IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No.5925/DEL/2018, A.Y. 2011-12
ITA No.2315/DEL/2019, A.Y. 2012-13
ITA No.6506/DEL/2018, A.Y. 2013-14

Hindustan Coca-Cola Beverages Company Pvt. Ltd. b-91, Mayapuri Industrial Area, Phase-I, New Delhi- 110064 PAN : AAACH3005M	Vs.	The Joint Commissioner of Income Tax Special Range-4, C.R. Building, New Delhi-110002
(Appellant)		**(Respondent)**

ITA No.5903/DEL/2018, A.Y. 2011-12
ITA No.6296/DEL/2018, A.Y. 2013-14

Addl. CIT, Special Range-4, C.R. Building, New Delhi-110002	Vs.	Hindustan Coca-Cola Beverages Company Pvt. Ltd. b-91, Mayapuri Industrial Area, Phase-I, New Delhi- 110064 PAN : AAACH3005M
(Appellant)		**(Respondent)**

Appellant by	Shri Sachit Jolly & Ms. Soumya Singh, Advs.
Respondent by	Mr. Waseem Arshad, CIT(DR)

Date of Hearing	01/02/2024
Date of Pronouncement	05/03/2024

ORDER

PER YOGESH KUMAR U.S., JM:

All the above appeals are filed by the Assessee and Revenue against the respective orders of the Ld. CIT (Appeals) for the assessment years pertaining to 2011-12 to 2013-14.

2. Since the issues involved in above appeals are common and connected, having only difference in the amount, the above appeals were heard together and being disposed off by this common order.

3. The Assessment Year 2011-12 comprises of all the Grounds/issues to adjudicated, therefore, the Grounds of Appeal of the Assessee taken in ITA No. 5925/Del/2018 (AY 2011-12) are as under:-

> ***"1. Ground no. 1***
>
> *That on the facts and circumstances of the case and in the law, the order passed by Ld. AO/ Ld. CIT(A) partly allowing the appeal filed by the Appellant, without appreciating the facts of the case and judicial precedents, is bad in law and is liable to be quashed to the extent it is prejudicial to the Appellant.*
>
> ***2. Ground no. 2-Disallowance on account of reversal of Provisions towards bad debts***

2.1 That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the disallowance made by the Ld. AO in relation to the Appellant's claim on account of reversal of Provision towards Bad Debts amounting to Rs. 22,53,006.

2.2 That on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to consider the submissions made during the course of appellate proceedings wherein the Appellant had stated that the amount represent reversal of provision created in earlier years and were offered to tax in the year when provision were created and reversal out of the same provision during the year under consideration cannot be brought to tax again;

2.3 That on the facts and circumstances of the case and in law, action of the Ld. CIT(A) in upholding the order of the Ld. AO has resulted in double taxation of the same amount which is against the principles of natural justice.

2.4 The Ld. CIT(A) has erred in law and in facts in not following the order of her predecessor for the AY 2008-09 & AY 2009-10 wherein under similar circumstances, such expenditure has been allowed by the Ld. CIT(A).

3. Ground no. 3-Disallowance of Traffic Challans

3.1 That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the disallowance of expenditure of Rs. 2,25,51,980 being amount paid for Traffic Challans, which was incurred wholly and exclusively for the purpose of business of the Appellant, by treating the same as penal in nature without appreciating the true and correct nature of such expenditure.

3.2 That on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the business model of the Appellant and uphold the addition made by the Ld. AO on arbitrarily giving a finding that payment towards traffic challans are for violation of law and not eligible as a deduction;

3.3 That on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the expenditure incurred by the Appellant is not for infraction / violation of law but have been incurred during normal course of its operations and are compensatory in nature, thereby eligible as a deduction;

3.4 That on the facts and circumstances of the case and in law, That the Ld. CIT(A) failed to appreciate that similar expenditure were incurred by the Appellant in earlier years as well and has not been disputed by the Assessing Officer till AY 2007-08.

4. Ground no. 4- Disallowance on account of Deposit from customers

4.1 That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the disallowance made by the Ld. AO, by invoking the provisions of Sec 41(1) of the Act, for the amount of security deposits collected during FY 2003-04 amounting to Rs. 7,89,58,311/- treating the same as cessation of liability by illogically following the stand of the Ld. AO in considering the period of 8 years as a period to determine inactive dealers, merely following earlier year's order is bad in law and is liable to be quashed;

4.2 That on the facts and circumstances of the case, without prejudice to aforesaid grounds, the Ld. CIT(A)'s action in

disallowing container deposits under Section 41(1) is not in accordance with the provisions of the Act since no deduction was ever claimed by Appellant in the past on account of such container deposits.

4.3 That on the facts and circumstances of the case, the Ld. CIT(A) erred in law by not appreciating that liability for payment of security deposits continue to exist and no sums were written back to the Profit and Loss A/c, so as to invoke Section 41(1) of the Act being a sine-qua-non for taxability of any sum which is in complete disregard of judicial precedents including those of Apex Court and jurisdictional High Court;

4.4 That on the facts and circumstances of the case and in law, the Ld. CIT(A) has grossly erred in assuming that the closing balance of security deposits from customers outstanding as on March 31, 2003 amounting to Rs. 165,98,59,900 represent income of the Appellant. Such an action is grossly unjustified as it is without appreciating the business model of the Appellant, which requires massive network on the nationwide basis to carry on the diversified business operations. Instead of the appreciating the fact pattern of the Appellant, the Ld. CIT(A) proceeded with his allegations and the approach merely in the absence of party-wise details of security deposits alongwith confirmations of the balances of customers / dealers therefrom.

4.5 Without prejudice to the above, that on the facts and circumaunces of the case and in law the Ld. CIT(A) erred in not following the rule of consistency and ignored the findings of Ld. CIT(A) for the preceding assessment year i.e AY 2010-11, wherein the LA CIT(A) has given his findings that the provisions of section

41(1) of the Act are not applicable to the facts of the case, when there is no change in the facts and circumstances of the case during the year under appeal and the AY 2010-11.

That the above grounds are independent and without prejudice to each other.

The Appellant craves leave to add, amend, alter, delete, rescind, forgo or withdraw any of the above grounds of appeal either before or during the course of the appellate proceedings in the interest of the natural justice."

4. The Grounds of Appeal of the Revenue for A.Y 2011-12 & 2013-14) are as under:-

ITA No. 5903/Del/2018 (A.Y 2011-12)

1. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.10,67,24,494/- made on account of Innovtory losses and leakages as details related to this expenses were not produced during assessment proceedings and even during the appellate proceedings only unsubstantiated justification and accounting treatment were produced by the assessee company.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.8,68,12,412/- made on account of Repair & Maintenance (Others) as no details or documentation beyond mere numerical figures of the head-wise expenses related to the same (such as supporting vouchers, details of the site expenses etc) were produced during assessment proceedings and even during the appellate proceedings, only unsubstantiated justification and statistical chart showing year-wise percentage of repair and maintenance expenditure were produced by the assessee company.

3. Whether on the facts and circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs.8,06,98,146/- made on account of Staff Welfare Expenses as no details beyond mere numerical figures of the head-wise expenses related to the same (such as supporting vouchers, details of the site expenses etc. were produced during assessment proceedings) and even during the appellate proceedings only unsubstantiated justification and statistical chart showing the expenditure under various sub-heads of Staff Welfare Expenses were produced by the assessee company.

4. The appellate crave leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time before or at the time of hearing of the appeal."

ITA No. 6296/Del/2018 (A.Y 2013-14) (Revenue)

1. "Whether on the facts and in the circumstances of the case, the Ld CIT(A) has erred in deleting the addition of Rs.1,02,94,404/- made by the AO in respect of delayed payment of Employee's contribution to the Provident Fund, ESI and other welfare funds, not appreciating that the Employee's contribution to PF & ESI is governed by the provisions of section 2(24) read with section 36(1)(va) and by section 43B of the Income Tax Act, 1961('the Act')

2. Whether on the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.3,62,01,570/- made on account of disallowance of 20% of deduction claimed towards inventory losses/leakages and 'RM/PM write off, despite the fact that the assessee failed to produce any details or documents in respect of these expenses during assessment proceedings and that even during the appellate proceedings the claim had remained unsubstantiated as the explanation given by the assessee was not supported by any quantitative details or documentation showing

that whole amount of such losses had actually been incurred by the assessee.

2.1 Whether the Ld. CIT(A) has erred in deleting the addition on account of disallowance of 20% of deduction claimed towards inventory losses/leakages and towards 'RM/PM write-off, ignoring the settled principle that primary onus is on the assessee to substantiate its claim of deduction by producing details and documentary evidence.

3. The appellate crave leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal."

5. For the sake of convenience, the brief facts of the case for A.Y 2011-12 are considered, the assessee filed return of income declaring NIL income after setting off brought forward losses of Rs. 1,60,30,95,879/- and income of Rs. 198,10,45,943/- u/s 115JB of the Act. The case of the assessee was selected for scrutiny and the assessment order came to be passed on 30/03/2015 by making addition on account of reversal of provision towards bad debt of Rs. 22,53,006/-, disallowed expenses claimed on account of traffic challans of Rs. 2,25,51,980/-, disallowed the claim of inventory loss and leakage of Rs. 10,67,24,494/-, disallowed repair and maintenance of Rs. 8,68,12,412/-, disallowed the expenditure

claimed on account of Staff Welfare of Rs. 8,06,98,146/- and further disallowed Rs. 7,89,58,311/- claim on account of deposit from customers.

6. As against the assessment order dated 30/03/2015, the assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) vide order dated 18/06/2018 partly allowed the Appeal filed by the assessee by upholding the disallowances made by the A.O. in relation to the claim on account of reversal provision towards bad debt amounting to Rs. 22,53,006/-, Rs. 2,25,51,980/- being amount paid for traffic challans and Rs. 7,89,58,311/- on account of deposit from customers. Further, the Ld. CIT(A) deleted the additions of Rs. 10,67,24,494/- made on account of inventory loss and leakages, Rs. 8,68,12,412/- made on account of repair and maintenance and further deleted the addition of Rs. 8,06,98,146/- made on account of Staff Welfare Expenses. Aggrieved by the above deletions, the Ld. CIT(A) filed the Appeal in ITA No. 5903/Del/2018 and as against the sustaining the additions, the assessee preferred the Appeal in ITA No. 5925/Del/2018 on the grounds mentioned above.

7. First we will take the Assessee's Appeals. The Ground No. 1 of the assessee appeals for A.Y 2011-12, 2012-13 and 2013-14 are general in the nature of which require no adjudication.

8. Ground No. 2 for A.Y 2011-12, is regarding reversal of provision for bad and doubtful debts amounting to Rs. 22,53,006/-. The Ld. A.O. while making the above addition for A.Y 2011-12 held as under:-

> *"**1. Addition on account of Reversal of Provisions towards Bad Debts***
>
> *As per the computation of Income, assessee company has reduced a sum of Rs. 22,53,006/- on account of Reversal of Provision towards Bad Debts. Accordingly, the assessee vide order sheet entry was asked to explain and justify the reasons for making such provision and writing it back. The assessee vide its reply has submitted that "as per accounting policy and receivable past due for more than 90 days needs to be provided. The above amount is offered for tax while computing of tax free income after making provision of doubtful receivable. The assessee follow properly laid down recovery policy which includes follow-up and legal action. During the course of hearing, it was explained that this amount represents the provisions which were made in earlier year but since these were just unascertained, the amount was added in the computation of income of the relevant year".*
>
> *Without dwelling into the merits of the issue it may be pointed out that the details provided by the assessee company are scanty. How the provisions were created and how it was worked out, have not been demonstrated in*

any meaningful manner whatsoever. The claim is being made this year for the reasons that the amount of provision has been written back.

Therefore, it is not simply a question of bad debts having been written off during the year which is being claimed as expenditure. It is an amount which is stated to have been offered for tax in earlier years when it stood unascertained and now the amount is being claimed as expenditure because it was offered to tax in earlier assessment year. As already mentioned above, the assessee has not been able to demonstrate that such a provision was made and added in the earlier years with complete details. Otherwise also this is not a claim which is admissible in the year under consideration. It is not an expenditure which was exclusively laid down for the purposes of business during the year. Just because assessee happens to have offered some additional income in earlier assessment year on account of provisions, which was subsequently found to be avoidable, will not entitle the company for further deduction in any future assessment year. The claim is clearly inadmissible; therefore Rs. 22,53,006/-is hereby added to the income of the assessee. Since, I am satisfied that the assessee has furnished inaccurate particulars of its income, penalty proceedings under section 271(1)(c) are being initiated separately.

[Addition of Rs. 22,53,006/-]

9. The assessee preferred an appeal before the Ld. CIT(A), the Ld. CIT(A) while upholding the addition held as under:-

"4.3.3.2. The appellant has stated that the amount of Rs.22,53,006/-were already offered to tax in the year when the same were provided for, any reversal out of the same should be excluded from the total income to avoid potential double taxation of the amount (a) once in the year of creation of provision in which case the same would be

debited to P&L A/C, and (b) on reversal / write-back of such provision in which case the same would be credited to P&L A/c. The appellant has submitted that the claim of the appellant was denied by the AO stating that scanty details were furnished. Further, the appellant has argued that the reversal of provision has been misinterpreted by the AO as bad debts written off and held that simply addition sums / provisions were offered to tax in earlier years, when it stood unascertained, subsequently, if these sums were found unavoidable further deduction in future year is not eligible. The appellant has submitted that it is a trite law that no provision for an unascertained liability is eligible as a deduction in the computation of income if debited to P and L A/C, and extending the same rationale, any reversal out of such provision in a subsequent year should be allowed as a deduction. If no deduction is allowed in a subsequent year on reversal, the same would result in a double taxation of the same amount which is not tenable in the eyes of law. The Appellant has stated that similar disallowances were made while passing the assessment order for AY 2009-10 and AY 2008-09. In appeal before the Commissioner (Appeals), complete relief was granted on identical facts.

However, I do not find merit in the contentions filed by the appellant and therefore, I am not following the decision of the Ld. CIT's(A) in AY 2009-10 and 2008-09.

4.3.3.3. The AO has observed that the appellant company has not been able to demonstrate that such a provision was made and added in the earlier years with complete details and has stated that even, otherwise this is not a claim which is admissible in the year under consideration, The AO has held that this was not an expenditure which was exclusively laid down for the purpose of business during the year as if the appellant were to have offered some additional income in earlier assessment year on account of provisions, which was subsequently found to be avoidable, will not entitle the company for further

deduction in any future assessment year. The AO concluded that the claim is clearly inadmissible and added back the amount of Rs.22,53,006/-. I find no reason to interfere with the AO's order on this issue, the appeal on this ground is upheld."

10. The Ld. Counsel for the assessee submitted that the very same issue of Reversal of Provision of Bad debts arising in Assessee's own case for Assessment Year 2010-11 has been decided in favour of the assessee by the Co-ordinate Bench of the Tribunal vide its order dated 18/07/2023 in ITA No. 5671/Del/2018, therefore, sought for allowing the Ground No. 2 of the assessee.

11. Per contra, the Ld. Departmental Representative relied on the orders of the Lower Authorities.

12. We have heard both the parties and perused the material available on record. The issue involved in Ground No. 2 in A.Y 2011-12 has been considered in Assessee's own case for Assessment Year 2010-11 by the Co-ordinate Bench of the Tribunal in ITA No. 5671/Del/2018 vide order dated 08/07/2023 wherein held as under:-

"19. We have carefully perused the orders of the authorities below. Provision was created in the earlier year and it was written back in that year is not in dispute. The ld. CIT(A) has admitted that the issue in hand is a case of reversal of provision of which income has already been offered in the earlier year. Therefore, we fail to understand why the addition has been sustained by the ld. CIT(A).

20. In A.Ys 2008–09 and 2009–10 also, similar issue arose but no disallowance was made in this regard as the ld. CIT(A) has deleted the disallowance and no appeal has been filed by the revenue against the decision of the ld. CIT(A). Considering the past history and considering the totality of the facts, we do not find any merit in the addition. We, therefore, direct the Assessing Officer to delete the disallowance of Rs. 8,34,21,291/–. This ground is allowed.

13. By following the ratio laid down in Assessee's own case for A. Y 2010-11 (supra), we direct the A.O. to delete the disallowance of Rs. 22,53,006/- made in A.Y 2011-12, accordingly the Ground No. 2 of the assessee Appeal in ITA No. 5925/Del/2018 is allowed.

14. Ground No. 3 in Assessee's Appeal for A.Y 2011-12, Ground No. 2 in A.Y 2012-13 and A.Y 2013-14 are regarding disallowance of Traffic Challans amounting to Rs. 2,25,51,980/-,1,30,34,740/-, 1,51,16,561/- respectively.

15. The Ld. A.O. for A.Y 2011-12 while making the disallowance of Traffic Challans observed as under:-

> *" 2.* ***Addition on account of Traffic Challans***
>
> *The assessee has paid a sum of Rs. 22,551,980/- towards traffic challans. The assessee vide order sheet entry was required to show cause as to why these amounts should not be disallowed. In response, the assessee company did not furnished any reply thereto.*
>
> *It is seen that in the case of Malwa Vanaspati and Chemical Co. Vs CIT, (1996) 225 ITR 383 (SC), Hon'ble Apex Court adjudicated issue relating to penalty on sales tax. Here the amount in question was found to be having compensatory as well of penal component. Component involving compensation was held allowable. In the case of Jamna Auto Industries Vs CIT (2008) 167 Taxmann 192 (P&H), Hon'ble High Court held that while damages or penalty which are compensatory in nature are allowable as a deduction u/s 37(1) of the Act, damages which are penal in nature and in respect of infraction of law are not allowable as a business expenditure. In the case of Prakash Cotton Mills P. Ltd. Vs CIT (1996) 201 ITR 684 (SC), Hon'ble Supreme Court held that when a particular component comprises compensatory as well as penal amount, deduction is allowable in respect of amount compensatory in nature only. In these circumstances, it is seen that none of the case laws actually support the contention of the assessee and are in fact, against its stand that traffic challans, which are clearly expenditure laid down for infringement of law, are allowable expenditure.*
>
> *The controversy has clearly been laid to rest with the insertion of the explanation to section 37(1) of the Act. This explanation to sub-Section (1) of Section 37 of the Act has*

been inserted by the Finance (No.2) Act, 1988 with full retrospective effect from 01.04.1962 and provides:

> *"For removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purposes, which is an offence or which is prohibited by law, shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure."*

Expenditure incurred by an assessee for the purpose of making payment of traffic Police Challans for No entry, red light, no parking etc. are clearly expenditure which are incurred for infringement of law. These expenses are hence not allowable and an amount of Rs. 2,25,51,980/- is added to the income of the assessee. Since, I am satisfied that the assessee has furnished inaccurate particulars of its income, penalty proceedings under section 271(1)(c) are being initiated separately.

(Addition of Rs. 2,25,51,980/-)

16. The Ld. CIT(A) while confirming the said addition for A.Y 2011-12 held as under:-

> *"4.4.3.2. The submissions of the appellant have been considered and are not found to be tenable. The case laws cited have also been considered but are distinguishable in facts. The AO has rightly held that the expenditure incurred by the appellant company for the purpose of making payment of traffic Police Challans for No entry, red light, no parking etc. are clearly expenditure which are incurred for infringement of law and has correctly added back the amount of Rs.2,25,51,980/- to the income of the appellant. I find no reason to interfere with the AO's order on this issue, appeal on this ground is dismissed."*

17. The Ld. Counsel for the assessee submitted that the issue of disallowance of traffic challnas has been dealt and decided by the Co-ordinate Bench of the Tribunal for the Assessment Year 2009-10 in Assessee's own case in ITA No. 4588-4589/Del/2015 vide order dated 07/06/2023 and same has been followed by the Tribunal in subsequent years for Assessment Year 2010-11. The Ld. Counsel also submitted that in A.Y 2012-13 the Assessee filed an Application under Rule 29 of (Income Tax Appellate Tribunal) Rules, 1963 for Admission of Additional Documents by producing Ledger of Traffic Challans, thus, the Ld. Counsel for the assessee sought for admission of the Additional Evidence for AY 2012-13 and deletion of the said addition/disallowance made by the Revenue Authorities.

18. Per contra, the Ld. Departmental Representative relied on the orders of the Lower Authorities.

19. We have heard both the parties and perused the material available on record. The very same issue in hand has been decided by the Co-ordinate Bench of the Tribunal in Assessee's own case for

Assessment Year 2009-10 and 2010-11 wherein the Tribunal held as under:-

> *"26. We have carefully perused the orders of the authorities below. We find force in the contention of the ld. counsel for the assessee. Similar disallowance was considered by this Tribunal in A.Y 2008–09. Relevant findings read as under:*
>
> > *"23. In ground no. 4, the assessee has challenged the disallowance of Rs.41,32,403/- representing payment made towards traffic rule violation. On perusal of record, it is observed, the assessee incurred expenses of Rs.41,32,403/- towards traffic challans for violation of certain rules/regulation. Being of the view that the payment made was for an offence and prohibited by law, the Assessing Officer held that the deduction claimed is not allowable as they fall under the exception provided under Explanation 1 to section 37(1). Though, the assessee contested the said disallowance before the first appellate authority, however, the disallowance was sustained.*
> >
> > *24. We have considered rival submissions and perused the materials on record. From the facts on record, it is evident that the traffic challans were issued for violating traffic rules relating to no-entry areas, no parking zones etc. The issue which arises for consideration is, whether such payments made were for an offence or is prohibited by law. We find, the aforesaid issue has been decided in case of DCIT Vs. Bharat C Gandhi, 46 SPT 258 (Mum. Trib.). In the aforesaid decision, the Coordinate Bench while dealing with identical issue of payment of compounding fee for violation of provision under the Motor Vehicles Act, 1988 and Rules thereunder has held that such expenditure is allowable as business expenditure under section 37(1) of the Act. Thus, following the decision of the Coordinate Bench (supra), we delete the disallowance. Ground no. 4 is allowed.*
>
> *27. Respectfully, following the decision of the coordinate bench, the Assessing Officer is directed to delete the disallowance of Rs. 2,18,81,852/–. This ground is accordingly allowed."*

20. By following the order of the Tribunal for Assessment Year 2009-10 and 2010-11, we direct the A.O. to delete the disallowance made on account of Traffic Challan amounting to Rs. 2,25,51,980/- in A.Y 2011-12 and Rs. 1,51,16,561/- for A.Y 2013-14 accordingly the Ground No. 3 in ITA No. 5925/Del/2018 (A.Y 2011-12) and Ground No. 2 in ITA No.6506/Del/2018 for (A.Y 2013-14) of the Assessees are allowed .

21. In so far as the similar ground raised by the Assessee for AY 2012-13, the Assessee has filed an application for admission of additional documents under Rule 29 of the Income Tax (Appellate Tribunal) Rules, by producing Ledger of Traffic Challans. The Ld. Counsel submitted that the Authorities have not raised any query regarding the disallowance of the Traffic Challans, therefore, there was no occasion to the assessee to produced the same before the Lower Authorities, thus, the Assessee has filed the present application for admission of additional evidence before the Tribunal.

22. Considering the facts that the Assessee has not been asked to produce the Traffic Challans before making the addition, with a

view to render substantial justice, we deem it fit to remand the matter to the file of the A.O. to verify the documents produced by the Assessee and decide the issue afresh as per the ratio laid down by the Tribunal on the issue in earlier years. Accordingly, the Ground No. 2 of the Assessee in ITA No. 2315/Del/2019 is partly allowed for statistical purpose.

23. Ground No. 4 in A.Y 2011-12, Ground No. 2 in A. Y 2012-13 and Ground No. 3 in A.Y 2013-14, are regarding disallowance of deposits from customers amounting to Rs. 7,89,58,311/-, 38,88,33,738/- & 4,07,57,490/- respectively.

24. The A.O. made addition for A.Y. 2011-12 in following manners:-

> ***"6. Addition on account of Deposit from customers***
>
> *The assessee company is accepting deposit from customers, like distributors, retailers etc as\ security deposit. During the year under reference the amount lying as security deposit is at Rs. - 2,07,55,30,197/-. 'Fire assessee company was required to furnish party wise details of such deposits and also their confirmations to prove the claimants of such deposits. In compliance thereto the assessee company did not furnish any party wise details and no confirmations of any party were furnished. The assessee company was required to furnish details of such security deposit from assessment year 2002-03. In compliance there to the assessee company furnished details of such security deposit which are reproduced as under:-*

Assessment year	Opening Balance (in Rs.)	Closing Balance (in Rs.)
AY 2011-12	184,15,10,571	2,07,55,30,197
AY 2010-11	152,93,72,281	184,15,10,571
AY 2009-10	182,20,52,443	152,93,72,281
AY 2008-09	173,18,80,205	182,20,52,443
AY 2007-08	164,16,87,433	173,18,80,205
AY 2006-07	155,54,96,436	164,16,84,433
AY 2005-06	146,68,76,742	155,54,96,436
AY 2004-05	144,21,16,424	146,68,76,742
AY 2003-04	158,09,01,589	165,98,59,900
AY 2002-03	171,13,56,928	158,09,01,589

From the perusal of above noted details reveals that on the yearly basis the accumulated deposit are increasing and the same has been increased from 158 crores to 207 Crores in the assessment year during the year under reference. Since the assessee company failed to furnish any confirmation even the list of such deposits has not been furnished if appears that this amount is lying from so many years and there is no claimant of this amount. In the assessment year 2003-04 this amount was at Rs. 165,98,59,900/- and that amount is also more than 8 years. Therefore considering all the facts of the case there being no claimant of this huge amount. the amount payable in the assessment year 2003-04 is hereby added in the income of the assessee as liability cease to exist within the meaning of section 41(1) of the LT. Act. Since in the previous year an amount of Rs. 158,09,01,589/- has already been disallowed **u/s** *41(1} the remaining | amount of Rs. 7,89,58,311/-is hereby disallowed in this year and added to the income of the assessee company. Since I am satisfied that the assessee has furnished inaccurate particulars of income penalty u/s 271(l)(c) are being initiated separately.*

(Additions **Rs***, 7,89,38,311/-)*

25. The above said addition has been confirmed by the CIT(A) in following manners:-

"4.7.3.3. The submissions filed by the appellant, case laws cited have been considered and are not found to be tenable. The appellant's contention that this is an ad hoc disallowance is misplaced. The appellant has advanced this argument without application of mind. The amount lying as security deposit is Rs. 2,07,55,30,197/- in the instant year. The AO has observed that the appellant company failed to furnish the list of the deposits nor the

confirmations were filed before the AO. In the assessment year 2003-14, this amount was at Rs. 165,98,59,900/- which pertained to a period more than 8 years. The AO held that the amount payable in the assessment year 2003-04 was to be added in the income of the appellant as the liability has ceased to exist within the meaning of Section 41(1) of the I.T. Act. Further the AO has stated that since in the previous year an amount of Rs. 158,09,01,589/- has already been disallowed u/s 41(1), the remaining amount of Rs. 7,89,58,311/-was added in the instant year. I find no reason to interfere with the AO's order on this issue, appeal on this ground is dismissed."

26. The Ld. Counsel for the assessee submitted that the issue of disallowance of deposit from customers has been decided in Assessee's own case for Assessment Year 2010-11 and 2017-18 in Assessee's own case in ITA No. 5671/Del/2018 and 975/Del/2023 respectively, therefore, sought for allowing the above Grounds.

27. Per contra, the Ld. Departmental Representative by relying on the orders of the Lower Authorities sought for dismissal of the said Ground of the Assessee.

28. We have heard both the parties and perused the material available on record. The similar issue regarding disallowance of deposit from customers has been considered by the Tribunal in

Assessee's own case in Assessment Year 2010-11 in ITA No. 5671/Del/2018 wherein held as under:-

> *"36. We are of the considered view that section 41(2) of the Act was inserted W.E.F 1.04.1998 to provide for a levy of balancing charge in respect of certain depreciable assets, namely, building, machinery, plant or furniture which is owned by the assessee in respect of which depreciation is claimed u/s 32(1)(i) of the Act, that is, assets of an undertaking engaged in generation or generation and distribution of power which was, or has been used for the purpose of business.*
>
> *37. It is clear that section 41(2) of the Act applies only if the assets are owned by the power generating undertaking and since the assessee is not a power generating company, the ld. CIT(A) grossly erred in applying provisions of Section 41(2) of the Act.*
>
> *38. Coming to the applicability of provision of Section 41(1) of the Act which is also not applicable on the facts of the case, as twin conditions have to be satisfied (i) deduction in respect of a trading liability should be claimed in the previous year and (ii) the subsequent year liability must be written back effectively resulting into a benefit.*
>
> *39. Facts on record show that the assessee has not claimed any trading liability. Containers and bottles are shown under the head "Current Assets" and deposits are shown as "Liabilities". There is no evidence brought on record to show that liability has ceased to exist. In our considered view, the cessation of liability can only occur either by operation of law or debtors unequivocally declaring his intention to not honour his liability when payment is demanded by the creditor.*

40. For this proposition we draw support from the decision of the Hon'ble Supreme Court in the case of Sugauli Sugar Works [P] Ltd 102, taxmann 713 and the onus is on the revenue to bring on record tangible evidence to show that liability has ceased to exist, especially when it is continued to be shown in the books of accounts of the assessee.

41. Thus, considering from all possible angles, neither provisions of section 41(1) of the Act apply [Assessing Officer fails] nor provisions of section 41(2) and 43(6) of the Act [CITA fails]. This ground by the assessee is allowed and similar grievance in revenue's appeal is dismissed."

29. By respectfully following the order of the Co-ordinate bench of the Tribunal for A.Y 2010-11 (supra) the disallowance sustained by the CIT(A) on account of deposits from customers for A.Y 2011-12, 2012-13 and 2013-14 amounting to Rs. 7,89,58,311/-, 38,88,33,734/-, 4,07,57,490/- respectively are hereby deleted. Accordingly, Ground No. Ground No. 4 in ITA No. 5925/Del/2018, Ground No. 2 in ITA No. 2315/Del/2019 and Ground No. 3 in ITA No. 6506/Del/2018 are allowed.

30. Now, we take up the Revenue's Appeals. The Department of Revenue filed the Appeals in ITA No. 5903/Del/2018 (A.Y 2011-12) and ITA No. 6296/Del/2018 (A.Y 2013-14).

31. The Ground No. 1 for A.Y 2011-12 and Ground No. 2 in A.Y 2013-14 of the Revenue are against the deletion of addition amounting to Rs. 10,67,24,494/- and Rs. 3,62,01,570/- made by the A.O. on account of inventory loss and leakages.

32. As against the above said respective additions the assessee preferred the Appeals before the CIT(A). The CIT(A) adjudicating the issue for the A.Y 2011-12, deleted the said addition in following manners:-

> *"4.5.3.1. A perusal of the assessment order reveals that the appellant company has debited Rs.10,67,24,494/-on account of Inventory losses and leakages in the P&L account where in the Immediate previous year the appellant company had debited Rs.9,29,17,122/- towards this head, therefore, the AO asked the appellant to furnish the details of these expenses, their nature, their position in the stock and also how the figures of Rs.10,67,24,494/- was arrived at. The AO has stated that the appellant had claimed the expenses of Rs. 10,67,24,494/-but did not produce any supporting evidence in support of its claim. Further, the details regarding the quantity of products and how these amount for inventory losses and leakages were ascertained were not produced for verification. The AO has observed that for claiming deduction u/s. 37(a) of the I.T. Act, 1961 the onus of proof lies on the appellant to prove that these have been incurred wholly and exclusively for the business purposes and since the appellant has failed to substantiate its claim by supporting evidence or documentary evidences regarding the claim made before*

the Income Tax authorities, the AO relying upon the following case law, the Hon'ble SC in the case of CIT vs Calcutta Agency Ltd. (SC) 19 ITR 191 and in the case of Lashinaratan Cotton mills Co. Ltd. Vs CIT (SC) 73 ITR 634, added back the amount claimed under this head.

4.5.3.2. The appellant has stated that during the year under consideration, the appellant had debited a sum of Rs. 10,67,24,494 on account of inventory losses and leakages in the P&L account. The above loss incurred by appellant is on account of mishandling of its products, products having crossed best before date and leakages of the product. The appellant has stated that the products manufactured by appellant have an expiry period and beyond the expiry period, the products if consumed would result in reputational loss to the appellant. Therefore, the appellant calls such expired products available in market from customers and drains the same at its facilities. Similarly, there would be slow-moving manufactured products lying at the factory and not dispatched to customers and have expired which too needs to be drained. Furthermore, during the course of transportation of products from factory to customers, due to fragile nature of containers i.e. glass and plastic bottles in which the liquid manufactured by the appellant are supplied, there could be leakages and breakage which too are returned to the assessee for drainage. Similar could be the fate of products while packaging at the factory. Even raw materials used by the appellant i.e. sugar, concentrate, pulp, pre-forms, corks and closures gets destroyed during the production process. All of the aforesaid, being incidental to business of the appellant has been incurred wholly and exclusively for the purposes of business and has been recorded as "Inventory Loss and Leakages". All of the aforesaid are booked at cost incurred by the appellant i.e. cost at which raw materials has been

procured or cost at which the product has been manufactured, as may be applicable.

In this regard, Appellant places reliance on the following decisions:

- *Bharat Heavy Electricals Ltd. vs. DCIT. [98 TT) 565]*
- *Pepperi + Fuchs India Ltd. vs DCIT: 6 SOT 10 (2006) (ITAT) (Del)*

The Appellant has also submitted that various courts including Apex Court and jurisdictional High Court held that liability recognized in accordance with the Accounting Standards prescribed by the ICAI are allowable expenses and has relied upon the following judgments:

- *CIT v. Woodward Governor India Pvt. Ltd. & Ors [162 taxman 60 (Del)]*
- *Challapalli Sugars Ltd. v. CIT [98 ITR 167 (SC)]*
- *CIT v. Indo Nippon [261 ITR 275 (SC)]*

The appellant has contended that adhoc disallowances are not allowed in the eye of law and has relied upon the Hon'ble ITAT-Mumbai latest judgment on this issue in the case of "ITO vs M/s Intertoll ICS India Pvt. Ltd. ITA 7700/Mum/2010. The appellant has also stated that no such adhoc disallowances were made in assessment of AY 2012-2013.

The Year- wise details of Inventory losses as a percentage of sales is reproduced below:

Assessment Year	Sales	Increase in sales	%of Increase	Inventory Loss & Leakaaes	Increase	% Of Increase	% Expence
	(i)	(ii)	(iii)	(iv)	(v)	(v/iv)	(iv/(i)
AY 2008-09	20,535,425,616			23,118.160			0.11%
AY 2009-10	27.429.903.560	6.894.477.944	33.57%	59.053,380	35,935,220	155.44%	0.22%
AY 2010-11	38,456,209.427	11,026.305.867,	40.20%	92,917,122	33,863,742	57.34%	0.24%
AY 2011-12	45.405.809.185	6.949.599.758	18.07%	106.724.494	13.807.372	14.86%	0 240%
AY 2012-13	56,102,094,941	10.696.285,756	23.56%	159.262.979	52,538,485	49.23%	0.28%
AY 2013-14	65,971,270,000	9,869.175,059	17.59%	141,776,244	117.486.7351	-10.98%	0.21%
A.Y 2014-15	68,979,970,000	3,008,700,000	4.56%	183,862,533	42,086,289	29.69%	0.27%

4.5.3.3. The submissions filed by the appellant and the case laws cited have been considered. It is seen that the claim of expenses under this head is only 0.24% expense, which is plausible considering the nature of business of the appellant company. In view of the submissions filed by the appellant company, the appeal on this ground is allowed.

33. The Ld. Counsel for the assessee submitted that the very same issue in hand in Assessee's own case for Assessment Year 2010-11 has been decided in favour of the assessee by the Tribunal in ITA No. 5810/Del/2018 which has been followed for the Assessment Year 2017-18 by the Co-ordinate Bench of the Tribunal in ITA No. 928/Del/2023, therefore, sought for dismissal of the above Grounds of the Revenue.

34. Per contra, the Ld. Departmental Representative relying on the orders of the Lower Authorities sought for the intervention by the Tribunal.

35. We have heard both the parties and perused the material available on record. The similar issue in Assessee's own case for Assessment Year 2010-11 and 2017-18 has been decided by the Co-ordinate Bench of the Tribunal in favour of the assessee and against the Revenue by dismissing the similar Ground of the Revenue. The Co-ordinate Bench of the Tribunal in Assessment Year 2017-18 in the Revenue's Appeal in ITA No. 928/Del/2023 while dismissing the similar Ground of the Revenue held as under:-

> *"13. We have carefully perused the orders of the authorities below. We find that similar quarrel was considered by the co-ordinate bench in ITA No. 5810/DEL/2018 for A.Y 2010-11. The relevant findings read as under:*
>
> > *"52.We have carefully perused the orders of the authorities below. The undisputed fact is that since the assessee is engaged in the business of manufacturing and distribution of non-alcoholic beverages which are perishable in nature, these beverages are supplied in glass and plastic bottles which are susceptible to breakage. Such breakage and expiry of the products leads to inventory losses which was at Rs. 9,29,17,122/- in the year under consideration.*
>
> > *53. We find that the write off of inventory is based on actual loss and not on estimation. Therefore, in our considered view, the ld. CIT(A) was correct in allowing the same as business expenditure. Such action of the ld. CIT(A) cannot be faulted with. This ground is dismissed."*

14. On finding parity of facts, respectfully following the findings of the co-ordinate bench [supra], we decline to interfere."

36. By following the above ratio laid down by the Tribunal in Assessee's own case, we find no reason to interfere with the findings of the Ld. CIT(A), accordingly, the Ground No. 1 of the Revenue in ITA No. 5903/Del/2018 and Ground No. 2 in ITA No. 6296/Del/2018 of the Revenue A.Y 2013-14 of the Revenue are dismissed.

37. Ground No. 2 is regarding deletion of addition of Rs. 8,68,12,412/- made by the A.O. on account of repair and maintenance, the Ld. A.O. while making the above disallowance for A.Y 2011-12 held as under:-

*"4. **Disallowance of Repair & Maintenance (Others)***

During the course of assessment proceedings it is noted that the assessee company has debited Rs. 43,40,62,060/- The assessee company was asked during the course of assessment proceedings to provide the details of these expenses with supporting vouchers, details of the sites where these expenses incurred also the nature of these expenses to justify its claim. However, the assessee company failed to provide the reason for the steep increase and also the site wise details with supporting vouchers but simply filed the details of

numerical figures of the head wise expenses and from therein no reason for increase in these expenses can be gathered. Further, no supporting vouchers has been provided to support its claim for the deduction of these expenses as revenue deduction u/s 37(1) of the Act. It is onus on the part of the assessee during the course of the assessment proceedings to justify its claim made in the P&L account for the expenses with supporting documents and to the satisfaction of the assessing officer. IN this regard following case laws is relied upon:-

The Hon'ble Supreme Court in the case of CIT vs Calcuta Agency Ltd. (SC) 19 ITR 191 and in the case of Lashimaratan Cotton mills Co. Ltd. Vs CIT (SC) 73 ITR 634 has held that in order to claim an expenditure u/s 37(1) of the Act the burden of proving the necessary fact in the connection is on the assessee.

Therefore in view of the above discussions, Rs. 8,68,12,412/-i.e. 20% of the above expenses of Rs. 43,40,62,060/- is hereby disallowed u/s 37(1) of the Income Tax Act, 1961 and added to the total income of the assessee Since I am satisfied that the assessee has furnished inaccurate particulars of income penalty u/s 271(1)(c) are being initiated separately.

(Addition: Rs. 8,68,12,412/-)

38. The Ld. CIT(A) deleted the addition, as against which the Revenue preferred the present Appeal.

39. The Ld. Assessee's Representative submitted that the issue involved in Ground No. 2 for A.Y 2011-12 is also covered in

Assessee's own case for Assessment Year 2010-11, wherein the Tribunal dismissed the similar Ground of the Revenue in ITA No. 5810/Del/2018.

40. The Ld. Departmental Representative by relying on the findings of the A.O. sought for the intervention of the Tribunal.

41. We have heard both the parties and perused the material available on record. The identical issue came for consideration by the Tribunal in Assessee's own case for Assessment Year 2010-11 in ITA No. 5810/Del/2018 wherein it is held as under:-

> *"62. We have carefully perused the orders of the authorities below. There is no dispute that the expenses have increased by 53% if compared to the immediately preceding year. It is also a fact that sales have increased by 35% but what is not acceptable is the comparison of the increase in sales with increase in repairs and maintenance expenses etc.*
>
> *63. In our considered opinion, difference of 18% between 53% and 38% has no logic without pointing out any error or defect in the books of account which are audited and no adverse inference has been pointed out by the auditors.*
>
> *64. Considering the facts in totality, we do not find any reason to interfere with the findings of the ld. CIT(A). This ground is dismissed.*

42. Finding the parity, in the year under consideration and following the order of the Coordinate Bench of the Tribunal for Assessment Year 2010-11 (supra) we find no merit in the Ground No. 2 of the Revenue, accordingly, Ground No. 2 of the Revenue in ITA No. 5903/Del/2018 is dismissed.

43. Ground No. 3 in Revenue's Appeal in ITA No. 5903/Del/2018 (A.Y 2011-12) is regarding deletion of addition of Rs. 8,06,98,146/- made on account of Staff Welfare Expenses. During the year under consideration, the assessee claimed expenditure of Rs. 40,34,90,731/- towards food, training, transportation, insurance, etc. for its employees and the same was claimed as staff welfare expenses. The Ld. A.O. made ad-hoc disallowance of 20% of the said expenditure amounting to Rs. 8,06,98,146/- on the ground that the assessee could not justify its claim for the said expenditure.

44. The Ld. CIT(A) while deleting the said ad-hoc disallowance made by the A.O. on the ground that, the said ad-hoc disallowance made by the A.O. was without any basis and without rejecting the

books of accounts of the Assessee. The findings of the CIT(A) are as under:-

> *"4.6.3.1 With regard to Ground nos.5 (a & b) pertaining to disallowance of Repair & Maintenance, the AO has disallowed Rs.8,68,12,412/- i.e. 20% of the total expenses under this head of Rs.43,40,62,060/-, u/s.37(1) of the I.T. Act, 1961. And with regard to Ground nos.5 (c, d & e) pertaining to disallowance of Repair & Maintenance, the AO has disallowed Rs.8,06,98,146/- i.e. 20% of the total expenses under this head of Rs.40,34,90,731/-, u/s.37(1) of the I.T. Act, 1961. It is held that in the present case, the Appellant is a Pvt. Ltd. Company with audited books of accounts and the AO has made adhoc disallowances, in a routine manner, without giving any logical reason and also without rejecting the books of accounts. In view of the submissions filed by the Appellant, the addition is deleted. Hence, the Ground nos.5 (a, b, c, d & e) are allowed."*

45. The Ld. Departmental Representative by relying on the order of the A.O. sought for intervention of the Tribunal.

46. Per contra, the Ld. Assessee's Representative relying on the findings of the CIT(A) sought for dismissal of the Ground of the Revenue.

47. Heard the parties perused the material. The Ld. CIT(A) while deleting the disallowance found that the A.O. made the ad-hoc

disallowance in a routine manner without giving any logic reason and without rejecting the books of accounts. We find no error or infirmity in the said finding and the conclusion of the Ld. CIT(A) and find no merit in the Ground No. 3 of the order of the CIT(A) as the disallowance has been made without pointing any deficiency in the books of accounts of the assessee and the disallowance has been made on ad-hoc basis without rejecting the books of accounts. No such disallowance has been made in the past, thus, we find no merit in the Ground No. 3 of the Revenue, accordingly, Ground No. 3 of the Revenue is dismissed.

48. Ground No. 1 in Revenue's Appeal for A.Y 2013-14 is against the deletion of addition of Rs. 1,01,94,404/- made on account of delayed payment of PF/ESI.

49. The Ld. Counsel for the Assessee fairly submitted that the issue of belated payment of PF/ESI are covered against the Assessee by the Judgment of Hon'ble Supreme Court in the case of Checkmate Services (P.) Ltd. vs. CIT (2022) 448 518 (SC).

50. As the issue of belated payment of PF/ESI are covered against the Assessee by the Judgment of Hon'ble Supreme Court in the case of Checkmate Services (P.) Ltd (supra), we find merit in the Ground No. 1 of the Revenue in ITA No. 6296/Del/2018 (A.Y 2013-14). Accordingly the addition made by the A.O. of Rs. 1,01,94,404/- on account of delayed payment of PF/ESI is hereby sustained. Thus, the Ground No. 1 of the Revenue in ITA No. 6296/Del/2018 (A.Y 2013-14) is allowed.

51. In the result, Appeals filed by the Assessee in ITA No. 5925/Del/2018 (A.Y 2011-12) and 6506/Del/2018 (A.Y 2013-14) are allowed, Appeal of the Assessee in ITA No. 2315/Del/2019 (2012-13) is partly allowed for statistical purpose and the Appeals of the Revenue in ITA No. 5903/Del/2018 (A.Y 2011-12) is dismissed and Appeal of the Revenue in ITA No. 6296/Del/2018 (A.Y 2013-14) is partly allowed.

Order pronounced in open Court on 05th March, 2024.

Sd/- Sd/-

(M.BALAGANESH) **(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**
Dated: 05/03/2024
B.R./R.N Sr. Ps.

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI