stated that the Ld. CIT(A), Visakhapatnam in the assessee's own case for the AY 2004-05 has deleted the addition with respect to prior period expenditure. He therefore pleaded that this may be allowed.

Per contra, the Ld. DR relied on the orders of the Ld. Revenue Authorities.

100. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. Admittedly, the prior period Staff Cost comprises of VRS ex-gratia payments, pension payments and leave encashment and difference of leave salary payable including fixation of payment to employees, re-fixation of pay on grant of additional increments etc. From the submissions of the Ld. AR, we find that due to certain disciplinary cases these payments could not be finalized in the earlier assessment years and hence after finalization in the FY 2011-12 these have been accounted as prior period expenses. There is no dispute on the fact that these are all business expenditures. We also find from the order of the

Ld. CIT(A) in the assessee's own case this issue was decided in favour of the assessee which is extracted herein below:

"In the instant case, the business of the appellant is of giant proportion and therefore the principle enunciated by the Delhi High Court is fully applicable to the facts of the case of the appellant. The nature of expenses is recurring in a big organization like the appellant as there would be various bills pending for processing and even submissions of the bills would be delayed even though advances would have been taken in different accounting years particularly by the employees. Expenditure incurred in the earlier years which could not be claimed in the relevant years on account of errors in accounting and claimed in subsequent year in which such error is rectified cannot be disallowed merely on the ground that it does not relate to the year of account particularly when occurring of such error is usual and common in large organizations like that of the appellant. The genuineness of these expenditures have not been disputed at any stage by the Assessing Officer. Moreover, the accounts of the appellant have been audited by the External Auditors. The External Auditors have made their annual report U/s. 227(2) of the Companies Act, 1956 to the Members of the Company on the accounts examined by them and on the balance sheet and profit & loss account for the year under consideration. These reports do not doubt the correctness of accounts. Under section 227(3)(b) and (c), the Auditor's report have to state whether in their opinion paper books of accounts as required by law have been kept by the Company and whether the company's balance sheet and profit & loss account are in agreement with books of account. The Auditors have furnished such certificate. Therefore, genuineness of these expenses cannot be doubted. It is settled position of law that where it is possible to draw two inferences from the facts and there is no evidence of any dishonest or ulterior motive on the part of the assessee, it would lead to equity and justice. In view of this, I hold that expenditure relating to an earlier year is allowable as a deduction in an subsequent year especially when claiming of such deduction in the relevant year is due to bona fide reason of either being an error in accounting or information not been available in that year. Therefore, the addition of Rs. 22,46,12,886/- made by the Assessing Officer is hereby deleted and this ground of appeal is allowed."

101. Further we find that the Ld. CIT(A) sustained the additions made by the Ld. AO. In our considered view since these expenses have been crystallized and finalized during the FY 2011-12, these expenditures need to be allowed in the year of finalization. We are therefore inclined to **allow this claim** made by the assessee and set-aside the orders of the Ld. Revenue Authorities on this ground.

102. With respect to **Ground No.5**, regarding the addition of Rs. 28,79,099/- towards disallowance of contribution to VPT Employees Family Security Fund, the Ld. AR submitted that a provision has been made during the FY towards the Family Security Fund of the employees of the VPT. The Ld. AR submitted that these expenditure are incurred during the course of carrying of the assessee's business and shall be allowable U/s. 37 of the Act.

Per contra, the Ld. DR relied on the orders of the Ld. Revenue Authorities.

103. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. From the submissions made by the Ld. AR we find that a provision to the extent of Rs. 28,79,099/- was made to the VPT Employees Family Security Fund. This being a provision shall be allowed in the year of payment, in

accordance with the provisions of section 43B of the Act. The Ld. CIT(A) in para 9.4 of his order has held as follows:

"9.4. The AR was asked to furnish the details of the contributions made. In response, the AR submitted that breakup: as per which Rs. 50,12,435/- was contributed towards assessee's share to Indian Port Association, Rs. 1,00,000/- was contributed to East Coast Port Vision Seminar, Rs. 80,000/- towards 150th Jayanthi Gurudev Rabindranath Tagore and it was represented that these contributions are more in the nature of publicity & not donations. I find that these expenditure are allowable U/s. 37 of the Act. In regard to the remaining amount, it was seen provision to the tune of Rs. 28,79,099/- was made to VPT employees family security fund. I find that this is merely a provision and as such not allowable. Therefore, the disallowance to the tune of Rs. 28,79,099/- is upheld."

104. The Ld. CIT(A) has therefore rightly considered the disallowance being the provision made in the books of account and hence we find no infirmity in the order of the Ld. CIT(A) on this ground and accordingly **the ground raised by the assessee is dismissed.**

105. With respect to Additional Ground, the Ld. AR submitted that this ground is not pressed. Therefore, the **Additional Ground raised by the assessee is dismissed as not pressed.**

In the result, the assessee's appeal (ITA No. 324/Viz/2017) is **partly allowed.**

C.O. No. 28/Viz/2022 (By Revenue)
(AY: 2012-13)

106. This Cross Objection is raised by the Revenue is against the additional ground raised by the assessee. Since the additional ground raised by the assessee in its appeal ITA No. 324/Viz/2014 (AY 2012-13) is not pressed by the assessee, the adjudication of the Cross Objection raised by the Revenue with respect to allowability of additional ground becomes infructuous. Accordingly, the grounds raised by the Revenue in its CO are dismissed as infructuous.

107. In the result, **CO raised by the Revenue is dismissed as infructuous.**

ITA No.399/Viz/2014 (By Revenue)
(AY: 2011-12)

108. This cross appeal filed by the Revenue against the combined order of the Ld. CIT(A) in ITA No.0266/12-13/Addl.CIT, R-1/VSP/13-14 & ITA No. 0362/12-13/ACIT,C-1/VSP/2013-14 dated 28/03/2014 arising out of the order passed U/s. 143(3) of the Act for the AY:2010-11 & 2011-12.

109. The Revenue has raised the following grounds of appeal:

- “1. The order of the Ld. CIT(A) is erroneous in law and to the facts of the case.*
- 2. The Ld. CIT(A) erred in allowing pension to be included under the head “salaries and Wages” for computation of allowable contribution towards Pension Fund and thus allowed excess deduction to the assessee.*
- 3. The Ld. CIT (A) erred in not appreciating the fact that payment of pension is made out of a specific fund maintained for that purpose and not like normal business expenditure.*
- 4. Any other ground that may be urged at the time of hearing.”*

110. The only issue raised by the Revenue in its grounds of appeal is with respect to **contribution to pension fund in excess of the annual limit of 27% of the salaries and wages.**

This issue was decided by us while adjudicating the assessee's appeal vide **Ground No.5 of ITA No.397/Viz/2014** wherein we have respectfully followed the decision of the Coordinate Bench decision in ITA No. 6444/Mum/2007, dated 28/01/2011 in the case of Glaxo Smithkline Pharmaceuticals which was also affirmed by the Hon'ble High Court of Bombay in CIT-6 vs. Glaxo Smithkline Pharmaceuticals wherein the Hon'ble High Court of Bombay has held that even if the expenditure is not allowable U/s. 36(1)(iv) of the Act, but the

same is allowable U/s. 37 of the Act. Respectfully following the above decision, we are inclined to allow the contribution to Pension Fund in excess of 27% on account of salaries, wages and pension U/s. 37 of the Act and hence this ground raised by the Revenue is dismissed. Since, the expenditure is allowed on contribution basis, we are of the opinion that the provisions of section 43B of the Act are not applicable. It is ordered accordingly. Thus, the **Grounds raised by the Revenue are dismissed.**

111. In the result, appeal of the Revenue (**ITA No. 399/Viz/2014**) is **dismissed.**

ITA No.67/Viz/2021 (By Revenue)
(AY: 2016-17)

112. This cross appeal is filed by the Revenue against the order of the Ld.CIT (A)-1, Visakhapatnam in ITA No. 10269/2018-19/VSP/2020-21, dated 21/09/2020 arising out of the order passed U/s. 143(3) of the Act for the AY 2016-17.

113. Briefly stated the facts of the case are that the assessee is a Port Trust came into existence under the Major Port Trust Act, 1963 and has been carrying on commercial activities and services of a port and allied facilities relating to maritime trade and

commerce since inception. The assessee being a Local Authority was exempted U/s. 10(20) of the Act up to the AY 2002-03. From AY 2003-04 to 2008-09, total income of the assessee was exempted U/s. 11 of the Act. Consequent to amendment to section 2(15) of the Act, the assessee filed its return of income for the AY 2009-10 onwards admitting its income under the head 'business income'. Further, the registration U/s. 12AA of the Act was cancelled w.e.f 1/4/2009 vide proceedings of the Ld. CIT-1, Visakhapatnam dated 11/09/2012. The assessee filed its original return of income for the AY 2016-17 on 13/10/2016 admitting NIL income. Subsequently, the assessee filed revised return of income for the AY 2016-17 on 22/03/2017 admitting NIL income. The case of the assessee was selected for scrutiny under CASS. Accordingly, notice U/s. 143(2) of the act was issued on 17/7/2017 which was duly served on the assessee on 25/07/2017. A notice U/s. 142(1) of the Act dated 9/2/2018 was issued which was duly served on the assessee on 15/2/2018. Due to change in incumbent, notice U/s. 143(2) of the act was issued through ITBA module on 14/08/2018. Thereafter a notice U/s. 1242(1) of the Act calling for certain information was also issued to the assessee on 31/8/2018. Thereafter, a show cause notice dated 9/11/2018 was also issued to the assessee through

online. In response, the assessee filed the submissions / information through e-proceedings module from time to time. After examining the relevant information / written submissions filed by the assessee through ITBA module, the Ld. AO completed the assessment by making the following additions / disallowances:

Sl No	Nature of addition	Amount (Rs.)
1.	Upfront premium added as income as per para-4	212,96,25,561
2.	Disallowance of excess claim of depreciation as per para 5	13,11,29,794
3.	Disallowance of excess claim on account of contribution to Pension Fund as per para 6	118,00,00,000
4.	Disallowance of provision for interest on government loan for outer harbour as per para-7	7,00,00,000
5.	Disallowance of Prior period expenditure as per para 8	86,96,880
		237,77,54,960

114. Aggrieved by the order of the Ld.AO, the assessee filed an appeal before the Ld. CIT(A)-1, Visakhapatnam. After considering the submissions made by the assessee from time to time and after discussing the case with the Ld. AR, the Ld. CIT(A) partly allowed the appeal of the assessee for the AY 2016-17. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us by raising the following grounds of appeal:

- "9. *The order of the Ld. CIT(A) is erroneous on facts and in law.*

10. *The Ld. CIT(A) is not justified in restricting the rate of depreciation to 10% as against 15% (sic) in respect of depreciation Railway Permanent Way as the railway track is an integral unit of the system for carrying out materials for loading and unloading up to the railway siding of Indian Railways and accordingly railway permanent way should be treated as roads on par with buildings, which are entitled for depreciation at 10% only instead of 15%.*
11. *The Ld. CIT(A) is not justified in allowing the "prior period expenditure" of Rs. 86,96,880/- as these expenses did not pertain to the subject year and is as such not allowable for AY 2016-17. The expenditure is allowable in the year to which it relates. Except certain expenses eg., described U/s. 43B, the same are allowed in the year of payment only. The expenditure of prior period are allowed in the year of payment only, if the liability of the said expenses have arisen or are crystallized in the year of payment.*
12. *the appellant craves leave to add or delete or amend or substitute any ground of appeal before and / or as the time of hearing of appeal."*

115. At the outset, it is pertinent to mention here that the Sl. No. of Grounds of appeal are given as 9, 10, 11 and 12 instead of 1, 2, 3 and 4. Therefore, to avoid confusion while adjudicating the grounds, we shall proceed to renumber the grounds with Ground No.1, 2, 3 and 4 instead of 9, 10, 11, & 12.

116. **Ground No.1 & 4** are general in nature and therefore they need no adjudication.

117. With respect to **Ground No.2**, the Revenue has contended that the Ld. CIT(A) has erred in treating the Railway Permanent

Way as Plant & Machinery instead of treating it as roads on part with buildings and accordingly allowed depreciation @ 15% instead of depreciation @ 10% on buildings. On this ground, the Ld. DR submitted that the Railway Permanent Way is akin to road and should be treated as "buildings" for the purpose of calculation of depreciation. The Ld. DR also submitted that the Ld. AO has also distinguished the decision of the Hon'ble Apex Court in the case of CIT vs. Karnataka Power Corporation reported in 247 ITR 268 (SC) relied on by the assessee in support of its claim. Therefore, the Ld. DR pleaded that the order of the Ld. AO be upheld.

Per contra, the Ld. AR relied on the order of the Ld. CIT(A) and argued in support of the same.

118. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. In the instant case, we find that the Ld.CIT(A) following the principle of consistency has considered the Railway Permanent Way under "Plant & Machinery" by following the adjudication of the same issue in the AY 2012-13. From the records available before us, we find that the Ld. CIT(A) in the earlier years has relied on the order of the Ld. CIT(A) for the AY 2005-06 in ITA No. 240/R-1/VSP/2007-08 wherein it was held

that the Railway Permanent Way should be treated as part of the "plant". From the records produced before us, we find that this decision was not challenged by the Revenue before the Higher Appellate Authorities. Therefore, the Ld. CIT(A) has been consistently following the decision as laid down in ITA No.240/R-1/VSP/2007-08, dated 28/04/2008 by considering the Railway Permanent Way as "plant and machinery" and accordingly allowed the depreciation @ 15%. Since the decision of the Ld. CIT(A) was not challenged by the Revenue, we are inclined to uphold the order of the Ld. CIT(A) in the instant case and accordingly we do not find any infirmity in the order of the Ld. CIT(A) on this issue. Thus, **this ground raised by the Revenue is dismissed.**

119. **Ground No.3** is with respect to allowance of "**Prior Period Expenses**" of Rs. 86,96,880/- by the Ld. CIT(A). On this issue, the Ld. DR submitted that the deduction of expenditure can allowed only when it is found to have been incurred in the relevant accounting period. Since these expenditure are pertained to earlier periods, these cannot be allowed in the impugned assessment year. He therefore pleaded that the order of the Ld. AO be upheld.

Per contra, the Ld. AR submitted that the Prior Period Expenses arise out of the following:

Sl No	Particulars	Amount (Rs.)
1.	Expenses for Accounting of stock issues made in 2014-15	63,05,589
2.	Expenses for wage revision arrears paid during FY	33,30,676
3.	Less: Income related to reversals of excess provision for interest and expenditure transferred to CWIP	(9,29,385)
	Total	86,96,880

120. With respect to accounting stock issues due to non-receipt of respective documents at the time of closing of the books of accounts, entries could not be debited in the respective accounting years. The Ld. AR pleaded that these expenses are allowable U/s. 37 of the IT Act, 1961. Further, with respect to the wage revision, the Ld. AR submitted that the salaries of the employees are revised for every Five Years based on the Wage Revision Settlement between the Trade Unions of Major Ports and Ministry of Shipping. Due to settlement of wage revisions during November, 2013, arrears of salaries were paid in the year 2013 itself to the employees who are on the Rolls of the Visakhapatnam Port Trust. However, where there were cases of Court attachments, these arrear payments were released during the FY 2015-16 and hence pleaded that these expenses were

crystallized only during the FY 2015-16 and hence to be allowed as business expenditure. The Ld. AR therefore pleaded that the order of the Ld. CIT(A) be upheld.

121. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities on this issue. The Ld. CIT(A) in para 4.6.3 held as follows:

"4.6.3. I have carefully considered the issue. Generally, the expenditure is allowed in the year in which it is incurred against the income of the year. The appellant argued that the expenditure was incurred on account of 'stocks' arrears and interest. The reason for not claiming in the year was seemingly the delay in receipt of consumption. It is not the case of the Assessing Officer that the expenditure is not genuine or not related to business. It appears to be departmental lacuna because that made difficult in claiming the expenses. Regarding the wages, it is claimed that the proposals are made in the FY 2015-16 pertaining to the period from January, 2012 to 2013. There is no doubt in the genuineness of expenditure. On over all consideration of facts of the case, I am of the opinion that there exists some difficulty in ascertaining the expenditure in earlier years. Therefore, it should be allowed in the year of payment. Accordingly, the Assessing Officer is directed to delete the addition."

122. Further, in the instant case, we find that the delay in receipt of consumption could not be a valid reason for the accounting of the stock issues amounting to Rs. 63,05,589/-. These arise on account of errors or omissions in accounting during the relevant assessment year and hence are considered as

prior period expenses which need to be disallowed. We are therefore not in agreement with the decision of the Ld. CIT(A) on this issue and also direct the Ld. AO to make addition of Rs.63,05,589/-. However, with respect to the settlement of wages and delay in releasing the arrears of payment on account of Court case attachments, we are of the opinion that these arrears or wages crystallized during the FY 2015-16 and hence cannot be considered as prior period expenses thereby no disallowance can be made on this amount of Rs. 33,20,676/-. We therefore concur with the view of the Ld. CIT(A) on this issue and direct the Ld. AO to delete the addition of Rs. 33,20,676/-. Accordingly, this **Ground No.3 raised by the Revenue is partly allowed.**

123. In the result, appeal of the Revenue (**ITA No. 67/Viz/2021**) **is partly allowed.**

C.O. No. 51/Viz/2021 (By assessee)
(AY: 2016-17)

124. This Cross Objection is filed by the assessee and raised the following grounds of cross objection:

- "1. *The Ld. CIT(A) is justified in deleting the addition of Rs. 2,99,97,444/- made by the Assessing Officer towards disallowance of excess claim of depreciation in respect of Railway Permanent Line by restricting the*

rate of depreciation to 10% as against 15% claimed by the respondent.

2. *The Ld. CIT(A) is justified in deleting the addition of Rs. 86,96,883/- made by the Assessing Officer towards disallowance of prior period expenses.*
3. *Any other grounds of cross objection that may be raised at the time of hearing."*

125. The above grounds of cross objection raised by the assessee are in supportive nature to the decision of the Ld. CIT(A). While adjudicating the Revenue's appeal in ITA No. 67/Viz/2021 (supra), we have partly allowed the issues raised by the Revenue in favour of the assessee. Therefore, considering the outcome of the Revenue's appeal, these grounds of Cross Objection raised by the assessee are accordingly disposed off.

126. In the result, CO raised by the assessee is disposed off as discussed herein above.

ITA No.49/Viz/2021 (By Revenue)
(AY: 2015-16)

127. This appeal filed by the Revenue against the order of the Ld. CIT(A)-1, Visakhapatnam in ITA No. 10251/2017-18/CIT(A)-1/VSP/2019-20, dated 21/09/2020 arising out of the order passed U/s. 143(3) of the Act.

128. Briefly stated the facts of the case are that the assessee is a Port Trust came into existence under the Major Port Trust Act, 1963 and has been carrying on commercial activities and services of a port and allied facilities relating to maritime trade and commerce since inception. The assessee being a Local Authority was exempted U/s. 10(20) of the Act up to the AY 2002-03. From AY 2003-04 to 2008-09, total income of the assessee was exempted U/s. 11 of the Act. Consequent to amendment to section 2(15) of the Act, the assessee filed its return of income for the AY 2009-10 onwards admitting its income under the head 'business income'. Further, the registration U/s. 12AA of the Act was cancelled w.e.f 1/4/2009. The assessee had filed its original return of income for the AY 2015-16 on 29/09/2015 declaring NIL income. Subsequently, a revised return was filed for the AY 2015-16 on 28/03/2017 admitting NIL income. The case was selected for scrutiny under CASS and accordingly notice U/s. 143(2) was issued on 27/7/2016 which was duly served on the assessee on 4/8/2016. Further, a notice U/s. 142(1) of the Act dated 6/2/2017 was issued and duly served on the assessee on 9/2/2017. Thereafter, a letter dated 21/8/2017 was issued to the assessee informing the assessee regarding the conversion of 'limited scrutiny' to 'complete scrutiny' with the approval of the

Pr. CIT-1, Visakhapatnam as the case falls under the categories prescribed under the CBDT's Instruction No. 20/2015 dated 29/12/2014 and Instruction No.5/2016 dated 14/7/2016. Subsequently, notice U/s. 142(1) of the Act has been issued on 28/09/2017. In response to the notice, the assessee's Authorized Representative appeared from time to time and filed the submissions as called for. The Ld. AO after discussing the facts and examining the books of accounts, submissions of the assessee, completed the assessment U/s. 143(3) of the Act by making the following additions:

Sl No	Nature of addition	Amount (Rs.)
1.	Upfront premium added as income as per Para-4	26,39,48,118
2.	Disallowance of excess claim of depreciation as per para-5	5,16,08,835
3.	Disallowance of donation and contribution as per para-6	1,56,99,298
4.	Disallowance of excess claim on account of 'contribution to pension fund' as per para 7	4,57,93,453

129. Aggrieved by the order of the Ld.AO, the assessee filed an appeal before the Ld. CIT(A)-1, Visakhapatnam. After considering the submissions made by the assessee from time to time and after discussing the case with the Ld. AR, the Ld. CIT(A) partly allowed the appeal of the assessee for the AY 2015-16. Aggrieved

by the order of the Ld. CIT(A), the Revenue is in appeal before us by raising the following grounds of appeal:

- “5. *The order of the Ld. CIT(A) is erroneous on facts and in law.*
6. *The Ld. CIT(A) is not justified in restricting the rate of depreciation to 10% as against 15% in respect of Depreciation on ‘Railway Permanent Way’ as the railway tract is an integral unit of the system for carrying out materials for loading and unloading up to the Railway siding of Indian Railways and accordingly, railway permanent way should be treated as roads on par with buildings, which are entitled for depreciation at 10% only instead of 15%.*
7. *The Ld. CIT(A) is not justified in allowing the donations and contributions of Rs. **1,56,99,298/-** as the business expenditure as none of these contributions are related to the business activities of the assessee.*
8. *The appellant craves leave to add or delete or amend or substitute any ground of appeal before and / or as the time of hearing of appeal.”*

130. At the outset, it is pertinent to mention here that the Sl. No. of Grounds of appeal are given as 5, 6, 7 and 8 instead of 1, 2, 3 and 4. Therefore, to avoid confusion while adjudicating the grounds, we shall proceed to renumber the grounds with Ground No.1, 2, 3 and 4 instead of 5, 6, 7 and 8.

131. **Grounds No. 1 and 4** are general in nature and therefore they need no adjudication.

132. With respect to **Ground No.2**, the Revenue has contended that the Ld. CIT(A) has erred in treating the Railway Permanent Way as Plant & Machinery instead of treating it as roads on part with buildings and accordingly allowed depreciation @ 15% instead of depreciation @ 10% on buildings. This issue is identical to that of the issue raised by the Revenue vide Ground No.2 of its appeal in ITA No. 67/Viz/2021 (AY 2016-17) which is adjudicated by us in the foregoing paragraphs of this order. Considering the similar facts and circumstances of the case and also the identical nature of the issue involved in both the appeals, our decision given on Ground No. 2 while adjudicating the Revenue's appeal in ITA No.67/Viz/2021 (supra) *mutatis mutandis* applies to the Ground No.2 of the ITA No.49/Viz/2021. Accordingly, this **Ground No.2 raised by the Revenue is dismissed.**

133. With respect to **Ground No.3**, the Revenue has contended that the Ld. CIT(A) has erred in allowing the donations and contributions of Rs. 1,56,99,298/- as business expenditure. However, we find that the Ld. CIT (A) has allowed a sum of Rs. 1,55,49,973/- as discussed in para 4.4.1 of the Ld. CIT(A) order in ITA No. 235/Viz/2020. We have already dealt with this issue

while adjudicating the assessee's appeal in ITA No. 235/Viz/2020 (AY 2015-16) vide **Ground No.4**. Considering the similar facts and circumstances of the both the cases, our decision given while adjudicating the Ground No.4 of assessee's appeal in ITA No. 235/Viz/2020 *mutatis mutandis* applies to the Ground No.3 of the Revenue's appeal in ITA No. 49/Viz/2021 (AY 2015-16) also. Accordingly, we dismiss the ground raised by the Revenue.

134. In the result, the **appeal of the Revenue (ITA No. 49/Viz/2021) is dismissed.**

C.O. No. 50/Viz/2021 (By assessee)
(AY: 2015-16)

135. This Cross Objection is filed by the assessee and raised the following grounds of cross objection:

- "1. The Ld. CIT(A) is justified in deleting the addition of Rs. 2,30,63,434/- made by the Assessing Officer towards disallowance of excess claim of depreciation in respect of Railway Permanent Line by restricting the rate of depreciation to 10% as against 15% claimed by the respondent.*
- 2. The Ld. CIT(A) out to have deleted the entire addition instead of partly sustaining the addition of Rs. 1,56,99,298/- made by the Assessing Officer towards disallowance of donations and contributions.*
- 3. Any other grounds of cross objection that may be raised at the time of hearing."*

136. The above grounds of cross objection raised by the assessee are in supportive nature to the decision of the Ld. CIT(A). While adjudicating the Revenue's appeal in ITA No. 49/Viz/2021 (supra), we have dismissed the issues raised by the Revenue. Therefore, considering the outcome of the Revenue's appeal, these grounds of Cross Objection raised by the assessee are accordingly disposed off.

137. In the result, CO raised by the assessee is disposed off as discussed herein above.

Pronounced in the open Court on 27th September, 2023.

Sd/- (दुव्वुऱर.एलरेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER	Sd/- (एसबालाकृष्णन) (S.BALAKRISHNAN) लेखासदस्य/ACCOUNTANT MEMBER
---	---

Dated : 27.09.2023

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-The Chairman, Visakhapatnam Port Authority, Port Area, Visakhapatnam-530001. (ii) M/s. Visakhapatnam Port Authority (Formerly known as M/s. Visakhapatnam Port Trust), AdministrativeOffice Building, Port Area, Visakhapatnam, Andhra Pradesh - 530035. (iii) M/s.

2. राजस्व/The Revenue – Addl. CIT, Range-1, Visakhapatnam.(ii) Asst. Commissioner of Income Tax, Circle-1(1), Direct Tax Building, MVP Colony, Visakhapatnam, Andhra Pradesh – 530017. (iii) Asst. Commissioner of Income Tax, Range-1, 4th Floor, Direct Taxes Building, MVP Colony, Visakhapatnam-530017.(iv) Asst. Commissioner of Income Tax, Circle-1, Visakhapatnam. (v) Asst. Commissioner of Income Tax, Circle-1(1), 4th Floor, Direct Taxes Building, MVP Double Road, Visakhapatnam – 530017.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam