

आयकरअपीलीयअधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्रीरविशसूद, न्यायिक सदस्य एवं श्रीअरुण खोड़पिया, लेखा सदस्यकेसमक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकरअपीलसं./ITA No.181/RPR/2023 (AY-2010-2011)
आयकरअपीलसं./ITA No. 182/RPR/2023 (AY:2011-2012)
आयकरअपीलसं. /ITA No. 183/RPR/2023(AY: 2012-2013)
आयकरअपीलसं. /ITA No. 184/RPR/2023(AY: 2013-2014)
आयकरअपीलसं./ITA No. 185/RPR/2023(AY: 2014-2015)
आयकरअपीलसं./ITA No. 186/RPR/2023(AY: 2015-2016)
आयकरअपीलसं./ITA No. 187/RPR/2023(AY: 2017-2018)
आयकरअपीलसं. /ITA No. 188/RPR/2023(AY: 2018-2019)

Deputy Commissioner of Income Tax, Circle-1(1), Raipur Aayakar Bhawan, Civil Lines, Raipur	V s	Chhattisgarh State Power Distribution Company Limited, Vidhyut Seva Bhawan, Daganiya, Raipur
PAN: AADCC6047K		

AND

Cross Objection No. 10/RPR/2023 (2011-12)
Cross Objection No. 11/RPR/2023 (2012-13)
Cross Objection No. 12/RPR/2023 (2014-15)
Cross Objection No. 13/RPR/2023 (2015-16)
Cross Objection No. 14/RPR/2023 (2018-19)

Chhattisgarh State Power Distribution Company Limited, Vidhyut Seva Bhawan, Daganiya, Raipur	V s	Deputy Commissioner of Income Tax, Circle-1(1), Raipur Aayakar Bhawan, Civil Lines, Raipur
PAN: AADCC6047K		

(अपीलार्थी/Applicant)	:	(प्रत्यर्थी / Respondent)
निर्धारितीकीओरसे /Assessee by	:	Shri Praveen Khandelwal & Praveen Goyal, CA's
राजस्वकीओरसे /Revenue by	:	Shri Debashish Lahiri, CIT-DR
सुनवाईकीतारीख/ Date of Hearing	:	24.11.2023
घोषणाकीतारीख/ Date of Pronouncement	:	14.12.2023

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

आदेश / ORDER

Per Bench:

The aforesaid appeals and cross objections are filed by the revenue and the assessee against the separate orders passed by the CIT(A), Raipur, all pertains to the same assessee, for the assessment years, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2017-2018, & 2018-19 respectively.

2. Since the appeals under considerations are of a single assessee, having common, interlinked and interwoven issues, which were heard together and therefore, are disposed-off by this common order.
3. Brief facts of the case are that the assessee is a State Government Undertaking engaged in transmission of electricity within the State of Chhattisgarh. It was formed after disintegration of erstwhile CG State Electricity Board. The assessee filed its original return of income for AY 2010-11 was electronically filed on 27.09.2010, declaring loss at RS. 435,67,34,501/- vide acknowledgment no. 161559291270910, on the basis of unaudited accounts. The assessee had filed the audited accounts along with tax audit report and re-computation of income loss incurred by the assessee was Rs 499,61,75,159/-. The case of the assessee was selected for scrutiny through 'CASS' and notice u/s 143(2) of Income Tax Act, 1961 was issued on

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

26.08.2011. After deliberations in the assessment proceedings certain disputes have cropped up accordingly Ld. AO has made certain disallowances/ additions which were carried before the Ld. CIT(A), however, after adjudication by the Ld. CIT(A) certain issues were further disputed by the department / assessee the same are under adjudication before us. Appeal wise and ground wise arguments and decisions are as follows:

ITA No. 181/RPR/2023 (Department Appeal for AY 2010-11)

4. In **ITA No. 181/RPR/2023** department has raised the following grounds:

1. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer on account of depreciation amounting to Rs. 27,99,54,965/-.*
2. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the addition made by the Assessing Officer by treating grant received as revenue subsidy amounting to Rs. 46,00,25,000/-.*
3. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the addition made by the Assessing Officer on account of cessation of liability in respect of amount shown under the head 'stale cheques' Rs. 20,33,486/-.*
4. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer out of expenditure shown under consultancy charges as capital expenditure amounting to Rs. 1,20,90,790/-.*
5. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer out of repair and maintenance expenses amounting to Rs. 52,36,58,610/-.*
6. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance of interest paid to Power Finance Corporation amounting to Rs. 7,12,002/-.*

Chhattisgarh State Power Distribution Company Limited
 (ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
 (CO Nos. 10,11,12,13,14/RPR/2023)

7. On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the addition of Rs. 30,08,416/- made by the Assessing Officer on account of distributed profit of Chhattisgarh State Power Holding Company.

8. Any other ground that may be adduced at the time of hearing.

4.1 Though the department has raised as many as Eight grounds, however, as per the chart filed by the assessee, the following effective grounds emerged are as under:-

- (i) *Disallowance of Depreciation u/s 32 of the Act*
- (ii) *Treatment of capital subsidy as revenue subsidy*
- (iii) *Addition on account of remission and cessation of liability on account of stale cheque*
- (iv) *Ad-hoc disallowance @25% of consultancy charges treating the same as capital nature*
- (v) *2/3 Ad-hoc disallowance of repair and maintenance of P& M and Building*
- (vi) *Disallowance of interest paid to Power Finance Corporation of India*
- (vii) *Addition of income assessed in the hands of CG state Power Holding Company*

Ground No.1: Disallowance of Depreciation u/s 32 of the Act

4.2 The brief facts of the issue culled out from the record are that, during the relevant year, the assessee has claimed depreciation of Rs. 1,75,58,50,981/- on the basis of value of shares allotted in lieu of the assets, while as per Ld. AO, the depreciation should have been claimed on the value of WDV of assets last shown by CSEB, which were transferred to the assessee company. Ld. AO, further observed that such claim was also

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

made in the preceding year, however looking to the provisions of section 2(19AA) and explanation-2 to section 43(6) of the Act depreciation was restricted³ and the claim of excess depreciation was disallowed. It is further observed by the Ld. AO that, being aggrieved by this disallowance, the assessee has filed an appeal before the Ld. CIT(A), Raipur, and wherein the observations of Ld. AO has been confirmed by the Ld. CIT(A). The Ld. AO in the assessment proceedings has asked to explain the assessee that “Why corresponding disallowance should not be made out of the claim of depreciation as the assessee has claimed the depreciation on the assets taking transfer value of shares” .Assessee's response and observations of the Ld. AO, as mentioned in the assessment order are extracted as under:

3. In reply, it has been contended that Explanation 4 to sec. 2(19AA) is not applicable to the reorganization of CSEB on the ground that it is applicable only when the Central Govt. notifies such re-organization in the official gazette, and they are not aware of any notification issued covering the reorganization under demerger within the meaning of sec. 2(19AA) of the Act. It was also contended that the addition made in the preceding year and confirmed by the first appellate authority is under challenge before the Hon'ble ITAT, therefore, the claim u/s.32 is admissible.

4. The Assessee's reply has been considered and is found not acceptable. As per Explanation-4 to section 2(19AA) of the act, the splitting-up or reorganization of any authority or a body constituted or established under a Central, State or Provincial Act or local authority or a public sector company into separate authorities or bodies or local authorities or companies is deemed as 'demerger'. Thus, the re-organization of erstwhile body corporate i.e. CSEB into separate companies falls under the category of 'demerger'. Further, as per Explanation-2B to Sec. 43(6) of the Act, where in a previous year, any assets forming part of a block of assets, is transferred by a demerged company to the resulting company, then notwithstanding anything contained in clause (1), the written down value of the block of assets in the case of the resulting company, shall be the written down value of the transferred assets of the demerged company immediately before the demerger. Therefore, depreciation is allowable only on such value as it was there before re-organization.

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

Accordingly, the assessee was required to furnish the admissible depreciation on the basis of such WDV and the same was filed. The admissible depreciation works out to Rs. 147,58,96,016/- as against depreciation claimed at Rs. 1,75,58,50,981/- and the difference of Rs. 27,99,54,965/- is disallowed and added to the total income of the assessee. A schedule is enclosed showing correct depreciation as per IT Act. Penalty proceedings u/s 271(1)(c) of the Act are separately initiated.

4.3 Aggrieved by the aforesaid addition made by the Ld. AO, assessee preferred an appeal before the Ld. CIT(A), wherein the contention of the assessee has been accepted by the Ld. CIT(A) following the judgment of ITAT in Assessee's own case for the AY 2009-10, accordingly, the appeal of the assessee has been allowed. Observations of the Ld. CIT(A) pertaining to vacating the disallowance of depreciation is as under:

***5.4.3** The issue involved is whether the depreciation should be allowed on the basis of cost of assets in the book of the appellant or on the basis of WDV of the assets last shown by the erstwhile CSEB. In AY 2009-10, the CIT(A) confirmed the action of the AO. However, the Hon'ble ITAT held that the assets have not been transferred by CSEB to the appellant company but by the State Government to the appellant company, hence Explanation 2B to section 43(6) was not applicable. The disallowance made by the AO has been reversed by the Hon'ble ITAT. Respectfully, following the decision of the 2009-10, the disallowance of depreciation made by the AO is deleted. These grounds are allowed.*

4.4 Dissatisfied with the aforesaid decision of the Ld. CIT(A) in the department has preferred an appeal before us.

4.5 At the beginning of the hearing before us, Ld. AR of the assessee has placed before us the fact that the issue pertaining to disallowance of depreciation u/s 32 of the Act is already covered by the order of ITAT,

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

Mumbai, Benches “C” in Assessee's own case for the AY 2009-10 in ITA No. 01/BLPR/2013 dated 31.05.2019.Ld. AR drew our attention to the relevant observations of the ITAT, which have been placed before us for our consideration, the same are extracted as under:

10.8 *In this regard, it is pertinent to note here that the scheme notified by the State Government, namely CSEB Transfer Scheme Rules, 2010, for reorganization of CSBE, which at Rule 7(g) states that the value of the assets to be transferred to the transferees shall be the fair value determined in any one or more of the following basis namely (a) revenue earning potential, (b) depreciation replacement value or (c) book value. Further Rule 7(j) states that opening balance sheet of the transferee companies may be notified by the State Government. Accordingly, in terms of Rule 7(j) of the Transfer Rules, Government of Chhattisgarh vide notification dated 29.10.2010 No. 202/F-21/13/09/13/2/ED notified the opening balance sheet of successor companies which included the opening balance sheet of the assessee company as on 01.01.2009, being one of the successor companies. Based on the values assigned in the said opening balance sheet, assessee-company recorded the value of assets and liabilities in its books of account and also for the purpose of income tax it reported the addition to the fixed assets based on the same value. In consideration for the transfer of these assets, assessee issued equity shares to the CGSPHCL. As such, the cost of these assets acquired by the assessee corresponds to the consideration paid by the assessee by way of issue of shares. The fact that assessee has issued shares to the extent of value of assets acquired by it, as above, in consideration of transfer of assets in its favor has not been controverted by the Revenue at any stage. Thus, the cost of assets in the hands of the assessee will be the value on which depreciation is to be allowed as per the rates prescribed in section 32(1)(ii) of the Act.*

10.09 *In view of the above discussion, we set aside the order of CIT(A) and direct the Assessing Officer to allow depreciation to the assessee on the cost of acquisition to the assets recorded by the assessee in accordance with the Scheme framed by the Government of Chhattisgarh. Thus, Ground of appeal no. 2 is allowed.*

4.6 Ld. AR, referring to the aforesaid decision of the coordinate Bench of the ITAT, Mumbai has submitted that since the issue is squarely covered

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

therefore, the same may be decided in accordance with the earlier decision of the ITAT.

4.7 Ld. CIT DR on the other hand, vehemently supported the order of Ld. AO.

4.8 We have considered the rival submissions and perused the material available on record. Admittedly, the issue raised in the first ground qua addition on account of disallowance of depreciation u/s 32 by the Ld. AO, which have been vacated by the Ld. CIT(A) following the order of ITAT in Assessee's own case was a justified decision by the Ld. CIT(A), which needs no further interference. In absence of any further development or information or any contrary decision, the issue which has been decided by the coordinate bench i.e., ITAT, Mumbai, Benches "C" in Assessee's own case for the AY 2009-10 in ITA No. 01/BLPR/2013 dated 31.05.2019 still holds ground, thus, respectfully following the same, we uphold the findings recorded by the Ld. CIT(A) in this regard. Accordingly, we dismiss the Ground No.1 of the revenue.

Ground No. 2: Treatment of capital subsidy as revenue subsidy

4.9 The observations of the Ld. AO w.r.t. treatment of capital subsidy as revenue subsidy are as under:

Chhattisgarh State Power Distribution Company Limited
 (ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
 (CO Nos. 10,11,12,13,14/RPR/2023)

6. During the year the assessee has received an amount of Rs. 49,07,18,777/- and out of this an amount of RS. 46,00,25,000/- was claimed as capital subsidy. In reply to related query regarding admissibility of the claim it was contended that it was received against specified purposes and the same was used for the same, which are capital in nature. It was also contended for the purpose of claiming depreciation, this amount was reduced. The Assessee's explanation has been considered. The assessee has furnished details of grants received and their respective treatment in accounts. The schemes are Kisan Samridhi Yojana, Rajiv Gandhi Gramin Vidhyutikaran Yojna, and Accelerated Power Development Plan etc. Such subsidy was also received by the assessee during last year (AY.2009-10) and it was treated as capital subsidy. However, for the reasons detailed in the assessment order and remand report submitted on the assessee's explanation filed during first appeal, the same was treated as revenue subsidy. The Id. CIT(Appeals) has confirmed the action holding that the subsidy was granted for running the business more profitably and not for establishment or setting up of new unit or expansion of existing unit. Accordingly, there being no change in the facts and circumstances of the case and submissions of the assessee, the above amount of Rs. 46,00,25,000/- is treated as revenue subsidy and added to the total income.

4.10 The issue was carried by the assessee before the Ld. CIT(A), wherein the same have been decided in favour of the assessee with the following observations:

5.6.1 Ground No. 5: - Grant/Subsidy from Government:

The appellant has received grants from the Government under various schemes and has claimed the same to be capital subsidy/receipt. The appellant claimed before the AO that the grants were of capital nature and the amounts had been reduced from the cost of assets for calculation of depreciation. The AO was not convinced with the explanation of the appellant. The AO observed that in AY 2009-10, this amount was treated as revenue subsidy by the AO and had been added as income of the appellant. This action had been confirmed by the CIT(A) who had held that the subsidy has been granted to the appellant for running the Business more profitability and not for Setting up new unit or expansion of existing unit. Accordingly, the AO has added this amount in this year as well, treating it as Revenue Subsidy/receipt.

5.6.2 The appellant has given detailed justification for showing this amount as Capital Subsidy and has also relied upon the Hon'ble ITAT decision for AY 09-10. The Hon'ble ITAT have discussed this issue in Para 18.2 to 18.6 of the order for AY 2009-10 and have held the receipt as Capital Subsidy. Respectfully following the decision of the Hon'ble ITAT, **the AO is directed to delete the addition** by treating the same as capital receipt.

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

4.11 Aggrieved by the relief granted to the assessee by Ld. CIT(A), the revenue is an appeal before us on the issue.

4.12 Ld. CIT DR vehemently supported the order of Ld. AO. It is further submitted by Ld. CIT DR that since the issue is decided the favour of the assessee in assessee's own case by coordinate bench of the ITAT, Mumbai for the AY 2009-10, however, the actual utilization of the funds received under the subsidy are never factually checked and verified by the authorities below, therefore, in the interest of justice the issue should be restored back to the files of Ld. AO for verification.

4.13 Ld. AR contradicting the argument of the Ld. CIT DR has submitted that since the issue is already covered by the order of coordinate bench of ITAT Mumbai, Benches "C" in Assessee's own case for the AY 2009-10 in ITA No. 01/BLPR/2013 dated 31.05.2019, therefore, the issue is squarely covered and the same should be followed in the present case.

4.14 We have considered the rival submission and perused the relevant documents on record. On perusal of the order of the coordinate bench of the Tribunal in assessee's own case for A.Y.2009-10 in 01/BLPR/2013 dated 31.05.2019, wherein, the Tribunal has allowed this issue in favour of assessee after observing as under :-

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

17. We have carefully considered the rival contentions. The issue before us is whether the subsidy of Rs. 74,08,23,550/- received by the assessee, is on capital or revenue account. The facts in brief are that assessee received subsidy from the Government for acquisition of capital assets and development of infrastructure of Lines and Cable Network. The assessee reduced the amount of these subsidies from the actual cost of the assets for the purpose of claiming depreciation u/s 32 of the Act in terms of Explanation 10 to section 43(1) of the Act. The Assessing Officer relying on the decision of Hon'ble Hyderabad Tribunal in the case of AP State Electricity Board (supra) held that the subsidy received by the assessee was a compensation for sale of the power at subsidized rates to certain category of customers and thus, subsidy received by the assessee is revenue in nature. The CIT(A) has also upheld the action of the Assessing Officer.

18. We shall now appraise the factors that are relevant for determination of nature of subsidy. In this context, it is pertinent to refer to certain judgments relied upon is the decision relied upon by the Id. counsel is decision of the Hon'ble Bombay High Court in the case of Poona Electric Supply Co Ltd (supra) wherein facts were that the assessee company was to provide services to the Government for the consideration of cost plus fifteen percentage. However, to provide such services assessee needed to construct new supply lines and in respect of those lines, Government contributed some amount. The sum so received from Government was treated as revenue receipt in the hands of the assessee-company by the Assessing Officer. It was noted that it is not as if the company was charging Government anything more for supply of electricity to them, but what the company had canvassed to the Government was that they were not in a position to incur capital expenditure to supply electricity to them unless requisite contribution was made towards the capital expenditure, Under the aforesaid circumstances, the Hon'ble held that when the Government agreed to make this contribution and the company agreed to incur capital expenditure, it is in the nature of capital receipt and not a trade receipt.

18.1 The second decision relied upon on behalf of the assessee was the judgement of Hon'ble Supreme Court in the case of Hoshiarpur Electric Supply Co. (Supra) wherein facts were that the assessee was a licensee of an electricity undertaking. The assessee had installed machinery for producing electrical energy and had also laid mains and distributing lines for supplying electricity to its customers. Assessee received certain amount for new service connections granted to its customers. Part of those amounts was spent by the assessee for laying service lines and a part for laying certain mains. The Assessing Officer treated the entire consideration

Chhattisgarh State Power Distribution Company Limited
 (ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
 (CO Nos. 10,11,12,13,14/RPR/2023)

as a 'trading receipts. The First Appellate Authority held that, the costs incurred for laying service lines and mains was to be excluded and the balance was to be treated as taxable income. The Tribunal concurred with the same. On reference, the Hon'ble High Court agreed with the view of the Tribunal. On appeal to the Hon'ble Supreme Court, assessee contended that the amount paid by the consumers for new connections was capital receipt and not liable to tax, because the amount was paid by the consumers towards expenditure to be incurred by the assessee in laying new service lines- an asset of a lasting character. The relevant para of the decision is reproduced hereunder:

"The amount contributed by the consumer for obtaining a new connection would of necessity cover all those services. The amount contributed by the consumer is in direct recoupment of the expenditure for bringing into existence an asset of a lasting character enabling the installation of the service lines, a capital asset is brought into existence. The contribution made by the consumers is substantially as consideration for a joint adventure; the service line when installed becomes an appendage of the mains of the assessee, and by the provisions of the Electricity Act, the assessee is obliged to maintain it in proper repairs for ensuring efficient supply of energy. The assumption made by the Department that the excess remaining in the hands of the assessee, after defraying the immediate cost of installation of a service line must be regarded as a trading profit of the company is not correct. The assessee is undoubtedly carrying on the business of distributing electrical energy to the consumers. Installation of service lines is not an isolated or casual act; It is an incident of the business of the assessee. But if the amount reimbursement of capital expenditure, the excess remaining after expending the cost of installation out of the amount contributed is not converted into a trading receipt. This excess- which is called by the Tribunal "profit element" was not received in the form of profit of the business; it was part of a capital receipt in the hands of the assessee, and it was not converted into a trading profit because the assessee was engaged in the business of distribution of electrical energy, with which the receipt was connected.

In Commissioner of Income-tax v. Poona Electric Supply Co. Ltd. [1946] 14 ITR 622 it was held by a Division Bench of the Bombay High Court that the amount received from the Government of Bombay by the Poona Electric Company in reimbursement of expenses incurred for constructing new supply lines for supplying energy to new areas

Chhattisgarh State Power Distribution Company Limited
 (ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
 (CO Nos. 10,11,12,13,14/RPR/2023)

not previously served was a capital receipt and not a trade receipt. The question of the taxability of the "profit element" in the contribution received from the Government was not expressly determined; but the court in that case held that the entire amount received by the Poona Electric Company from the Government as contribution was a capital receipt.

The receipts though related to the business of the assessee as distributors of electricity were not incidental to nor in the course of the carrying on of the Assessee's business; they were receipts for bringing into existence capital of lasting value. Contributions were not made merely for services rendered and to be rendered, but for installation of capital equipment under an agreement for a joint venture. The total receipts being capital receipts, the fact that in the installation of capital, only a certain amount was immediately expended, the balance remaining in hand, could not be regarded as profit in the nature of a trading receipt. On that view of the case, in our judgment, the High Court was in error in holding that the excess of the receipts over the amount expended for installation of service lines by the assessee was a trading receipt."

The principle that emerges from above judgments is that the purpose of subsidy is vital factor to decide the nature of subsidy. The second important factor to be seen is whether the subsidy is giving rise to any new capital asset of enduring nature or is in the nature of revenue field. If it goes to contribute to a capital asset of enduring nature, then the subsidy so received is in the capital field.

18.2 In above legal background, we shall now analyze the purpose for which the instant subsidy has been received by the assessee from Government. The assessee received grants and subsidy from Central and State Government under various schemes such as (a) Rajiv Gandhi Gramin Vidyutikaran Yojna, (b) Scheme of Financial support for Rural Electrification, (c) Electrification of wells of farmer, etc. for acquisition of capital assets and development of infrastructure of Lines and Cable Network.

18.3 At the time of hearing the Ld. Senior Counsel for the assessee referred to the order dated 06.02.2008 from Ministry of Power, Government of India communicating the continuance of the "Rajiv Gandhi Gramin Vidyutikaran Yojna Scheme of Rural Electrification Infrastructure and Household Electrification". The said order clearly states that the subsidy is a Capital Subsidy. Further, the order states that subsidy is for

Chhattisgarh State Power Distribution Company Limited
 (ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
 (CO Nos. 10,11,12,13,14/RPR/2023)

provision of sub-station of adequate capacity where these do not exist. This clearly substantiates the contention of the assessee that the subsidy was for creating the new asset and not for repair or maintenance of an existing asset. The Id. Counsel also drew our attention to the 'Utilization Certificate' given by the assessee-company to state government laying down the details of utilization of funds released under various schemes during Financial Year 2008-09, On going through the same, it is evident that the funds were utilized for creating new assets of the enduring nature in the form of K V Lines, sub-station, etc., Once that is so, following the legal ratio -- as above, we hold that subsidy received by the assessee is in capital field and cannot be treated as a revenue receipt.

18.4 Coming to the next argument put-forth by the Id. Counsel that in all the earlier years, the Assessing Officer has accepted the claim of the same subsidy being Capital Subsidy. On this aspect, following the principle of consistency as laid down by the Hon'ble Supreme Court in the case of Radhasaomi Satsang (supra), the subsidy received by the assessee ought to be treated as capital in nature. In this regard, details of year-wise subsidy received by the erstwhile CSEB and the copy of notices wherein specific queries were raised by the Assessing Officer with respect to nature of this subsidiary were also submitted. It was pointed out that in all the earlier years, Assessing Officer accepted that the subsidy received by the assessee was capital in nature after due application of mind. Even the Commissioner in the revisionary proceedings u/s 263 of the Act had raised this issue in the assessment years 2002-03 and 2004-05 and after considering the replies of the assessee, dropped the proceedings and accepted the treatment done by the assessee.

18.5 We, thus, find that there being no change in facts i.e., the subsidy has been received under the same scheme as was received in earlier, Revenue is precluded from taking a different stand for the current year following the judgment of the Hon'ble Supreme Court in the case of Radhasaomi Satsand (Supra).

18.6 In view of the above discussion, we are of the considered view that the instant subsidy received by the assessee is capital subsidy and, therefore, the same is not liable to tax. Accordingly, Grounds of appeal no. 4 is hereby allowed.

4.15 Respectfully following the above observations of the coordinate bench of the Tribunal, we have no reasons to deviate in absence of any further contrary information or decision on the issue but to uphold the findings

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

recorded by the Id. CIT(A) in this regard. Accordingly, we dismiss the Ground No.2 of the revenue.

Ground No. 3: Addition on account of remission and cessation of liability on account of stale cheque

4.16 The observations of the Ld. AO w.r.t. addition on account of remission and cessation of liability on account of stale cheque are as under:

7. The assessee has claimed liability of Rs. 20,33,486/- as liability against stale cheque. The Cheque being become barred by time, no liability can be based on them. Therefore, the assessee should have offered the same as Income. In this connection reliance is placed on the decision of Hon'ble Supreme Court in the case of CIT vs. TV Sundaram Iyengar & Sons Ltd. 222 ITR 344 (SC). In the course of assessment proceedings, the Id. Counsel has submitted that the cheques were not presented for clearing within the validity period by the parties for various reasons and non-presentation of the cheques cannot be deemed as cessation of liability. It was contended that such addition made in the preceding assessment year was deleted in appeal. Therefore, no addition is called for on this account. Assessee's explanation has been considered and is not found acceptable. The claim that the liability is not diluted is without any support. The assessee has not furnished the details of subsequent discharge even during the assessment proceedings. In other sister concerns of assessee such cheques dates back to 2006. Under these circumstances, the above amount of Rs.20,33,486/- is added to the total income as cessation of liability.

4.17 The issue was carried by the assessee before the Ld. CIT(A), wherein the same have been decided in favour of the assessee with the following observations:

5.7.3 The appellant has requested that the addition should be deleted. The appellant has requested that alternatively, the addition should be restricted as part of the amount already stood allowed in the earlier year. I have considered the request of the appellant. The alternate claim of the appellant is meaningless as the disallowance made in the earlier year had already been allowed in appeal. However, following the decision of CIT (A) in assessment year 2009-10, this addition is deleted in toto. This ground is allowed.

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

4.18 Aggrieved by the relief granted to the assessee by Ld. CIT(A), the revenue is an appeal before us on the issue.

4.19 Ld. CIT DR vehemently supported the order of Ld. AO.

4.20 Ld. AR submitted that this ground is also covered by the order of ITAT in favour of the assessee, in assessee's own case, thus shall be allowed accordingly.

4.21 We have considered the rival submission and perused the relevant documents on record. On perusal of the order of the coordinate bench of the Tribunal in assessee's own case for A.Y.2007-08 in ITA No.14/BLPR/2013 dated 31.05.2019, wherein, the Tribunal has dismissed this issue raised by the department and decided in favour of assessee after observing as under :-

32. *Ground of appeal no. 4 relates to addition of Rs. 19,98,021/-on account to remission and cessation of liability. The Assessing Officer relied on the judgment of CIT vs. TV Sundaram Iyengar and Sons Ltd, 222 ITR 344 and held that as the cheque have become stale and the parties have not encashed the same, therefore, they are not payable and, hence, shall be treated as income of the assessee. The CIT(A) accepted the contention of the assessee, that as the liability is still standing in the balance sheet, therefore, it cannot be assumed that it had ceased to exist for the reason that the cheques have become stale. The CIT(A) held that there is nothing on record to prove that the opposite parties have given up their claims and therefore, the same cannot be treated as a ceased liability. The CIT(A) relied on the decision of the Hon'ble Calcutta High Court in the case of Goodricke Group Limited v CIT338 ITR 116 to decide the issue in favour of the assessee.*

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

33. *In our considered view, merely because the cheque issued by the assessee was not encashed by the creditor cannot be treated as a cessation of liability. The non-presentation of cheque could be due to any reason and cannot ipso facto lead to an inference that creditor has agreed to waive his right to claim the amount in future. It is not a case wherein there was bilateral agreement for cessation of liability or assessee has Suo-moto written back the amount in his books of account. Accordingly, we uphold the decision of CIT(A) and the Ground of appeal no. 4 raised by the Revenue is hereby dismissed.*

4.22 Respectfully following the above observations of the coordinate bench of the Tribunal, we have no reasons to deviate in absence of any further contrary information or decision on the issue but to uphold the findings recorded by the Id. CIT(A) in this regard. Accordingly, we dismiss the Ground No. 3 of the revenue.

Ground No. 4: Ad-hoc disallowance @25% of consultancy charges treating the same as capital nature.

4.23 The brief facts of the issue are reiterated by the Ld. CIT DR from the order of Ld. AO the same are extracted as under:

9. An amount of Rs. 4,83,63,167/- was claimed under the head Consultancy charges (A/c head 76.123). The assessee was asked to furnish details of consultancy charges relating to capital expenditure. Though it was assured to file the details in the next hearing, these details were not filed. Accordingly, an amount equivalent to 25% of the claim is disallowed at Rs. 1,20,90,790/- on estimate basis and added to the total income.

4.24 Aggrieved by the aforesaid estimated disallowance the assessee challenged the issue before the Ld. CIT(A), wherein the ground raised by the assessee was decided in favor of the assessee after observing as under:

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

5.9.2 *The appellant has claimed that this ad hoc disallowance should be deleted. It has contended that similar addition made in Assessment Year 2009-10 had been deleted by the CIT (A) and the same has been upheld by the Hon'ble ITAT. However, it is seen from the records that no such addition had been made in A.Y. 2009-10. Hence, this issue was examined on merit.*

5.9.3 *The AO has made the disallowance on an estimated basis, by considering the same to be relatable to capital expenditure. On the other hand, the appellant has claimed that the entire expenditure was allowable under section 37(1) of the Act. After careful consideration of the reply of the appellant and the facts of the case, the disallowance is deleted, as there is nothing to show that any part of the expenditure had been incurred towards capital expenditure or for enduring benefit to the company, this ground is allowed.*

4.25 At the outset Ld. CIT DR vehemently supported the order of Ld. AO also submitted that the AO has categorically requested the assessee to furnish the details of consultancy charges pertaining to capital expenditure, but the assessee squarely failed in providing such details. Ld. CIT(A) also have not examined such facts so as to conclude that there is no capital expenditure covered under the head consultancy charges. Assessee's submission has been considered as gospel truth by the Ld. CIT(A) without verifying the nature of expenditure or asking for any remand report from the Ld. AO. Under such facts and circumstances a theoretical conclusion that since there is nothing to show that any part of the expenditure had been incurred towards capital expenditure or for enduring benefit to the company, thus, the disallowance made was vacated by the Ld. CIT(A) totally on his own

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

presumptions without any basis. Such observations of Ld. CIT(A), thus, are liable to be struck down.

4.26 Contradicting the arguments of Ld. CIT DR, Ld. AR submitted that the assessee company is a Public Sector Undertaking having in place all the audit compliances. Ld. AR drew our attention to schedule 13 forming part of P&L account available at page 148 of the assessee's PB, wherein an amount of Rs. 12,18,17,823/- has been shown under the head Repairs, Administration & other expense/ Repairs and Maintenance/ Legal and Professional charges. Ld. AR further took us to page no. 210 of the assessee's PB, wherein the amount of consultancy charges (A/C code 76.123) is shown to be covered under the Legal and Professional charges for Rs.4,83,63,167/-. It is the submission of Ld. AR that an amount of Rs. 2,04,61,976/- was already reduced by the assessee company mentioning its nature as "Administration expenses and HOS Capitalized (net) in schedule 13 to the P&L Account. It was the submission that the expenditure in the capital nature was already reduced by the assessee company while claiming R&M expenditure which includes consultancy charges also. Ld. AR with such submissions requested to approve the observation of Ld. CIT(A), wherein a contention of the assessee have been accepted.

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

4.27 We have considered the rival contentions, perused the material available on record and order of the revenue authorities. As per the assessment order the assessee was required to furnish certain details which apparently were not produced. Ld. CIT(A) has decided the issue taking the exception into account that there was nothing to show that any part of the expenditure had been incurred towards capital expenditure or for enduring benefit to the company. Certain information has been furnished before us, but going through by such information also no conclusive factual position can be arrived at. Failure on the part of assessee in not explaining and furnishing the requisite information before the Ld. AO, the same was topped up when the issue was decided by Ld. CIT(A) without looking into the facts but merely on the basis of submissions of the assessee, on presumptive basis. In view of such facts and circumstances the contention of the assessee may be correct or may not be, all depends upon verification of facts a/w the supporting evidence, so as to decide the nature of expenditure incurred falls within the scope of revenue expenditure or capital expenditure. Backed by such observations the issue in hand would be suitable to be set aside to the files of Ld. AO for verification of facts from records, and we do so in the interest of substantial justice. Needless to say, the assessee shall be provided with

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

reasonable opportunity of being heard. In the result, ground no. 4 of the revenues appeal is partly allowed for statistical purposes.

Ground No.5: 2/3 Ad-hoc disallowance of repair and maintenance of P& M and Building

4.28 The relevant observations of the Ld. AO, while making ad hoc disallowance from the amount of repair and maintenance on plant and machinery are extracted as under:

11. *The assessee has claimed the following amounts under the head Repair & Maintenance.*

- a- *Plant & Machinery - Rs. 84,43,26,786/-*
- b- *Building - Rs. 47,21,722/-*

In the course of assessment for the earlier assessment year, for reasons of non-furnishing of the details to ascertain the amount of expenses of capital nature included therein, 2/3rd part of the claim was treated as capital expenditure and depreciation thereon was allowed and 1/3rd part was treated as revenue expenditure. Therefore, the assessee was asked to furnish details of the same. In reply the assessee has filed only extract of ledger account giving only broad heads of expenses of different divisions without any narration. Under these circumstances, it is not possible to verify the quantum of expenses relating to capital items. therefore, keeping in view the action taken in this matter in the past, 2/3rd part of the above claims is treated as relating to capital expenditure and disallowed. Depreciation at the applicable rates is, however, allowed against the amount disallowed and the amount of net addition is worked out as under:-

SI	PARTICULARS	P & M (INR)	BUILDING(INR)
(a)	Repair & Maintenance Exp.	Rs. 84,43,26,786/-	Rs. 47,21,722/-
(b)	2/3rd of Expenditure Exp.	Rs. 56,28,84,524/-	Rs. 31,47,815/-
(c)	Less: Deprn.@7.5%	(-)4,22,16,340/-	(-) 1,57,390/-
(d)	Amount of Addition	Rs. 52,06,68,185/-	Rs. 29,90,425/-
	Total Addition	Rs. 52,36,58,610/-	

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

Accordingly, this amount of Rs. 52,36,58,610/- is disallowed out of Repair & Maintenance Expenses and added to the total income of the assessee.

4.29 The issue was further assailed before Ld. CIT(A) by the assessee, wherein Ld. CIT has decided the issue in favor of the assessee, with the following observations:

5.10.2 The appellant has stated that the disallowance out of repair and maintenance expenditure made in earlier years had been deleted by higher judicial authorities. It is seen that in Assessment Year 2009-10, similar disallowance had been made by the Assessing Officer, and the same had been deleted by the CIT(A). In para 12 of the appeal order, the CIT(A) has discussed the issue in detail. Following the decision of the CIT(A) in Assessment Year 2009-10, the disallowance made by the assessing officer is deleted. The ground is allowed.

4.30 This ground of department's appeal is also argued by the Ld. AR, to be covered by order of the coordinate bench of the Tribunal in Assessee's own case for A.Y.2007-08 in ITA No.14/BLPR/2013 dated 31.05.2019, wherein, the Tribunal has dismissed the ground raised by the department by deciding the same in favour of the assessee, the relevant observations of the tribunal are as under: -

36. *Ground of appeal no. 7 pertains to addition of Rs. 6,98,87,170/- out of repair and maintenance i.e. 2/3rd of the total expenses claimed under that head. The relevant facts are that the Assessing Officer made the impugned addition on the plea that the requisite details were not submitted by the assessee. The CIT(A) allowed the appeal of the assessee on the ground that the reason for making such disallowance was same as in the case of CSEB in earlier years and that the Assessing Officer in the remand proceedings*

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

accepted the claim of the assessee. Though the Revenue has assailed the deletion made by the CIT(A), but the findings arrived at by the CIT(A) have not been assailed on the basis of any cogent reasoning.

37. We have considered the respective orders of the authorities below and find that the CIT(A) has deleted the addition in the following manner:

"12.3 I have gone through the observations of the A.O. and submissions of the appellant. This disallowance was mainly made as a corollary of such disallowance made in the case of CSEB, In the remanded proceedings, the A.O. making the assessment in the said case did not consider the necessity of any such disallowances. The facts and circumstances being identical and the reasons for making the disallowance was such disallowances in the case of CSED, I do not find any reason to confirm the disallowance in the changed scenario. Accordingly, the disallowance is cancelled, and this ground of appeal is allowed.

38. Having perused the aforesaid findings of the CIT(A), we find no reason to interfere with the same. Ostensibly, the CIT(A) deleted the addition finding similarity in the case of CSEB and this aspect is not disputed by the Revenue before us. Thus, we hereby affirm the decision of the CIT(A) and ground raised by the revenue is dismissed.

4.31 Ld. CIT DR on the other hand vehemently supported the order of Ld. AO and have mentioned that the order of ITAT relied upon by the assessee cannot held the contention of the assessee in toto, because in the order of ITAT referred to supra. The assessing officer was provided with the opportunity to conduct remand proceedings wherein no objection towards the claim of the assessee was raised by the Ld. AO. The facts in the present case are therefore not identical, thus, the issue should be referred back to the files of AO for verification of the expenditure incurred so as to arrive at a logical conclusion that the nature of expenditure was capital or revenue and accordingly the quantum of disallowance shall be decided.

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

4.32 We have considered the rival contentions and perused the material available on record. Admittedly the issue regarding adhoc disallowance has been found to be partly covered by the order of ITAT, Mumbai (supra) in assessee's own case, however the case whereupon the reliance has been placed by the Ld. AR an opportunity was provided to the Ld. AO and in response there was no objection lodged by the revenue in the form of remand report. Since, such opportunity is missing in the present case, in all fairness in the interest of natural justice, as rightly pointed out by Ld. CIT DR, we are of the considered view that the observations of Ld. CIT(A) on the issue that it is seen that in Assessment Year 2009-10, similar disallowance had been made by the Assessing Officer, and the same had been delete by the CIT(A), without examining the facts of the issue for the relevant year or without referring the same for the comments of the Ld. AO was unjustified and liable to be set aside, accordingly, we found it appropriate to restore the issue back to the file of Ld. AO for verification of the expenditure incurred under the aforesaid disputed head of R&M and re-adjudicate the same afresh. Needless to say, the assessee shall be provided with reasonable opportunity of being heard. In the result, ground no. 5 of the revenue in the present appeal is partly allowed for statistical purposes.

Chhattisgarh State Power Distribution Company Limited
 (ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
 (CO Nos. 10,11,12,13,14/RPR/2023)

Ground No. 6: Disallowance of interest paid to Power Finance Corporation of India

4.33 The observation of the Ld. AO while making the aforesaid disallowance were as under:

10. *The assessee has claimed an amount of Rs.23,35,368/- (AH- 78.556) as interest on loans from Power Finance Corporation and regarding admissibility of the interest expenses, it was stated that the interest expenses are allowable u/s.36, except the interest on PFC, which' was capitalized. However, it is found that the assessee has capitalized only Rs. 16,23,366/- therefore the balance amount of Rs. 7,12,002/- is disallowed and added to the total income.*

4.34 The issue was challenged before Ld. CIT(A) by the assessee, wherein Ld. CIT has decided the issue in favour of the assessee, with the following observations:

5.11.1 Ground No. 10: Disallowance of interest paid to Power Finance Corporation:

The Appellant had paid Rs.23,35, 368/- to Power Finance Corporation of India Ltd as interest. Out of this amount, Rs.16,23,366/- pertained to project loan, hence the same had been capitalized by the appellant. The Assessing Officer disallowed the balance amount of Rs.7,12,002/-, by considering that even this part was required to be disallowed. The appellant has explained that this part of the interest amounting to Rs. 7,12,002/- was revenue expenditure covered under section 36(1)(iii) of the Act, hence should have been allowed by the Assessing Officer.

5.11.2 *I have carefully considered the facts of the case and the explanation given by the appellant regarding allowability of the expenditure. I find that the amount is allowable as expenditure under section 36(1)(iii) of the Act. This ground is allowed.*

4.35 Ld. CIT DR vehemently supported the order of Ld. AO.

4.36 Ld. AR submitted that the interest paid to Power Finance Corporation of India Ltd was for Rs.23,35,368/- out of which Rs.16,23,366/- pertains to

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

project loan and remaining were related to revenue expenditure of the assessee. Such explanations were furnished before the Ld. CIT(A) who has rightly appreciated the facts and had allowed such expenditure to the assessee. Ld. AR has shown us the suo moto reduction on account of capitalization of interest and finance charges in schedule 15 to the P&L Account furnished before us at page 149 of the assessee's PB. Ld. AR also drew our attention to the accounting policies of the assessee regarding borrowing cost in schedule 18, para "r" at page 154 of the Assessee's PB. It was the submission of Ld. AR that the assessee is complying with all the audit requirement, has no negative comment or qualification in the audit report pertaining to any claim of capital interest and finance cost in its P&L account, therefore, the expenditure incurred and claimed as revenue in nature for Rs. 7,12,002/- cannot be treated as capital to disallow the same.

4.37 We have considered the rival submissions, perused the material available on record and orders of revenue authorities. According to section 36(1)(iii), the amount of interest paid in respect of capital borrowed for the purpose of business and profession is allowable deduction, but subject to verification w.r.t. its nature qua capital or revenue. Under the factual matrix of the present case, it is evident that the details of expenditure incurred were neither produced before Ld. AO or before Ld. CIT(A). Assessee has tried to explain the issue impressing the authorities that they have duly audited accounts and are complying all the accounting and auditing

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

policies. The allowability of deduction of interest on capital borrowed is subject to verification of uses of such funds for capital nature or for revenue nature. According to proviso to section 36(1)(iii) no one can conclusively decide the nature of expenditure without examining the corroborative evidence establishing the characteristic of the expenditure. We, therefore, are of the view that requisite details require to be verified and accordingly the allowability of deduction shall be decided. In back drop of such observations, we find it appropriate to restore this issue back to the files of AO to verify the claim of the assessee in terms of our observations. The assessee is directed to provide all the necessary information in the set aside assessment proceedings. The assessee shall be provided with reasonable opportunity of being heard. Resultantly Ground no. 06 of the revenue's appeal is partly allowed for statistical purposes.

Ground no. 7: Addition of income assessed in the hands of CG state Power Holding Company

4.38 The observation of the Ld. AO while making the aforesaid disallowance were as under:

12. *The assessee is a subsidiary company of CG Power Holding Company, Raipur along with CG Power Generation Company and Power Transmission Company. In the course of assessment proceedings in the case of CG Power Holding company, it has been explained by the Id. Counsel that all the income and expenditure of the holding company are distributed to the above subsidiary companies in the ratio of closing WDV of the subsidiary companies and this practice is regularly followed in the case of holding companies. Accordingly, the*

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

total income assessed in the case of CG Power Holding company is distributed on the basis of closing WDV of those companies respectively at 26.41% to CGPDCL, at 20.83% to CGPTCL and 52.76% to CGPGCL. The share of the present assessee @ 26.41% comes to Rs. 30,08,416/-, which is added to the total income of the assessee.

4.39 Aggrieved by the aforesaid decision of the Ld. AO, the issue was challenged before Ld. CIT(A) by the assessee, wherein Ld. CIT has decided the issue in favour of the assessee, with the following observations:

5.12.3 I have carefully considered the facts of the case and the explanation offered by the appellant. While allocation of expenses among group companies is an acceptable practice, the same is not true in respect of distribution of income. The holding company is an independent taxable entity and is required to pay taxes on its income. Hence, the addition made by the assessing officer, by considering share of profit of the company, is deleted. This ground is allowed.

4.40 Being aggrieved with the decision of Ld. CIT(A), the revenue raised ground no.7 of the present appeal before us stating that the Ld. CIT(A) was in error while deciding this issue therefore, the same needs to be adjudicated on merits of the facts.

4.41 Ld. CIT DR at the outset has submitted that the AO has rightly appreciated the facts of the issue and has added the share of the assessee company in the income of holding company, which could not properly be understood by the Ld. CIT(A) and, therefore, has erroneously accepted the explanations of the assessee without deliberating the actual

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

facts of the issue. It is, therefore, the prayer that the share of income taxable in the hands of assessee company should be added to the income of assessee company, accordingly the order of Ld. CIT(A) is liable to be set aside and the addition made by the Ld. AO deserves to be restore.

4.42 In response Ld. AR of the assessee submitted that as per notification dated 31.03.2010 pronouncing "THE CHHATTISGARH STATE ELECTRICITY BOARD TRANSFER SCHEME RULES,2010", wherein as per clause a(v) under part II having functions and duties of holding company, all expenses incurred by holding company including administration and general expenses, legal and consulting fee, etc. shall be shared by generation company, transmission company, distribution company and trading company in the ratio of their respective equity. Ld. AR submitted that the ratio taken by the AO was on the basis of WDV/asset value but according to the notification dated 31.03.2010 the distribution should be in ratio of equity. Ld. AR drew our attention to page 216& 217 of assessee's PB showing assessment order of M/s CG State Power Holding Company Ltd. for the AY 2010-11, wherein the income of the holding company was shown at Nil. There were certain additions on account of steel cheques- cessation of liability and donation & contributions aggregating to Rs.1,13,91,201/-, which were taken as transferred to subsidiary companies and the final assessed income is shown as NIL. On being queried about taking the matter for appeal before

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

the CIT(A) in case of the holding company, Ld. AR submitted that no such appeal was preferred. It was the submission of Ld. AR that since the amounts belongs to holding company, the assessee company is not liable to pay taxes on such amounts, therefore, the Ld. CIT(A) has rightly decided the issue in favour of the assessee.

4.43 We have considered the rival contentions, perused the material available on record and have gone through the specific documents placed before us for our consideration. In the present case admittedly, certain disallowances proposed by the assessing officer in the case of holding company have been accepted by the holding company by not preferring any appeal against the same. Ld. AO has rightly added such income in the hands of assessee company in the ratio of WDV / asset value which ostensibly is consistently followed by the assessee in earlier years also. The ratio of equity should have been ideally followed by the assessee while sharing the expenses of holding company to be borne by the assessee company in terms of notification dated 31.03.2010 (supra), likewise if there is income which is chargeable tax in the hands of holding company the same needs to be shared by the assessee company in conjunction with the other sister subsidiary companies. The ratio of sharing of expenditure / income of the holding company should not be disputed at this stage, because in case the directions are given to change the ratio of sharing of expenditure/ income between the subsidiary

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

company the same would be tantamount to disturb the assessment of all the subsidiary companies. Since the disallowances in the case of holding company are to be taxed in the hands of subsidiary companies the AO has rightly added the share of the assessee company, therefore, the same cannot be treated as income of the holding company to be taxed in the hands of holding company. Under such facts and circumstances the findings of the Ld. CIT(A) are found to be under mistaken belief with wrong understating of the facts of the issue, therefore, the same is directed to set aside and the addition made by the Ld. AO is sustained. In result, ground no. 7 of the revenue stands allowed.

4.44 In the result ITA No. 181/RPR/2023 for AY 2010-11 filed by the revenue is partly allowed for statistical purposes.

ITA No. 182/RPR/2023 (Department Appeal for AY 2011-12)

5. In this appeal department has raised the following grounds:

1. *On the facts and circumstances off the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer on account of depreciation amounting to Rs. 21,72,90,119/-.*
2. *On the facts and circumstances off the case whether the Id. CIT(A), NFAC was justified in deleting the addition made by the Assessing Officer by treating grant received as revenue subsidy amounting to Rs. 1,02,79,39,766/-.*
3. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the addition made by the Assessing Officer on account of cessation of liability in respect of amount shown under the head 'stale cheques' Rs. 35,22,523/-*

Chhattisgarh State Power Distribution Company Limited
 (ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
 (CO Nos. 10,11,12,13,14/RPR/2023)

4. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting disallowance made by the Assessing Officer out of expenditure shown under consultancy charges as capital expenditure amounting to Rs. 24,46,665/-*

5. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer out of repair and maintenance expenses amounting to Rs. 51,78,41,004/-.*

6. *Any other ground that may be adduced at the time of hearing.*

The concise effective grounds of appeal of the revenue for AY 2011-12 are as under:

- (i) *Disallowance of Depreciation u/s 32 of the Act*
- (ii) *Treatment of capital subsidy as revenue subsidy*
- (iii) *Addition on account of remission and cessation of liability on account of stale cheque*
- (iv) *Ad-hoc disallowance @25% of consultancy charges treating the same as capital nature*
- (v) *2/3 Ad-hoc disallowance of repair and maintenance of P& M and Building*

5.1 On perusal of the grounds of appeal in **ITA No. 182/RPR/2023** **(AY:2011-2012)** filed by the department, it is found that the following effective grounds raised by the department were similar to the grounds raised by the department in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

grounds of the appeal No. referred in the table below will *mutatis mutandis* applicable and accordingly, are disposed off:

Ground No of ITA No.182/RPR/2023	Grounds of appeal	Covered by corresponding grounds of ITA	Remarks
1	<i>Disallowance of Depreciation u/s 32 of the Act</i>	1 of ITA No.181/RPR/2023 for AY 2010-11	
2	<i>Treatment of capital subsidy as revenue subsidy</i>	2 of ITA No.181/RPR/2023 for AY 2010-11	
3	<i>Addition on account of remission and cessation of liability on account of stale cheque</i>	3 of ITA No.181/RPR/2023 for AY 2010-11	
4	<i>Ad-hoc disallowance @25% of consultancy charges treating the same as capital nature.</i>	4 of ITA No.181/RPR/2023 for AY 2010-11	
5	<i>2/3 Ad-hoc disallowance of repair and maintenance of P& M and Building</i>	5 of ITA No.181/RPR/2023 for AY 2010-11	

5.2 In the result, appeal of the revenue in ITA No.182/RPR/2023 for AY 2011-12 is partly allowed for statistical purposes in terms of our aforesaid observations.

CO 10/RPR/2023 (Assessee's Cross Objection for AY 2011-12)

6. Grounds of Appeal in the CO filed by the Assessee are as under:

1. That on the facts and in the circumstances of the case and in law, the CIT(A), NFAC erred in sustaining the addition of Rs.18,53,87,161/- made by the assessing officer u/s 2(24)(x) of the Act.

2. The appellant craves to add, alter, or delete any of the grounds of appeal during the course of appellate proceedings.

Ground No. 1 : Addition u/s 2(24)(x) of employees contribution towards retirement benefit schemes

6.1 The Ld. AO has made the disallowance u/s 2(24)(x) for Rs. 43,23,11,871/- on account of delayed deposit of employee's contribution to welfare scheme like PF, ESI etc. which was assailed before the Ld. CIT(A), however, the assessee's contentions were accepted by the Ld. CIT(A) in view of in recent judgment of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd., wherein Hon'ble Apex Court has categorically observed that the liability to pay the employees contribution is in the character as an income (albeit deemed), by virtue of section 2(24)(x) unless the condition spelt by explanation to sec. 36(1)(va) are satisfied i.e., depositing such amounts received or deducted from the employee on or before the due date. Since it is the deduction from employee's income and held in trust by the employer. Ld. CIT has, therefore, in view of such observations of the Hon'ble Apex Court has approved the action of the AO in adding the amount as income of the

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

appellant. The observations of Ld. CIT(A) qua the issue pertaining to delayed payment of employee's contributions to PF/ ESI is extracted as under:

5.12.12 *In view of the above discussion the claim of the appellant cannot be accepted. Hence, the amounts of employees contribution to the PF, ESI and other welfare funds paid by the appellant before filing of the Income Tax Return cannot be allowed as deduction under section 43B of the Income Tax Act. As the amounts once received from the employees are deemed as income of the appellant under Section 2(24)(x) of the I.T. Act, and as the same has not been deposited within the due date prescribed under the respective laws, the same is not deductible u/s 36(1)(va) of the I. T Act. Hence, the action of the AO is adding the amount as income of the appellant is correct and as per law. This ground raised by the appellant is accordingly rejected.*

6.2 Aggrieved by the decision of Ld. CIT(A) the assessee has filed a CO against the appeal filed by the revenue.

6.3 At the outset, Ld. AR on behalf of the assessee submitted that, though certain deposits pertaining to PF, ESI were made beyond the due date under the respective statutes, however, if grace period of five days which is allowable to the assessee the amount of Rs.15.68 Crores are paid within the permitted time therefore, the same should not be treated as deemed income in the hands of assessee company within the provisions of section 2(24)(x). Ld. AR of the assessee placed his reliance on the decision of coordinate bench of ITAT, Raipur in the case of M/s Dilip Construction Company vs DCIT, Bhilai in ITA No.

Chhattisgarh State Power Distribution Company Limited
 (ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
 (CO Nos. 10,11,12,13,14/RPR/2023)

78/RPR/2023 vide order dated 01.06.2023, wherein the observations of Tribunal are as under:

12. As can be gathered from “Explanation 1” to Section 36(1)(va) of the Act, the term “due date” has been explained as under:

“[Explanation 1].—For the purposes of this clause, “due date” means the date by which the assessee is required as an employer to credit an employee’s contribution to the employee’s account in the relevant fund under any Act, rule, order or notification issued thereunder or under any standing order, award, contract of service or otherwise.”

Although the assessee as an employer is obligated to credit an employee’s share of contribution to the employee’s account in the relevant fund under the EPF Act within 15 days from closure of every month, but as stated by the Ld. AR, and, rightly so, a further the grace period of 5 days to remit the contribution had been allowed under the said Act. The issue as to whether or not the grace period would fall within the meaning of the term “due date” as contemplated in Section 36(1)(va) of the Act, had come up before the Hon’ble High Court of Bombay in the case of Pr. CIT Vs. Hind Filter Ltd. (2018) 90 taxmann.com 51(Bom.). The Hon’ble High Court in its said aforesaid order had, inter alia, observed that payments having been made within the grace period were to be held as having been made within the period prescribed by law. For the sake of clarity, the relevant observations of the Hon’ble High Court are culled out as under:

“7. In the present case, the Tribunal found that the assessee had deposited the contribution within the grace period and having done so, even assuming applicability of Section 43B, the requirement of law is deemed to have been complied. Furthermore, the payment having been made within grace period, the same was held to have been made within the period prescribed by law. On this ground also the order of CIT(A) was upheld by the Tribunal. The order of the CIT(A) noted that the due date of the amount was 21st September, 2008 and the actual date of payment was 29th September, 2008. The CIT(A) also had found that the addition made by the Assessing Officer was not justified and the same was deleted. The only ground on which the Assessing Officer sought to make addition was apparently default in payment before the due date and the amount of Rs.9,770/- was required to be treated as income of the assessee in accordance with Section 2(24)(x), however, it was admittedly deposited in the ESIC account before expiry of the grace period which was not considered by the Assessing Officer.

8. xxxxxxxx

9. xxxxxxxx

10. xxxxxxxx

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

11. In our view the decision of the Tribunal in upholding the order of the CIT(A) in the case at hand cannot be faulted. The assessee was found to have deposited the amount within grace period and hence there is no substance in the grievance of the Revenue. Thus even the third question does not require any further consideration.”

As the assessee firm in the case before me had deposited the employees share of contribution towards EPF of Rs.1,88,346/- (supra) within the grace period under the EPF Act, 1952, therefore, respectfully following the judgment of the Hon'ble High Court of Bombay in the case of Pr. CIT Vs. Hind Filter Ltd. (supra), I am of the view that the said amount could not have been disallowed u/s.36(1)(va) r.w.s 2(24)(x) of the Act.

6.4 Ld. AR further drew our attention to the chart showing certain payments made by the assessee company within the extended due date (with grace period) furnished at Page No. 159 of the assessee's PB, the same is extracted as under:

CSPDCL, AY 2011-12
Statement of Provident Fund
Page No. 152 of Paper Book

Month	Amount deducted	Amount remitted	Due Date	Extended Due date (with grace period)	Actual Date
May	3,01,84,291	2,97,11,771	15-06-2010	20-06-2010	16-06-2010
September	3,11,85,084	3,11,90,084	15-10-2010	20-10-2010	16-10-2010
October	3,13,74,549	3,12,28,249	15-11-2010	20-11-2010	19-11-2010
November	3,13,94,365	3,13,88,365	15-12-2010	20-12-2010	20-12-2010
February	3,21,23,557	3,21,14,757	15-03-2011	20-03-2011	16-03-2011
Total (A)	15,62,61,846	15,56,33,226			

Page No. 155 of Paper Book

Month	Amount deducted	Amount remitted	Due Date	Extended Due date (with grace period)	Actual Date
March	1,10,114	2,38,265	15-04-2011	20-04-2011	18-04-2011
Total (B)	1,10,114	2,38,265			

Raipur-1

Page No. 156 of Paper Book

Month	Amount deducted	Amount remitted	Due Date	Extended Due date (with grace period)	Actual Date
May	2,28,065	4,77,097	15-06-2010	20-06-2010	17-06-2010
June	2,18,880	4,57,097	15-07-2010	20-07-2010	19-07-2010
Total (C)	4,46,945	9,34,194			

Rajnandgaon

Month	Amount deducted	Amount remitted	Due Date	Extended Due date (with grace period)	Actual Date
May	18,631	43,991	15-06-2010	20-06-2010	17-06-2010
Total (D)	18,631	43,991			

Total (A+B+C+D) **15,68,37,536** **15,68,49,676**

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

6.5 Based on aforesaid data Ld. AR submitted that the assessee company has paid certain statutory liabilities pertaining to employee's contribution to PF & ESI within the permissible time limits and therefore, the same qualifies to be allowed as deductible expenditure.

6.6 Ld. CIT DR vehemently supported the order of Ld. AO and Ld. CIT(A), however, have fairly admitted that in case the payments were made withing due date the issue shall be restored back to the files of AO for verification of the same.

6.7 We have considered the rival submissions, perused the material available on record and case law relied upon by the assessee. In the present case as per information furnished before us by the Ld. AR, apparently the assessee company has made certain deposits towards employees contributions for PF/ESI within the extended due date including the permissible grace period. However, the facts produced before us are subject to verification from the evidence pertaining to such payments. We, therefore, respectfully following the view taken by the coordinate bench of ITAT in the case of M/s Dilip Construction Company (supra), are remanding this matter back to the files of Ld. AO for verification of the same and if the information furnished founds to be satisfactory then the amounts deposited within the extended due date including the grace period may be reduced from the addition made by the AO and sustained by the Ld. CIT(A). Resultantly, the

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

ground No. 1 raised by the assessee in its CO is partly allowed for statistical purposes.

6.8 In the result, CO No.10/RPR/2023 for AY 2011-12 filed by the assessee is partly allowed for statistical purposes in terms of our aforesaid observations.

ITA No. 183/RPR/2023 (Department Appeal for AY 2012-13)

7. *In this appeal department has raised the following grounds:*

1. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer on account of depreciation amounting to Rs. 17,37,99,524/-*
2. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the addition made by the Assessing Officer by treating grant received as revenue subsidy amounting to Rs. 128,96,00,555/-*
3. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the addition made by the Assessing Officer on account of cessation of liability in respect of amount shown under the head 'stale cheques' Rs. 6,64,697/-*
4. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting disallowance made by the Assessing Officer out of expenditure shown under consultancy charges as capital expenditure amounting to Rs. 21,17,183/-*
5. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer out of repair and maintenance expenses amounting to Rs. 51,72,82,518/-*
6. *Any other ground that may be adduced at the time of hearing.*

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

7.1 On perusal of the grounds of appeal in **ITA No. 183/RPR/2023 (AY : 2012-2013)** filed by the department, it is found that the following effective grounds raised by the department were similar to the grounds raised by the department in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will *mutatis mutandis* applicable and accordingly, are disposed off:

Ground No of ITA No.183/RPR/2023	Grounds of appeal	Covered by corresponding grounds of ITA	Remarks
1	<i>Disallowance of Depreciation u/s 32 of the Act</i>	1 of ITA No.181/RPR/2023	
2	<i>Treatment of capital subsidy as revenue subsidy</i>	2 of ITA No.181/RPR/2023	
3	<i>Addition on account of remission and cessation of liability on account of stale cheque</i>	3 of ITA No.181/RPR/2023	
4	<i>Ad-hoc disallowance @25% of consultancy</i>	4 of ITA No.181/RPR/2023	

Chhattisgarh State Power Distribution Company Limited
 (ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
 (CO Nos. 10,11,12,13,14/RPR/2023)

	<i>charges treating the same as capital nature.</i>		
5	<i>2/3 Ad-hoc disallowance of repair and maintenance of P& M and Building</i>	5 of ITA No.181/RPR/2023	

7.2 In the result, appeal of the revenue in ITA No.183/RPR/2023 for AY 2012-13 is partly allowed for statistical purposes in terms of our aforesaid observations.

CO No. 11/RPR/2023 (Assessee's CO for AY 2012-13)

8. Grounds of Appeal in the CO filed by the Assessee are as under:

1. That on the facts and in the circumstances of the case cand in law, the CIT(A), NFAC erred in sustaining the addition of Rs. 18,37,49,720/- made by the assessing officer u/s 2(24)(x) of the Act.
2. The appellant craves to add, alter, or delete any of the grounds of appeal during the course of appellate proceedings.

8.1 The sole controversy raised by the assessee in the CO for AY 2013-14 is covered by our decision in the foregoing para's of this order in CO No. **10/RPR/2023** for the AY 2011-12. Our decision pertaining to the issue regarding additions u/s 2(24)(x) shall be *mutatis mutandis* applicable on the ground of appeal raised in present CO the same is disposed off accordingly.

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

8.3 In the result, CO No.11/RPR/2023 for AY 2012-13 filed by the assessee is partly allowed for statistical purposes in terms of our aforesaid observations.

ITA No. 184/RPR/2023 (Department Appeal for AY 2013-14)

9. In this appeal department has raised the following grounds:

1. *On the facts and circumstances off the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer on account of depreciation amounting to Rs. 14,60,86,188/-*
2. *On the facts and circumstances off the case whether the Id. CIT(A), NFAC was justified in deleting the addition made by the Assessing Officer by treating grant received as revenue subsidy amounting to Rs. 208,86,94,032/-*
3. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the addition made by the Assessing Officer on account of cessation of liability in respect of amount shown under the head 'stale cheques' Rs. 35,66,673/-*
4. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting disallowance made by the Assessing Officer out of expenditure shown under consultancy charges as capital expenditure amounting to Rs. 24,10,197/-*
5. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer out of repair and maintenance expenses amounting to Rs. 57,41,97,750/-*
6. *Any other ground that may be adduced at the time of hearing.*

Chhattisgarh State Power Distribution Company Limited
 (ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
 (CO Nos. 10,11,12,13,14/RPR/2023)

9.1 On perusal of the grounds of appeal in **ITA No. 184/RPR/2023 (AY: 2013-2014)** filed by the department, it is found that the following effective grounds raised by the department were similar to the grounds raised by the department in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will *mutatis mutandis* applicable and accordingly, are disposed off:

Ground No of ITA No.184/RPR/2023	Grounds of appeal	Covered by corresponding grounds of ITA	Remarks
1	<i>Disallowance of Depreciation u/s 32 of the Act</i>	1 of ITA No.181/RPR/2023	
2	<i>Treatment of capital subsidy as revenue subsidy</i>	2 of ITA No.181/RPR/2023	
3	<i>Addition on account of remission and cessation of liability on account of stale cheque</i>	3 of ITA No.181/RPR/2023	
4	<i>Ad-hoc disallowance @25% of consultancy charges treating the</i>	4 of ITA No.181/RPR/2023	

Chhattisgarh State Power Distribution Company Limited
 (ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
 (CO Nos. 10,11,12,13,14/RPR/2023)

	<i>same as capital nature.</i>		
5	<i>2/3 Ad-hoc disallowance of repair and maintenance of P& M and Building</i>	5 of ITA No.181/RPR/2023	

9.2 In the result, appeal of the revenue in ITA No.184/RPR/2023 for AY 2013-14 is partly allowed for statistical purposes in terms of our aforesaid observations.

ITA No. 185/RPR/2023 (Department Appeal for AY 2014-15)

10. In this appeal department has raised the following grounds:

1. *On the facts and circumstances off the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer on account of depreciation amounting to Rs. 12,35,84,170/-.*
2. *On the facts and circumstances off the case whether the Id. CIT(A), NFAC was justified in deleting the addition made by the Assessing Officer by treating grant received as revenue subsidy amounting to Rs. 466,79,90,343/-.*
3. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the addition made by the Assessing Officer on account of cessation of liability in respect of amount shown under the head 'stale cheques' Rs. 10,12,381/-.*
4. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting disallowance made by the Assessing Officer out of expenditure shown under consultancy charges as capital expenditure amounting to Rs. 12,15,376/-*
5. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer out of repair and maintenance expenses amounting to Rs. 56,75,20,974/-.*

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

6. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer amounting to Rs. 22,57,73,600/- on account of other expenses.*
7. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer amounting to Rs. 2,66,71,000/- on account of deduction claimed as per AG memo.*
8. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer amounting to Rs. 53,01,63,000/- on account of interest cost attributable to Capital WIP.*
9. *Any other ground that may be adduced at the time of hearing.*

10.1 On perusal of the grounds of appeal in **ITA No. 185/RPR/2023 (AY:2014-2015)** filed by the department, it is found that the following effective grounds raised by the department were similar to the grounds raised by the department in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will *mutatis mutandis* applicable and accordingly, are disposed off:

Ground No of ITA No.185/RPR/2023	Grounds of appeal	Covered by corresponding grounds of ITA	Remarks
1	<i>Disallowance of Depreciation u/s 32 of the Act</i>	1 of ITA No.181/RPR/2023 for AY 2010-11	

Chhattisgarh State Power Distribution Company Limited
 (ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
 (CO Nos. 10,11,12,13,14/RPR/2023)

2	<i>Treatment of capital subsidy as revenue subsidy</i>	2 of ITA No.181/RPR/2023 for AY 2010-11	
3	<i>Addition on account of remission and cessation of liability on account of stale cheque</i>	3 of ITA No.181/RPR/2023 for AY 2010-11	
4	<i>Ad-hoc disallowance @25% of consultancy charges treating the same as capital nature.</i>	4 of ITA No.181/RPR/2023 for AY 2010-11	
5	<i>2/3 Ad-hoc disallowance of repair and maintenance of P& M and Building</i>	5 of ITA No.181/RPR/2023 for AY 2010-11	
6	<i>Addition on account of 10% of A & G expenses and miscellaneous expenses</i>		<i>Adjudicated in ensuing para's of this order</i>
7	<i>Addition u/s 37 on account of prior period item</i>		<i>Adjudicated in ensuing para's of this order</i>
8	<i>Disallowance of interest cost treating it as interest attributable to capital WIP</i>		<i>Adjudicated in ensuing para's of this order</i>

Ground No. 6: Addition on account of 10% of A & G expenses and miscellaneous expenses:

10.2 The observations of the Ld. AO while making the adhoc addition of 10% from the head other expenses which includes other miscellaneous expenses are extracted as under:

11. *The assessee was asked to show cause why the disallowance of other Expenses should not be made at 10% of the expenses claimed at Rs. 22577.36 Lakhs in view of non-verifiability of expenses and also that expenses claimed includes Rs. 1055.56 Lakhs on account of A & G Expenses of CSPHCL, in reply the assessee submitted that payment has been made through proper approval of employees and officers of the company with their delegated power and company possessed all the documents and vouchers of the payment made in every category of expenses. The reply of the assessee has been considered and found not acceptable. The assessee and CSPHCL being separate persons therefore expenses incurred by CSPHCL cannot be allowed as deduction to the assessee. The head Other Expenses further includes Other Misc. Expenses at Rs. 1942.92 Lakhs which has remained unverified due to non-submission of relevant and vouchers. Hence, Rs. 22577.36 Lakhs being 10 % of total expenditure of Rs. 22577.36 lakh is hereby disallowed and added to the total of the assessee.*

10.3 Aggrieved with aforesaid observations of the AO, the assessee preferred appeal before the Ld. CIT(A) wherein the issue is decided in favour of the assessee therefore, dissatisfied revenue is in appeal before us. The observations of the Ld. CIT(A) while allowing the entire expenditure under the head other expenses are culled out as under:

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

5.10.1 Ground no. 9 Lumpsum disallowance out of other expenses

The AO noted that the other expenses shown by the appellant included share of expenditure allocated by the holding company CSPHCL. Further, the AO noted that the expenses were not verifiable as the relevant bills and vouchers were not produced during the assessment proceedings. Hence, the AO disallowed 10% of the expenses shown under the other expenses.

5.10.3 *I have carefully considered the arguments of the appellant. The AO has not pointed out any specific defect or instance. Hence, the ad hoc disallowance out of the other expenses cannot be sustained and the same is deleted. This ground is allowed.*

10.4 At the outset, Ld. CIT DR submitted that since the assessee was unable to provide necessary explanations before the AO, the AO has rightly made the addition and the same requires to be sustained. The assumption of the Ld. CIT(A) that the appellant is a government undertaking and cannot incur any expense without supporting bills, documents, and proper sanctions, was totally on the basis of presumptions without any whisper of any verification by him. Such an observation without any basis is liable to be quashed.

10.5 In rebuttal, Ld. AR on behalf of the assessee has submitted that the assessee is a public sector undertaking has all the audit compliance in place. Ld. AR drew our attention to page 56 of assessee PB showing note no. 9.4:OTHER EXPENSE to financial statements for the relevant year wherein details of total other expenses for Rs.22577.36 Lacs have been evident. However, no specific explanation pertaining to other miscellaneous expenses amounting to Rs. 1942.92 could have been furnished before us. It was the

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

prayer of Id. AR that all the expenditure shown in the financial statement are duly audited and vouched by the statutory auditors of the company therefore, they are undoubtedly supported with evidence and duly sanctioned as per policy of the company. Under such facts and circumstances no disallowance on a lumpsum basis is called for. Ld. CIT(A), therefore, has rightly vacated such adhoc addition made by the AO.

10.6 We have considered the rival submission, perused the material available on record and have thoughtfully considered the contentions raised before us. Admittedly the assessee company is governed by various government policies, have all the audit compliances in place therefore, we may safely concur with the contentions of the assessee and the observation of the Ld. CIT(A), however, the procedure of assessment which is under the provisions of Act, whereby the assessee is required to furnish all the necessary evidences and information to the assessing officer so as to satisfy him qua the genuineness of expenditure. In the present case since the assessee fails to substantiate its claim by providing all the necessary information to the AO thus, the information pertaining to miscellaneous expenses remain unverified. Non submission of relevant information and explanation on the plea that the assessee is a government undertaking cannot be accepted. We, therefore, are of the considered view that this issue should be restored back to the file of AO for verification of the expenditure which were disallow in lumpsum basis, for which the assessee is also required to produce all the necessary corroborative supporting bills etc. needless to say reasonable opportunity of being heard shall be provided to the

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

assessee. Consequently, Ground no. 6 of revenues appeal in ITA 185/RPR/2023 is partly allowed for statistical purposes.

Ground no. 7: Addition u/s 37 on account of prior period item on account of deduction claimed as per AG memo:

10.7 The observations of the Ld. AO while making the aforesaid addition are extracted as under:

12. *The assessee was asked to show cause against the disallowance of deductions claimed as per AG Memo Rs.11.68 Lakhs, Rs.6.03 Lakhs and Rs. 2.49 crores on the ground of Prior Period Item, the assessee has submitted that the said expenses due to error and omission, the reply of the assessee has been considered, however, not acceptable due to the reason that as per Section 37 only expenditure incurred during the year is allowable and there is no exception of admissibility of expenses owing to error or omission. Hence, aggregate amount of Rs. 266.71 Lakhs is hereby disallowed and added back to the total income.*

10.8 Ld. CIT(A), while the issue was challenged by the assessee has decided the same in favour of the assessee by observing that the expense are not prior period expense and pertained to the relevant year only.

10.9 To challenge the observations of the CIT(A), now the revenue is in appeal before us.

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

10.10 Ld. CIT DR at the outset, has submitted that Ld. CIT(A) has not appreciated the facts of the issue properly therefore, the findings of the Ld. CIT(A) are liable to be set aside and that of the AO deserves to be restored.

10.11 Ld. AR, on the other hand drew our attention to page 41 of the PB showing us the annexure C to directors report wherein an amount of Rs. 2.31 Crore pertaining to the period from Jan 2014 to March 2014 towards parallel operation charges and Rs.0.18 Crore towards JLDC State sector and difference bill for the period of Feb 2014 and March 2014 payable to PowerGrid corporation of India which was erroneously omitted to be booked as expenditure in the relevant year, therefore, the same was claimed in the computation of income. Certain other expenses amounting to Rs. 11.68 Lacs and Rs. 6.03 lacs regarding advertisement expenses and professional charges, which belongs to the financial year 2013-14 were accounted for in the FY 2014-15 and the same has been pointed out by the AG auditors therefore, the same belongs to the year under consideration only. It is also submitted that such expenditure which are claimed as expense in the computation of relevant year are *suo moto* disallowed by the assessee company in the AY 2015-16. Under such facts and circumstances the disallowance made by Ld. AO is uncalled for and has rightly vacated by the Ld. CIT(A).

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

10.12 We have considered the rival submissions and perused the material available on record. Admittedly, the expenditure which were related to the year under consideration but in advertently left to be accounted for. The same were claimed on the instance of AG auditors in the relevant year and the assessee refrained itself from claiming the same in the year in which those are actually accounted for. In backdrop of such facts, Ld. CIT(A) has rightly appreciated the issue and has accordingly vacated the addition, which in absence of any cogent evidence against the fact that such expenditure does not pertains to the year under consideration, we do not see any reason to interfere with the decision of Ld. CIT(A), therefore, we sustain the same. In the result, ground no. 7 of the appeal filed by the revenue is dismissed.

Ground no. 8: Disallowance of interest cost treating it as interest attributable to capital WIP

10.13 The observations of the Ld. AO while making the aforesaid addition are extracted as under:

13. The assessee was asked to show cause why the interest cost attributable to Capital WIP of Rs.144296.58 Lakhs should not be disallowed u/s 36(1)(iii) as It is incurring interest cost @8.9 % from state Government 11% from PFC, in response, the assessee has merely stated that the non-interest bearing funds were received in the form of grants/schemes, however, no documentary evidence has been filed by the assessee in support of its contention, the assessee has also not furnished the details of scheme wise grants received and amount outstanding, the assessee has also not demonstrated the end use borrowed funds, it is noticed that the assessee has capitalized interest cost of Rs. 1913.20 Lakhs only whereas the total interest cost debited to P&L A/c is Rs. 17550.61 Lakhs. Even if it is considered that

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

the total amount invested in Capital WIP is partly funded out of non-interest bearing funds and partly out of borrowed funds on which assessee is incurring interest cost at an average rate of 10% PA; the total interest cost disallowable u/ s 36(I)(iii) works out to Rs. 7214.83 Lakhs whereas the assessee has disallowed only Rs. 1913.20 Lakhs, thus, further disallowance of Rs. 5301.63 Lakhs is hereby made and added back to the total income.

10.14 Aggrieved by the aforesaid finding of the AO the assessee preferred an appeal before the Ld. CIT(A), wherein the contentions of the assessee were allowed by the Ld. CIT(A) observing that the appellant has worked out the disallowance as per proper accounting policy therefore, the disallowances is deleted.

10.15 Dissatisfied with the finding of Ld. CIT(A), the revenue is in appeal before us.

10.16 Ld. CIT DR vehemently supported and relied upon the order of Ld. AO.

10.17 Ld. AR on the other hand submitted that according to accounting policies of the company as per note no. 9.3 of the financial statement of the company the assessee has suo moto capitalized the interest expenditure to the extent of Rs. 19.31 crores on the principle mention in point no. 'r' to the notes on financial statement as on 31.03.2014. In terms of the said note it was the submission that the assessing officer has erred in making addition on

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

presumptive basis therefore, the same deserves to be deleted. Ld. CIT(A) has therefore, rightly and judiciously decided the issue.

10.18 We have considered the rival submissions and perused the material available on record. On perusal of the balance sheet of the assessee company it is observed that the assessee company has share capital of Rs. 226310.32 lac, a negative result and surplus of Rs.(307764.05) lacs and share application money pending allotment of Rs. 6326.25 lac, this shows that the assessee company have no surplus fund other than the borrowed funds which were used for capital WIP. Without looking into the detailed calculations of utilization of borrowed funds the possibility that certain borrowed funds were also utilized for capital WIP cannot be ruled out. In order to ascertain the quantum of interest cost attributed towards capital WIP specific details has to be offered and workings needs to be made. The addition on the presumptive basis is not justified under the law. We, therefore, are of the considered opinion that this issue should be restored back to the files of Ld. AO to examine same de novo after verifying the details pertaining to the borrowed funds and its utilization. Assessee company is directed to provide all the necessary information so as to arrive at a logical figure of interest attributable to capital WIP. Ld. AO is directed to decide the issue afresh. Resultantly, ground no. 8 of the revenue's appeal in ITA 185/RPR/2023 is set aside by partly allowing for statistical purposes.

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

10.19 **In the result, appeal of the revenue in ITA No.185/RPR/2023 for AY 2014-15 is partly allowed for statistical purposes in terms of our aforesaid observations.**

CO No. 12/RPR/2023 (Assessee's CO for AY 2014-15)

11. Grounds of appeal forming part of memorandum of cross objection:

1. That on the facts and in the circumstances of the case and in law, the CIT(A), NFAC erred in sustaining the addition of Rs. 11,55,00,000/- made by the assessing officer on account of prior period expenses.
2. That on the facts and in the circumstances of the case and in law, the CIT(A), NFAC erred in sustaining the addition of Rs. 9,30,30,619/- made by the assessing officer u/s 2(24)(x) of the Act.
3. The appellant craves to add, alter or delete any of the grounds of appeal during the course of appellate proceedings.

Ground no. 1: Addition on prior period expense debited P& L

11.1 The observations of the Ld. AO while making the aforesaid addition are extracted as under:

14. *The assessee was asked to show cause why the Prior Period Expenses debited to P&L A/c Rs.14567.99 Lakhs should not be disallowed u/s 37 when only Rs 13412.21 Lakhs has been added back while computing total income, in reply, the assessee has stated that the assessee has Suo moto added back net Prior Period Item of Rs. 13412.21 Lakhs after deducting Prior Period Income of Rs.1155 Lakhs, the assessee relied upon the provisions of Section 5 and stated that as per Section 5 income for the year only is taxable, the reply of the assessee has been considered; however, not acceptable as the prior period expenses are disallowable due to specific provisions contained in Section 37 While there is no such exemption provision for incomes not offered for taxation by the assessee in the year in which it was earned, if the contention of the assessee is accepted then merely by taking the*

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

plea of error or omission in the accounts one can get away from paying the tax which is certainly not the intention of law. Hence, the further disallowance of Rs.1155 Lakhs is hereby made u/s 37 and added back to the total income.

(Addition: Rs. 11,55,00,000/-)

11.2 Aggrieved by the aforesaid finding of the AO the assessee preferred an appeal before the Ld. CIT(A), wherein the contentions of the assessee were not allowed by the Ld. CIT(A) and the addition was sustained:

11.3 Dissatisfied with the finding of Ld. CIT(A), the assessee is in appeal before us.

11.4 Ld AR of the assessee at the out set on this issue has drawn our attention to Page 56 of the paper book showing us the Note 11 pertaining to prior period Income/ (Expenses) and page 176 showing computation of income having net effect added back to the income of the assessee to offer for taxation. Therefore, the Ld AO has wrongly made the addition on this account, thus needs to be deleted.

11.5 Ld CITDR vehemently supported the orders of revenue authorities on this issue.

11.6 We have considered the rival contentions and perused the material available on record. This issue has been discussed and deliberated by

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

Hon'ble Gujrat High Court in the case of Pr. CIT Vs Dishman Pharmaceuticals and Chemicals Ltd (Gujarat High Court) in /TAX APPEAL NO. 192 of 2019 vide order dated 26.06.2019, wherein it has been held that:

2. *The Revenue has proposed the following questions of law:*

“[A] Whether the Appellate Tribunal has erred in law and on facts directing to add only net income after setting off prior period expenditure without appreciating that assessee has been unable to prove expenditure was incurred for earning the particular receipts offered under the head prior period income?”

CONCEPT OF “PRIOR PERIOD” AND ITS ACCOUNTING TREATMENTS:

12. *As per Section 209 of the Companies Act, 1956, every company is required to prepare and maintain its books of accounts, following the double entry system and the accrual method. At the end of the accounting year / financial year, the financial statements are prepared which furnishes the financial information relating to the financial position. As per Section 211 of the Companies Act, 1956, every company while preparing its profit and loss account and balance sheet has to comply with the Accounting Standards recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act 1949 (38 of 1949), or the Accounting Standards prescribed by the Central Government in consultation with the National Advisory Committee on the Accounting Standards established under subsection (1) of section 210A of the Companies Act, 2013]. The Accounting Standard 5 “net profit or Loss for the period, prior period Items and changes in the accounting policies”, deals with the issue of prior period*

Chhattisgarh State Power Distribution Company Limited
 (ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
 (CO Nos. 10,11,12,13,14/RPR/2023)

items. Vide Para 4.3, it defines the prior period items as items of income or expenses which arise in the current period as a result of the errors or omissions in the preparation of the financial statements of one or more prior periods. The same read as follows:

“4.3 Prior period items are income or expenses which arise in the current period as a result of errors or omissions in the preparation of the financial statements of one or more prior periods.”

The para 15 of the Accounting Standard indicates that the nature and amount of prior period items, should be separately disclosed in the statement of profit and loss in a manner that their impact on the current profit or loss can be perceived. Para 16 of the standard restricts itself to those items of income or expenses which arise in the current period as a result of the errors or omissions in the preparation of the financial statements of one or more prior periods. Some of the examples of prior period items are as under :

Error in calculation in providing expenditure or income.

Omission to account for income or expenditure.

Non-provision of travelling expenses for travel already undertaken.

Non-provision for salary already due in earlier year.

Applying incorrect rate of depreciation.

Treating operating lease as finance lease.

Capitalization of borrowing cost on working capital.

13. Section 37(1) of the Act is as follows: “37. General (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 a [x x] and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession". Hence, the only requirement under Section 37 of the Act is that the expenses (not capital or personal) should be incurred for the purposes of the business or profession. There is no need to demonstrate that a certain expense relates to a particular income in order to claim such expense. Moreover, if the Legislature intended to have such a condition, it would have worded the section accordingly as was done in Section 57(iii) of the Act.

14. *Section 57 of the Act is as follows: "57. Deductions The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely *** ** (iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income."*

15. *We are of the view that once the prior period income is held to be taxable, the prior period expenditure also should be allowed to be set off.*

16. *In the aforesaid context, we may refer to and rely upon a decision of the Delhi High Court in the case of Commissioner of Incometax, Delhi vs. Shri Ram Honda Power Equip [2007] 158 Taxman 474 (Delhi). We quote the following observations: "25.5 The underlying principle of netting appears to logically get attracted as no prudent businessman would allow taxation of the interest income de hors the expenditure incurred for earning such income. The words 'included any such profits' following the words receipts*

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

by way of interest, commission, brokerage etc., is a clear pointer to the fact that only net interest would be includable in arriving at the business profit.

25.6 Once business income has been determined by applying accounting standards as well as the provisions contained in the Act, the assessed would be permitted to, in terms of Section 37 of the Act, claim as deduction, expenditure laid out for the purposes of earning such business income. 25.7

Support for this proposition is to be found from Circular No. 621 dated 19.12.1991 of the CBDT. "32.10 The existing formula often gives a distorted figure of export profits when receipts like interest, commission, etc., which do not have element of turnover are included in the profit and loss account.

32.11 It has, therefore, been clarified that "profits of the business" for the purpose of Section 80HHC will not include receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature. As some expenditure might be incurred in earning these incomes, which in the generality of cases is part of common expenses, ad hoc 10 per cent deduction from such incomes is provided to account for these expenses."

17. Mr. Hemani, the learned counsel placed reliance on the decision of this Court in the case of Principal Commissioner of Income Tax¹ vs. Adani Gas Ltd [Tax Appeal No.900 of 2016 decided on 11th January 2017] wherein two questions fell for consideration of this Court. Those are as under; "A. Whether the Appellate Tribunal has erred in law and in facts in deleting the disallowance of Rs. 10,28,028/ being the preliminary expenditure under Section 35 D of the Act ? B. Whether the Appellate Tribunal has erred in facts and circumstances in directing the AO to set off prior period expenditure of Rs. 15,25,746/without considering the merit of the issue?" This Court held as under: "3.0. So far as proposed question no. A is

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

concerned, it is with respect to deletion of disallowance of Rs. 10,28,028/ being preliminary expenditure under Section 35 D of the Act. The learned Tribunal has dealt with the same in para 4 and considering the fact that the very expenditure stand accepted in the preceding assessment year and therefore, thereafter it will not be open for the department in the subsequent year to disallow the preliminary expenditure under Section 35 D of the Act, the learned Tribunal has deleted the disallowance of Rs. 10,28,028/ being preliminary expenditure under Section 35 D of the Income Tax Act. It is not in dispute that in the preceding assessment year, very expenditure stand accepted. The issue is squarely covered against the revenue in light of the decision of the Honble Supreme Court in the case of *Shasun Chemicals & Drugs Ltd vs. Commissioner of Income Tax II, Chennai* reported in (2016) 243 Taxman 47/73 taxguru.in 293(SC). In the said decision also, the issue was with respect to claim under Section 35 D of the Act and it was found that expenses claimed by the assessee for first two assessments years were allowed by the Assessing Officer, the Assessing Officer in the subsequent assessment year could not have disallowed the same. Under the circumstances, no error has been committed by the learned Tribunal in deleting the disallowance of preliminary expenditure under Section 35 D of the Act. We are in complete agreement with the view taken by the learned Tribunal. Under the circumstances, question No.1 A is answered against the revenue and in favour of assessee.” “5.0. The aforesaid issue is also as such concluded by the decision of the Division Bench of this Court in the case of *Associate Company of the very assessee i.e. in the case of Principal Commissioner of Income Tax1 vs. Adani Enterprises Ltd in Tax Appeal No. 566 of 2016*. Even the said issue is also directly covered by the decision of the Delhi High Court in the case of *CIT vs. Exxon Mobil*

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

Lubricant Pvt Ltd reorted in 328 ITR 17. No error has been committed by the learned Tribunal in accepting the alternative plea and directing the AO to set off prior period of expenditure of Rs. 15,25,746/. The learned Tribunal has directed the Assessing Officer to set off assessee's prior period of expenditure and income as per the law. Therefore, necessary consequence shall follow. Under the circumstances, we see no reason to interfere with the impugned judgment and order passed by the learned Tribunal. Question B is also held against the revenue and in favour of assessee. No substantial question of law arise in the present appeal. Hence, present appeal deserves to be dismissed and is accordingly dismissed."

18. Mr. Hemani also placed reliance on the decision of this Court in the case of Principal Commissioner of Income Tax I vs. Adani Enterprises Ltd [Tax Appeal No.566 of 2016 decided on 20th July 2016] wherein one of the questions was as under: "(A) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the disallowance of Prior Period expenditure of Rs.67,88,591/?" The Court, ultimately, held as under: "2. Main question is sum of Rs.67.88 lacs(rounded off) which the Assessing Officer and CIT(Appeals) disallowed treating the expenditure as a prior period expenditure. The Tribunal reversed the findings of the Revenue authorities primarily on two grounds. Firstly, that the assessee being a company was charged uniformly for all years and would therefore, have no revenue implication of whether the expenditure was recognised in this assessment year or earlier year. The second ground was that in any case, the Revenue had recognised the prior period income. If that be so, according to the Tribunal, it would be unfair not to recognise the expenditure also of the prior period. 3. Having heard learned counsel for the

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

parties and having perused the documents on record, we see no reason to interfere. Firstly, the expenditure of Rs.67.88 lacs is a fraction of the total income of the assessee company declared at Rs.105.88 crores. Further, even the Revenue does not dispute that the company would be taxed at the same rate in the present assessment year or during earlier year. It is also not disputed that prior period income was declared by the assessee during the current year which is also accepted by the Revenue. No question of law therefore, arises.”

19. In the aforesaid context, Mr. Hemani submitted that even otherwise, there is no loss to the Revenue as the respondent being a corporate entity, the rate of tax has remained the same and on this count also, the set off is to be allowed. Mr. Hemani placed reliance on a decision of the Supreme Court in the case of CIT vs. Excel Industries [2013] 358 ITR 295(SC), wherein the following has been observed: “32. Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers.”

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

20. This Court in *PCIT vs. Adani Enterprises Ltd* [Tax Appeals Nos.566 of 2016 and 573 of 2016 decided on 20th July 2016] has taken such a stance while allowing the set off of the prior period expenses against the prior period income.

21. This Court in *PCIT vs. Adani Gas Ltd* [Tax Appeal No.900 of 2016 decided on 11th January 2017] allowed the set off by following the decision of the Delhi High Court in *CIT vs. Exxon Mobile Lubricant Pvt Ltd* [(2010) 8 taxguru.in 249 (Delhi)]. It was held that if the AO had not excluded the prior period income while working out the current year taxable income, there was no reason to disallow only a part of the prior period adjustment.

22. This Court in *PCIT vs. Adani Enterprises* [Tax Appeal NO.566 of 2016 decided on 20th July 2016] noted that the prior period income was declared by the assessee in the current year and accepted by the Revenue. Hence, this Court declined to interfere with the order of the ITAT holding that it would be unfair not to recognise the prior period income. It further took into account the fact that the company would be taxed at the same rate in the present assessment year or during the earlier year.

23. This Court in *PCIT vs. Adani Enterprises Ltd* [Tax Appeal no.573 of 2016 decided on 20th July 2016] followed its order in the Tax Appeal no.566 of 2016 dated 20th July 2016 to dismiss the Tax Appeal.

24. Thus, in view of the aforesaid discussion, we are of the view that the ITAT committed no error in holding that once the prior period income is held to be taxable, the prior period expenditure also should be allowed to be set

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

off and the assessee is not obliged in law to indicate any direct or indirect nexus between the prior period income and prior period expenditure.

11.7 Respectfully following the above decision of Hon'ble Gujarat High Court in the case of Dishman Pharmaceuticals and Chemicals Ltd (supra), we find merits in the ground raised by the assessee and accordingly the set off of prior period expenses is allowed from the prior period income of the assessee. Thus, Ground No. 1 of the **CO No. 12/RPR/2023** of the assessee is allowed in terms of aforesaid observations.

Ground No. 2: Addition u/s 2(24)(x) of employees contribution towards retirement benefit schemes:

11.8 The controversy raised by the assessee in the CO for AY 2014-15 is covered by our decision in the foregoing para's of this order in CO No. **10/RPR/2023** for the AY 2011-12. Our decision pertaining to the issue regarding additions u/s 2(24)(x) shall be *mutatis mutandis* applicable on the ground of appeal raised in present CO, the same is disposed off accordingly.

11.9 **In the result, CO No.12/RPR/2023 for AY 2014-15 filed by the assessee is partly allowed for statistical purposes in terms of our aforesaid observations.**

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

ITA No. 186/RPR/2023 (Department Appeal for AY 2015-16)

12. In this appeal department has raised the following grounds:

1. *On the facts and circumstances off the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer on account of depreciation amounting to Rs. 2,75,10,633/-.*
2. *On the facts and circumstances off the case whether the Id. CIT(A), NFAC was justified in deleting the addition made by the Assessing Officer by treating grant received as revenue subsidy amounting to Rs. 266,11,20,211/-.*
3. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the addition made by the Assessing Officer on account of cessation of liability in respect of amount shown under the head 'stale cheques' Rs. 48,520/-.*
4. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting disallowance made by the Assessing Officer out of expenditure shown under consultancy charges as capital expenditure amounting to Rs. 13,15,803/-*
5. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer out of repair and maintenance expenses amounting to Rs. 72,80,08,028/-.*
6. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer amounting to Rs. 8,00,81,770/- on account of other expenses.*
7. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer amounting to Rs. 7,24,91,000/- on account of interest cost attributable to Capital WIP.*
8. *Any other ground that may be adduced at the time of hearing.*

12.1 On perusal of the grounds of appeal in **ITA No. 186/RPR/2023 (AY : 2015-2016)** filed by the department, it is found that the following effective grounds raised by the department were similar to the grounds

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

raised by the department in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will *mutatis mutandis* applicable and accordingly, are disposed off:

Ground No of ITA No.186/RPR/2023	Grounds of appeal	Covered by corresponding grounds of ITA	Remarks
1	<i>Disallowance of Depreciation u/s 32 of the Act</i>	1 of ITA No.181/RPR/2023 for AY 2010-11	
2	<i>Treatment of capital subsidy as revenue subsidy</i>	2 of ITA No.181/RPR/2023 for AY 2010-11	
3	<i>Addition on account of remission and cessation of liability on account of stale cheque</i>	3 of ITA No.181/RPR/2023 for AY 2010-11	
4	<i>Ad-hoc disallowance @25% of consultancy charges treating the same as capital nature.</i>	4 of ITA No.181/RPR/2023 for AY 2010-11	
5	<i>2/3 Ad-hoc disallowance of repair and maintenance of P& M and Building</i>	5 of ITA No.181/RPR/2023 for AY 2010-11	
6	<i>Addition on account of 10% of A & G expenses</i>	6 of ITA No.185/RPR/2023	

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

	<i>and miscellaneous expenses</i>	for AY 2014-15	
7	<i>Disallowance of interest cost treating it as interest attributable to capital WIP</i>	8 of ITA No.185/RPR/2023 for AY 2014-15	

12.2 In the result, appeal of the revenue in ITA No.186/RPR/2023 for AY 2015-16 is partly allowed for statistical purposes in terms of our aforesaid observations.

CO No. 13/RPR/2023 (Assessee's CO for AY 2015-16)

13. Grounds of appeal forming part of memorandum of cross objection:

- i. That on the facts and in the circumstances of the case and in law, the CIT(A), NFAC erred in sustaining the addition of IQs, 1,27,00,000/- made by the assessing officer on account of prior period expenses.
2. That on the facts and in the circumstances of the case and in law, the CIT(A), NFAC erred in sustaining the addition of Rs. 7,38,33,609/- made by the assessing officer u/s 2(24)(x) of the Act.
3. The appellant craves to add, alter, or delete any of the grounds of appeal during the course of appellate proceedings.

Ground no. 1: Addition on prior period expense debited P&L

13.1 The issue raised by the assessee in ground no 1 of the CO for AY 2015-16 is covered by our decision in the foregoing para's of this order in CO No. **12/RPR/2023** for the AY 2014-15. Our decision pertaining to the issue regarding Addition on prior period expense debited P&L shall be *mutatis*

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

mutandis applicable on the ground of appeal raised in present CO, the same is disposed off accordingly.

Ground No. 2: Addition u/s 2(24)(x) of employees contribution towards retirement benefit schemes:

13.2 The controversy raised by the assessee in the CO for AY 2014-15 is covered by our decision in the foregoing para's of this order in CO No. **10/RPR/2023** for the AY 2011-12. Our decision pertaining to the issue regarding additions u/s 2(24)(x) shall be *mutatis mutandis* applicable on the ground of appeal raised in present CO, the same is disposed off accordingly.

13.3 **In the result, CO No.13/RPR/2023 for AY 2015-16 filed by the assessee is partly allowed for statistical purposes in terms of our aforesaid observations.**

ITA No. 187/RPR/2023 (Department Appeal for AY 2017-18)

14. In this appeal department has raised the following grounds:

1. *On the facts and circumstances off the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer on account of depreciation amounting to Rs. 41,80,50,564/-*
2. *On the facts and circumstances off the case whether the Id. CIT(A), NFAC was justified in deleting the addition made by the Assessing Officer by treating grant received as revenue subsidy amounting to Rs.334,65,14,000/-*
3. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer out of expenditure shown under consultancy charges as capital expenditure amounting to Rs. 29,50,984/-.*

Chhattisgarh State Power Distribution Company Limited
 (ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
 (CO Nos. 10,11,12,13,14/RPR/2023)

4. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting disallowance made by the Assessing Officer out repair and maintenance expenses amounting to Rs. 105,43,73,852/-*
5. *Any other ground that may be adduced at the time of hearing.*

14.1 On perusal of the grounds of appeal in **ITA No. 187/RPR/2023 (AY : 2017-2018)** filed by the department, it is found that the following effective grounds raised by the department were similar to the grounds raised by the department in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will *mutatis mutandis* applicable and accordingly, are disposed off:

Ground No of ITA No.187/RPR/2023	Grounds of appeal	Covered by corresponding grounds of ITA	Remarks
1	<i>Disallowance of Depreciation u/s 32 of the Act</i>	1 of ITA No.181/RPR/2023 for AY 2010-11	
2	<i>Treatment of capital subsidy as revenue subsidy</i>	2 of ITA No.181/RPR/2023 for AY 2010-11	
3	<i>Ad-hoc disallowance @25% of consultancy charges treating the</i>	4 of ITA No.181/RPR/2023 for AY 2010-11	

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

	<i>same as capital nature.</i>		
4	<i>2/3 Ad-hoc disallowance of repair and maintenance of P& M and Building</i>	5 of ITA No.181/RPR/2023 for AY 2010-11	

14.2 In the result, appeal of the revenue in ITA No.187/RPR/2023 for AY 2017-18 is partly allowed for statistical purposes in terms of our aforesaid observations.

ITA No. 188/RPR/2023 (Department Appeal for AY 2018-19)

15. In this appeal department has raised the following grounds:

1. *On the facts and circumstances off the case whether the Id. CIT(A), NFAC was justified in deleting the disallowance made by the Assessing Officer on account of depreciation amounting to Rs. 42,72,32,494/-*
2. *On the facts and circumstances off the case whether the Id. CIT(A), NFAC was justified in deleting the addition made by the Assessing Officer by treating grant received as revenue subsidy amounting to Rs.748,41,24,031 /-*
3. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting disallowance made by the Assessing Officer out repair and maintenance expenses amounting to Rs. 126,13,02,433/-*
4. *On the facts and circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting disallowance made by the AO amounting to Rs. 12,43,25,000/-*
5. *Any other ground that may be adduced at the time of hearing.*

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

15.1 On perusal of the grounds of appeal in **ITA No. 188/RPR/2023 (AY : 2018-2019)** filed by the department, it is found that the following effective grounds raised by the department were similar to the grounds raised by the department in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will *mutatis mutandis* applicable and accordingly, are disposed off:

Ground No of ITA No.188/RPR/2023	Grounds of appeal	Covered by corresponding grounds of ITA	Remarks
1	<i>Disallowance of Depreciation u/s 32 of the Act</i>	1 of ITA No.181/RPR/2023 for AY 2010-11	
2	<i>Treatment of capital subsidy as revenue subsidy</i>	2 of ITA No.181/RPR/2023 for AY 2010-11	
3	<i>2/3 Ad-hoc disallowance of repair and maintenance of P& M and Building</i>	5 of ITA No.181/RPR/2023 for AY 2010-11	
4	<i>Disallowance on account of reimbursement of expenses to CSPHCL (A&G Expenses)</i>		<i>Adjudicated separately in ensuing para's</i>

Ground 4 : Disallowance on account of reimbursement of expenses to CSPHCL (A&G Expenses)

15.2 In this regard Ld AO had observed that the explanations of the assessee could be substantiated with any documentary evidence, thus was not accepted. Ld CIT(A) on the other hand has clarified the position by examining the grouping of final accounts, where in reimbursement of expense to CSPHCL was allowed. Since the expenditure incurred by the holding company are allowable as demonstrated by the Ld AR showing notification dated 31.03.2010 pronouncing "THE CHHATTISGARH STATE ELECTRICITY BOARD TRANSFER SCHEME RULES,2010", wherein as per clause a(v) under part II having functions and duties of holding company, all expenses incurred by holding company including administration and general expenses, legal and consulting fee, etc. shall be shared by generation company, transmission company, distribution company and trading company in the ratio of their respective equity, we therefore, have no different opinion than the Ld CIT(A), thus do not wish to interfere with the same. In the result ground no 4 of the department in ITA 188/RPR/2023 for AY 2018-19 is rejected.

15.3 **In the result, appeal of the revenue in ITA No.188/RPR/2023 for AY 2018-19 is partly allowed for statistical purposes in terms of our aforesaid observations.**

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

CO No. 14/RPR/2023 (Assessee's CO for AY 2015-16)

16. Grounds of appeal forming part of memorandum of cross objection:

- I . That on the facts and in the circumstances of the case and in law," the CIT(A), NFAC erred in sustaining the addition of Rs: 1,54,10,000/- made by the assessing officer on account of shortage of inventory.
2. That on the facts and in the circumstances of the case and in law, the CIT(A), NFAC erred in sustaining the addition of Rs. 96,60,00,000/- made by the assessing officer on account of bad debt claimed by the appellant.
3. The respondent craves to add, alter, or delete any of the grounds of appeal during the course of appellate proceedings.

Ground no 1 : Disallowance of provision for shortage in inventory.

16.1 Necessary details were not furnished before the revenue authorities by the assessee as apparent for the orders of the authorities below. Ld AR on the contrary have submitted that such shortage of inventory claimed in the P&L A/c as an expense is against the total inventory of Rs. 27425.50 Crore which is hardly 0.005% of the total inventory, therefore the same should be allowed as expense under section 37 of the Act.

16.2 Contentions of assessee only based on explanations without any cogent supporting evidence can't not be accepted, thus the issue is restored back to the files of AO providing assessee one more opportunity to satisfy the Ld AO. Ld AO is directed to re-adjudicate the issue afresh providing assessee reasonable opportunity of being heard. In result this ground is partly allowed for statistical purposes.

Ground no 2 : Disallowance on account of bad debts written off of claim receivable from state Government

16.3 The addition was made by the Ld AO on the ground that the assessee did not file any documents in support of the claim. Assessee had claimed that all the necessary details and evidence were produced before the AO. However, no such response was produced before us, therefore this issue is also restored back to file of AO for re-adjudication, wherein assessee would be at liberty to submit all the necessary documents in support along with contentions based on judicial decisions. In the result ground 2 of the CO 14/RPR/20233 is partly allowed for statistical purposes.

16.4 In the result, CO No.14/RPR/2023 for AY 2018-19 filed by the assessee is partly allowed for statistical purposes in terms of our aforesaid observations.

17. In combined result all the aforesaid appeals and cross objections of revenue or assessee are partly allowed for statistical purposes in terms of our observations here in above

Order pronounced in the open court on 14/12/2023.

Sd/-
(RAVISH SOOD)

न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखासदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 14/12/2023

Vaibhav Shrivastav

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant-
2. प्रत्यर्थी/ The Respondent-
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण,रायपुर/ DR, ITAT,
Raipur
6. गार्डफाईल / Guard file.

// सत्यापित प्रति True Copy //

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकरअपीलीयअधिकरण, रायपुर/ITAT, Raipur

Chhattisgarh State Power Distribution Company Limited
(ITA Nos. 181,182,183,184,185,186,187,188/RPR/2023)
(CO Nos. 10,11,12,13,14/RPR/2023)