IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

ITA NO. 6025/MUM/2016 (A.Y: 2011-12)

M/s. Indian Oil Corporation Ltd., G-9, Ali Yavar Jung Marg Bandra (E), Mumbai – 400051 **PAN: AAACI1681G**	*v.*	Addl. CIT – 10(1) Aayakar Bhavan, Mumbai - 400020
(Appellant)		**(Respondent)**

ITA NO. 5979/MUM/2016 (A.Y: 2011-12)

DCIT – 14(2)(1) 432, 4th Floor Aaykar Bhavan, Mumbai - 400020	*v.*	M/s. Indian Oil Corporation Ltd., G-9, Indian Oil Bhavan Ali Yavar Jung Marg Bandra (E), Mumbai – 400051 **PAN: AAACI1681G**
(Appellant)		**(Respondent)**

CO NO. 31/MUM/2018
[ARISING OUT OF ITA NO. 5979/MUM/2016 (A.Y: 2011-12)]

M/s. Indian Oil Corporation Ltd., G-9, Indian Oil Bhavan Ali Yavar Jung Marg Bandra (E), Mumbai – 400051 **PAN: AAACI1681G**	*v.*	DCIT – 14(2)(1) 432, 4th Floor Aaykar Bhavan, Mumbai - 400020
(Appellant)		**(Respondent)**

Assessee Represented by	**:**	**Shri J.D. Mistry, Shri Niraj Sheth, Shri Dhiraj Jain & Shri Samir Shah**
Department Represented by	**:**	**Smt Snayogita Nagpal**
Date of conclusion of Hearing	**:**	**07.05.2024**
Date of Pronouncement	**:**	**22.05.2024**

O R D E R

PER NARENDRA KUMAR BILLAIYA (AM)

1. ITA No. 6025/mum/2016 an d ITA No. 5979/MUM/2016 are cross appeals by the assessee and the revenue preferred against the order of the Learned Commissioner of Income-Tax (Appeals)-22, Mumbai [hereinafter in short "Ld. CIT(A)"] dated 07.07.2016 pertaining to A.Y.2011-12. C.O. No. 31/Mum/2018 is the cross objection by the assessee for the A.Y. 2011-12.

2. The cross appeals and the cross objection were heard together and are disposed off by this common order for the sake of convenience and brevity.

ITA NO. 6025/MUM/2016 (A.Y. 2011-12)-(ASSESSEE'S APPEAL)

3. The grievance of the assessee read as under: -

> *"1. The Commissioner of Income-tax (Appeals)-22 ["the CIT(A)"] erred in confirming disallowance of provision for unavailed leave travel concession of Rs.77,67,42,314.*

Deduction under section 80IB

Interest expenditure allocated to Marketing margin

2. The CIT(A) erred in confirming the apportionment of interest expenditure to marketing margin for computing deduction under section 80IB of the Act.

3. The CIT(A) ought to have directed the Assessing Officer ("AO") to set off the interest income of Rs.1,551 crores against the interest expenditure of Rs.1,760.28 crores before attributing interest expenditure to marketing margin.

4. The CIT(A) ought to have directed the AO to reduce exchange loss aggregating to Rs.159.98 crores (Rs.35.77 crores plus Rs.124.21 crores) from the interest expenditure for computing deduction under section 80IB of the Act.

Interest expenditure allocated to Refinery

5. The CIT(A) erred in confirming the apportionment of interest expenditure to PREP unit for computing profit eligible for deduction under section 80-IB.

6. The CIT(A) ought to have directed the AO to set off interest income aggregating to Rs.1,551 crores against interest expenditure of Rs.1,760.28 crores before attributing interest expenditure to PREP unit.

7. The CIT(A) ought to have directed the AO to reduce exchange loss aggregating to Rs.159.98 crores (Rs.35.77 crores plus Rs.124.21 crores) from the interest expenditure for computing deduction under section 80IB of the Act.

Capital receipts credited to Work-in-Progress

8. The CIT(A) erred in confirming treatment of the following receipts credited to work-in-progress as revenue receipts:

Particulars	***Amount (Rs.)***
Sale of tender documents	*74,200*
Recoveries from employees	*6,21,207*
Total	*6,95,407*

Survey Expenses

9. The CIT(A) erred in confirming disallowance of survey expenditure of Rs.333,43,69,242.

10 The CIT(A) ought to have allowed deduction of Rs.445.16 crores incurred by way of infructuous or abortive exploration expenditure in respect of area surrendered prior to beginning of the commercial production u/s 42(1)(a).

Prior Period Expenditure

11. The CIT(A) erred in confirming disallowance of expenditure of Rs.73,71,75,163 by treating it as prior period expenditure.

12. The CIT(A) ought to have directed the AO to allow deduction for expenditure of Rs.73,71,75,163 in the respective years to which it pertains.

Additional depreciation

13. The CIT(A) erred in confirming disallowance of additional depreciation of Rs.98,00,000 claimed for new plant and machinery acquired prior to the Financial year 2005-06.

Disallowance of business loss on sale of oil bonds

14. The CIT(A) erred in confirming disallowance of loss of Rs.356,47,28,469 incurred on sale of special oil bonds received from the Government of India on account of sale of petroleum products as per price fixed by the Government of India.

Expenditure for increase in authorized share capital

15. The CIT(A) erred in confirming disallowance of the following expenditure incurred for increase in authorized share capital of the appellant as being capital in nature:

Sr. No.	***Particulars***	***Amount (Rs.)***
A	*R&T bill for processing ballot data & over printing of forms*	*2,46,096*
B	*R&T bills for Postage expenses for dispatch of ballot forms, etc.*	*19,31,311*
C	*Scrutiniser bill for postal ballot*	*44,121*
	Total	*22,21,528*

16. The CIT(A) erred in not specifically directing the Assessing Officer to charge interest under section 234C as pdr revised return.

Grounds Not decided

17. The learned commissioner (Appeals) erred in not deciding Ground No. 8, 9,10,38,39,41 and 64 of appeal.

The appellant reserves the right to amend, alter or add to the above grounds of appeal."

4. Further, Assessee has raised following additional grounds in its appeal: -

"1. The AO ought to be directed to give reliefs arising on account of settlement of disputes under Direct Tax Vivad Se Vishwas Act, 2020 ["VsV] for AY 2004-05 to 2010-11 in respect of following issues:

a. Treatment of enabling expenses and expenses on scientific research as capital expenditure - consequential depreciation must be given

b. Treatment of receipts credited to capital work in progress as income - Capital work-in-progress must be correspondingly increased

c. Disallowance of provision for retirement expenses - relief must be given on payment basis

d. Disallowance of provision for unavailed LTC/LFA - relief must be given on payment basis

e. Disallowance of provision for year-end expenses - must be allowed in the current year since identified and credited to respective vendors accounts in the current year.

2. The Appellant craves leave to add to, alter, amend, substitute and/or modify the foregoing ground of appeal at or before the hearing of the appeal.

5. Ground No. 1 relates to the addition on account of provision for unavailed leave travel concession of ₹.77,67,42,314/-. While scrutinizing the return of income the Assessing Officer noticed that the assessee has provided ₹.77,67,42,314/- on account of unavailed LTC facility for the employees as on 31.03.2011. Assessee was asked to explain why this amount should not be disallowed since provisions are contingent in nature. The assessee explained that the provision for unavailed LTC has been made on the basis of amount due to employees. Accrued liability is estimated for LTC based on actuarial valuation. It was explained that the liability is accrued but not paid. The Assessing Officer was of the opinion that since LTC claim is not an ascertained liability till the employee makes the claim after performing journey, the provision made is therefore not allowable. The Assessing Officer made the addition of ₹.77,67,42,314/-.

6. Assessee carried the matter before the Ld. CIT(A) but without any success.

7. Before us, the counsel reiterated that the liability is accrued and due but not paid and the same has to be allowed. Ld. DR relied upon the findings of the Assessing Officer.

8. We have carefully considered the underlying facts; it is the policy of the Corporation that its employees are eligible to receive Leave Fare Allowance [LFA] once in a block of two years. The employees are eligible to encash their LFA entitlement for a particular block during any time in the next block of two calendar years. If the employee has opted for LFA portion of his salary as per LFA entitlement is retained by the Corporation and is not immediately paid over to the employee and a provision is created to that extent. The provision is made by aggregating the unavailed entitlement of all the eligible employees. If the employees submit a claim for LFA encashment any time on or before the last date the amount is paid as LFA and taxed in the hands of the employees. If he provides the statement of expenses with documentary proof of travel, then treats and provides the tax relief as per the provision of Rules of Income Tax Act. However, if the employee does not claim LFA till the last date it will be paid to employee as salary. Therefore, in our understanding of the facts as far as the assessee is concerned the provision represents ascertained liability and there is no contingency as regards its payment to employees.

9. In our understanding of law, if a business liability has definitely arisen in the accounting year the deduction should be allowed although

the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. For this proposition, we draw support from the decision of the Hon'ble Supreme Court in the case of Bharat Earth Movers *v.* CIT [245 ITR 428]. Hon'ble Supreme Court in the case of Metal Box Company of India Ltd. *v.* Their Workmen [73 ITR 53] has laid down a few principles (i) If an assessee maintaining his accounts on mercantile system, a liability already accrued, though to be discharged at a future date, would be a proper deduction while working out the profits and gains of his business, (ii) Just as receipts, though not actual receipts but accrued due are brought in for income-tax assessment, so also liabilities accrued due would be taken into account while working out the profits and gains of the business; (iii) the condition subsequent, the fulfilment of which may result in the reduction or even extinction of the liability, would not have the effect of converting that liability into a contingent liability; (iv) a trader computing his taxable profits for a particular year may properly deduct not only the payments actually made to his employees but also the present value of any

payments in respect of their services in that year to be made in a subsequent year if it can be satisfactorily estimated.

10. Similar view was taken in Calcutta Company Ltd *v.* CIT [37 ITR 1] wherein the Hon'ble Supreme Court has held that the liability on the assessee having been imported, the liability would be an accrued liability and would not convert into a conditional one merely because the liability was to be discharged at a future date.

11. Applying the ratio laid down of the Hon'ble Supreme Court (supra), we are of the considered view that provisions made by the assessee for meeting the liability accrued by it under LFA entitlement earned by employees is entitled to deduction and the liability is not a contingent liability. We accordingly direct the Assessing Officer to delete the addition of ₹.77,67,42,314/-. Ground No. 1 is allowed.

12. Ground Nos. 2 to 7 relate to the claim of deduction under section 80IB of Income-tax Act, 1961 (in short "Act") disallowed by the Assessing Officer. It would be pertinent to consider the entire claim of deduction under section 80IB of the Act. This will cover the grounds

taken by the revenue in its appeal wherever the Ld. CIT(A) has given the relief.

13. The underlying facts in the issue are that the assessee claimed deduction under section 80IB of the Act of its new industrial unit PREP at Paniput. It is seen that the assessee is claiming deduction under section 80IB of the Act from A.Y. 2007-08. For its claim the assessee has submitted Tax Audit Report including Form 10CCB duly certified by the Auditors. PREP is an independent, identifiable and separate unit with separate man power. PREP produces petroleum products. The new process units installed under PREP are located in separate plot and are independent of the existing refinery. The utility blocks, effluent treatment plant, Flare network and fuel oil / Gas networks are also independent. The crude oil pipeline is also independent. The new process is operated independently. The PREP unit is a separate cost centre and maintains separate balance sheet and profit and loss account. In nut shell, PREP is a standalone refinery. The total profits of the prep and claim of 80IB is as under: -

SI	Name of the Plant	PREP	PX-PTA	PNCP
1	Year of Commissioning	2006-07	2006-07	2010-11
2	Refinery Margin	1,263.26	-114.64	-5,798.10
3	Marketing Margin	159.56	-84.98	-

SI	Name of the Plant	PREP	PX-PTA	PNCP
4	Margin	742.96	-	-
5	Profit for the year (2+3+4)	**2,165.78**	**-199.62**	**-5,798.10**
6	Loss (Prior Period B/Fwd)	0.00	-920.32	0.00
7	Profit eligible u/s 80IB	**2,165.78**	-	
8	Loss to be carried forward	0.00	-1119.94	-5,798.10
9	Percentage for u/s 80IB	100%	100%	100%
10	Amount admissible u/s 80IB (8*9)	**2,165.78**		
11	Total claim u/s 80IB			**2,165.78**

14. While scrutinizing the claim the Assessing Officer noticed that the assessee allocated ₹.204.56 crores of Head Office expenses to various refineries. The assessee has allocated ₹.24.09 crores as other office administration out of the above. According to the Assessing Officer the assessee has allocated only ₹.204.56 crores out of total head office expenses of ₹.1137.18 crores. The Assessing Officer was of the opinion that out of the balance expenses after excluding the expenses not related to refinery balances amount still remains to be allocated and the Assessing Officer computed the disallowance as under: -

Particulars	Rs crore
Total expenses of refinery head office	1137.18
Already allocated to various refineries	204.56
Balance not yet allocated to refineries	932.62
Expenses incurred for other than refinery operation	
1 Community Development	32.75
2 Expenses on enabling facilities	10.28
3 Commodity Hedging	48.40
4 Legal Expense / Payment to consultants	14.17
5 Advertisement / notices and announcement	6.20
6 EDP expenses	11.65
7 Amortization of forward premium	113.38
Total expenses for other than refineries operation (1 to 7)	236.83

Particulars	Rs crore
Balance expenses to be allocated to various refineries	695.79
Already allocated to Panipat Refinery	57.44
Balance expenses to be allocated to Panipat Refinery	195.37
HO expenses to be allocated to PREP	30.14
(total no of employees at panipat 1426 out of which 220 employees at PREP)	

15. The Assessing Officer accordingly, reduced the 80IB deduction of PREP, Paniput by ₹.30.14 crores.

16. We have given a thoughtful consideration to the aforementioned working of the Assessing Officer, it appears that the Assessing Officer has made an adhoc addition without realizing that the assessee has already allocated all the direct and indirect expenses. Same can be understood from the following profit and loss account of Panipat refinery.

UNDERTAKING - PREP , PX-PTA & PNCP

PANIPAT REFINERY , PANIPAT

PROFIT & LOSS ACCOUNT FOR THE YEAR / PERIOD ENDED 31st March, 2011

PARTICULARS	PREP Rs/LACS For the Year Ended 31.03.2011	PXPTA Rs/LACS For the Year Ended 31.03.2011	PNCP Rs/LACS From 27.04.2010 to 31.03.2011
INCOME			
VALUE OF PRODUCTION	2578307.76	123910.81	266840
MARKRTING MARGIN	15955.63	-8497.94	20235.35
PRIOR PERIOD INCOME	0.00	0.00	0
COT MARGIN	74295.80	0.00	0
TOTAL	2668559.19	115412.87	287075.48
EXPENDITURE			
RAW MATERIAL CONSUMED	2409816.29	80198.15	323111.45
OPERATING COST			
CHEMICALS	851.02	17119.03	12250.90
REPAR AND MAINTENANCE	6179.65	8565.12	2990.66
STORES & SPARES	204.44	102.41	87.86
ESTABLISHMENT	2392.67	2208.45	7150.14
INSURANCE	142.42	166.50	640.15
TECHNICAL ASSISTANCE	0.00	146.42	474.06
FORWARD CONTRACT AMORTISATION	0.00	0.00	0.00
FOREX FLUCTUATION	0.00	0.00	1106.50
HEAD OFFICE EXPENSES (UNALLOCATED)	0.00	0.00	0.00
RLNG	6149.41		
OTHER ADMN. O/H (net of Misc Income)	2408.63	782.64	29129.88
INCOME TAX DEPRECIATION	21699.44	23888.49	452715.07
POST COMMISSIONING INTEREST	2136.74	2197.45	37228.70
TOTAL	2451980.70	135374.67	866865.17
Notes to Accounts (Schedule - J)			
PROFIT / (LOSS) FOR THE YEAR CARRIED TO BALANCE SHEET	216578.49	(19961.80)	(579809.69)

Schedule I Annexed to and forming part of Profit & Loss Account

17. When the addition was challenged before Ld. CIT(A), the Ld.CIT(A) following the decision of his predecessor deleted the disallowance of ₹.30.14 crores.

18. Considering the facts that the assessee has already allocated direct and indirect expenses to the PREP, Paniput and no error or defect has been pointed out by the Assessing Officer, we do not find any reason to any further disallowance, therefore, the addition of ₹.30.14 crores stand deleted.

19. Proceeding further, the Assessing Officer was of the opinion that the assessee has not worked out the profit / loss of marketing division correctly. According to the Assessing Officer the interest claimed in marketing division is only ₹.9.57 Crores whereas the assessee in its final profit and loss account has shown its interest cost about ₹.2669.83 crores. The Assessing Officer derived his own formulae and computed the allocation of the interest cost as under: -

Interest for marketing division

= Interest— Interest for 14A — Interest for Specific purpose ex $\frac{\text{Total assets of Mktg Div (fixed +net current)}}{\text{Total assets of the IOCL after giving effect of—ve assets for regd. office}}$

$= [2669.83-70.71-838.83] \times \frac{44,367.06}{1,16,645.24+27,882.77}$

$= 1760.29 \times \frac{44367.06}{144528.01}$

= Rs.540.37 crore to be allocated further.

20. The Assessing Officer accordingly, allocated ₹.540.37 crores towards interest cost which was confirmed by the Ld. CIT(A).

21. We have carefully perused the order of the authorities below. On perusal of the balance sheet, we find that there are no borrowings for marketing division as on 31.03.2011. We further find that the working capital of the marketing division as on 31.03.2011 is ₹.13,799.25 crores and the accumulated reserves as on 31.03.2011 is ₹.44,307.06 crores. This shows that the assessee has sufficient own funds for the marketing division to meet the requirement of the working capital. Further, the division wise profit and loss account for the year ended 31.03.2014 show that the assessee has not incurred any interest expenditure against the borrowings. Therefore, we do not find any merit in further allocation of interest done by the Assessing Officer and confirmed by the Ld. CIT(A). We accordingly direct the Assessing Officer to delete the addition of ₹.536.54 crores.

22. Proceeding further, while scrutinizing the claim of deduction under section 80IB of the Act, the Assessing Officer noticed that assessee has shown subsidy from Government of India amounting to ₹.1,613.13 crores as income in the marketing division. The Assessing Officer was of

the opinion that this amount cannot be said to have been derived from the business of refining but is only a consequence of loss sharing mechanism evolved by the Government, it has to be deducted from the marketing profit for the purpose of calculation of profit for section 80IB of the Act. A perusal of the notes on the accounts for the year ended 31.03.2011 show that subsidies on sales of SKO (PDS) and LPG (Domestic) in India amounting to ₹.157738.99 Lakhs and subsidies on sale of SKO and LPG to customers in Bhutan amounting to ₹.3573.80 Lakhs have been reckoned as per the schemes notified by the Government of India. Further, at clause (8) it has been mentioned that in line with the scheme formulated by petroleum Planning And Analysis Cell, the assessee has received during the year discounts of ₹.15,42,155.00 Lakhs on crude oil / products purchased from ONGS/GAIL/OIL and ₹.80,073.00 lakhs from CPCL through sale of HSD to IOC out of their purchase of crude oil from ONGC, towards under recovery suffered on sale of MS and the same has been adjusted against the purchase cost.

23. It would be pertinent to understand the subsidy scheme, the relevant clause read as under: -

"5. Determination of the amount of subsidy

5.1 Subsidy on PDS kerosene and domestic LPG will be met from the budgetary grants of the Ministry of Petroleum & Natural Gas.

5.2 The amount of subsidy per selling unit will be equal to the difference between the cost price and the issue price per selling unit and will be computed ex-depot for PDS kerosene and ex-bottling plant for Domestic LPG.

5.3 The amount, of subsidy per selling unit for a given depot/bottling plant for the year 2002-03 will be based on the issue price of the product effective 1st April 2002 and the cost price worked out in the manner provided in clause 7 hereinafter.

5.4 Subsidy per selling unit allowed for any depot/bottling plant effective 1st April 2002 will remain unchanged for the financial year 2002-03. The scheme/subsidy will be phased out in 3-5 years as decided/finalised by the Government after consultation between the Ministry of Petroleum and Natural gas and the Ministry of Finance.

5.5 The entitlement of a participating company to receive. subsidy for the product sold at a given depot/bottling plant for a given month will be equal to the rate of subsidy in force multiplied by the total quantity of the product sold to dealers/ distributors at that depot/bottling plant in that month.

6. Issue Price

6.1 For the depots/bottling plants from which sales of PDS kerosene and domestic LPG are being effected prior to the commencement of the scheme, the issue price of the product as on 31% March 2002, will be continued as such post 15 April 2002 till revised by the participating company in accordance with clause 8 herein under.

6.2 For a new depot/bottling plant commissioned after 1st April 2002, the issue price of the product for the first month for its operation and the subsidy per unit for that particular financial year will be determined by the Ministry of Petroleum & Natural

Gas on the basis of retail selling prices prevailing at that time in the markets that are linked to the new depot/bottling plant.

Explanation: For the purposes of this clause, issue price means the invoice price of the product ex-depot/bottling plant excluding state surcharge, excise duty, sales tax, local levies and delivery charges."

24. And in the discount scheme it has been provided that the contribution from ONGC and GAIL would come in terms of appropriate discounts on the prices of crude oil, LPG and kerosene supplied by them to oil manufacturing companies.

25. The Ld. CIT(A) allowed the claim of discount received from ONGC / Gail but sustained the action of the Assessing Officer in so far as the subsidy is concerned.

26. Let us understand the facts by a simple example. The assessee sells the petrol. The assessee is forced to sell the petrol at ₹.100 by the Government of India. The actual sale price is say ₹.150/-. To compensate the assessee deficit of ₹.50/- the Government allows subsidy to the assessee and also asks its undertakings like ONGC / GAIL and OIL to sell their products to the assessee at a discount. The Ld.CIT(A) has accepted the subsidy part but surprisingly not the discount part. We are of the considered view that both the subsidy and

the discount have a first degree nexus with the business of the assessee and therefore both form part of the marketing profit and cannot be excluded. Therefore, we direct the Assessing Officer to not to exclude the subsidy and the discount from the marketing profits. This will take care the grievance of both the sides.

27. The grounds relating to the claim of deduction under section 80IB of the Act contested by both the sides are decided accordingly, as mentioned hereinabove.

28. Ground No. 8 relates to the addition confirmed by the Ld. CIT(A) being capital receipts credited to Work-in-Progress as revenue receipts: -

a. Sale of tender documents of ₹.74,200/-
b. Recoveries from employees of ₹.6,21,407/-

29. While scrutinizing the return of income the Assessing Officer noticed that the assessee has reduced a sum of ₹.35.43 crores from the capital Work-in-Progress. The Assessing Officer was of the opinion that the amount reduced is in the nature of income earned which is not been offered to tax. The assessee was asked to explain why the same has not been offered to tax. The assessee explained that ₹.33,77,01,173/- is received as interest income on advances and deposits received from

suppliers / contractors; ₹.74,200/- is received on sale of tender documents and ₹.6,21,207/- was recoveries from employees and ₹.1,58,61,059/- are the recoveries from suppliers / contractors. It was explained that these receipts are directly and inextricable linked with the setting up of the plant at various refineries and marketing location. Therefore, same are in the nature of capital receipts. The submissions of the assessee did not find any favour with the Assessing Officer who referring to the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd., [227 ITR 172] and Hon'ble Bombay High Court in the case of Shree Krishna Polyster Ltd., [274 ITR 21] added back the amount of ₹.35.43 crores.

30. When the matter was agitated before the Ld. CIT(A), the Ld.CIT(A) following the order of his predecessor deleted the addition on account of interest income on advances of ₹.33,77,01,173/- and recoveries from suppliers / contractors ₹.1,58,61,059/- and confirmed the balance.

31. Before us, the counsel reiterated what has been stated before the lower authorities. Ld. DR strongly supported the findings of the Assessing Officer.

32. The nature of income is already mentioned elsewhere. The assessee has reduced the cost of construction in respect of the above mentioned capital receipts. Considering the nature of income, we are of the considered view that these receipts are directly and inextricably linked with the setting up of the plant at various refineries and marketing location. In the course of the setting up of the plant it is customary to give advances and receive deposits from suppliers and contractors on which interest is paid. At the same time recoveries are made from suppliers and contractors sometimes advances are given to the employees and interest is charged all these are directly and inextricably linked with the setting up of the plant at various refineries. The sale of tender documents have direct nexus with the business of refineries. In our considered opinion advance to the contractors are given to enable them to execute the large scale construction work smoothly on which the assessee charged interest. Thus the advance made to the contractors to facilitate the construction activity without any financial hitch is intrinsically connected with the construction of the refinery. The interest earned on such advances is therefore a capital receipt.

33. The decision relied upon by the Assessing Officer are misplaced. In the case of Tuticorin Alkali Chemicals (supra) the issue before the Hon'ble Supreme Court was whether interest earned out of investment of borrowed funds prior to commencement of business is taxable or not. The Hon'ble Supreme Court held that taxability of the income is not dependent upon its destination for the manner of its utilization. It has to be seen whether at the point of accrual, the amount is of revenue nature. In our considered opinion the Hon'ble Supreme Court did not consider the issue of receipts which are inextricably and directly linked with the setting up of plant is taxable as revenue receipt or capital receipt. The issue before the Hon'ble Bombay High Court (supra) whether interest earned from investment in short-term deposit of surplus funds acquired in public issue of shares should be assessed as business income or income from other sources. Thus, the facts of the cases relied upon by the Assessing Officer are totally different from the facts of the case in hand. Considering the facts of the case in totality, we are of the considered view that the total income mentioned elsewhere at ₹.35,42,57,639/- are capital receipts and have been rightly reduced from the Work-in-Progress. Ground No. 8 is accordingly, allowed.

34. Ground No. 9 relates to the disallowance of survey expenses amounting to ₹.333,43,69,242/-. While scrutinizing the return of income the Assessing Officer found that the assessee has debited ₹.333.44 crores towards survey expenses. The Assessing Officer was told that the expenditure debited to the profit and loss account related to unsuccessful survey expenditure and is covered by the definition of Exploration expenditure. The Assessing Officer found that in the earlier year also the said claim has been disallowed. Taking a leaf out of the earlier assessment proceedings the Assessing Officer disallowed the claim of ₹.333.44 crores which was confirmed by the Ld. CIT(A).

35. Before us, the counsel reiterated that the impugned expenditure relates to unsuccessful survey expenditure. The counsel referred to the provision to section 42 of the Act and referred to the Production Sharing Contract and pointed out that the deductions prescribed in the Production Sharing Contract are to be allowed. Referring to the relevant clause of the Production Sharing Contract, the counsel contended that the deduction for survey expenditure of ₹.333.44 crores should be allowed.

36. Ld. DR strongly supported the findings of the lower authorities and read the operative part of the assessment order and the order of the Ld.CIT(A).

37. We have carefully considered the orders of the authorities below. Para No. 17.2.1 of the Production Sharing Contract reads as under: -

> *"17.2.1 Subject to the provisions herein below, deductions at the rate of one hundred percent (100%) per annum shall be allowed for all expenditures, both capital and revenue expenditures, incurred in respect of Exploration Operations and drilling operations. The expenditure incurred in respect of Development operations, other than drilling operations, and production operations will be allowable as per the provisions of the Income-tax Act. The expenses so incurred are subjection to the following:*
>
> *……"*

38. Section 42 of the Act which contains special provisions for deduction in the case of business for prospecting, extraction or production of mineral oils. It has been provided that there shall be made in lieu or in addition to the allowances admissible under the Act and such allowances are specified in the Production Sharing Contract. Reading the provisions of Section 42 of the Act with Para No. 17.2.1 (supra) we are of the considered view that the deduction @100% is allowable for both capital and revenue expenditure incurred in respect of

exploration and drilling expenses. Therefore, the claim of survey expenditure of ₹.333,43,69,242/- is to be allowed. We direct accordingly. Ground No. 9 is allowed.

39. Ground No. 10 becomes otiose.

40. Ground No. 11 relates to disallowance of prior period expenses of ₹.73.71 crores. During the course of the assessment proceedings the query raised that as per the Tax Audit Report prior period expenses are ₹.73,71,75,163/-, in the report it is further mentioned that ₹.9.37 crores pertaining to financial year 2009-10 and 2008-09 and hence prior period expenses. In its reply, assessee explained that the entire prior period expenses of ₹.73.71 crores has been offered for tax in the return and at the same time it was contended that these expenses are not prior period expenses. Explanation of the assessee do not find any favour with the Assessing Officer who made an addition of ₹.73,71,75,163/-.

41. The addition was challenged before Ld. CIT(A) who followed the decision of his predecessor and confirmed the addition.

42. Before us, the counsel drew our attention to the revised computation of normal taxable income and tax liability at Page No. 830 of the Paper Book and pointed out that the assessee has added prior period expenses of ₹.80.74 crores suomoto. The counsel drew our attention to the notes on the accounts for the year ended 31.03.2011 and pointed out Clause (12), the accounting policy regarding expenditure during the construction period of projects on assets not owned by the company has been revised as per the opinion of the Expert Advisory Committee of ICAI received during the year which states that such expenditure should be charged to revenue at the time of incurrence instead of charging the same in the year of capitalization of the projects. This change has resulted in decrease in profit by ₹.57.06 crores. The counsel fairly stated that vide order dated 04.07.2013 framed under section 154 of the Act the Assessing Officer has rectified the mistake apparent from record and deleted the suomoto disallowance added again by the Assessing Officer amounting to ₹.73,71,75,163/-. Even otherwise, we are of the considered view that the assessee has various offices scattered all over India and to collect information at the time of finalization of the accounts from various refineries, state offices and regions is a most difficult task and it is quite natural that there

would be an amount of overflow of information after the close of the accounting year and therefore there is a possibility that earlier year expenses finds place in the accounts of the current year. We are of the considered view that the for organization of the magnitude of the assessee such exercise would be tax neutral. Therefore, considering the nature of expenses in the light of the applicable Tax Rules, we do not see any merit in such disallowance and the same are directed to be deleted. Ground No. 11 is allowed.

43. Ground No. 12 becomes otiose.

44. Ground No. 13 relates to the additional depreciation, during the course of the assessment proceedings the assessee was asked that in the depreciation chart it has claimed additional depreciation on drainage, railway siding etc., assessee was asked to explain why the same is allowable. It was explained that during the year ₹.12.10 crores and ₹.13.07 crores have been transferred from construction Work-in-Progress for railway siding and drainage and sewage and water supply system respectively and further, ₹.3.05 crores has been added in Drainage, Sewage and Water Supply system directly. The Assessing Officer was not convinced that the railway siding and drainage are plant

and machinery and therefore formed a belief that additional depreciation is not allowable. The Assessing Officer accordingly disallowed the claim on additional depreciation. Moreover, the Assessing Officer has not allowed the claim of depreciation on the ground that the new plant and machinery is not for the manufacturing articles of things. The Assessing Officer further observed that in order that additional depreciation is to be claimed, there must be direct and close nexus between manufacturing activity and the usage of machinery or plant for the said purpose. The same was confirmed by the Ld. CIT(A).

45. Before us, counsel referring to the provisions of section 32(1)(iia) of the Act pointed that any new plant and machinery which has been acquired and installed after 31.03.2005 by an assessee engaged in the business of manufacturing for production of any article or things is eligible for additional depreciation. It is the say of the counsel that nowhere in the section it is mentioned that new plant and machinery should be acquired and installed in the same year. The counsel pointed out that in the appellants case new plant and machinery is acquired and installed after 31.03.2005, therefore the assessee is entitled to additional depreciation as per section 32(1)(iia) of the Act.

46. Per contra, Ld. DR strongly supported the findings of the Assessing Officer and read the operative part.

47. We have carefully perused the orders of the authorities below. It is true that under section 32(1)(iia) of the Act, it has been mentioned that the new machinery or plant eligible for depreciation has to be acquired and installed after 31.03.2005. In our considered opinion once the assessee submits that plant and machinery are acquired and installed after 31.03.2005 the assessee is eligible for additional depreciation, there is no question of add or subtract a word from the provisions of section. The provisions of section 32(1)(iia) was introduced into Act by the Finance Act, 2002 w.e.f. 01.04.2003 and it was introduced as an incentive for fresh investments in the industrial sector with a specific purpose / object of providing relief to tax payers to make investments in the new plant and machinery. In our humble opinion such provision has to be interpreted keeping in view the intent and purpose for which it was introduced. Considering facts of the case in totality in the light of the relevant provision of the Act we do not see merit in the disallowance of the claim of depreciation and the claim of additional depreciation and the Assessing Officer is directed to delete the same. For the sake of completeness, we are of the view that railway

siding and the drainage system thereon are part and parcel of the plant and machinery installed and therefore eligible for the claim of additional depreciation. Ground No. 13 is allowed. For the sake of completeness, this Ground should be read with Ground Nos. 10 and 11 of Revenue's appeal in the latter part.

48. Ground No. 14 relates to the disallowance of business loss on sale of oil bonds. While scrutinizing the return the Assessing Officer noticed that the assessee has claimed expenses on Government of India Oil bonds amounting to ₹.356,47,28,469/-. Assessee was asked to explain why it should not be treated as capital loss as these are classified as current asset. The assessee explained how it purchased the Government of India Special OIL Bonds. Assessee also explained the intent of the said purchase and sale thereon and explained in detail how the loss was incurred and is incidental to business carried on by the assessee and hence revenue loss. The reply of the assessee did not find any favour with the Assessing Officer who treated the said loss as capital loss. The action of the Assessing Officer was confirmed by the Ld. CIT(A).

49. Before us, the counsel claimed that as per the Government's directive assessee was required to sell petrol, diesel, kerosene, meant for public distribution system and LPG used for domestic consumption, to the consumers at a price fixed by the Ministry of Petroleum and natural Gas. It is the say of the counsel that the sale price of such products was lower than cost which has resulted in operating loss to the assessee and the Government of India evolved a burden sharing mechanism to ensure that the burden of under recoveries incurred by the Oil Marketing companies is shared by all the stake holders. To compensate operating loss suffered by the assessee the Government of India issued special Oil Bonds. The counsel stated that any loss on sale of such oil bonds has to be treated as revenue loss.

50. Ld. DR read the operative part of the Assessing Officer and the Ld.CIT(A) order and reiterated that loss is a capital loss.

51. We have given a thoughtful consideration to the underlying facts in the issue, there is no dispute that as per the Government of India directives the assessee procured the oil bonds. Such bonds were shown under the head current investments and valued at cost or market value whichever is less which is similar in the light of valuation of stock in

Trade. It is an undisputed fact that the purchase price of the bonds is akin to the sale price credited to the profit and loss account. A simple example will explain the facts in true perspectives. The assessee is forced to sell petrol, diesel or kerosene or LPG used for domestic consumption for say ₹.100/- and the cost comes to ₹.150/-. This mandate of the Government of India has resulted in operating loss to the assessee amounting to ₹.50/-. Government of India came up with the scheme of giving oil bonds of ₹.50/- to the assessee to compensate the operating loss suffered by the assessee. Now such oil bonds does not have any statutory liquidity ratio status and therefor banks are unwilling to buy such bonds making the demand of such bonds very limited. It has to be understood clearly that the assessee has neither subscribed to these bond nor had intention to earn any investment income from them. These bonds were received at the behest of the Government of India as cash subsidy and the assessee has no alternative but to agree to Government's directives. Any low realisation from such bonds is nothing but non-receipt of subsidy. Therefore, in our considered view such loss is nothing but a revenue loss incurred by the assessee in the ordinary course of its business and deserves to be

allowed. We therefore direct the Assessing Officer to delete the disallowance of ₹.356.47 crores. Ground No. 14 is allowed.

52. Ground No. 15 relates to the expenditure for increase in authorised share capital. During the course of the assessment proceedings the assessee was asked to justify the expenses incurred in increase in capital from ₹.2,500 crores to ₹.6,000 crores. It was explained that following expenses were incurred in relation to obtaining shareholders' approval through postal ballot for increase in authorised capital through public offer (i) R & T Bills for processing ballot data & over printing of forms; (ii) R & T bills for postage expenses for dispatch of ballot forms, and (iii) scrutinizer bill for postal ballot activity. It was explained that there is no increase in the capital base of the company, therefore postal ballot expenditure is incurred for increase in the authorised capital is revenue in nature and therefore should be allowed. The Assessing Officer was of the opinion that these expenses incurred by the assessee are for increase in share capital and since there is a close nexus between the expenses incurred and increase in share capital the Assessing Officer treated the same as capital expenses as confirmed by the Ld. CIT(A).

53. Before us, counsel reiterated his claim that such expenditure are of revenue in nature. It is the say of the counsel that since there is no increase in the capital base the same should be allowed as revenue expenditure. Ld. DR strongly supported the findings of the Assessing Officer.

54. We have carefully perused the orders of the authorities below. The undisputed fact is that no stamp duty was paid to Superintended of Stamps, Mumbai and to the ROC and a perusal of the balance sheet show that there is increase in authorised share capital only. The issued share capital has remained the same. In our considered opinion, even if the expenditure is incurred for increase in the authorised capital this expenditure is revenue in nature and is therefore allowable under section 37(1) of the Act. The decision relied upon by the Assessing Officer in the case of Punjab State Industrial Corporation [225 ITR 792] is misplaced in as much as in that case the issue was whether filing fees paid to Registrar of Companies for increasing the capital base of the company is allowable as deduction. Whereas in the case in hand no filing fees are paid to Registrar of Companies and there is no increase in issued share capital. Therefore, considering the facts in totality the impugned expenditure is directed to be allowed as revenue expenditure.

55. Now coming to the additional grounds raised by the assessee, facts on record show that for the A.Y. 2004-05 to 2010-11 the assessee has settled the dispute under the direct tax Vivad Se Vishwas Act, 2020. The assessee has accepted the treatment of certain expenditure as capital expenditure and certain receipts as capital receipts. Therefore, in our considered view, the assessee is very much eligible for the claim of depreciation on the amount of expenditure accepted as capital expenditure. Therefore, the Assessing Officer is directed to examine the claim and decide the issue afresh as per relevant provisions of law. In so far as the claim made under Clause (c), (d) and (e) the same need to be re-verified. We direct accordingly.

56. In the result, appeal filed by the assessee is partly allowed on the grounds argued before us.

ITA NO. 5979/MUM/2016 (A.Y. 2011-12) – REVENUE APPEAL

57. Grievance of the revenue, read as under: -

> *"1 "On the facts and in the circumstances of the case as well as in law, the Learned CTT(A) has erred in deleting the addition made on account of disallowance u/s 40A(9) of expenditure being payment to educational institutions"*

2. "On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of disallowance of club expenditure without appreciating the fact that the assessee had not been able to establish that the expenditure is incurred wholly and exclusively for its business and that the expenditure resulted in promotion of its business."

3(a) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A)'s erred in deleting the disallowance u/s 14A made by the AO on various expenses like-interest cost & other expenses without appreciating the fact that the assessee has not been able to prove that these investments are out of Overdraft or Borrowed Funds made for the purpose of earning the exempt income."

3(b) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A)'s erred in not appreciating that the assessee used its borrowed funds or overdraft reduced its tax payable on non-exempted income by debiting the expenses incurred to earn the exempted income"

3(c) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A)'s erred in excluding the exchange loss from the interest expenditure which otherwise is considered by the AO while applying section 144 disallowance"

4(a) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A)'s erred in not appreciating the allocation of remaining portion out of the total HO expenses, which was not apportioned anyway/any manner to any refinery especially the PREP, Panipat unit on which the deduction u/s. 80IB was claimed by the assessee and thereby reducing the taxable profits of the assessee company."

4(b) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) s erred in rejecting the allocation out of HO expenses to PREP made by the AO who rightfully took the installed capacity as the essence for further allocation of HO expenses."

5. "On the facts and in the circumstances of the case and in law, the Ld CIT(A) s erred in holding that the discount received from ONGC/GAIL Rs. 16222.28 crores towards loss sharing mechanism in which only OMCS (like IOCL) have to make up for 1/3rd of the projected under recoveries by cross subsidization through other retail products and contribution by upstream sector (ONGC/GAIL) is entitled for deduction u/s 80IB which otherwise rightfully held by the AO as not directly relatable or profit derived from any industrial undertaking"

6. "On the facts and in the circumstances of the case and in law, the La. CIT(A)'s erred in treating the expenditure of Rs 416819076/- incurred on enabling facility as Revenue Expenditure which otherwise is rightfully treated by AG as Capital Expenditure"

7. "On the facts and in the circumstances of the case as well as in law, the Ld CIT(A)'s erred in deleting the addition to the extent of Rs 6.56 crores in respect of bad debts, bad advances and bad claims written off without appreciating the fact that the said amounts were never taken into account in computing the income of the assessee and thus were never debts, hence not eligible for claim as bad debts on being written off. The assessee did not fulfill the conditions laid down u/s 36(2) r.w.s 36(1) (vii) of the Act.

8. "Whereas the AO rightfully treated the receipts from Capital W.1.P. which were in the nature of recoveries from supplier/contractor are Revenue Receipts. Further in not applying the Hon'ble Supreme Court's decision in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. (227 ITR 172 (SC)] and another decision of the Hon'ble Bombay High Court in the case of in Shree Krishna Polyster Ltd. (274 ITR 21 (Bom.)] which squarely applies to this ground."

9. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A)'s erred in while allowing the deduction of expenditure incurred on account of Rs. 222,78,00,000/- disallowed by AO u/s 43 B (f) of the Income Tax Act, 1961"

10. "On the facts and in the circumstance of the case and in law, the Ld. CIT(A)'s erred in allowing additional depreciation of

Rs. 3004,99,33,399/- on the machineries which were installed during the year without appreciating the facts that these machineries are transferred from construction work-in-progress."

11. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A)'s erred in allowing excess depreciation on railway sidings and drainage without appreciating the fact that as per Hon'ble Supreme Court's decision in the case of Anand Theatres 244 ITR 192 railway siding and drainage are building"

12. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A)'s erred in allowing the amortization of premium on forward contracts of Rs 132,04,00,000/- without appreciating the facts that the mercantile system does not give him a handle to debit liability of every kind whatsoever. The hability that can be debited is only that which is certain, and which arises in present."

13. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)'s erred in allowing amortization of premium on hedging transactions of Rs. 48,40,00,000/ - without appreciating the facts that the mercantile system does not give him a handle to debit liability of every kind whatsoever. The liability that can be debited is only that which is certain, and which arises in present."

14. "The appellant prays that the order of CIT(A) on the above ground be set aside and that of the assessing officer be restored."

15. "The appellant craves leave to amend, or alter any grounds or add a new ground, which may be necessary"

58. Ground No. 1 relates to disallowance made under section 40A(9) of the Act being payment made to Educational Institutions. On a perusal of the audit report, the Assessing Officer found that the assessee paid to Educational Institutions ₹.24,23,67,130/- for welfare of

IOCL employees. The assessee was asked to explain why the same should not be disallowed under section 40A(9) of the Act. In its reply the assessee contended that the said expenditure is incurred for the purpose of its business and is in the nature of employee welfare expenses and hence not covered by the provisions of section 40A(9) of the Act. The Assessing Officer was of the opinion that since the auditors have referred the said expenditure falling within the scope of provisions of section 40A(9) of the Act the Assessing Officer disallowed the same. The Ld. CIT(A) simply followed the order of his predecessor and deleted the disallowance.

59. Before us, counsel vehemently stated that the assessee is a public sector undertaking which carried on business through five divisions. The assessee has nine refineries at remote areas. Technocrats and men of managerial skills are required to run these refineries. In order to locate employees at such remote places, it is necessary to provide them a conducive environment and opportunities and for this purpose assessee provided education facilities to the children of employees at the places of their work. It is the say of the counsel that the entire cost of running of the Kendriya Vidyalayas near refineries which includes expenditure on pay and allowances, recurring and non-recurring expenditure are borne

by the assessee. Counsel therefore supporting the deletion made by the Ld. CIT(A) prayed for the same. Ld. DR supported the findings of the Assessing Officer and read the operative part.

60. We have given a thoughtful consideration to the order of the authorities below. In our considered opinion without such facilities being provided, it would have not been possible for the assessee to obtain the services of the employees concerned and to efficiently continue its business. Therefore, in our considered view the amount paid towards education of employee's children which is for the welfare of the employees ought to be allowed as deduction under section 37(1) of the Act. In our considered opinion such expenditure is incurred wholly and exclusively for the purpose of business. It would be pertinent to refer to the decision of the Hon'ble Supreme Court in the case of Sri Venkata Satyanarayana Rice Mill Contractors Co., [223 ITR 101] wherein the Hon'ble Supreme Court held that as long as the expenditure is made for the purpose of the business and the payment made is not by way of penalty for infraction of any law, the same would be allowable as a deduction. In the same judgement the Hon'ble Supreme Court further held that any contribution made by the assessee to public welfare fund which is directly connected or related with the

carrying on of the assessee's business or which results in the benefit to the assessee's business has to be regarded as an allowable deduction. In our considered view section 40A(9) of the Act was introduced to avoid tax evasion in the guise of donation to trusts and the flow back of the same amount to the employer again in the form of deposit and as a measure for combating tax avoidance. Therefore, in our considered opinion the case of the assessee does not fall within the ambit of section 40A(9) of the Act and therefore the expenditure incurred has to be allowed under section 37(1) of the Act. Therefore, no interference is called for in the findings of the Ld. CIT(A). Ground No. 1 is dismissed.

61. Ground No. 2 relates to the deletion of the club expenditure. The Assessing Officer noticed that the assessee has debited club expenses being entrance fees and subscriptions ₹.60,78,076/- and Cost of club services and facilities used at ₹.1,27,18,374/- totaling to ₹.1,87,96,450/-. The assessee was asked to explain why the said expenditure should be allowed. Assessee filed a detailed reply which was dismissed by the Assessing Officer who went on to make the addition of ₹.1,87,96,450/-. Ld. CIT(A) following the order of his predecessor deleted the addition. The Ld. CIT(A) also referred to the decision of the Hon'ble Bombay High Court in the case of Otis Elevator Co. India Ltd., [195 ITR 682].

62. Ld. DR strongly supported the findings of the Assessing Officer and placed strong reliance on the decision of Hon'ble Madras High Court in the case of L. Jairam Parwani *v.* DCIT [255 Taxman 362].

63. Counsel submitted that entrance fees and subscriptions have been paid to obtain corporate membership of the clubs. It is the say of the counsel that since the assessee is a public sector undertaking it has to follow prescribed guidelines for incurring any expenditure. The membership of various clubs was obtained for the purpose of conducting business conferences.

64. We have given thoughtful consideration to the rival submissions. The impugned dispute has now been settled by the Hon'ble Supreme Court in the case of United Glass Mfg., Co., Ltd., [28 Taxman.com 429] wherein the Hon'ble Supreme Court inter alia was seized with the following question for determination:

> *"(ii) Whether club membership fee for employees incurred by the assessee is a business expense and liable to be deducted under section 37(1) of the Income-tax Act, 1961"*

65. And the Hon'ble Supreme Court inter alia held that *"as far as Question No. 2 is concerned, we find that a series of judgments have*

been passed by High Courts holding that club membership fees for employees incurred by the assessee is business expense under section 37 of the Income Tax Act, 1961. We also find that none of the decisions have been challenged in this court. Even otherwise, we are of the view that it is a pure business expense." Respectfully following the decision of the Hon'ble Supreme Court, we decline to interfere with the findings of the Ld. CIT(A). Ground No. 2 is dismissed.

66. Ground No. 3 relates to deletion of disallowance under section 14A r.w. Rule 8D of I.T. Rules. While scrutinizing the return of income the Assessing Officer found that the assessee in the computation of taxable income claimed exemption in respect of dividend from subsidiaries companies ₹.92.72 crores and from other companies ₹.966.54 crores totaling to ₹.1059.26 crores. Assessee was asked to explain as to why no expenditure has been apportioned in respect of the income claimed as exempt and why the expenditure should not be disallowed as per section 14A of the Act. In its reply the assessee explained that there was nexus between expenditure incurred and dividend earned and hence no expenditure should be netted off against the dividend income. The explanation has not find any favour with the Assessing Officer who

computed the disallowance under section 14A as per Rule 8D and disallowed ₹.76 Crores.

67. When the matter was agitated before Ld. CIT(A) the Ld. CIT(A) simply followed the order of his predecessor and deleted entire disallowance.

68. Ld. DR strongly contended that some expenditure must have been incurred by the assessee to earn exempt income and reasonable disallowance ought to have been made in this regard.

69. Before us, counsel reiterated what has been stated before the Assessing Officer. It is the say of the counsel that the investments have been made out of own funds and the assessee has not made any borrowings for the purpose of making investments in shares of companies which earned tax free income.

70. We have carefully perused the rival submissions. The undisputed fact is that investments has been made out of own funds. The own funds are far more in excess of the investments. Therefore, the ratio laid down by the Hon'ble Jurisdictional High Court of Bombay in the case

of Reliance Utilities and Power Ltd., [313 ITR 340] squarely apply. Therefore, in our considered opinion the deletion of the disallowance of interest is justified. In so far as other expenses are concerned in our humble opinion it cannot be ruled out that some administrative part must have been utilized to monitor the investments. Therefore, a reasonable disallowance of ₹.50 Lakhs should meet the ends of justice. We accordingly direct the Assessing Officer to restrict the disallowance to the extent of ₹.50 lakhs in so far as other expenses are concerned. This ground is partly allowed.

71. Ground No. 4 and 5 relates to claim of 80IB deduction. The claim of 80IB deduction has been considered by us in detail in appeal of the assessee (supra) for our detailed discussion therein, these grounds are dismissed.

72. Ground No. 6 relates to the deletion of addition of ₹.41,68,19,076/- being incurred on enabling facility treated as revenue expenditure. While scrutinizing the return, the Assessing Officer noticed that the assessee has claimed ₹.41.68 crores under the head "Expenses on enabling facilities". The details submitted by the assessee are as under: -

Particulars	Rs.
33 KVHT Power Supply at Chitoor	53,20,200
Conversion of Overhead line to Underground Line at Taloja	65,03,489
Re-routing of HT Line at Jasidih	2,36,025
Electricity connection at RSO	6,14,985
Electricity Connection 18 KWAT-Salasar Balaji	2,29,317
Electricity connection at Garh District Jaipur	6,77,731
Railway Quarters at Ratlam	13,74,11,963
Compound wallat Ratlam	10,85,184
Deposits work by Railway at Ratlam	12,78,29,742
Shifting of 132KV line from PNCP	55,00,000
Construction of Culvert at PNCP	44,94,998
Coastal Road at Paradeep Port Trust	4,64,94,265
Coastal Road at Paradeep Port Trust	5,63,00,000
Extension of 66KVA line at Viramgam	66,61,400
Drinking Water at Radhanpur Colony	20,00,000
100 KVAHT Line at Radhanpur Colony	2,86,546
Transmission Line at Paradeep Colony	39,54,211
Water Supply at Paradeep Colony	1,00,000
33KVHT Power supply-Chitoor	1,06,40,400
Installation charges -Independent feeder-CBPLRCPI	4,78,620
Total Enabling Assets	41,68,19,076

73. By merely giving a cursory look, the Assessing Officer formed a belief that the said expenses have been incurred for assets of enduring nature and are in the nature of capital expenditure and disallowed the sum of ₹.41,68,19,076/-. The Ld. CIT(A) simply following the order of his predecessor deleted the entire disallowance.

74. Before us, Ld. DR reiterated that is a capital expenditure. It is the say of the counsel that whether expenditure is revenue or capital has to be decided based on the facts of each case and the character of the expenditure depends upon the commercial consideration in each case.

The counsel explained that expenditure on enabling facility does not result in obtaining any enduring benefit to the assessee. Counsel further stated that no capital assets have been acquired by the assessee. The ownership in such assets remains with the authorities to whom such assets belongs to.

75. We have carefully considered the orders of the authorities below and have given a thoughtful consideration to the expenditure claimed as mentioned elsewhere. In our humble opinion the expenditure has been incurred in order to procure appropriate facilities to enable the assessee to carry out its operations effectively and profitably. For example, the expenditure incurred on railway quarters at Ratlam is to facilitate smooth running of the business of the assessee at the junction of Railway Station Ratlam. The same is the nature of expenditure incurred for setting up KVA line at Viramgam, construction of costal road at Paradeep Port Trust and supply of transmission line at Paradeep colony. The Hon'ble Supreme Court in the case of CIT *v.* Madras Auto services Pvt ltd., [233 ITR 468] has considered the case where the assessee had taken a premise on lease for 39 years and demolished the said premises and constructed new building at its own expenses. The Hon'ble Supreme Court held that "Right from inception, the building was of the

ownership of the lessor. Therefore, by spending this money, the assessee did not acquire any capital asset. The only advantage which the assessee derived by spending the money was that it got the lease of a new building at a low rent. From the business point of view, therefore, the assessee got the benefit of reduced rent. The expenditure is, therefore, to be treated as revenue expenditure.*"* Considering the nature of expenditure in the light of the decision of the Hon'ble Supreme Court we do not find reason to interfere with the findings of the Ld. CIT(A). Ground No. 6 is dismissed.

76. Ground No. 7 relates to the deletion of the addition of ₹.6.57 crores in respect of the bad debts, bad advances and bad claims written off. The Assessing Officer noticed that the assessee has debited ₹.6.57 crores as amount written off. The assessee was asked to justify its claim. In its reply the assessee stated that the write off are incidental to the trade and is allowable as expenditure under section 28 of the Act on ordinary principles of commercial trading. The submissions of the assessee was dismissed by the Assessing Officer who was of the firm belief that the assessee failed to fulfill the conditions stipulated under section 36(2) r.w.s. 36(1)(vii) of the Act. When the addition was

agitated before Ld. CIT(A) the Ld. CIT(A) simply followed the order of his predecessor and deleted the addition.

77. Before us, the counsel stated that the assessee is not required to prove that debts / advances / claims have become bad during the year under consideration. It is the say of the counsel that once the debts / advances / claims are written off as bad debts then deduction under section 36(1)(vii) r.w.s. 36(2) of the Act ought to be allowed. The counsel stated that bad debts has arisen on account of sale of petroleum products to various parties from which recovery could not be made due to various reasons such as subsequent rate revision, rate or quality dispute, short receipt of quantity by the customers etc.,

78. We have carefully perused the orders of the authorities below. The details of bad debts, advance, claim written off are as under: -

INDIAN OIL CORPORATION LIMITED
ASSESSMENT YEAR 2011-12 (FINANCIAL YEAR 2010-11)

Details of Bad Debts, Advances, Claims Written off

Particulars	Total	Refinery	Pipeline	Marketing	R&D Centre	IBP	Business
Revenue Losses	1,17,013	1,15,563	0	1,450	0	0	0
Bad Deposits	7,76,682	6,78,546	0	0	0	98,136	0
Bad Debts	2,49,47,895	7,32,010	0	2,27,98,275	0	13,71,187	46,423
Bad Advances	59,37,961	24,58,252	0	34,79,709	0	0	0
Raliways and other Claims	3,39,16,562	13,75,080	63,655	3,23,33,063	1,44,764	0	0
Total	**6,56,96,113**	**53,59,451**	**63,655**	**5,86,12,497**	**1,44,764**	**14,69,323**	**46,423**

79. We are of the view that since assessee is a supplier of various petroleum products to its customers through railway. Stock transfer of petroleum products also takes place from one location to another location through railway, sometimes receiving location receive petroleum products in short quantity and there is no denial that bad debts has arisen on account of sale of petroleum products to various parties. Considering the nature of business in the light of the details exhibited elsewhere, we do not find any merit in the disallowance made by the Assessing Officer and the Ld. CIT(A) has rightly deleted the same. Therefore, no interference is called for. Ground No. 7 is dismissed.

80. Ground No. 8 relates to the treatment of receipts for capital Work-in-Progress, this issue has been considered by us in the appeal of the assessee (supra), for our detailed discussion therein, this ground is dismissed.

81. Ground No. 9 relates to the allowance of deduction of expenditure incurred on leave encashment claim made for the assessment year under consideration disallowed by the Assessing Officer under section 43B(f) of the Act.

82. While scrutinizing the return of income, Assessing Officer noticed that the assessee made provision for leave encashment based on actuarial valuation of ₹.222.78 crores. It was claimed by the assessee relying on the decision of the Hon'ble Kolkata High Court in the case of Exide Industries. The Hon'ble Kolkata High Court has struck down 43B(f) being arbitrary and held unconstitutional. Revenue's special Leave was accepted by the Hon'ble Supreme Court and the Hon'ble Supreme Court allowed the assessee to make the claim in its return of income, following the directive of the Hon'ble Supreme Court the assessee claimed the said deduction.

83. Now the Hon'ble Supreme Court has decided the issue in favour of revenue accepting constitutional validity of section 43B(f) of the Act, we are of the considered view that this issue needs fresh verification at the assessment stage as the facts have not been examined in the first round of litigation. We therefore restore this issue to the file of the Assessing Officer. The Assessing Officer is directed to examine the underlying facts afresh after affording a reasonable and adequate opportunity of being heard to the assessee and the assessee is directed to explain the facts of payment / valuation with supportive documentary evidences to

the satisfaction of the Assessing Officer. This ground is allowed for statistical purposes.

84. The next grievance relates to the additional depreciation on machineries transferred from construction Work-in-Progress and also allowance of the claim of additional depreciation on railway sidings and drainage. Both these issues also find place in the appeal filed by the assessee considered hereinabove. The underlying facts show that he assessee in its return claimed additional depreciation of ₹.3004,99,33,399/- for additional depreciation of ₹.17,07,16,57,0125/- made to plant and machinery. The Assessing Officer proceeded to disallow additional depreciation on new machinery installed during the year on the ground that both acquiring and installation should be in the same year when the claim of additional depreciation is made. In the opinion of the Assessing Officer machinery which are transferred from construction Work-in-Progress are not eligible for additional depreciation. As discussed in the appeal filed by the assessee that as per section 32(1)(iia) of the Act any new plant and machinery which has been acquired and installed after 31.03.2005 by an assessee engaged in the business of any manufacturing or production of article or things is eligible for additional depreciation. In our understanding nowhere in the

section it is mentioned that new plant and machinery should be acquired and installed in the same year. We are of the considered view that there is no dispute that the plant and machinery was capitalised in the year under consideration. It is also not in dispute that assets capitalised from the capital Work-in-Progress were acquired after 31.03.2005. It appears that the Assessing Officer has overlooked the fact that such expenditure was part of the installation of plant which has been capitalized in the year under consideration. Therefore, in our considered view merely because the plant and machinery were transferred from construction Work-in-Progress will not disentitle the assessee to claim the additional depreciation as it has claimed. Therefore, in our humble opinion the assessee is very much entitled for the claim of additional depreciation and the findings of the Ld. CIT(A) cannot be faulted with. Ground No. 10 is dismissed.

85. Ground No. 11 relates to the claim of depreciation on railway siding and drainage. The underling facts show that the assessee has classified drainage and railway siding as plant and machinery and accordingly claimed depreciation @15% on the opening written down value and additions.

86. While scrutinizing the return the Assessing Officer asked the assessee to justify the claim of depreciation @15% on railway sidings and drainage. As the Assessing Officer was of the firm belief that both are entitled for the depreciation @10%. Assessee filed detailed reply justifying its claim of depreciation @15% which was dismissed by the Assessing Officer.

87. When the matter was agitated before Ld. CIT(A), it was strongly contended that railway siding and drainage are not buildings but plant as the same are used for running the business. Strong reliance was place on the decision in the case of CIT *v.* Birla Jute & Industries Ltd., [260 ITR 55]. After considering the facts and submissions, Ld. CIT(A) was convinced with the claim of depreciation @15% and allowed the same.

