

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 579/Bang/2015
Assessment Year : 2009-10

M/s. HP India Sales Pvt. Ltd. (Formerly known as Hewlett-Packard India Sales Pvt. Ltd.), 24, Salarpuria Arena, Hosur Main Road, Adugodi, Bangalore – 560 030. PAN: AAACC9862F	Vs.	The Joint Commissioner of Income tax, LTU, Bangalore.
APPELLANT		RESPONDENT

&

ITA No. 593/Bang/2015
Assessment Year : 2009-10
(By Revenue)

Assessee by	:	Shri Percy Pardiwala, Sr. Advocate
Revenue by	:	Shri Saravanan B, CIT-DR

Date of Hearing	:	30-08-2023
Date of Pronouncement	:	21-11-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present cross appeals are filed by assessee as well as revenue against the order dated 30.01.2015 passed by the Ld.CIT(A)-14, Bangalore for A.Y. 2009-10 on following grounds of appeal:

Grounds of appeal (Assessee)

“Based on the facts and circumstances of the case, Hewlett-Packard India Sales Private Limited ("HPISPL" or "the Appellant"), respectfully submits that:

1 Addition under head Income received in advance ("IRIA")

1.1 The Commissioner of Income-tax (Appeals) ["CIT(A)"] has erred in law and on facts in upholding the addition of Rs 50,612,697, representing unreconciled amounts in respect of IRIA.

2 Addition under head Deferred revenue

2.1 The CIT(A) has erred in law and on facts by upholding the addition pertaining to deferred revenue.

2.2 The CIT(A) has further erred in law and on facts in not appreciating the accounting treatment and revenue recognition policy consistently followed by the Appellant in respect of the amounts covered under deferred revenue addition.

2.3 The CIT(A) has erred in law and on facts by not taking into consideration the accounting opinion issued by the leading accounting expert, Mr Y H Malegam inter alia sanctifying that the accounting treatment of the Appellant is in accordance with Generally Accepted Accounting Principles followed in India and Accounting Standard ("AS 9").

2.4 The CIT(A) has erred in law and on facts in drawing up inferences and conclusions based on the contract entered into by the Appellant with United India Insurance Contract ("UIIC").

2.5 The CIT(A) has erred in law and on facts in stating that the claim of TDS on deferred revenue is against the arguments raised by Appellant for recognition of revenue.

2.6 The CIT(A) has erred in law and on facts by not adjudicating on the grounds raised in respect to adhoc cost adjustment made in the assessment order.

2.7 The CIT(A) has erred in law and on facts, in upholding the decision of the Assessing Officer ("AO") of disregarding the accounting system which has been regularly followed by the Appellant, without

establishing reasons for which such an accounting system is not correct in light of the provisions of section 145(1) of the Income-tax Act, 1961 ("the Act").

2.8 The CIT(A) has erred in law and on facts in upholding the addition on account of income deferred from small customers and also upholding the decision of the AO that there is no scope for deferral of income.

2.9 Without prejudice to the above grounds, the CIT(A) erred in law and on facts in not providing a specific direction to limit the addition to the movement in the deferred revenue and the corresponding cost accounts, as per the financial statements and to provide appropriate relief in the subsequent years to ensure no double taxation of the same amounts.

3 Addition on account of audit entries

3.1 The CIT(A) has erred in law and on facts in upholding the addition made by the AO in respect of audit entries of Rs 357,780,932 posted in certain expense account (i.e. rent, travelling, repairs and maintenance, outside contract service, advertisement and business promotion, freight and warehousing charges and legal and professional) without appreciating that these audit entries entailing reclassification, accrual and reversal entries are passed by the Appellant as a part of statutory audit.

3.2 The CIT(A) has erred in law and on facts in not appreciating that the audit entries passed under certain expense head (i.e. rent, travelling expenses, repairs and maintenance and outside contract services ledger accounts) were actually reducing the ledger totals as a part of reclassification/reversals and upholding the addition made by the AO in respect of the subject ledgers.

3.3 The CIT(A) has erred in law and on facts in upholding the addition made on account of audit entries passed in the expense ledger for want of evidence, without appreciating that the Appellant had submitted requisite details sought during the assessment proceedings.

4 Grounds relating to disallowance of deduction claimed under section 40(a)(i) and section 40(a)(ia) of the Act

4.1 The CIT(A) has erred in law and on facts in upholding the disallowance made by the AO in respect of amounts claimed under section 40(a)(i) and 40(a)(ia) of the Act.

4.2 The CIT(A) has erred in law and on facts in not appreciating the accounting system followed by the Appellant in respect of provision for year-end expenses

and upholding the addition made by the AO in the assessment order.

4.3 The CIT(A) has erred in law and on facts in stating that the disallowance made by the Appellant in the earlier Assessment Year ("AY") 2008-09 under section 40(a)(i) and section 40(a)(ia) of the Act may be in the nature of contingent liability and merited disallowance under section 37 of the Act.

4.4 The CIT(A) has erred in law and on facts in holding certain invoices submitted by the Appellant in respect of the deduction claimed under section 40(a)(i) and section 40(a)(ia) of the Act to be in the nature of prior period, based on the date of the invoice without appreciating the time-lag in posting /accounting for these invoices as per the procedures / policies followed in the Appellant's systems, as was explained by the Appellant.

5 Grounds on reclassification of disallowance under section 40(a)(i) and 40(a)(ia) of the Act

5.1 The CIT(A) has erred in law and on facts by not adjudicating on the grounds raised by the Appellant in respect of reclassification of the expenditures which has been suo moto disallowed under section 40(a)(i) and 40(a)(ia) of the Act, to an expenditure attracting disallowance under section 37 of the Act.

5.2 The CIT(A) has erred in law and on facts by not appreciating the fact that though the reclassification of disallowance from section 40(a) (ia)/ section 40(a)(i) of the Act to disallowance under section 37 of the Act does not have any tax implications for the current year, the same leads to shift in nature of the disallowance from temporary to permanent in nature.

6 Grounds pertaining to disallowance of demonstration expenses

6.1 The CIT(A) has erred in law and on facts by upholding the disallowance made by the AO in disallowing the demonstration expenses written-off amounting to Rs.7,836,077 for want of additional evidence.

6.2 The CIT(A) has erred in law and on facts in failing to appreciate the explanation provided by the Appellant pertaining to the nature of the expenses and substantiating the deduction claimed on expenses incurred in relation to demonstration equipment, which were utilized as samples for the purpose of generating sales.

6.3 The CIT(A) has erred in law and on facts by not appreciating the facts of the decision of the Honourable Delhi Income tax Appellate Tribunal ("ITAT") in the case of

Hero Motocorp Ltd (156 TTJ 139) are squarely applicable in the Appellants case.

7 Grounds pertaining to disallowance of expenses debited as cost of goods sold

7.1 The CIT(A) has erred in law and on facts by upholding the addition made by the AO in respect of certain amounts debited under the head cost of goods sold for want of addition evidence and details of Tax Deduction at Source ("TDS").

8 Ground pertaining to disallowance of warranty and maintenance expenses

8.1 The CIT(A) has erred in law and on facts in upholding the disallowance of Rs 430,570,914 made by the AO under the head warranty expenses.

8.2 The CIT(A) has erred in law and on facts in adjudicating the matter on prior period expenditure by applying the analogy held for upholding the addition made under section 40(a)(ia)/ 40(a)(i) of the Act.

8.3 The CIT(A) has erred in law and on facts in upholding the addition made under prior period expenditure without appreciating that Appellant had not made any separate claim in respect of subject expenses owing to reversal of provisions at the beginning of the year.

8.4 The CIT(A) has erred in law and on facts by upholding the addition made by the AO on audit entries without appreciating that the same represents mere accounting classification of expense into a different head.

8.5 The CIT(A) has erred in law and on facts in upholding the disallowance on account of audit entries for want of additional evidence.

8.6 The CIT(A) has erred in law and on facts by upholding the addition made by the AO in arbitrarily disallowing 10 percent of the warranty and maintenance expenses contending that various unwarranted expenditures like sales commission, freight, equipment rent etc. were debited to the warranty and maintenance account.

8.7 Without prejudice, the CIT(A) has erred in law and on facts in not appreciating that even if expenditure do not relate to warranties, the same are to be allowed under section 37 of the Act as the expenditure have been incurred for the purpose of business.

9 Other Grounds

9.1 The CIT(A) has erred in law and on facts by upholding the decision of the AO in levying interest under section 234B and section 234C of the Act.

9.2 The CIT(A) has erred in law and on facts by upholding the decision of the AO in simultaneously levying interest under section 234B and section 220(2) of the Act on the demand raised under section 143(1) of the Act for the same period.

9.3 The CIT(A) has erred in law and on facts by not adjudicating the ground on penalty proceedings and consequently upholding the decision of the AO in initiating penalty proceedings under section 274 read with section 271 of the Act.

Each of the above ground is independent and without prejudice to the other grounds of appeal preferred by the Appellant.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Honourable Income tax Appellate Tribunal to decide this appeal according to law.”

Grounds of appeal (Revenue)

“In the case of M/ s Hewlett - Packard India Sales (P) Limited A.Y 2009-10 appeal Number: ITA No 47/JCIT – LTU/CIT (A) -14/ 12-13 dated 30.01.2015

The order of the Ld. CIT (A) LTU is opposed to law and fact of the case.

1. The Ld CIT (A) has erred in directing the AO to delete addition made on income received in advance
2. The Ld CIT (A) has erred in directing the AO to delete the addition made on claim of liability towards deferred revenue.
3. The Ld CIT (A) has erred in directing the AO to delete the disallowances of other audit entries for lack of evidences.
4. The Ld CIT (A) has erred in directing the AO to delete the disallowance of other provision U/s 37 of the Income tax Act
5. The Ld CIT (A) has erred in directing the AO to delete the disallowance of provision of warranty.

6. *The Ld CIT (A) has erred in directing the AO to delete the Addition of undisclosed sales on account of goods*

7. *The Ld CIT (A) has erred in directing the AO to delete disallowance of lease rental paid on account of computers”*

Brief facts of the case are as under:

2. The assessee is a company and filed its return of income on 30.09.2009 by declaring total income of Rs.389,29,00,660/-. The Ld.AO noted that assessee was engaged in manufacture and trading of computer equipments, printers and accessories and also rendering services of the same. The case was selected for scrutiny and notice u/s. 143(2) of the act was issued. Subsequently, revised return was filed by assessee declaring total income of Rs.428,58,75,420/-. In response to the statutory notices issued, the representative of assessee appeared before the Ld.AO.

2.1 The Ld.AO based on the responses filed by the assessee, made following additions in the assessment order.

Para No.	Particulars	Amount [in Rs.]
	Income returned as per the revised return	428,58,75,416
	Additions made:	
1	Addition of income received in advance:	264,92,26,481
2	Addition of deferred revenue	346,02,21,726
3	Undisclosed income detected from TDS certificates	279,40,71,311
4	Addition of undisclosed sales on account of goods:	916,08,87,209
5	Disallowances of other audit entries:	36,89,24,197

6	Disallowance of claim of deduction 40(a)(i) and 40(a)(ia) in the computation of income:	52,58,75,221
7	Disallowance of lease rental paid on account of computers	6,27,45,952
8	Disallowance of other provisions u s 37 of the Income Tax Act:	7,39,69, 500
9	Disallowance of expenditure debited under the head miscellaneous expenses	1,44,57,372
10	Adjustments in cost of material - added for want of evidence	46,04,37,752
11	Disallowance of demonstration equipment charged off	78,36,077
12	Disallowance of provision of warranty	90,70,53,064
	Total income assessed	2477,15,81,278

Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

2.2 The Ld.CIT(A) after considering the submissions of the assessee deleted the addition pertaining to AMC contracts amounting to Rs.2,59,86,30,784/- by holding that income in respect of AMC contracts were to be offered to tax over a period of the respective contracts. In respect of other reconciliation items, the Ld.CIT(A) sustained addition upto Rs.5,06,12,697/-.

Aggrieved by the order of the Ld.CIT(A), assessee and revenue are in appeal before this *Tribunal*. For the sake of convenience, grounds raised by assessee and revenue on common issues shall be considered together.

3. It is noted that **Ground nos. 1 and 2** raised by assessee and revenue are in respect of the income received in advance and addition under the head deferred revenue.

3.1 Income received in advance

The Ld.AR submitted that sum of Rs.5,06,12,697/- represents a negative amount reflected under the head other reconciliation items in the list of contracts comprised in the closing balance of "Income received in advance" as per the financial statements.

The details of the same was submitted to the Ld.AO which were running into voluminous pages. Thus there was no dispute that the said amount was not accounted and recognised as income over period of contracts. The contracts being in huge volumes assessee could not file the details contract-wise in order to verify the closing balance.

3.2 Addition towards the deferred revenue:

The Ld.AR submitted that addition in respect of the deferred revenue pertains to integrated large scaled contracts entered into by assessee with its customers such as banks, insurance companies etc. that entailed delivery of integrated solutions comprising of supply of products, services, third party product / services generally spread over multiple geographical locations over a period of time with various delivery / supply milestones as agreed between the customers. It is submitted that assessee has recognised cost and revenue in relation to such contracts based on the term of each contract which is in accordance with Accountant standard 9 issued by ICAI. He submitted that the contract-wise data was provided to the authorities below and the

income received in advance by assessee amounted to Rs.2,616,125,327/-, the break-up of which are as under:

The opening balance of the income received in advance account as on April 1, 2008 amounts to Rs 1,904,439,818 and the closing balance of such account on March 31, 2009 was Rs 2,616,125,327. **Therefore, the net movement of the income received in advance account during the financial year 2008-09 amounts to Rs 711,685,509.**

The inventory in respect of certain spare parts and finished goods that form a part of the closing inventory of spare parts and finished goods amounting to Rs 2,089,450,628 and Rs 5,003,254,826 respectively as on March 31, 2009 (as per financial statements) are maintained by the Company in order to service contracts in relation to the abovementioned 'income received in advance' account. Therefore, the expenditure in relation to such spare parts and finished goods is inextricably linked to the 'income received in advance' account.

Hence, the impact of both the net movement of **Rs 711,685,509** of "income received in advance" and the corresponding costs in relation to the same (representing a portion of the spare parts and finished goods inventory) have been rightly carried on by the Company into the balance sheet following the matching principle.

- Further, we wish to bring to your attention that certain parties included in the closing balance of the 'income received in advance account are not included in the list of parties in respect of whom HPISPL is claiming a credit of the taxes withheld at source ("TDS") and hence it appears that such parties have not withheld taxes in respect of the subject amounts during the financial year.

2. Deferred revenue – closing balance of Rs 13,442,789,879

In connection with the income received in advance, the following details have been submitted before your goodself till date;

- Sample copy of an agreement entered into with a customer in respect of the deferred revenue, ie agreement with entered into between HPISPL and Bank of Baroda along with various SOW's connected therewith - Submission dated November 23, 2012
- A note on the nature of the deferred revenue contracts and the connected accounting treatment - Submission dated December 21, 2012
- Statement providing the movement in respect of the deferred revenue account, project in progress account and connected costs including details of the Opening Balance, Debits during the year, Credits during the year and Closing Balance along with a break of the same separately in respect of products and services and such details in respect of 8 large customers of HPISPL being Bank of Baroda, Bank of India, UCO Bank, Union Bank of India, Andhra Bank, United India Insurance Company, Life Insurance Corporation of India and Central Board of Excise and Customs. - Submission dated December 21, 2012

- Copy of the original agreement with Bank of Baroda - Submission dated December 21, 2012
- Detailed document/Invoice wise break-up (comprising of 39,211 line items in relation to products deferrals and about 13,860 line-items in relation to services deferrals) of the closing balance of the entire deferred revenue account amounting to Rs 13,442,789,879 *inter alia* providing detailed information of the Document /Invoice number, Party name and the amount deferred - Submission dated December 21, 2012.
- Explanation on the accounting treatment of the Deferred revenue, Project in progress and certain related accounts - Submission dated December 21, 2012.

In the subject notice, your goodself has required HPISPL to furnish details regarding the closing balance of deferred revenue amounting to Rs 13,442,789,879 in a table provided in the Annexure to the subject notice. In this connection, while it may be noted that all most of the details called for in the subject notice are included in the statement filed vide submission dated December 21, 2012, we have now reformatted such details with certain additional details in the format provided by your goodself and the same is enclosed as **Annexure 4**. Also the party wise listing in respect of the small customers have been enclosed as **Annexure 4A**.

In this regard, we also wish to submit the following;

- The opening balance of the deferred revenue account as on April 1, 2008 amounts to Rs 9,099,121,374 and the closing balance of such account on March 31, 2009 was Rs 13,442,789,879. **Therefore, the net movement of the deferred revenue account during the financial year 2008-09 amounts to Rs 4,343,668,505.**
- As stated in all our earlier submissions, the project in progress account and certain related of the inventory amounts pertain to and are inextricably linked to the deferred revenue account. The opening balance of the project in progress as on April 1, 2008 is Rs 5,735,838,602 and the closing balance of the project in progress and the related inventory accounts as on March 31, 2009 is Rs 8,356,088,695 and Rs 3,235,655,772 (related to small customers). Hence, the total of the costs deferred pertaining to the deferred revenue is 11,591,744,467. **Therefore the net movement in project in progress account (without considering the amounts related to the small customers) during the FY 08-09 amounts to Rs 2,620,250,093.**

- Therefore the / net impact of the movement of the deferred revenue and project in progress (without considering the movement in the inventory costs in relation to small customers) in respect of the financial year 2008-09 amounts to Rs 1,723,418,412
 - Also, it may be noted that difference between the closing balance of the deferred revenue and project in progress and related inventory cost accounts as on March 31, 2009 is Rs 1,851,045,412 and the amount of Rs 5,086,701,184 considered by your goodself in this regard in the notice dated February 18, 2013 is incorrect.
3. **Differences in sales turnover and evidences for discount – Accounts with debit balances totaling to Rs 69,621,945,250 in the trial balance at on March 31, 2009**

In this regard, firstly we wish to reiterate the nature of the key discounts as explained in our submission dated January 21, 2013 (reproduced below for ease of reference)

Account (as reflected in the trial balance)	Balance as per trial balance as on March 31 2009	Nature of the account
Trade Sales of Used Products	621,437,538.05	Entries pertaining to returns from leases, trade-in programs, consignment/demo inventory, previously capitalized HP products, and products expensed upon purchase
Sales Goal Attainment Incentives , Trade Sales Discounts	1,510,363,434.76	Entries pertaining to discounts provided to channel partners, resellers and distributors based on the achievement of or to incentivize specified goals, generally sales volume or product mix related
Special Negotiated Discounts, Trade Sales Discounts	15,660,380,745.94	Entries pertaining to customer and deal specific trade discounts associated with large volume or other strategic opportunities. These discounts are typically limited to a specified time period for a set of products in specified volumes

Special Negotiated Discounts, Trade Sales Discounts	1,882,451,212.58	Entries pertaining to customer and deal specific trade discounts associated with large volume or other strategic opportunities. These discounts are typically limited to a specified time period for a set of products in specified volumes
--	------------------	---

Further, as required by your goodself, we are hereby providing the following to evidence the amounts in connection with the subject accounts having a debit balance of Rs 69,621,945,250

- Copies of the following ledger accounts for the financial year 2008-09 – enclosed in Compact disc as **Annexure 5**.

GL Code	Closing balance (as on March 31, 2009)	Number of pages /line items
30610000	Rs 19,195,582	2 pages / 59 line items
31040000	Rs 15,660,380,746	32 pages / 1748 line items
31050000	Rs 6,156,684,719	49 pages / 2660 line items
31060000	Rs 59,143,515	3 pages / 148 line items
31080000	Rs 33,088,227,008	61 pages / 3349 line items
31090000	Rs 91,932,700	2 pages / 84 line items
31100000	Rs 6,114,857	1 page / 17 line items
31120000	Rs 143,337,887	67 pages / 3647 line items
31020000	Rs 8,556,824	7 pages / 356 line items
38680000	Rs 1,480,354,455	115 pages / 6274 line items
30070000	Rs 67,331,169	11 pages / 562 line items
31030000	Rs 1,510,363,435	56 pages / 3050 line items
9030040000	Rs 8,726,263,596	28 pages / 1512 line items
9031040000	Rs 1,882,451,213	9 pages / 466 line items
31070000	Rs 49,989,411	17 pages / 891 line items
30100000	Rs 621,437,538	5 pages / 241 line items
9130108800	Rs 39,414,901	4 pages / 174 line items
30040200	Rs 10,765,695	1 page / 5 line items

- Sample copies of documents evidencing the nature of the discounts including various quotations, price statements, invoice copies, discount memorandums, promotion policies etc. as **Annexure 6**

- A report obtained from the accounting system of HPISPL in respect of August 2008 entailing about 6.5 lacs line items *inter alia* providing details of the discount amounts and the respective sale amounts.

During the course of the hearing we shall explain the broad accounting process in respect of the abovementioned discount accounts illustrating the nature of the discounts, manner of the same being reflected in the report (mentioned above) and the corresponding ledger accounts pertaining to the subject discount.

- A copy of the sales tax returns of HPISPL for the financial year 2008-09 in two box files as **Annexure 7** along with statement providing a broad reconciliation of the same with the financial statements of HPISPL for the subject year.

In view of the above, we wish place on record that HPSIPL has provided sufficient evidence and /or supporting documents in connection with the subject discount accounts in respect of the subject financial year 2008-09.

4. Differences in service income and evidences – Accounts with debit balances totaling to Rs 56,904,200,513 in the trial balance at on March 31, 2009

In this regard, firstly we wish to reiterate our submission dated February 13, 2013 wherein we had brought to your attention that the amount of Rs 56,904,200,513 includes an amount of Rs 38,122,060,348 pertaining to an erroneous entry.

Further, as required by your goodself, we are hereby providing the following to evidence the amounts in connection with the subject accounts having a debit balance of Rs 56,904,200,513.

- Nature of the discount GL account number 31990000 included in above mentioned accounts carrying debit balances:

GL Code	Nature of the account
31990000	This account is used to record approved discounts granted to customers on the sale of trade support and services.

- Copies of the following ledger accounts for the financial year 2008-09 – enclosed in Compaq disc as **Annexure 8**

GL Code	Closing balance (as on March 31, 2009)	Number of pages /line items
30910600	Rs 5,695,367	7 pages / 349 line items
30950100	Rs 43,241,064,309	6171 pages / 339,349 line items
31900100	Rs 22,135,466	1 page / 36 line items
31990000	Rs 13,589,858,671	6 pages / 301 line items
9030980000	Rs 45,446,701	5 pages / 233 line items

- Sample copies documents evidencing the nature of the discounts including various quotations, price statements, invoice copies, discount memorandums, promotion policies etc. as **Annexure 8A.**

Further, the report obtained from the accounting system of HPISPL in respect of August 2008 entailing about 6.5 lacs line items would also be applicable in respect of the subject discount account and we could provide an explanation similar to the discount accounts pertaining to the sales during the course of the hearing

5. Differences of service income between service tax return and financial statements

We wish to reiterate our submission provided vide our letter dated January 21, 2013. In addition, we wish to bring to your attention that the reconciliation statement between the sales tax return and the income as per the financial statements enclosed in Annexure 7 to this submissions *inter alia* includes the service income as per the service tax return of income and hence a reconciliation of the amounts as per the service tax return and the income as per the financial statements have been reconciled in such Annexure 7.

6. Income as per TDS certificate and income as per the financial statements

We wish to reiterate our submission provided vide our letter dated January 21, 2013. In addition, we wish to bring the following reason for difference in the amounts reflected in the TDS certificates and the service income as per the financial statements:

- The service income amounting to Rs 9,461,948,094 reflected in the financial statements of HPISPL for the financial year 2008-09 does not include the amount of service tax and the same is also evidenced by clause 21 reflected in the tax audit report (relevant extract of the tax audit report has been enclosed as **Annexure 9**). Given the rate of service tax of 12.36 percent applicable for the financial year 2008-09, the amount of service tax on the service income of Rs 946.19 crores could amount to about **116.95 crores**.
- We understand that the income amounts reflected by the parties in the TDS certificates *inter alia* include the amount of service tax and accordingly the amounts reflected in the TDS certificates would be in excess of the financial statements to the extent of such service tax.

Given the above, in addition to the reasons explained in the submission dated January 21, 2013 for non-reconciliation of the amounts as per the TDS certificates and the service income as per the financial statements, the above is a reason for such non-reconciliation to the extent of about Rs 116.95 crores.

7. Deduction under section 40(a)(i) and 40(a)(ia) of the Act

We wish to reiterate on our earlier submissions provided in this regard wherein we have provided line item wise details of the payments in connection with the subject deduction. We are in the process of collating supporting documents in connection with such deductions and given the volume of the documents, we request for additional time for submission of the same.

8. Disallowance under section 40(a)(i) and 40(a)(ia) of the Act

We are in the process of collating supporting documents in connection with such disallowances and have also requested for the same from our tax auditor. Given the volume of the transactions, we request for additional time for submission of the same.

9. Provision for obsolescence –Raw material – closing balance of Rs 63,792,303 as on March 31, 2009

In this regard, firstly we wish to reiterate to our submission dated January 21, 2013 providing the nature of the provision for obsolescence and the justification for deductibility of the same.

Further, as required, we have provided details of the closing balance of the provision for obsolesce pertaining to raw material amounting to Rs 63,792,303 as on March 31, 2009 *inter alia* including Product Number, Description of the product, Date of purchase, Aging as on March 31, 2009, Quantity, Price Per Unit and Total Amount in support of the evidence of such closing balance as on March 31 2009 as **Annexure 10**

Further to the above, without prejudice to all our earlier submissions, we wish to submit that the net movement in the provision account pertaining to raw materials accounts during the financial year 2008-09 amounts to a credit amount of Rs 12,059,259 (ie it represents a net increase between the closing balance as on March 31, 2009 and opening balance as on April 1, 2008 in respect of provision for obsolesce pertaining to raw materials)

10. Provision for obsolescence - Finished Goods

In this regard, firstly we wish to reiterate to our submission dated January 21, 2013 providing the nature of the provision for obsolesce and the justification for deductibility of the same.

Further, as required, we have provided details of the closing balance of the provision for obsolesce pertaining to finished goods amounting to Rs 199,539,730 as on March 31, 2009 *inter alia* including Product Number, Description of the product, Date of purchase, Aging as on March 31, 2009, Quantity, Price Per Unit, Net realizable value and Total Amount in support of the evidence of such closing balance as on March 31 2009 as **Annexure 11**.

Further to the above, without prejudice to all our earlier submissions, we wish to submit that the net movement in the provision account pertaining to finished goods accounts during the financial year 2008-09 amounts to a debit amount of Rs 154,231,083 (ie it represents a net decrease between the closing balance as on March 31, 2009 and opening balance as on April 1, 2008 in respect of provision for obsolesce pertaining to raw materials).

11. Provision for obsolescence - Spare parts, spare parts in transit and defective spare parts

In this regard, firstly we wish to reiterate to our submission dated January 21, 2013 providing the nature of the provision for obsolesce and the justification for deductibility of the same. Further, we have provided the details pertaining to the computation of provision for obsolesce relating to spare parts as **Annexure 11A**.

Further to the above, without prejudice to all our earlier submissions, we wish to submit that the net movement in the provision account pertaining to raw materials accounts during the financial year 2008-09 amounts to a credit amount of Rs 93,229,533 (ie it represents a net increase between the closing balance as on March 31, 2009 and opening balance as on April 1, 2008 in respect of provision for obsolesce pertaining to raw materials)

3.3 The Ld.AR then submitted that, in respect of the addition on account of deferred revenue, this is the first year when such disallowance has been made. In fact he submitted that this is

the only year in which the disallowance has been made and in the subsequent assessment years no disallowance has been made by the Ld.AO.

3.4 The Ld.AR then submitted that TDS in respect of the entire amount has been claimed during the year as the ITR does not allow appropriating the TDS that is already been deducted. He submitted that it is just the timing issue. He submitted the position that is accepted by the assessee as well as revenue in the past and subsequent assessment year the details of which are as under:

“2.2 Position accepted by Revenue and Taxpayer in the past and subsequent years

(v) Revenue Authorities and the Taxpayer have accepted position of recognition of revenue on the accounting principles followed by the taxpayer and have required the Taxpayer to restrict TDS credit, and claim the same based on recognition of revenue in respect of DR. A summary of the position in the past and future years has been summarized as follows:

- a) AYs prior to AY 2007-08 — No addition has been made in respect of deferred revenue.*
- b) AY 2008-09 – The AO made an addition in of 1,53,06,33,861 in respect of deferred revenue under reassessment proceedings following the approach adopted in the assessment order for AY 2009-10.*

The CIT(A), based on a remand report from the learned AO (refer page 1 to 4 of paper book - part 4), deleted the addition in respect of DR and directed the AO to restrict TDS credit and allow the same to be claimed based on the recognition of income (refer OGE order dated 12 March 2019 - page 1 to 4 of paper book - part 4). The Revenue Authorities and the Taxpayer have accepted the said order of the CIT(A) and no further appeal has been preferred by either of the parties before the ITAT on the said matter.

(Refer page 46 to 49 of paper book 4 for Revenue grounds for AY 2008-09).

- c) AY 2010-11 – The AO has not made any addition in respect of deferred revenue on account of negative movement in deferred revenue. However, no specific remark has been made by the AO in the assessment order.*
- d) AY 2011-12 to AY 2013-14 – The Taxpayer, as part of the assessment submissions, offered to restrict TDS credit and claim the same over the period of recognition of income pertaining deferred revenue in line with the approach adopted pursuant to the CIT(A) order for AY 2009-10. The AO has acknowledged the approach adopted by the Taxpayer and has not made any addition owing to the negative movement in the deferred revenue in the assessment orders.*
- e) AY 2014-15 and AY 2015-16 —The Taxpayer, as part of filing the tax return and the assessment submissions, offered to restrict TDS credit and claim the same over the period of recognition of income pertaining deferred revenue in-line with the approach adopted pursuant to the CIT(A) order for AY-2009 10. The AO has accepted the approach adopted by the Taxpayer in the assessment orders.*
- f) Subsequent AYs – The taxpayer has in the return of income restricted TDS credit in respect of the closing balance of deferred revenue and the same has been claimed in the subsequent year [in line with the approach pursuant to the order of the CIT(A) in AY 2008-09]. This position has been accepted by the AO in the assessment orders passed up to AY 2018-19.”*

3.5 The Ld.AR thus submitted that in respect of the deferred revenue, the TDS credit may be considered accordingly on year to year basis as the revenue recognition on accounting policies followed by the assessee, and accepted by the revenue is consistent in all the preceding and subsequent assessment year. On the contrary, the Ld.DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

3.6 We note that similar issue has been considered by *Coordinate Bench of this Tribunal* in assessee's own case which has been recorded hereinabove. It has been submitted that the order giving effect to the order of this *Tribunal* for A.Y. 2008-09 has been passed by the Ld.AO on 12.03.2019 wherein necessary reliefs have been granted to the assessee after necessary verifications. We direct the Ld.AO to carry out verifications in accordance with the directions of this *Tribunal* given in 2008-09 recorded hereinabove.

3.7 We also direct the Ld.AO to consider the TDS credit on proportionate basis on the basis of the accrued AMC income for the relevant year under consideration.

Accordingly, ground nos. 1-2 raised by assessee and revenue stands partly allowed for statistical purposes.

4. Ground no. 3 in assessee and revenue appeal is regarding audit entries.

4.1 The Ld.AR submitted that during the assessment proceedings the Ld.AO called for various expenses ledger extracts of the assessee. It is submitted that the Ld.AO identified entries reflected as audit entries in the expense ledger extracts maintained for communication, transfer, development and business promotion, freight and warehouse, legal and

professional and outside contractor services and disallowed the same for want of further evidences /details.

4.2 The Ld.AR further submitted that the assessing officer also included the audit entries to reduce the expenses which had the effect of reduction of expenses claimed for the purposes of addition in the assessment order. The Ld.AR has filed in the written submission following details summarising the additions made by the Ld.AO on this account.

<i>(a) Audit entries – positive amounts</i>				
S No.	Expense head	Audit entries as per ledger	Adjustment by the AO	Remarks
1	Advertisement and business promotion	5,78,16,068	5,78,16,068	Positive amount
2	Freight and warehousing charges	91,52,337	91,52,337	
3	Legal and professional charges	3,14,18,740	3,14,18,740	
[A]	Total	9,83,87,145	9,83,87,145	
<i>(b) Audit entries – Negative amounts</i>				
S No.	Expense head	Audit entries as per ledger	Adjustment by the AO	Remarks
4	Rent	(3,50,95,296)	3,50,95,296	Negative amount (has the effect of reducing the expense)
5	Travelling expenses	(4,04,43,074)	4,04,43,074	
6	Communication expenditures (relief granted by CIT(A))	(1,11,43,265)	1,11,43,265	
7	Repairs and Maintenance	(5,27,80,237)	5,27,80,237	
8	Outside contract services	(13,10,75,180)	13,10,75,180	
[B]	Total	(27,05,37,052)	27,05,37,052	
C = [A (+) B]	Grand total	(17,21,49,907)	36,89,24,197	

4.3 On an appeal before the Ld.CIT(A), the assessee submitted that audit entries substantially represent reclassification of entries that result in reclassification of certain expenses items from one ledger head to another ledger head which has been carried out by the assessee based on examination during audit process. It is also due to accrual or reversal of entries that has been identified during the audit process.

4.4 The Ld.CIT(A) after analysing the information / details furnished by the assessee deleted addition in respect of audit entries under the expenses ledger account pertaining to communication expenses amounting to Rs.1,11,43,265/- and sustained the balance addition of Rs.35,77,80,923/-.

4.5 The Ld.AR submitted as under:

- (i) The Audit entries largely represent reclassification entries or accrual/reversal entries (moving expense from one head to another based on nature), which were passed based on the information available at the time of finalization of accounts. These audit entries are regular occurrences and entries are passed based on the observations raised as a part of the normal audit process.
- (ii) The addition made by the AO and sustained by the learned CIT(A) include negative amounts in the Audit entries to the extent of INR 27,05,37,052 that have the effect of reduction of the subject expenses. The additions in respect of such amounts are not warranted.
- (iii) It may be noted that there has been no addition in respect of such 'audit entities' in any of the assessment orders of the Assesseees in the future years. In the reassessment proceeding for AY 2008-09, the learned AO has made an addition of INR 88,01,13,420 on account of want of evidence. CIT(A) vide order dated 31 March 2018 has granted the relief [Refer conclusion para no. 13.2 of CIT(A) in paper book 4].
- (iv) Given the above, we request honorable members to delete the addition of INR 35,77,80,932 sustained by the CIT(A).
- (v) As a part of assessment / appellate proceeding, the Assessee submitted various details such as ledger extracts (6 expense mentioned above), rental agreement and list of accrual entries as part of audit entries along

with appropriate explanation towards passing audit entries.

- (vi) Additionally, without prejudice to the above, the Assessee vide additional evidence petition (refer page 133 to 176) has collated and furnished additional information /details in connection with the audit entities. These details inter alia include party-wise listing capturing the details of expenses, reclassification details (From account code & to account code), line-item level break-up along with TDS deduction details wherever applicable, and sample copy of invoices. Accordingly, we request honorable members to give direction for deletion of the additions made by the AO.

On the contrary, the Ld.DR relied on the orders passed by the Ld.AO.

We have perused the submissions advanced by both sides in the light of records placed before us.

4.6 We note that the details furnished by assessee has not been properly verified by the Ld.AO. We note that there are certain expenses which have been reduced and also forms part of the addition made by the Ld.AO which is not the proper way of analysing. The Ld.AO is directed to carry out necessary verification in respect of the evidences filed by the assessee and to consider the claim in accordance with law. It is also directed that wherever there is a reduction, no addition to be made in respect of the same. The rest of the other payments shall be verified by the Ld.AO. Needless to say that proper opportunity of being heard must be granted to the assessee.

Accordingly, ground no. 3 in assessee and revenue appeal stands allowed for statistical purposes.

5. Ground no. 4 raised by assessee is relating to disallowance of deduction claimed u/s. 40(a)(i) and 40(a)(ia) of the act.

5.1 The Ld.AR submitted that assessee had claimed deduction of Rs.52,58,75,221/- that were already disallowed in the assessment year 2008-09 and claimed during the current year as deduction on account of subsequent TDS and remittances happened during the year under consideration. It is submitted that during the assessment proceedings, the assessee had furnished the submissions explaining the accounting policy followed, opening provisions that were reversed during the year and the appropriate TDS recorded at the time of recording the actual expenses along with the details of tax with held and remitted. The Ld.AR submitted that the authorities below has not considered the submissions / evidences. On an appeal before the Ld.CIT(A), it is submitted that the Ld.CIT(A) upheld the addition for want of one-to-one correlation to the accrual entities and the details provided in respect of payments along with taxes that held in connection with the same.

5.2 The Ld.AR submitted that an identical issue has been considered by *Coordinate Bench of this Tribunal* in assessee's own case for A.Y. 2011-12 vide order dated 30.03.2022 in ITA No. 779/Bang/2016.

5.3 He submitted that this *Tribunal* has deleted the adjustment made by the Ld.AO by holding that 1 to 1 match of the provision is not necessary. The Ld.AR submitted that against this order, the revenue has not filed any appeal before the *Hon'ble Supreme Court* and that the order of this *Tribunal* has attained finality.

The *Tribunal* held as under:

"13. We heard the rival submissions and perused the material on record. The provisions of Section 40(a)(ia) provides that -

40. Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

(a) in the case of any assessee—

(ia) thirty per cent of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, thirty per cent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid:

14. As per the provisions as extracted herein above the assessee is entitled for the deduction of the amount which was disallowed earlier, in the year in which the TDS is deducted and paid. In the given case, the amount which was disallowed earlier by the assessee is claimed as a deduction u/s.40(a)(ia) in the year under consideration based on the fact that the assessee has deducted and remitted the TDS on the amount in year under consideration. There is no other condition attached while claiming the expenditure in the year of TDS remittance under the law. Hence the reasons given by the AO for disallowance that one-to-one matching with the provision made for the previous not done and that the invoices pertain to previous year are not tenable. The fact as submitted by the AR that the said details are duly verified and taken into account for computation of interest u/s.201(1A) in the previous assessment 2010-11 also

merits consideration. Considering the provisions of the Act and the facts we are of the considered view that the assessee has rightly claimed the deduction of Rs. 55,27,89,460 under section 40(a)(ia). The AO is directed to give relief to the assessee accordingly. This ground of the assessee is allowed.”

5.4 The Ld.DR on the contrary submitted that the entire issue may be remanded to the Ld.AO for verification. He submitted that this *Tribunal* while considering this issue for A.Y. 2011-12 had recorded a finding that the payments have been duly verified in the provisions u/s. 201(1A) for the previous year 2010-11. Whereas in the present facts of the case, no such verification has been carried out. He thus prayed for the entire amount to be remanded to the Ld.AO for necessary verification.

We have perused the submissions advanced by both sides in the light of records placed before us.

5.5 We note that principally the issue deserves to be allowed in case the amount so claimed in this year has been offered to tax in the preceding year. Though assessee had furnished all the necessary details, the verification has not been carried out by the Ld.AO based on such evidences filed. In the interest of justice, we remand this issue back to the Ld.AO to carry out necessary verification and to consider the claim in accordance with law.

Accordingly, ground no. 4 raised by assessee stands partly allowed for statistical purposes.

6. Ground no. 5 by assessee and ground no. 4 of revenue's appeal are in respect of reclassification of disallowances amounting to Rs.36,55,82,852/- u/s. 40(a)(i) / (ia) of the act.

6.1 The Ld.AR submitted that the assessing officer reclassified the amounts disallowed by the assessee u/s. 40(a)(i)/(ia) u/s. 37 of the act for want of details. Identical issue has been remanded to the Ld.AO hereinabove. We note that this year being revenue neutral, no tax implication is applicable in the present issue. However, we direct the Ld.AO to carry out necessary verification in respect of the same as the assessee is bound to claim the amount *suomoto* disallowed in the year under consideration while filing its return of income in the subsequent year. In the interest of justice, we remand this issue back to the Ld.AO to carry out necessary verification based on the evidences filed.

Accordingly, ground no. 5 raised by assessee and ground no. 4 of revenue appeal stands partly allowed for statistical purposes.

7. Ground no. 6 raised by assessee is in respect of disallowance of demonstration expenses.

7.1 The Ld.AR submitted that assessee had claimed Rs.78,36,077/- towards demonstration equipment returned of. It is submitted that the assessee was called upon to explain the nature of such expenses returned off, the accounting policy followed and the submission of entitlement of such expenses under the provisions of the act. The Ld.AO disallowed the claim

of assessee for want of further details / evidences which was upheld by the Ld.AO.

7.2 The Ld.AR submitted that in the financial year relevant to the AY 2009-10, HPISPL has included an amount of Rs 7,836,077 pertaining to demonstration equipments being charged-off in the cost of goods sold. In this regard, we wish to submit that as per the accounting policy of the Company, demonstration equipment is stated at cost and is fully charged-off on the expiry of the estimated useful life of the equipment. This is substantiated by the accounting policy followed by the Company as disclosed in Schedule 19 para (g) of the audited financial statements.

7.3 As per the accounting policy followed by HPISPL, we have provided below, a table that depicts the nature of demonstration equipments and their estimated useful lives:

Demonstration equipment	Useful life (in months)
Procurve Products	12
Business Critical Systems	12
Storage	12
Workstations	9
PCs and Notebooks	9
Industry Standard Servers	9
Commercial Imaging and Printing products	9
Consumer Imaging and Printing products	9
IPG Indigo and Large Format Signage Printers	12

7.4 The Ld.AR submitted that the aforementioned demonstration equipments (samples, in common parlance) are sent to prospective customers for the purposes of demonstration. Since the demonstration equipments are meant for generating sales, the amortization costs of these equipments, depending on the life of the equipment (which ranges from 9 months to 12 months depending on the type of equipment – as depicted in the table above), are charged to the cost of goods / services during the period as per HPISPL's accounting policy.

7.5 He further submitted that the amount has been recorded in the inventory schedule VI to the balance sheet which is placed at page 11 of the paper book and in the notes to the account, a description has been provided by noting that "demonstration equipment is stated at cost and is fully charged on the expiry of the estimated useful life. Spare parts pending, re-export, re....stated net realisable value. It is further submitted by the Ld.AR that such disallowance has not been made in any other year and that other expense has been always accepted to be wholly and exclusively only for the purposes of business or profession.

On the contrary, the Ld.DR placed reliance on orders passed by authorities below.

7.6 We note that assessee has furnished additional evidences listing the product-wise details of the demonstration equipment. These details deserves to be verified by the Ld.AO and the claim of the assessee has to be considered in accordance with law.

Accordingly, ground no. 6 raised by assessee stands partly allowed for statistical purposes.

8. Ground no. 7 is in respect of disallowance of expenses debited as cost of goods sold.

8.1 The Ld.AR submitted that the assessing office had disallowed certain expenses claimed by assessee under the head cost of goods sold for want of further details or evidences. The Ld.CIT(A) based on further details filed by assessee deleted the addition in respect of customs duty and sub-broker fees. In respect of services, IC Billing, the disallowance was restricted to partial amount. Against this, assessee as well as revenue has preferred appeal before this *Tribunal*.

8.2 At the outset, the Ld.AR has submitted the additional evidences in the form of sub ledgers, group under services, IC billing and reconciliation statement of cost of goods sold account. Based on the above, both the sides prayed for the issue to be remanded to the Ld.AO for necessary verification.

We have perused the submissions advanced by both sides in the light of records placed before us.

8.3 We note that the application dated 13.12.2019 consist of pages 1 to 217 that pertains to this issue considering the joint prayer by both the sides we remand this issue to the Ld.AO by admitting the additional evidences filed by the assessee. The

Ld.AO is directed to verify the claim of assessee in the light of the evidences filed and in accordance with law.

Needless to say that proper opportunity of being heard must be granted to assessee.

Accordingly, ground no. 7 raised by assessee stands partly allowed for statistical purposes.

9. Ground no. 8 by assessee is challenging the disallowance towards warranty expenses. **Ground no. 6** of revenue appeal is challenging the relief granted by the Ld.CIT(A) on this issue. The Ld.AR submitted that the assessing office had disallowed sum of Rs.90,70,53,064/- towards warranty expenses under four broad categories, the details of which are as under:

Particulars	Amount (INR)
Prior Period Expenditure	9,90,74,018
Other Entries	10,51,68,432
Provision for warranty for the year	47,66,62,150
Ad-hoc disallowance	22,63,28,464
Total	90,70,53,064

9.1 On an appeal before the Ld.CIT(A), relief was granted in respect of provision of warranty amounting to Rs.47,66,62,150/- and upheld the addition under other head for want of further details / information. Against the order of the Ld.CIT(A), assessee and revenue are in appeal before this *Tribunal*.

The Ld.AR on each of the expenditure claimed under this head submitted as under:

*“Prior period Expenditure – INR 9,90,74,018
(iii) As has been explained in the context of the accounting treatment in the case of allowance under section 40(a) and*

40(a)(ia), the Taxpayer reverses accruals created in the previous year and accounts for expenses in connection with the subject accruals and complies with the applicable withholding tax. As a part of the proceedings before the learned CIT(A), the Taxpayer has also furnished sample extract of such reversal entries [Page 373 & 374 of paper book 3]. Accordingly, the amount of INR 9,90,74,018 has have been incorrectly held to be 'prior period items' by the learned AO and CIT(A).

(iv) Further, in addition to the details furnished before the learned CIT(A), the Taxpayer has compiled listing in respect of INR 9,90,74,018 capturing party wise details, posting date along with TDS deduction and remittance details and sample copy of invoices and the same have been included in the petition for additional evidence [Page 177 to 210 of additional evidence petition].

(v) Given the above, the addition of INR 9,90,74,018 sustained by the CIT(A) should be deleted.

Other Entries – INR 10,51,68,432

(vi) Before the Learned AO and CIT(A), it has been explained that the 'other entities' amounting to INR 10,51,68,432 are of the same nature as 'audit entities' covered under Ground 3 above. Accordingly, the arguments provided in the case of Ground 3 are also applicable here.

(vii) Given the above, the addition of INR 10,51,68,432 sustained by the CIT(A) should be deleted.

(viii) Additionally, the Taxpayer has compiled listing in respect of INR 10,51,68,432 capturing party wise details, posting date along with TDS deduction and remittance details and sample copy of invoices. Further, the same have been included in the petition for additional evidence [page 211 to 224 of additional evidence petition].

Ad-hoc disallowance - INR 22,63,28,464

(ix) This addition represents an ad-hoc disallowance computed at 10 percent of a portion of the expenditure made by the Learned AO based on observations that the expenditure of various natures not related to warranty were captured under the warranty ledger. The same was also sustained by the learned CIT(A) essentially for want of further details / evidence.

(x) The subject disallowance being disallowance of an adhoc percentage of a portion of the expenditure, is not warranted.

(xi) The Learned AO and CIT(A) failed to appreciate that account head 'Warranty support and maintenance service expenses' as was reflected in the profit and loss account of the Taxpayer inter alio included expenses in connection with warranty and various other maintenance services. Therefore, nature of expenses observed by the Learned AO being in the nature of equipment rent, professional charges, logistic services, consultancy fees, scanning services etc. were all expenses incurred to certain warranty and service contracts.

(xii) Given the above, the addition of INR 22,63,28,464 sustained by the CIT(A) should be deleted.”

9.2 On the contrary, the Ld.DR submitted that the warranty expenses claimed are not in accordance with the provisions of the act and there are double deduction in respect of the same. It is submitted by the Ld.DR that there is no evidence filed by the assessee to show the reversal account.

We have perused the submissions advanced by both sides in the light of records placed before us.

9.3 We note that assessee has submitted that the expenses has been disallowed for the first time in the current year. It is the submission of the assessee that assessee has always followed the consistent method in determining the warranty. In the interest of justice, we remand this issue back to the Ld.AO to verify the claim of assessee in the light of the submissions made and evidences filed in support. Needless to say that proper opportunity of being heard must be granted to the assessee.

Accordingly, ground no. 8 of assessee's appeal and ground no. 5 of revenue's appeal stands allowed for statistical purposes.

10. Ground no. 9 raised by assessee is in respect of levy of 234C on the assessed income. It is submitted that 234C is to be levied on the returned income.

We direct the Ld.AO to verify the claim of assessee and to consider it in accordance with law.

Accordingly this ground raised by assessee stands allowed for statistical purposes.

Revenue's appeal

11. Ground no. 6 raised by revenue is against the relief granted by the Ld.CIT(A) on the undisclosed sale of goods.

11.1 The Ld.AR submitted that assessing officer from the trial balance filed by the assessee found that the gross sales of the company was Rs. 12979,31,04,484 whereas in the financial statement only a net sale figure of Rs. 6017,11,59,234 was reflected. The assessee explained the difference as being on account of pre-sales and post-sales discount provided to its customers with the pre-sales discounts reflected on the face of the sales invoices and the post sales discounts reflected in the Trial Balance. The reconciliation by the assessee was stated to be on account of the following kinds of discounts/items offered by it. It is submitted that since these items were not found as debit entries in the P&L account the Ld.AO denied the claim of

assessee. The Ld.AR submitted that the assessing officer accepted the VAT returns which totalled upto the sales disclosed and was higher than the sales admitted the income tax return. The Ld.AO thus made out a case of suppression of sales and made an addition of Rs.916,08,87,209/-.

11.2 On an appeal before the Ld.CIT(A), the assessee filed various details in the nature of credit notes, cash discounts offered, commission payments write off of refunds etc. which was remanded to the Ld.AO for a remand report. In the remand report the Ld.AO accepted sum of Rs.1,38,88,193/- based on the confirmation letters filed by the assessee from various parties. The balance were rejected as no confirmations were received and for lack of entry in the profit and loss account.

11.3 It is submitted that the assessee once again furnished evidences in the form of bank statements establishing the linkage between the party-wise transaction of some of the large partners / distributors and the actual payout of discount amount through cheques. It was submitted that the cash discounts were allowed in the post sale stage for reasons of timely payment etc and the net received from the customer is credited into the accounts.

The Ld.CIT(A) also carried out enquiries u/s. 133(6) with some of the large distributors / channel partners of assessee who make up for the bulk business during the relevant year.

The Ld.CIT(A) observed as under:

11.8 Subsequent to the rejoinder being received, this office made enquiries u/s.133(6) with 6 of the large distributors/channel partners of the appellant company who make up the bulk of business during the relevant period. These parties are M/s. Redington India Pvt. Ltd., M/s. Iris Computers Pvt. Ltd., M/s. Rashi Peripherals Pvt. Ltd., M/s. Savex Computers Ltd., M/s. Ingram Micro India Ltd. and M/s. Compuage Infocom Ltd. Information on all kinds of post-sales discounts offered by the assessee such as cash discount, incentive discounts relating to specific goals, sales volume, product mix etc which were not mentioned on the face of the sales invoices was requested to be furnished. The information received from these parties was provided to the appellant and after its reconciliation, the entire information was sent to the AO once again for his comments. He was also directed to conduct an enquiry with customers of the appellant with reference to the purchases disclosed by them in their VAT return and the purchases as per their financial statement which would be expected to show a difference if the claim of receipt of various post-sales discount was indeed correct.

11.9 The AO, through his reports dt. 27.10.2014 and 27.01.2015 submitted the result of sample enquiries made at his end which confirmed that trade discounts were received by the parties from the appellant and corresponding

entries could also be identified in the bank statement of the assessee. The discount offered to third party distributors is settled through debit notes and deduction in payments and is not separately debited to the Profit & Loss account. Considering the large volume of sales, most of which is tied to various promotional and marketing scheme of the assessee, the AO admitted his inability to correlate the discount to specific sale invoices.

11.10 On examination of the entirety of facts and evidences as narrated above, I am led to the reasonable conclusion that the practice of offering various post sales discounts is part of the general business practice in the assessee's line of commodities sold. The non-debiting of the discount as a specific entry in the ledger, and consequently taking only the net sales amount as a credit in the Profit & Loss account, is not a fatal error since the drilling down to the initial transaction level entry is possible and the same can be identified from the accounts as maintained. However, it must be admitted that the manner of account maintenance by the tax payer on its ERP system does not facilitate easy retrieval of data and establishments of connections/linkages between separate transactions of sales, debit notes and payments in order to comprehensively trail the transaction from start to finish. The appellant did produce samples of screen shots establishing this linkage but the amount of time availed for the same was inordinate. It is possible to understand why the details, with evidentiary granularity, could not be furnished before the AO to establish the claim of the assessee. Perhaps the shortcoming needs to be identified in our scrutiny/audit proceedings where the law, and AOs trained for its implementation, require complete evidentiary submission by an assessee to establish its claim instead of conducting an audit of its business and accounting systems to see whether they are robust enough to capture data with inter linkages so that critical information necessary for income determination does not "slip through the cracks." During the course of this appeal I have examined data in respect of six parties with whom the gross turnover reported by the appellant is approximately Rs.6,400 cr. which is more than 90% of its total gross turnover. Based on facts and evidences taken from this large sample, the conclusions regarding the claim of discount by the appellant have been arrived at.)

11.4 The Ld.CIT(A) also verified the details of with various other partners / distributors of assessee correlating the transaction in its totality.

With regard to post sales discount it was submitted that the assessee first accrues the amount in its books which is then reflected in its discount liability ledger and thereafter the payouts are made to the respective parties.

11.5 Party-wise details furnished by assessee and sample invoices were also verified by the Ld.CIT(A) and a comparative figures for all the parties were summed up post reconciliation which is as under:

11.14 The totality of comparative figures for all the six parties was summed up by the appellant as follows after reconciliation.

Extract from the submission dated August 28, 2014

Cash discount			
Name of the Party	Amount as per party (In Rs)	Remarks	Amount as per HPISPL (In Rs)
Iris Computers Limited	24,980,735	The amount as per Party represents total of credits appearing in the Cash Discount ledger, excluding reversals.	26,676,354
Redington India Limited	580,965,709	As per the Cash Discount listings provided by the party	584,962,174
Rashi Peripherals Private Limited	25,896,645	Represents amount confirmed as 'Cash Discount received' in the confirmation letter	23,723,524
Savex Computers Limited	225,370,022	Represents total of 'Cash Discount' listing submitted by Savex, excluding provisions of Rs 3,891,425 made as on March 31, 2009.	227,956,666
Ingram Micro India Limited	535,361,955	As per the confirmation letter received in respect of Cash Discount.	525,531,869
Compuage Infocom Limited	12,900,466	The amount as per Party represents total of credits appearing in the Cash Discount Ledger, excluding reversals.	12,867,660
Total	1,405,475,532		1,401,718,267

11.6 Based on the above the Ld.CIT(A) was satisfied that it was a matter of reconciliation that was not carried out by the Ld.AO that led to the addition. The Ld.CIT(A) detailed verification and the remand report from the Ld.AO concluded that suppression of

sales is not indicated in the assessee's facts. Based on a detailed analysis the addition was deleted.

11.7 The Ld.DR apart from supporting the order of the Ld.AO could not produce anything on record in order to establish contrary to what has been observed by the Ld.CIT(A). We therefore do not find any infirmity in the view taken by the Ld.CIT(A) and the same is upheld.

Accordingly ground no. 6 raised by revenue stands dismissed.

12. Ground no. 7 raised by revenue is against the relief granted by the Ld.CIT(A) on lease rental paid by assessee on computers as an allowable expenditure.

12.1 At the outset the Ld.AR submitted that the Ld.CIT(A) has allowed the claim of assessee by analysing in detail the lease transaction between assessee and its customers. The Ld.AR submitted that assessee had claimed sum of Rs.10,65,93,376/- on account of car lease rental payment in hire purchase and finance leases. It was submitted by the Ld.AR that assessing officer disallowed the claim based on the description that the amount pertained to computers / computer equipments taken on finance lease.

12.2 It is submitted that assessee has been following consistent Accounting Standard 19 and has capitalised in the books of account and claimed depreciation thereon.

Subsequently, based on the CBDT Circular No. 2 of 2001 the assessee started treating the income differently and the lease rentals paid by assessee were claimed as revenue expenditure as assessee was never the owner of the equipments / assets.

The Ld.AO did not accept this position and considered the amount to be capital in nature by relying on the decision of *Hon'ble Supreme Court in case of ABB Ltd. vs. Industrial Finance Corporation of India* reported in (2006) 154 ITR 512.

Subsequently, the decision of Hon'ble Supreme Court in case of *M/s. I.C.D.S Ltd. vs. CIT* reported in (2013) 350 ITR 527 reversed the said position.

12.3 On an appeal before the Ld.CIT(A), the Ld.CIT(A) considered the claim by observing as under:

12.3 The appellant's submissions as above have been considered. The differentiation of facts in the ABB Ltd. order based on the applicable statute is not considered material since the discussion around the nature of lease arrangement and financing are as much applicable for understanding the transactions even for purposes of the IT Act, 1961. As far as the ICDS order is concerned, it is also found to be inapplicable in the present matter. That judgment was rendered by the Hon'ble Supreme Court for the depreciation claimed by the lessor in a finance lease arrangement where the commercial vehicles had been purchased by the lessor with invoices drawn in its name and, thereafter, leased to the lessee who obtained the Registration Certificate under the Motor Vehicles Act in its name and plied the vehicle. The stand of Revenue in that case was based on the lease agreement under which ownership of the

vehicle was transferred to the lessee at a nominal value at the end of the lease period, making the lessor, in effect, a mere financier. However, it did not impress the Court. The Hon'ble Court, therefore, held that as long as the lessor had the right to retain the legal title of the vehicle against the rest of the world, it would be owner in the eyes of law.

12.4 The appellant's facts were examined with reference to one sample representative agreement between HP Financial Services India Pvt. Ltd. and the appellant (Global Agreement no. GCS 001 dt. 4.4.2003) in respect of equipments purchased through invoice no. 07-3311-50 dt. 28.06.2006. The equipment was placed in the location of Bharat Heavy Electrical Ltd. in Bhopal in connection with a project that the appellant was executing for this customer. The invoice for the equipment had been billed to HP Financial Services. Under the terms of the agreement, there is no residual clause whereby at the end of the lease period of 60 months, the appellant could become the owner of the equipment by paying some nominal amount. The relevant condition as scanned from the agreement below clearly shows that the arrangement between HP Financial Services and the appellant company is of a pure lease against rental payment.

3. LEASE.

<u>A. Description of Items of Leased Equipment</u>	<u>Total Cost*</u>
Invoice number Dated Inv 07-33011-50 dtd 28 JUNE '06	Rs.17,33,880/-
*(i.e., total acquisition cost to us of the Equipment, including related delivery, installation, taxes and other charges that we have agreed to pay and treat as a portion of such acquisition cost, if any)	
B. Initial Term: 60 Months (plus the number of days from and including the Acceptance Date through and including the last day of the calendar month or quarter (depending on whether Rent is payable monthly or quarterly as specified in Section 5 below) in which the Acceptance Date occurs)	

4. FINANCING.

<u>A. Description of Financed Items</u> [insert]	<u>Total Cost*</u> [insert]
*(i.e., the total amount of the Financed Items subject to the Financing)	
B. Financing Rate: [insert] % per annum	
C. Term: [insert] Months (plus the number of days from and including the Acceptance Date through and including the last day of the calendar month or quarter (depending on whether Rent is payable monthly or quarterly as specified in Section 5 below) in which the Acceptance Date occurs)	

5. RENT:

For Lease: Rs.34,053/-
 For Lease Tax: NA
 For Value Added Tax:Rs. 1,365/-
 For Service Tax: Rs.64/-
 For Financing: NA
 Total Rent: Rs.35,482/-

12.5 Infact, the terms of the above agreement indicate that the arrangement is not even in the nature of financial lease as has been understood by the company for its own purposes (with AS-19 considered applicable to the transaction). HP Financial Services goes in either for a pure leasing arrangement or a financing arrangement and in the sample case, the latter has not been preferred. It was also confirmed by the AR that depreciation u/s.32 of the IT Act has been claimed by HP Financial Services. Since the arrangement between the appellant and the lessor is one of a simple lease with rent payment, with the invoice raised on the lessor, there is no scope to treat the transaction for the purposes of income tax as anything but a revenue expenditure. In fact, the CBDT Circular relied upon by the assessee also clarifies that "by itself, the Accounting Standard will have no implication on the allowance of depreciation on assets under the provisions of the Income Tax Act." The AO's treatment, therefore, is not supported. The grounds raised in this regard, accordingly, succeed.

The Ld.AR relied on the decision of *Hon'ble Supreme Court in case of I.C.D.S Ltd. vs. CIT (supra)*

12.4 On the contrary, the Ld.DR submitted that at the end of the lease the assets were to be transferred to the assessee and therefore the lease rental paid cannot be allowed as revenue expenditure.

12.5 The *Tribunal* for A.Y. 2002-03 held as under:

"14. We have perused the orders and heard the rival submissions. AO himself has stated in the assessment order that though assessee termed the lease as financial lease, the terms of the lease did not provide for transfer of ownership to the lessee automatically at the end of the lease. Only reason why the lease was considered to be financial in nature was that the lease period was more or less on par with the life of the assets which were leased out and the renewal of the lease was at the option of the lessee for a nominal rent. However, in our opinion none of these can substitute the clause in the lease agreement which specified that the ownership of the assets continued

to be with the assessee. Insurance for the leased products were borne by the assessee. Assessee was the owner and held the title of the assets. Giving an equipment on lease by itself can be considered as a business. We are of the opinion that by virtue of the decision of Hon'ble Apex Court in I. C. D. S (supra), assessee having capitalised the assets in its books was eligible for claiming depreciation thereon. We do not find any reason to interfere. Ground.2 of the Revenue stands dismissed."

Accordingly ground no. 7 raised by revenue stands dismissed.

In the result, the appeal filed by the assessee stands allowed for statistical purposes and appeal filed by the revenue stands partly allowed for statistical purposes.

Order pronounced in the open court on 21st November, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 21st November, 2023.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file

By order

Assistant Registrar,
ITAT, Bangalore