88. Before us, Ld. DR reiterated what has been stated by the Assessing Officer while allowing the depreciation @10%. The counsel once again relied on the decision in the case of CIT *v.* Birla Jute & Industries Ltd., (supra).

89. We have given a thoughtful consideration to the orders of the authorities below. It would be pertinent to refer to the decision in the case of CIT *v.* Birla Jute & Industries Ltd., (supra) the relevant findings read as under: -

> *"In the aforesaid case, the issue before the High Court was whether assessee is entitled for additional depreciation on railway siding. In the aforesaid case, it was held:*
>
> > *"The word 'plant' is defined in section 43(3). It is not an exhaustive definition. It is an inclusive definition. It includes vehicles, among other things, used for the purpose of business or profession. The word, 'vehicle' has not been defined. The original meaning of the vehicle as found from the Shorter Oxford Dictionary, Third edition, is 'a conveyance provided with wheels used for the carriage of persons or goods; a carriage, cart, wagon, sledge, etc., a receptacle in which anything is placed in order to be moved.' Clause (b) to the proviso to section 32(1)(iia) and section 32A(1) excepts road transport vehicle. Therefore, vehicles other than road transport vehicles are plants.*
> >
> > *As regards the question as to whether railway siding and locomotive are plant, since loading or unloading of raw materials or transporting of the finished products are also part of the operation of the business for obtaining the end-product, any device, apparatus or means used for such purpose are plant (Italics supplied)."*

90. The Hon'ble Gujarat High Court in the case of Gujarat State Fertilizer Co. Ltd. [219 ITR 550] held as under: -

> *"Regarding pumps and drainage pipes for affluent disposal, the AO held it to be not an item of machinery or plant for rejecting*

the claim of the assessee in respect of development rebate. We fail to understand how pumps are not items of machinery.

Obviously, the AO had committed a mistake in dealing with the development rebate on the cost of pumps newly installed during the previous year under section 33. So far as drainage pipes which are installed for the purpose of discharging of the plant are concerned, in ordinary sense and keeping in view the object of section 33, the affluent discharge system for discharge of affluent which has come in existence as a result of operation of plant must be deemed to be a part of plant. Without discharge of affluent, the process of functioning of plant would not be complete. Use of drainage pipes and pumps in a drainage system installed for the purpose of discharge of affluent of a plant cannot be equated with ordinary sanitary pipes and fittings installed in a building for the purpose of use of buildings. We are, therefore, of the opinion that as discharge of affluent is an integral part of the operation of the plant, the pumps and drainage pipes are necessary adjuncts of plant itself and therefore plant within the meaning of section 33 of the Act and cost of acquisition of new pumps and installation of drainage pipes for affluent disposal during the previous year ought to have been considered for allowing the development rebate. Therefore, in our opinion, the Tribunal was right in holding that the assessee was entitled to claim development rebate in respect of pumps and drainage pipes for affluent disposal. (italics supplied)"

91. In the light of the aforementioned decisions, in our considered opining railway sidings would constitute plant since loading or unloading of raw materials or transporting of the finished products are also part of the operation of the business for obtaining the end product. Therefore, any devise used for such purpose should be considered as plant. And for drainage, the affluent discharge system for discharge of affluent

which has come in existence as a result of operation of plant must be deemed to be a part of plant because in our understanding without discharging of affluent the process of functioning of plant would not be complete. Drainage pipes and pumps in a drainage system installed for the purpose of discharge of affluent of a plant cannot be equated with ordinary sanitary pipes and fittings installed in a building for the purpose of use of buildings. Considering the facts in totality, we do not find error or infirmity in the findings of the Ld. CIT(A). Ground No. 11 is also dismissed.

92. Ground No. 12 and 13 relates to the deletion of amortization of premium on forward contracts and commodity hedging loss. The underlying facts in the issues are that to safeguard against risk of exchange fluctuations in foreign currency at the time of payment of liability. The assessee entered into forward contract with the banks. Under the contract, banks agree to provide foreign exchange to the assessee at predetermined rate of the foreign currency on the date when payment to suppliers becomes due. This is very common practice by which the assessee restricts risk of foreign exchange loss at the time of settlement of foreign exchange liability. As per assessee risk management policy it undertakes refining margin hedging, inventory

hedging and crude oil hedging through swaps, options and futures in the overseas over-the-counter market as well as the international and domestic exchanges. For this the assessee has claimed commodity hedging loss pertaining to crude oil. The Assessing Officer disallowed the both.

93. On understanding the facts, we find that the assessee imports crude oil from foreign countries for which it incurs liability in foreign currency. To safeguard against risk of exchange fluctuations in foreign currency at the time of payment of liability, the assessee enters into forward contract with the banks. This way the assessee restricts risk of foreign exchange loss at the time of settlement of foreign exchange liability. The assessee amortizes the premium / discount arising at the inception of the forward exchange contracts over the life of the contract. On understanding the underlying facts, we are of the considered view that the forward exchange premium can neither be a contingent liability nor notional in nature since in case of a forward contract, there is a legally binding and enforceable contract for purchase of foreign currency on a future date at the pre-determined rates. Therefore, it cannot be said that it is a contingent liability as the date and the rate of purchase of the foreign currency are decided at the time of entering into contract.

In our considered view the difference between the forward contract and the exchange rate on the date of entering into the contract has to be recognized as income or expenses. The assessee is not a dealer in foreign exchange but in order to hedge against loss the assessee has booked foreign exchange in the forward market with the bank. Therefore, it is not speculative in nature. Accordingly, we do not find any reasons to interfere with the findings of the Ld. CIT(A).

94. Coming to the hedge loss of ₹.48.40 crores, the Assessing Officer has disallowed the same holding it as a notional loss or contingent liability, as according to the Assessing Officer hedging loss is speculative in nature. For the reasons discussed herein above, we reiterate that there is a legally binding enforceable contract for purchase of foreign currency on a future date at the pre-determined rates. Therefore, commodity loss is also cannot be treated as speculative in nature and the same has to be allowed and rightly done so by the Ld. CIT(A) and no interference is called for. Ground Nos. 12 and 13 are also dismissed.

95. In the result, appeal filed by the revenue is partly allowed on the grounds argued before us.

C.O. No. 31/MUM/2018

96. The grounds of cross objection read as under: -

Grounds not decided

1. The learned Commissioner of Income tax (Appeals) erred in not deciding the following grounds of appeal:

"Disallowance under section 14A

Ground No. 8

Without prejudice to the above, the learned Additional Commissioner erred in not correctly working out a) value of assets as appearing in the Balance Sheet on the last day of earlier previous year b) value of assets as appearing in the Balance Sheet on the last day of the current previous year and c) average of total assets for working out disallowance under section 14A read with Rule 8D.

Ground No. 9

Without prejudice, the learned Additional Commissioner ought to have reduced the interest income as per Schedule N aggregating to Rs. 1551.45 crores against the interest expenditure before computing disallowance under section 14A as per Rule 8D of the Income-tax Rules.

Ground No. 10

Without prejudice, the learned Additional Commissioner ought to have reduced exchange loss aggregating to Rs. 159.98 crores (Rs.35.77 crores plus Rs. 124.21 crores) from the interest expenditure before computing disallowance under section 14A as per Rule 8D of the Income-tax Rules."

"Disallowance of alleged excess claim of depreciation on railway sidings and drainage

Ground No. 64

For the purpose of computing the aforesaid alleged excess depreciation, the learned Additional Commissioner erred in considering opening gross block of railway sidings of Rs.189.73 crores as per books of accounts and closing block of assets of drainage and water supply of Rs.375.39 crores as per books of accounts

(Schedule 'E' Fixed assets of the balance Sheet). The learned Additional Commissioner ought to have appreciated that these assets had merged into block of assets and therefore it was not

possible to quantify the opening written down value of these assets. "

Book profits under provisions of section 115JB

2. The learned Commissioner (Appeals) erred in dismissing the following ground as not pressed:

"Provision for un-availed LTC

Ground no. 79

The learned Additional Commissioner erred in increasing book profits by provision for un-availed LTC of Rs. 77,67,42,314."

3. Each one of the above grounds of appeal is without prejudice to the other.

4. The appellant reserves the right to amend, alter or add to the grounds of appeal."

97. For our detailed discussion and decision in the appeal of the assessee in ITA No. 6025/MUM/2016, the cross objection becomes otiose.

98. In the result, cross objection filed by the assessee is dismissed.

99. To sum-up, appeal filed by the assessee and revenue are partly allowed. Cross objection filed by the assessee is dismissed.

Order pronounced in the open court on 22nd May, 2024.

Sd/-	**Sd/-**
(SUNIL KUMAR SINGH)	**(NARENDRA KUMAR BILLAIYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai / Dated 22.05.2024
Giridhar, Sr.PS

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum