IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW

BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

ITA No.126/LKW/2016
Assessment Year: 2011-12

M/s. Alliance Builders & Contractors Ltd C/o 24/4, The Mall, Kanpur.	v.	**Asst.Commissioner of Income Tax, Central Circle-2** Laxmi Niwas, 10/503, Allen Ganj, Kanpur.
PAN:AAECA8217A		
(Appellant)		(Respondent)

Appellant by:	Shri Shubham Rastogi, C.A.		
Respondent by:	Shri Sunil Kumar Rajwanshi, Addl. CIT(DR)		
Date of hearing:	28	11	2024

O R D E R

PER ANADEE NATH MISSHRA, A.M.:

This appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-IV, Kanpur [hereinafter as referred Ld. "CIT(A)"] dated 29.02.2016 for the assessment year 2011-12. The grounds of appeal of the assessee are as under: -

"1 That the assessment order is invalid and void ab initio as the assessment being time barred.

2. That Ld. CIT(A) has erred in confirming the rejection of books of account on one hand and confirming various additions/disallowances of expenditure based on the same books of account rejected on the other hand.

3. That the Ld. CIT(A) has erred in confirming disallowance made by AO on account of interest paid to bank of Rs.21,86,041/-.

4. That the Ld. CIT(A) has erred in confirming disallowance made by AO on account of Directors Sitting Fees of Rs.36,000/-.

5. That the Ld. CIT(A) has erred in confirming disallowance made by AO on account of Directors Remuneration of Rs.2,40,000/-.

6. That the Ld. CIT(A) has erred in not adjudicating the disallowance made by AO on account of festival expenses of Rs.2,62,658/-.

7. That the Ld. CIT(A) has erred in confirming disallowance made by AO on account of AO on account of interest on TDS of Rs.21,549/- as not pressed.

8. That the Ld. CIT(A) has erred in confirming disallowance made by AO on account of Preoperative expense of Rs.95,632/-.

9. That the Ld. CIT(A) has erred in confirming disallowance made by AO on account of travelling expenses of Rs.2,91,960/-.

10. That the Ld. CIT(A) has erred in confirming disallowance made by AO on account of payment made to contractor by provision of section 40a(ia) of the Act.

11. That the Ld. CIT(A) has erred in confirming disallowance made by AO on account of battery and mobile of Rs.50,800/-.

12. That the Ld. CIT(A) has erred in confirming disallowance of deduction claimed u/s 80IB(10) of the income tax Act, 1961.

13. That the Ld. CIT(A) has erred in disallowance the deduction worked out by Special Auditors to the extent of Rs.19,46,402/- u/s 80IB(10) of the Act.

14. That the above additions/disallowances are highly excessive, arbitrary and bad in law and on facts.

15. That the assessment order as well as observations of Ld. AO as well as Ld. CIT(A) are arbitrary and bad in law and facts appropriate relief deserves to be allowed.

16. That the appellant's ground of appeal in Form 35 may also be considered as part of ground of appeal in the present appeal.

17. That the appellant craves leave to withdraw, introduce or modify any ground of appeal as and when need for doing so arises."

2. In this case, assessment order dated 26.09.2014 was passed by the Assessing Officer ("AO") under section 143(3)/142(2A) of the Income Tax Act, 1961 (hereafter as referred as "the Act") wherein the assessee's income was calculated as at Rs.1,98,96,420/-. However, the income of the assessee was assessed at Rs.2,01,37,531/-, being book profit, under the provision of Section 115JB of the Act. During the assessment proceedings, this case was referred for special audit under section 142(2A) of the Act vide order dated 21.03.2014. The

assessee agitated against the aforesaid order dated 21.03.2014 in Writ Petition filed in Hon'ble High Court of Allahabad, in Writ Tax No.293 of 2014. Vide order dated 13.05.2014, Hon'ble High Court of Allahabad dismissed the aforesaid writ petition of the assessee. Thereafter, time allowed to the auditor for completing audit under section 142(2A) of the Act was extended upto 31.07.2014. The relevant portion of the assessment order is reproduced below: -

> *"3. As per copy of ITR filed, gross receipts were shown at Rs. 23,61,97,601/- from business and profession. Other income of Rs.11,55,268/- was also shown from rent, interest and other sources. After deducting expenses under various heads, net income of Rs.1,45,75,195/- was shown from business of real estate, petrol pump and other sources. Claim of deduction u/s 80IB at Rs.75,61,471/- was also made in the return of income resulting into net income of Rs.67,77,700/-. However, taxes were paid on an income of Rs.1,45,75,195/- u/s 115JB as deemed income suggesting that on the income determined u/s 115JB of the Act was found to higher than the tax worked out on the income determined under the normal provisions of the Act.*
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> *4. Vide Para (2) of the notice under section 142(1) dated 26.09.2013, it was specifically required to furnish copy of Audit Report with all schedules and annexures for the year under consideration alongwith preceeding two years. Further, vide Para 41 of the said notice, it was also required to produce books of account, bills and vouchers etc. for verification. However, even after 4 months of lapse of time, the same were not furnished. Since no compliance to the notice under section 142(1) was made, penalty of Rs. 10,000/was also imposed on 06.11.2013. Furthermore, for the continuous noncompliance of notice under section 142(1), penalty u/s 271(1)(b) of Rs. 10,000/was again imposed on 18.12.2014. Considering the above facts as well as past records, prosecution proceedings u/s 276D of I.T. Act, 1961 have also been initiated for willfully withholding copy of Audit Report with all enclosures and annexures for the year under consideration alongwith preceeding two years; books of account and other documents. During the course of assessment proceedings in the case for assessment year 2010-11 too, copy of Audit Report with all enclosures and annexures alongwith Form 3CB were not furnished inspite of repeatedly directed to furnish the same and on account of and on account of such failure on part of the assessee company, the assessment had to be completed on the basis of the material available on record. After making appropriate. disallowance as were considered appropriate including disallowing the claim u/s 801B(10) of the Act.*
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> *5. After careful consideration of the facts, as indicated above, as also the past behavior of the assessee company particularly with regard to its willful withholding of the tax audit report which it was mandatorily required to be obtained in accordance . with the provisions stipulated u/s 44AB of the Act and also its failure to produce the books of accounts inspite of affording repeated opportunities to the assessee company. Vide Para 3 of the notice dated 07.02.2014, was specifically called upon to show cause as to why order directing the audit as contemplated u/s*

142(2A) of the Act be not passed. For the sake of brevity, the relevant portion of the notice is extracted here -

"You are a builder & colonizer and are engaged in this business for past several years. During a financial year, various house projects at various places run at a time. Purchasing land for future projects, constructing buildings of the existing projects and selling the flats to various parties of the completed projects is a running process in your trade. Besides, you are engaged in trading of petroleum products. Considering past records up to A.Y. 2010-11, it is evident that separate books of account for each unit and each building projects are being kept. No statutory audit report u/s 44AB and Audit Report for claim under section 80/B{10) along with prescribed schedules have since been filed till date. No P & L A/c, Balance Sheet etc. for each unit has been filed. As such, complexity is involved in your books of accounts. Accordingly, considering volumes of accounts, specialized nature of business activities through different "project units as also in the interest of revenue, | propose to get special office through which the inter-alia challenged the powers of the assessing officer audit of your accounts under the provisions of section 142(2A). For the said purpose, this notice is being issued fixing the case for 14.02.2014. If you wish to avail this opportunity, please put forth your written submissions on or before the date fixed."

6. In response, the assessee company filed written submission through Dak of the available in the Act relating to issuance of direction u/s 142(2A) of the Act on the following premises

"There is complexity in the accounts, and

It is in the interest of revenue to direct the Special audit."

In support, it has referred the decision of Allahabad High Court in the case of UP Financial Corporation Vs JCIT-2006, 10(1) ITCL-222. Also, Board Inst. No 10746 dated 12.07.1977 has been referred. It is further relied on the decision of Hon'ble Apex Court in the case of Rajesh Kumar and Others Vs. Dy. CIT(2007) 13(1) ITCL-129 (SC).

7. The submission made by the assessee company as aforementioned were carefully considered and it has been found that case of Hon'ble Supreme Court and Allahabad High Court, as referred by the assessee, are in respect of old provisions of section 142(2A). With effect from 01.06.2013, besides existing two conditions, following four more conditions have been incorporated in the statute –

Volume of the accounts,

Doubts about the correctness of the accounts,

Multiplicity of transaction in the accounts, and

Specialized nature of the business activity

In the assessee's case, all the four newly inserted conditions were found applicable w. e. f. 01.06.2013, were applicable. Accordingly, a proposal was sent to Ld CIT (C), Kanpur, through the Joint Commissioner of Income Tax, Central Range, Kanpur, for special audit u/s 142(2A) of the case for the year under consideration on 14.02.2014.

8. After obtaining approval from Ld. Commissioner of Income Tax (Central), Kanpur vide "Order for Approval u/s 1.42(2A) of the Income Tax Act, 1961"

dated 13.03.2014, an order u/s 142(2A) dated 21.03.2014 was passed in the name of the assessee to get its accounts audited through M/s Dinesh Chandra Shukla & Co., Chartered Accountant_ 24/56, Birnana Road, Kanpur for the year under consideration. Three months time was initially allotted for conducting the audit. A copy of the order was also sent to the Special Auditors. Copies of the orders, note sheet entries etc. were also provided to the assessee as and when required by it. On the same grounds, special audit u/s 142(2A) the Act has also been passed in case of the assessee for A. Y. 2012-13 to get it accounts audited through M/s. D.S. Sinha & Company, Chartered Accountant, 2 'Floor, Sky Lark Complex, 14/147, Chunni Ganj, Kanpur.

9. Against the order u/s 142(2A} dated 21.03.2014, assessee filed a writ petition | before the Hon'ble High Court of Allahabad bearing Writ Tax No. 293 of 2014 who vide its order dated 13.05.2014 has dismissed the writ petition of the assessee with the following observations —

> *"13. For these reasons, we find that the impugned orders are in accordance with law. Hence, no case for interference is made out. The writ petition is, accordingly, dismissed."*

10. Since substantial time was Consumed in High Court proceedings, on request of the Chartered Accountants after obtaining necessary approval from Ld. CIT (Central), Kanpur, the Chartered Accounts were allowed to complete the audit work by 31.07.2014 and to submit a copy of the audit report to the assessee as well as to the AO positively by that time. Copy of the Audit Report was received from the Auditors on the due time but a copy of the Audit Report was received on 20.08.2014 from the assessee."

3. The assessee filed appeal against the aforesaid assessment order dated 26.09.2014 in the office of the Ld. CIT(A). Vide impugned appellate order dated 29.02.2016, the assessee's appeal was partly allowed. The present appeal before us has been filed by the assessee against the aforesaid impugned appellate order dated 29.02.2016.

4. In the course of appellate proceedings in Income Tax Appellate Tribunal ("ITAT"), the following documents were filed from the assessee's side: -

Sr. No.	PARTICULARS
1-	Written submission
2	Copy of Order of Approval u/s 142(2A) of I. T. Act dated 13.04.2014.
3	Copy of Order Sheet Entry for A. Y. – 2011-12
4	Copy of Assessment Order for A. Y. – 2009-10 and 2010-11.
5	Copy of Audited Balance Sheet and Profit and Loss Account for the year ended 31.03.2011.
6	Copy of Order of Ld. Commissioner of Income Tax (Appeals) in appellant's own case for A. Y. 2013-14 dated 04.01.2017.
7	Copy of Form 10CCB.
4	Case laws
(i)	Copy of Order of Hon'ble ITAT, Allahabad Bench in case of Dr. Y. D. Singh BRD Medical College Vs. DCIT, 20 Taxmann.com 174.
(ii)	Copy of Order of Hon'ble I.T.A.T., Bench-A, Lucknow in ITA No. 460/LKW/2016 for A. Y.- 2012-13.
(iii)	Copy of order of Hon'ble Supreme Court in case of CIT Vs. Walchand & Co. Ltd. reported in 65 ITR 381
(iv)	Copy of Order of Hon'ble Supreme Court in case of Travancore Titanium Products Limited Vs. CIT. reorted in 60 ITR 227.

(v)	Copy of Order of Hon'ble Supreme Court in the case of PCIT Vs. R. G. Buildwell Engineers Limited reported in 99 Taxmann.com 284.
(vi)	Copy of Order of Honble ITAT, SMC Bench Lucknow in ITA No. 474/LKW/2019
(vii)	Copy of Order of Hon'ble ITAT Bench-B, Lucknow in ITA No. 127/LKW/2016 for A. Y. 2010-11 in appellant's own appea.

CHART OF REFERENCE

Grounds of Appeal No.	Reference in C.I.T.(A) Order	Reference in A. O. Order.	Covered by ITAT Order ITA 460/L/2016 AY 2012-13	Reference in Written submissions.
Additional Ground No.1	-	-	-	Page 1
Ground No.1	Page 6 to Page 11	-	-	Page 1 to Page 2
Ground No.2	Para 5.2 to 5.3 Page 11 to Page 15	-	-	-
Ground No. 3	Page 22 to Page 38	Page 15 to Page 23	Para 9 to 9.1 Page 84 to Page 85	Page 3 to Page 9
Ground No. 4&5	Page 38 to Page 42	Page 28 to Page 29	Para 6 to 6.3 Page 81 to Page 82	Page 10 to Page 12
Ground No. 6	Not Adjudicated	Page 30 to Page 32	-	-
Ground No. 8	Para 6.4 Page 44 and Page 46	Page 32 to Page 33	-	-
Ground No. 9	Page 46 to Page 57	Page 33 to Page 36	-	-
Ground No. 10	Para 6.8 Page 58 to Page 63	Page 37 to Page 41	-	Page 15
Ground No. 11	Para 6.9 to Para 7 Page 63 to Page 66	Page 42 to Page 44	-	Page 15 to Page 16
Ground No. 12&13	Para 7.3 to Para 7.4 Page 68 to Page 70	Page 8 to Page 12	ITA No. 127/LKW/2016 Page 103 to Page 105	Page 16 to Page 17

BRIEF FACTS OF THE CASE

1- On Ground No. 1, - *'That the Assessment Order is invalid and void ab initio as the Assessment being time barred.*

(i) That after obtaining the approval from Ld. C.I.T. (Central), the Ld. A. O. passed order u/s 142(2A) dated 21.03.2014 directing Assessee to get its accounts audited from M/s D. C. Shukla & Co., Chartered Accountant, Kanpur within 3 months from the date of service of this order. The Order was served on the assessee and with M/s D. C. Shukla & Co., Chartered Account on very same day. **Accordingly, the limitation for Special Audit was expiring on 21.06.2014.**

(ii) The time for completion of special audit was further extended till 31.07.2014 by the Ld AO and the audit report was obtained by that time by the Ld AO.

(iii) In the Order sheet there is no Noting regarding extension of time so moto given by Ld. A. O. to Special Auditor. Ld AO had not even mentioned on which dated he has allowed the extension of Time.

(iv) On perusal of the Order sheet it is apparent that there is no noting in the Order sheet regarding request of the Chartered Accountant and getting approval from Ld. C.I.T. (Central) and for extension of time to complete the audit Work by 31.07.2014. **Copy of Order sheet entry, the same is at page ___21 - 23___ of the Paper book**

(v) *Reliance is placed on* Dr. Y.D. Singh B.R.D. Medical College *vs.* Deputy Commissioner of Income-tax, reported in 20 Taxmann.com 174. Copy of Order is at page __65 - 75__ of the paper book

Thus the extension is invalid and the subsequent assessment made on the basis of invalid extension is liable to be quashed.

2- ON GROUND NO. 3- ADDITION OF Rs. 21,46,041/- BY DISALLOWING INTEREST PAID TO BANK u/s 36(i)(iii) of I. T. Act.

Ld AO disallowed Rs. 2146041 being interest paid to bank u/s 36(1)(iii).

i) During the year the Assessee company has given fresh advances of only Rs. 63,99,740/- to Directors. Rest are all opening b/f balances :

Sr. No.	Name	Balance as on 31.03.2010	Closing Balance as on 31.03.2011	Increase
	Total	39037285.00	45436325.00	63,99,740/-

(iii) No fresh loan was taken in AY 2011-12 and the bank loan was taken in A. Y. 2003-04. No disallowance of Interest paid on bank Loan has been made u/s 36(1)(iii) up to A. Y. 2010-11. Copy of Assessment Order of A. Y. 2009-10 and 2010-11 has been filed, same are at **Page 24 - 41** of the Paper book.

(iv) The outstanding borrowed funds are as under :-

Particulars	As on 31.03.2010	As on 31.03.2011	As on 31.03.2012
B.O.B., C. C. A/c No. 5011.	12941611	12696585	13205570
B. O. B., C. C. A/c No. 8040.	1014091	999313	1014770
Interest paid on Bank Loan	2119316	2186041	2725515

) The Ld AO has **not established any nexus** between bank loan and the interest free advances given.

ii) Assessee has **following interest free funds:-**

(a) **Share Holder Fund** **Rs. 300598891/-.**

(b) **Current Liabilities & Provisions** **Rs. 353760610/-**

T O T A L :: Rs. 654359501

(vii) Total Interest free funds were available to the tune of Rs. 65,43,59,501/- and the advance to Directors up to 31.03.2010 was Rs. 3,90,37,285/- and in A. Y. 31.03.2011 Rs. 4,54,36,325/- and as on 31.03.2012 Rs. 4,75,71,927/-, which is approximately 7% of TOTAL INTEREST FREE FUNDS.

(viii) In AY 2012-13 this issue already decided in favour of Assessee company by Hon'ble I.T.A.T. A- Bench, Lucknow in the appellant's own case in I.T.A. No. 460/LKW/2016. **The relevant portion of the Order of Hon'ble I.T.A.T. on 36(1)(iii) is at Para-9 and Para 9.1** of the order. Copy of order is at **page 76 - 87** of the Paper book.

(ix) Reliance is also placed on **CIT v. Reliance Industries Ltd.* reported in 102 Taxmann.com 52 (SC).**

3- On Ground No. 4 - Regarding disallowance of Director's sitting fee Rs. 36,000/- and Director Remuneration of Rs. 2,40,000/-.

(i) Addition made u/s 40A(2)

(ii) Before invoking section 40A(2) of I.T.Act, it has to be brought on record some evidence to show that such expenditure is either **excessive or unreasonable** having record to the **fair market value** of the services / facilities for which the payment is made.

(iii) **CBDT Circular No. 6-P, dated 6th. July, 1968**

"***Held : Under the CBDT Circular No. 6-P dated 6th. July, 1968, it is stated that no disallowance is to be made under s. 40A(2) in respect of the payments made to the relatives and sister concerns where there is no attempt to evade tax.***

(iv) The **matter of commercial expediency** should be adjudged from the point of view of the businessman concerned and Revenue cannot put itself in the arm chair of a businessman to assume the role of ascertainment.

(v) In AY 2012-13 this issue already decided in favour of Assessee company by Hon'ble I.T.A.T. A- Bench, Lucknow in the appellant's own case in I.T.A. No. 460/LKW/2016. **The relevant portion of the Order of Hon'ble I.T.A.T. on 36(1)(iii) is at Para-6.1** of the order. Copy of order is at **page 76 - 87** of the Paper book.

(vi) Under the similar sets of facts and circumstances, the Ld. C.I.T. (A)-1, Kanpur in the appellant's own case for A. Y. 2013-14 has deleted the addition made u/s 40A(2)(b) of I. T. Act.

4- On Ground No. -9 regarding disallowance of Travelling Expenses Rs. 2,91,960/-, correct amount of addition upheld is Rs. 1,45,980.

(i) C.I.T. (A) as upheld the addition of Rs. 1,45,980/- being 10% of total ad-hoc disallowance instead of 20% of ad-hoc disallowance made by Ld. A. O.

(ii) No specific defect / deficiency in Bill and vouchers were identified and disallowance has been made solely on ad-hoc basis.

5- On Ground No. 12- That Ld. C.I.T. (A) has erred in confirming the disallowance of deduction claimed u/s 80IB(10) of I. T. Act, 1961.

(i) Assessee in the Return of Income has wrongly claimed deduction of Rs. 75,61,471/- u/s 80IB(10) of I. T. Act.

(ii) The Correct amount of deduction was Rs.19,46,402/-. During the course of assessment proceeding, mandatory Form No. 10CCB was also furnished in which total allowable deduction was given Rs. 19,46,402/-

(iii) The Hon'ble I.T.A.T. Bench-B, in ITA No. 127/LKW/2016 in appellants own case vide order dated 11.04.2017 has set aside this issue to Ld. C.I.T. (A). Allow ability of deduction is pending before Ld. C.I.T. (A) for A. Y. 2010-11 for readjudication. Copy of Order of Hon'ble I.T.A.T. dated 12.04.2017 is at **page 103 – 105.**

5. During the appellate proceedings, the assessee also filed additional ground of appeal as under: -

> *"1. That the approval u/s 142(2A) of the IT Act dated 13.03.2014 has not been signed by Ld. CIT(Central) which is required as per law, thus the present Approval is invalid as per Law and subsequent proceedings on the basis of Audit Report are also invalid."*

5.1 However, at the time of hearing before us, the admission of the aforesaid additional ground was not pressed by the Ld. Authorized Representative ("AR") for the Assessee. Therefore, the additional ground is not being considered and this appeal has decided in terms of the original grounds of appeal filed with Form no. 36.

6. In the first ground of appeal, the assessee contended that the assessment order is invalid and void-ab-initio being time barred. In this regard, the following portions from brief facts of the case (referred to in foregoing paragraph no.1 of this order) are reproduced as under: -

> *"1. On Ground No.1, That the Assessment Order is invalid and void ab initio as the Assessment being time barred.*
>
> *(i) That after obtaining the approval from Ld. C.I.T. (Central), the Ld. A. O. passed order u/s 142(2A) dated 21.03.2014 directing Assessee to get its accounts audited from M/s D. C. Shukla & Co., Chartered Accountant, Kanpur within 3 months from the date of service of this order. The Order was served on the assessee and with M/s D. C. Shukla & Co., Chartered Account on very same day. Accordingly, the limitation for Special Audit was expiring on 21.06.2014.*
>
> *(ii) The time for completion of special audit was further extended till 31.07.2014 by the Ld AO and the audit report was obtained by that time by the Ld AO.*
>
> *(iii) In the Order sheet there is no Noting regarding extension of time so moto given by Ld. A. O. to Special Auditor. Ld AO had not even mentioned on which dated he has allowed the extension of Time.*
>
> *(iv) On perusal of the Order sheet it is apparent that there is no noting in the Order sheet regarding request of the Chartered Accountant and getting approval from Ld. C.1.T. (Central) and for extension of time to complete the audit Work by 31.07.2014. Copy of Order sheet entry, the same is at page 21-23 of the Paper book*

(v) Reliance is placed on Dr. Y.D. Singh B.R.D. Medical College vs. Deputy Commissioner of Jncome-tax, reported in 20 Taxmann.com 174. Copy of Order is at page _65 - 75_ of the paper book

vi Thus the extension is invalid and the subsequent assessment made on the basis of invalid extension is liable to be quashed."

6.1 Further, the relevant portion from written submission (referred to in foregoing paragraph no. 2) is reproduced as under: -

"2 Submission on Ground No.1, That the Assessment Order is invalid and void ab initio as the Assessment being time barred.

With due respect, it is prayed that Assessment Order passed u/s 143(3)/ 142(2A) of IT Act dated 29.06.2014 is barred by limitation. In this regard, following facts are being submitted: -

(i) That after obtaining the approval from Ld. C.I.T. (Central), the Ld. A. O. passed order w/s 142(2A) dated 21.03.2014 directing Assessee to get its accounts audited from M/s D. C. Shukla & Co., Chartered Accountant, Kanpur within 3 months from the date of service of this order. The Order was served on the assessee and with M/s D. C. Shukla & Co., Chartered Account on very same day. Accordingly, the limitation for Special Audit was expiring on 21.06.2014.

(ii) In the Assessment Order at Para-10, Ld. A. O. has observed that on request of Chartered Accountant and after obtaining necessary approval from the Ld. C.I.T. (Central), the Chartered Accountant were allowed to complete the Audit Work up to 31.07.2014.

(iii) No information w. r. t. extension of time was given to the appellant. It is further prayed that we have also taken the copy of Order sheet entry on perusal of the same, there is no Noting regarding extension of time so moto given by Ld. A. O. to Special Auditor. We are submitting Copy of Order sheet entry, the same is at page _2123_ of the Paper book. On perusal of the same it is apparent that there is no noting in the Order sheet regarding request of the Chartered Accountant and getting approval from Ld. C.I.T. (Central) and for extension of time to complete the audit Work by 31.07.2014.

It is further prayed that at Para-10 of the Assessment Order, the Ld. A. O. had not even mentioned the date when he is allowing extension of Time. In this regard, it is prayed that until and unless, the proper noting is not made in the Order Sheet, no valid extension of time may be allowed.

In this regard, the Hon'ble I. T, A. T., Allahabad Bench in the case of Dr. Y.D. Singh B.R.D. Medical College vs. Deputy Commissioner of Income tax, reported in 20 Taxmann.com 174, observed as under: -

"Section 158BC of the Income-tax Act, 1961 - Block assessment In search cases - Procedure for - Block period 1-4-1988 to 15-4-1998 - There being no entry in order sheet regarding issuance and service of notice under section 143(2) on assessee, it could be said that no such notice was ever issued and served on assessee and, therefore, block assessment made against assessee under section 168BC, read with section 143(2), was wholly illegal and not maintainable [In favour of assessee]"

Copy of Order is at page - 65 – 76 - of the paper book."

6.2 On perusal of the impugned appellate order dated 29.02.2016, we find that during the appellate proceedings in the office of the Ld. CIT(A) also, the assessee had taken the plea that the assessment was barred by limitation but the Ld. CIT(A) rejected this contention of the assessee. The relevant portion of the order of the Ld. CIT(A) is reproduced as under: -

"5.2 In ground no.2 the appellant has challenged that the assessment order dated 26.09.2014 is barred by limitation. In this regard, the AR has furnished written submission which is reproduced as under: -

1. Brief facts of the case are that during course of proceeding, Ld A.O issued a show cause notice dated 07.02.2014 asking appellant as to why order directing the audit as contemplated under section 142(2A) of the Act be not passed fixing the date for compliance on 14.02.2014.

2. That after receiving above show-cause notice, assessee company has filed its objection. On 20-02-2014, the proposal for special audit was also sent to Ld. Commissioner of Income Tax (Central) by A.O. Approval for special audit was granted by the Ld. Commissioner of Income Tax (Central) on 19.03.2014.

3. That after obtaining approval from Ld. Commissioner of Income Tax (Central), A.O passed an order u/s 142(2A) dated 21.03.2014, directing assessee to get its accounts audited from M/s D.C, Shukla & Co, Chartered Accountant, Kanpur within 3 months from the date of service of order. The order was served on the assessee at local address on the very same day and thus limitation for special order was expiring on 21 June, 2014. In the body of order at para10 A.O has also observed that on request of Chartered Accountant and after obtaining necessary approval from the Ld. CIT(Central), the Chartered Accountant were allowed to complete the audit work i) up to 31.07.2014. No information with regards to extension of time was given to the appellant. The detailed submission in this regards are being given in Para-11 onwards which may please very kindly be considered.

4. That against the order U/s 142(2A) dated 21.03.2014, assessee filed writ petition before the Hon'ble High Court of Allahabad which has been dismissed by the Hon'ble Court vide order dated 13.05.2014.

That copy of audit report was furnished and finally assessment has been completed Us 142(2A)/ 143(3) vide order dated 26.09.2014 which is barred by limitation in view of the provisions of section 142(2A) read with section!53 of the Income Tax Act, 1961.

6. Before going into any explanations, assessee would like to re-produce the provisions of section 142(2A) and section 153 for ready references:

The provisions of section 142 2A is as follows:

'(2A) If, at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts of the assessee

and the interests of the revertue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or Commissioner, direct the assessee to get the accounts audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, nominated by the Chief Commissioner or Commissioner in this behalf and to furnish a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require :

Provided that the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard."

The provisions of section 142(2C) read as follows:

'(2C) Every report under sub-section (2A) shall be furnished by the assessee to the Assessing Officer within such period as may be specified by the Assessing Officer:

Provided that the Assessing Officer may, suo motu, or on un application made in this behalf by the assessee and for any ground and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section (2A) is received by the assessee.'

The Provisions of Explanation (ii) to section 153B read as follows: Explanation. In computing the period of limitation for the purposes of this section, —

*Section 145 ******

(ii) the period commencing from the day on which the Assessing Officer directs the assessee to his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that

sub-section: or

*(iii) ******

Shall be excluded:

The proviso to Explanation (ii) of section 153B reads as follows:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in clause (a) or clause (6) of this sub-section available to the Assessing Officer for making an order of assessment or reassessment, as the case may be. Is less than sixty days, such remaining period shall he extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.'

7. Further clause (iii) of Explanation to section 153 of the Act deals with the exclusion of period given in the order for getting the accounts audited from the total period available with the Assessing Officer for completing the assessment. The proviso to Explanation-1 speaks that when the time left out with the A.O. after exclusion of the period given in the order for getting the accounts audited is less than 60 days, such remaining period shall be

extended to 60 days and the aforesaid period of limitation shall be deemed to be extended.

8. Your good self may appreciate that in the appellant case, time left out for completing assessment was less than 60 days and thus further it was extended to 60 days available for completion of assessment commencing.

9. Your good self may please very kindly be appreciate that in view of the proviso to Explanation (ii) of section 153B, A.O was having further time of 60 days for completing assessment and thus assessment should have been completed on or before extended time but in our case, assessment has been completed on 26.09.2014 and thus assessment is barred by limitation.

10. That in the body of order, at para-10, A.O has observed that on request of Chartered Accountant and after obtaining necessary approval from the Ld. CIT(Central), the Chartered Accountant were allowed to complete the audit work up to 31.07.2014 but no information with regards to extension of time was given to the appellant.

11. Your good self may appreciate that though in section 142(2C), discretionary power has been given to A.O empowering to extend time suo motu, The proceedings under the Income Tax Act are quasi judicial. In the case appellant no information was passed on by the A.O to assessee. Discretion' means that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice and not according to private opinion but in according to law and not humour. It should not be arbitrary, vague and fanciful, but legal and regular and it be exercised within the limit to which an honest man competent to discharge his office ought to confine himself. There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the condition under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty. The following principles of natural justice have become part of the income-tax law:

i) Audi alterampartem (hear the other side)

(ii) Give reasons for decision

(iii) Act fairly, reasonably and without prejudice, on evidence.

12. Your good self may please very kindly be appreciate that appellant was one of the affecting party of the decision and therefore before taking into any decision, at least an opportunity of being heard may he allowed. Denial of a right to a appellant on the basis on suspicion/gossip, without cogent materials of support the action would not stand the test of reasonableness and fair play, Discretion should be exercised by the authority in whom the power is vested. There should be no inference of exercise of such power being influenced by any order, instructions or directions of any other authority.

13. The action of the A.O which has never been brought in the notice of appellant before servicing of order u/s 142(2A)/143(3) dated 26.03.2014, that time has been extended is violation of principle of nature justice. The rule that no man shall be condemned unless he has been given prior notice of the allegations against him and a fair opportunity to be heard is a cardinal principle of justice. Moreover, even in the absence of any charge, the severity of the impact of a discretionary decision on the interests of an

individual may suffice in itself to attract an implied duty to comply with this rule.

14. The relevant principles formulated by the courts, about the exercise of discretionary powers, may be broadly summarized as follows:

The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner.

In general, discretion must be exercised only by the authority to which it is committed.

That authority must genuinely address itself to the matter before it,

It must not act under the dictation of another body or disable itself from exercising the discretion in each individual case.

In the purported exercise of its discretion, it must not do what it has been forbidden to do nor must it do what it has not been authorized to do.

It must act in good faith, It must have regard to all relevant considerations.

It must not be swayed by irrelevant considerations.

It must not seek to promote purposes alien to the letter or to the spirit of the Legisiuture that gives it power to act.

It must not act arbitrarily and capriciously.

Nor where a judgment must be made that certain facts exist can discretion be validly exercised on the basis of an erroneous statement about these facts.

15. Natural justice co-exists with, or reflects, a wider principle of fairness in decision making and that all judicial and administrative decision-makers have a duty to act fair . As stated, natural justice requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (o) to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet. Natural justice has various faucets and acting fairly is one of them—(See KL Shephard v. Union of India AIR 1988 SC 686).Further LO in Spackman vy. Plumstead District Board of Works 1985 (10) AC 229, observed as follows:

"No doubt in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall be violated. He is not a judge in the proper sense o the word but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honest] and impartially and not under the dictation of some other person or person to whom the authority is not given by law. There must be no malverisation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of Justice."

16. It is legal fair play not to hurt any party without hearing him unless the Act expressly excludes it. The Supreme Court in C/7 v. B.N. Bhattachargee held that the legal position is that where a statutory provision does not

exclude natural justice, the requirement of affording an opportunity of being heard can be assumed particularly where the proceedings are quasi-judicial.

17. The rule of natural justice requires that the authority before making an order should give a notice. Notice embodies rule of fair play and must precede the adverse order. It should be clear and precise so as to apprise the party determinatively of the case he has to meet (Canara Bank y. Debasis Das [2003] 4 SCC 557. Such a notice should contain reasons for the proposed action. He, then affords an opportunity of hearing and, thereafter, passes a speaking order considering the objections raised in the manner known to law [General Exporters v. CIT [1998] 98 Taxman 257 (Mad.)]. It should contain tentative and prima facie conclusions of the authority. the nature of the allegations, materials, copies of statement recorded and documents collected by the authority on which he intends relying, must be supplied to the concerned party Vijay Kumar Sharma v Appropriate Authority [1997] 223 ITR 572 (Bom.).

18. It is a fundamental principle of natural Justice that that no material should be relied upon against a party without giving him an opportunity of explaining the same. The right to know the materials on which the authority is going to take a decision is a part of the right to defend himself, The authority, therefore, while taking action by virtue of the powers vested in him and before making an adverse order in pursuance of such power, is obliged to provide to the affected party a 'reasonable opportunity of being heard. Where an order iy likely to prejudicially affect a person, reasons have to be recorded to give meaning and content to his remedy of appeal, review or approach to a writ Court. Reasons would enable the aggrieved party to show its cause in a better way. Article Id of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws withinthe territory of India Article I4 thus contains an express constitutional injunction against the State as defined in article 12 prohibiting the State from denying to any person (i) equality before the law, or (ii) the equal protection of the laws.

19. Your good self may further be appreciate that what extension was allowed or not is best known to the A.O or special auditor but before extension of time, assessee should have been allowed once opportunity to hear him and therefore, even if any extension of time was allowed, then too, it was against sprit of nature justice and should be treated as no extension of time was allowed.

In view of the above, it can safely be held that assessment was barred by limitation deserves to be held as void and invalid assessment.

From the above, it may be seen that Ld. AR is unable to substantiate its claim that order dated 26.09.2014 is barred by limitation. He has not pointed out specifically any provision of the Act under which it is barred by limitation. Therefore, this ground of appeal is dismissed."

7. The Ld. CIT(A), in his impugned order, dismissed the assessee's contentions on this issue, holding that the assessee's side did not point out any specific provision of law under which the assessment order can be said to be barred by limitation, and also failed to substantiate the claim that the assessment order

dated 26.09.2014 was time barred. During the appellate proceedings in Income Tax Appellate Tribunal also, the position remains the same. No specific provisions of law have been brought to our notice by the assessee's side to support the contention that the assessment order is time-barred. Further, in assessment order (at paragraph no. 20 at page 4), it is categorically stated by the Assessing Officer that the auditor was allowed to complete the audit work by 31.07.2014 and to submit the copy of the audit report. It is also stated by the Assessing Officer that the audit report was received by him from the auditor in due time. Nothing has been brought for our consideration to dispute this factual position as stated by the Assessing Officer. In view of foregoing, first ground of appeal is dismissed.

8. Ground Nos. 2 to 13 of the appeal are regarding various disallowances made by the Assessing Officer. We are taking these disallowances one by one.

9. The Assessing Officer disallowance an amounts of Rs.21,86,041/- being interest paid to bank for credit facility; on the ground that the huge amount of interest fees disallowance/advance/loans made by the assessee to cash source/directors and their relatives, as also towards advance for loan vide impugned appellate order dated 29.02.2016. The Ld. CIT(A) is confirmed this disallowance. As regards, disallowance of Rs.21,46,041/- out of interest expenses paid by the assessee (ground no. 3 of appeal), at the time of hearing before us, the Ld. AR for the Assessee relied on the written submission, the relevant portion of which is reproduced as under: -

SUBMISSION ON GROUND NO. 3- *ADDITION OF Rs. 21,46,041/- BY DISALLOWING INTEREST PAID TO BANK u/s 36(1)(iii) of I. T. Act.*

Detailed submissions were made before Ld. Commissioner of Income Tax (Appeals) which were reproduced in the Ld. C.I.T. (Appeal) Order at page 23 to Page 38 of the Appellate Order.

It is prayed that the said Bank Loan was taken in A. Y. 2003-04 and the said amount is outstanding since last seven years. No disallowance of Interest paid on bank Loan has been made u/s 36(1)(iii) up to A. Y. 2010-11. In support of the above, we are submitting copy of Assessment Order of A. Y. 2009-10 and 2010-11, same are at **Page __24 - 41__ of** the Paper book.

It is further prayed that on perusal of the submissions reproduced in Assessment Order that the advances to Directors were also old brought forward balance and up to A. Y. – 2010-11, no disallowances were made w. r. t. Interest paid to Bank u/s 36(1)(iii) of I. T. Act. up to A.Y- 2010-11.

It is prayed that Assessee has already demonstrated that the Assessee company has **following interest free funds:-**

(a)	**Share Holder Fund**	**Rs.**	**300598891/-.**
(b)	**Current Liabilities & Provisions**	**Rs.**	**353760610/-**
	T O T A L ::	**Rs.**	**654359501/-**

Copy of Audited Balance Sheet and Profit and Loss Account for the year ending 31.03.2011 is **at page __42 - 54__ of the paper book.**

Thus the total Interest free funds were available to the tune of Rs. 65,43,59,501/- and the advance to Directors up to 31.03.2010 was Rs. 3,90,37,285/- and in A. Y. 31.03.2011 Rs. 4,54,36,325/- and as on 31.03.2012 Rs. 4,75,71,927/-. Which is only approximately 7% of

TOTAL INTEREST FREE FUNDS. The break-up of the above Loans are as under :-

Sr. No.	Name	Opening Balance 31.03.2010	Closing Balance as on 31.03.2011	Balance as on 31.03.2012.
1	Smt. Ritu Arora	2323929.00	2876680.00	3571791.00
2	Smt. Sandeep Kaur	50000	50000	150000.00
3	Sri Aman Deep Singh	9858833.75	11355639.00	12105416.00
4	Shri Arvinder Singh	7094877.75	7267986.00	7611952.75
5	Shri Ramandeep Singh	9313004.30	10177781.00	20719499.30
6	Shri Satbir Singh	3129748.95	7133722.00	6740880.95
7	Shri Yuvraj Singh	1093998.95	1272668.00	1409471.95
8	Smt. Mahender Kaur Arora	1691715.75	2161594.00	2401234.75
9	Smt. Ginni Singh	0.00	7007.00	14014.00
10	Smt. Rhea Singh	2381619.00	2947559.00	13620843.00
11	Smt. Gurpreet Kaur	0.00	100000.00	150000.00
12	Smt. Ravindra Kaur	496620.00	35869.00	161629.00
	Total	**39037285.00**	**45436325.00**	**47571927.00**

Following are the Interest bearing funds being Bank Loans taken by the Appellant in A. Y. 2003-04. The outstanding borrowed funds are as under :-

Particulars	As on 31.03.2010	As on 31.03.2011	As on 31.03.2012
B.O.B., C. C. A/c No. 5011.	12941611	12696585	13205570
B. O. B., C. C. A/c No. 8040.	1014091	999313	1014770
Interest paid on Bank Loan	2119316	2186041	2725515

On perusal of the above details, it is evident that No Fresh Loan has been taken from the Bank during A. Y. 2010-11, 2011-12 and 2012-13, only Interest has been paid/credited on Opening Balance of Bank Loan

Further, from perusal of the details of the Loan taken from Director from 31.03.2010, the Loan outstanding was Rs. 3,90,37,285/- and the Loan outstanding as on 31.03.2011 Rs. 4,54,36,325/-. Thus, there is increase of Loan to Directors Rs. 63,99,740/-. These funds were given from own resources being Profit for the year and Interest free funds available as per Balance Sheet. As no disallowance of Interest u/s 3.6(1)(iii) of I. T. Act has been made up to A. Y. 2010-11, therefore, in the increase in amount of loan to the tune of 63,99,740/= during the year, no corresponding disallowance of Interest paid to Bank on Old Outstanding during the year should be made.

WITHOUT PREJUDICE TO ABOVE

It is prayed that Assessee Company has much more excess of Interest free funds being 92% , hence no disallowance of Interest paid to bank Rs. 21,46,041/- on old outstanding Bank Loans should be made u/s 36(1)(iii) of I. T. Act during this year as no fresh loan has been taken during the year from bank.

It is further prayed that in the facts and circumstances of disallowance of Interest upheld by Ld. C.I.T. (A) in A. Y.-2012-13. **The Hon'ble I.T.A.T. A- Bench, Lucknow in the appellant's own case in I.T.A. No. 460/LKW/2016 has after considering the above stated facts, deleted the addition. The relevant portion of the Order of Hon'ble I.T.A.T. which is Para-9 is** reproduced as under:-

Para 9 - Ground no. 5 relates to addition of Rs.29,54,329/- u/s. 36(1)(iii) of the Act. In this respect Ld. Counsel submitted that this disallowance has been made without establishing that borrowed fund were utilized in making interest free advances. Ld. Counsel submitted that interest free advances were given out of own funds, details of which were furnished before the Ld. AO. Ld. Counsel also submitted that advances to the directors of the company were not advances but were made under imprest to meet the cost of purchase of material and expenditure for the assessee. It was submitted that when these advances are given to directors for the said purpose, accounts of the directors are debited and corresponding entries are made in cash book. When the directors give details of expenditure incurred by them, corresponding entries are made by crediting cash in the name of the directors and debiting corresponding expenditure. Ld. Counsel referred to the details of interest free funds available with the assessee to the tune of Rs.63,85,43,085/- and the advance to directors as on 31.03.2012 at Rs.4,75,71,927/-. He thus, submitted that it is only around 7% of total interest free funds. Ld. Counsel further submitted that during the year, the increase in advance to directors is of Rs.85,34,642/- only. These funds were given from own resources being profit in the year and interest free funds available as reported in the Balance Sheet and, therefore, no disallowance of interest is called for as made by the authorities below. Ld. Counsel also referred to the findings of Ld. CIT(A) for AY 2013-14 to submit that similar addition made in AY 2013-14 has been deleted for the assessee.

9.1. From the factual matrix, we take note of the fact that assessee has its own interest free funds which are substantially more as compared to the interest free advances given by it, which does not have any adverse impact on the claim of interest expenditure made by it in the P&L Account. Considering the over all facts and circumstances of the case and the explanation furnished by the Ld. Counsel, we direct to delete the addition made in this respect. Accordingly, ground no. 5 is allowed.

Copy of said order is at **page 76 - 87** of the Paper book.

It is further prayed that under the similar sets of facts, now disallowance of Interest paid to bank has been made in A. Y. 2013-14. Copy of Ld. C.I.T. (A) order dated 04.01.2017 for A. Y. 2013-14 is at **page 55 – 60** of the Paper book.

1	**[2019] 102 taxmann.com 52 (SC), Hon'ble SUPREME COURT OF INDIA in case of Commissioner of Income Tax v.Reliance Industries Ltd.***	Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital (Interest free loans to subsidiaries) - Assessment years 2003-04 to 2006-07 - In course of assessment, Assessing Officer rejected assessee's claim under section 36(1)(iii) taking a view that interest would not have been payable to banks if funds were not provided to subsidiaries - Tribunal finding that interest free funds were available to assessee which were sufficient to meet its investment in

	subsidiaries, allowed assessee's claim - High Court upheld order passed by Tribunal - Whether on facts, impugned order passed by High Court did not require any interference - Held, yes [Para 8] [In favour of assessee]
Hon'ble Income Tax Appellate Tribunal, Lucknow Bench-SMC, Lucknow in I.T.A. No. 23/LKW/2019, A.Y.-2014-15, in the appeal of M/s Mahendipur BalajiImpex Pvt. Ltd., Kanpur Vs. DCIT, Central Circle-II, Kanpur .	9. Heard. The assessee has advanced interest-free funds to the tune of Rs.1.85 crores. Schedule 3 (APB:10) to the assessee's balance sheet shows issued, subscribed and paid-up shares of Rs.15.14 lakhs. Schedule 4 (APB:10) states the assessee's reserves and surplus to be at Rs.2,41,30,293/-. So, the assessee has funds of Rs.2,56,70,293/-. This amount is more than the amount advanced, of Rs.1.85 crores, by Rs.71,70,293/-. Hence, the non-interest-bearing funds available with the assessee are more than the amounts advanced. There are sufficient funds available with the assessee, in the form of paid-up share capital and reserves & surplus, other than the borrowed money, for advancing the amount of Rs.1.85 crores. 10. It stands well settled that if there are interest-free funds available with the assessee, sufficient to meet its investments and at the same time, the assessee had raised a loan, it can be presumed that the investments were from the interest-free funds available. In the present case, this is so. This material, in the shape of

Schedules 3 & 4 of the assessee's balance sheet, was available with the A.O. However, the A.O, in utter disregard/oblivion thereof, illegally made disallowance under section 36(1)(iii) of the Act, as per which, the amount of interest paid in respect of capital borrowed for the purposes of the business or profession shall be allowed as deduction in computing the profits and gains of the business and profession, i.e., income referred to in section 28 of the Act. The A.O further went wrong in observing that the assessee had "submitted nothing evidentiary to prove that there is no nexus between the money borrowed and the money advanced". It is under the law, the A.O's onus to prove the nexus between the borrowed amount and the sums advanced. The A.O failed to discharge such onus and to prove that the assessee had "diverted the advance borrowed for making interest-free advance". The assessee had, in its reply (reproduced at page 2 of the assessment order) to the A.O, specifically stated that it had sufficient interest-free funds, as appearing in Schedules 3 and 4 of its audited balance sheet. The A.O, in the assessment order, has nowhere held that this stand of the assessee was incorrect. This also answers the objection raised by the ld. D.R.

11. In view of the above, finding the same to be justified, the grievance of the assessee is accepted. The order

	under appeal is reversed. The disallowance made by the A.O is deleted.

9.1 As stated in the aforesaid written submission, the Ld. AR for the Assessee submitted that in similar facts and circumstances of the case. This issue has been decided in assessee's own favour by the aforesaid order dated 20.02.2023 of ITAT (in ITA. No.460/LKW/2016) of Income Tax Appellate Tribunal ("ITAT") Lucknow Bench in assessee's own case for AY. 2012-13. Ld. DR for the Revenue relied on the orders passed by the AO as well as Ld. CIT(A). No facts and circumstances of provision of law have been brought for our consideration from either side to distinguish the present case before us from assessment year 2012-13. In view of the foregoing and respectfully following the aforesaid order dated 20.02.2023 in assessee's own case in ITA. No.460/LKW/2016, we decide the issue in the present appeal also in assessee favour and direct the Assessing Officer to delete the aforesaid disallowance of Rs.21,46,041/-.

10. Further, the Assessing Officer made disallowances of Rs.36,000/- on account of Director Sitting Fees and of Rs.2,40,000/- paid as Directors Remuneration. At the time of hearing before us, the Ld. AR for the Assessee relied on the written submission, the relevant portion of which is reproduced below: -

Submission on Ground No. 4 -*Regarding disallowance of Director's sitting fee Rs. 36,000/- and Director Remuneration of Rs. 2,40,000/-*

The Ld. Authorities below has not brought out any contrary material except their own observation "*that during the last 3 – 4 years Rs. 57,12,000/- has been paid during the year as Annual Remuneration to the Directors as against Rs. 54,72,000/- which was paid during A. Y.-2008-09 to A. Y.-2010-11. As such an accretion to the remuneration to the Directors has been found at Rs. 2,40,000/- during the year which is baseless, without any supporting evidence and accordingly the same is being disallowed and added back to the total income of the Assessee Company.*"

Similarly, Rs. 36,000/- Director's sitting fee is being disallowed.

It is prayed that before invoking section 40A(2) of I.T.Act, it has to be brought on record some evidence to show that such expenditure is either excessive or unreasonable having record to the **fair market value of the services / facilities** for which the payment is made.

Further the CBDT Circular No. 6-P, dated 6th. July, 1968

"*Held : Under the CBDT' Circular No. 6-P dated 6th. July, 1968, it is stated that no disallowance is to be made under s. 40A(2) in respect of the payments made to the relatives and sister concerns where there is no attempt to evade tax.*

This Circular has been considered in the following case law :-

HIGH COURT OF BOMBAY in the case of COMMISSIONER OF INCOME-TAX *v.* **INDO SAUDI SERVICES (TRAVEL) (P.) LTD., (Reported in 219 CTR 562).**

It is further prayed that in the facts and circumstances of disallowance of Interest upheld by Ld. C.I.T. (A) in A. Y.-2012-13. The Hon'ble I.T.A.T. A- Bench, Lucknow in the appellant's own case in I.T.A. No. 460/LKW/2016 has after considering the above stated facts, deleted the addition. The relevant portion of the Order of Hon'ble I.T.A.T. which is Para-6.1 is reproduced as under :-

6. Ground no. 2 is in respect of addition of Rs.7,20,000/- on account of directors' remuneration being treated as excessive u/s. 40A(2) of the Act. In this respect, Ld. AO had made a disallowance of Rs.14,40,000/- out of which Ld. CIT(A) gave a partial relief and sustained disallowance of Rs.7,20,000/- and the assessee is in appeal before the Tribunal.

6.1. The moot point of contention by the Ld. Counsel is that authorities below have not brought out any contrary material except their own observations which are based on surmises and conjecture, to demonstrate that the remuneration paid to the directors is excessive. Ld. Counsel also referred to the book results of five years which were produced before the Ld. AO, to demonstrate that the allegation of Ld. AO that there is substantial decrease in the turnover and net profit of the company as against substantial increase in the remuneration of directors is factually incorrect. The said book results are tabulated below:

Assessment Year	Business Receipts	Net Profit	Director's Remuneration
2009-10	459515421.00	23960553.33	5472000.00
2010-11	279730491.00	14571553.81	5472000.00
2011-12	235197601.00	12010165.81	5712000.00
2012-13	204923876.00	6990086.40	6432000.00
2013-14	206973004.00	9981415.44	6432000.00

6.2. Ld. Counsel also submitted that remuneration to directors is legitimate business expenditure and has not been held to be bogus. The matter of commercial expediency should be left to the businessman concerned or the board of directors and Revenue cannot put itself in the arm chair of a businessman to assume the role of ascertainment, how it is a reasonable remuneration having regard to all the circumstances. Further, it was submitted that nothing has been brought on record to show, why the payment of remuneration to directors is excessive. In this respect, reliance is placed on the decision of Hon'ble High Court of Bombay in the case of CIT Vs. Indo-Saudi Services Travel Pvt. Ltd. 219

CTR 562. Ld. Counsel also submitted that in the similar set of facts and circumstances in the assessee's own case for AY 2013-14, Ld. CIT(A)-1, Kanpur has deleted the addition made by Ld. AO u/s. 40A(2) of the Act.

6.3. Considering the factual matrix in the present case, we note that directors' remuneration paid by the assessee against the turnover and net profit of the assessee in past five years demonstrate the legitimacy of the expenses incurred by the assessee and the benefits derived by it from the same. We also note that the payment made to directors is not bogus for which nothing has been brought on record by the Ld. AO. Thus, we are in agreement with the submission of the Ld. Counsel that once it is established that remuneration has been paid to directors then Revenue cannot put itself in the arm chair of a businessman to assume the role of ascertainment, how it is a reasonable remuneration having regard to the facts and circumstances of the case. In such a case, matter of commercial expediency should be left to the businessman concern or the board of directors. Accordingly, we are inclined to find favour with the submission of the Ld. Counsel and direct to delete the disallowance made in this respect of Rs.7,20,000/-. Accordingly, ground no. 2 is allowed

It is further prayed that under the similar sets of facts and circumstances, the Ld. C.I.T. (A)-1, Kanpur in the appellant's own case for A. Y. 2013-14 has deleted the addition made u/s 40A(2)(b) of I. T. Act. The finding part is reproduced here under:-

"It is well settled that the provisions of Section 40A(2)(a) of the Act cannot have any application unless it is first concluded that the expenditure was excessive or unreasonable, as held in the case of Upper India Steel Manufacturing and Engineering Co. Private Limited, 117 ITR 569(SC).

In the instant case, A. O. has not brought any evidence on record to show why the payment of remuneration to Director excessive having regard to either :-

(a) Fair market value of the Services or facilities; or
(b) The legitimate needs of the business of the Assessee, or
(c) The benefits derived by or accruing to the assessee on receipt of such services or facilities.

It is seen that the remuneration was approved as per Board resolution, copy of which was filed before the A. O. during the course of assessment proceeding. A. O. has not brought any material on record to show how the remuneration made to Company's directors are excessive or unreasonable.

Once it is established that remuneration has been paid to Directors in that capacity neither the revenue nor the Court can put itself in the armchair of a businessman and assume the role of ascertaining how much is a reasonable remuneration having regard to all the circumstances.

The matter of a commercial expediency and should be wisely left to the businessman concerned or the Board of Directors.

Addition made is therefore, not sustainable appeal is allowed on this ground."

In view of the above facts, it is prayed that the issue is covered by the Order of Hon'ble I. T. A. T. in the Appellant's own case in ITA No. 460/LKW/2016 for A. Y. 2012-13, hence the addition may kindly be directed to be deleted.

10.1 As stated in the aforesaid written submission, the Ld. AR for the assessee submitted that in similar facts and circumstances, The issues have been decided in assessee's own case by the aforesaid order dated 20.02.2023 (in ITA. No.460/LKW/2016) for AY. 2012-13 of ITAT Lucknow Bench. Ld. Sr. DR for the Revenue relied on the orders passed by the AO as well as Ld. CIT(A) but no facts and circumstances or provisions of law have been brought for our consideration from either side to distinguish the present case before us from assessment year 2012-13. In view of the foregoing, and respectfully following the aforesaid order dated 20.02.2023 in assessee's own case in ITA.

No.460/LKW/2016, we decide these issues in the present appeal also in assessee favour and direct the Assessing Officer to delete the aforesaid disallowance of Rs.36,000/- and Rs.2,40,000/-.

11. The Assessing Officer disallowed an amount of Rs.2,62,658/- incurred by the assessee towards festival expense. The Ld. CIT(A) confirmed this disallowance. At the time of hearing before us, the Ld. AR for the assessee submitted that this issue was raised by the assessee before the Ld. CIT(A) but the Ld. CIT(A) did not adjudicate on this issue. He submitted that this issue may be restored back to the file of the Ld. CIT(A) with the direction to decide this issue on merits. The Ld. Sr. Departmental Representative ("DR") for Revenue expressed no objection to this. In view of foregoing, we restore this issue to the file of the Ld. CIT(A) with a direction to adjudicate the issue on merits in accordance with law after providing reasonable opportunity to the assessee.

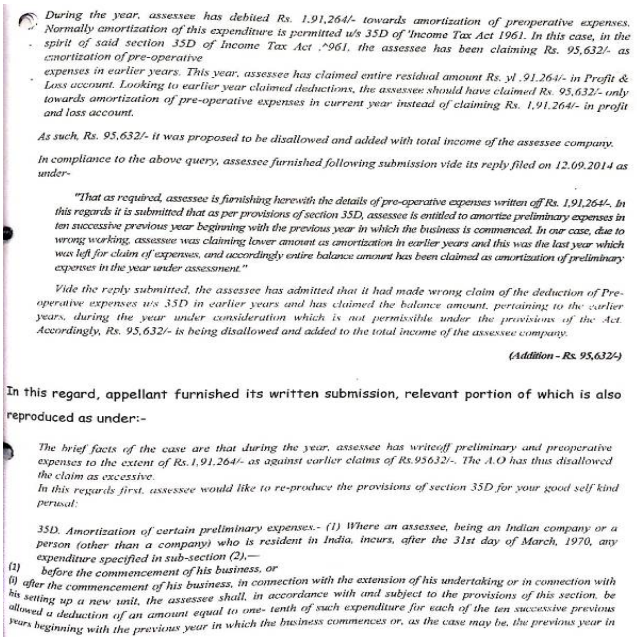
12. The Assessing Officer disallowed an amount of Rs.21,549/- on account of interest on TDS. The Ld. CIT(A) confirmed this disallowance. At the time of hearing before us, the Ld. AR for the assessee did not press the ground against the aforesaid disallowance. Accordingly, the disallowance of Rs.21,549/- is confirmed. This ground of appeal being not pressed by the assessee is dismissed.

13. The Assessing Officer disallowed an amount of Rs.95,632/- claimed by the assessee as preoperative expense. Vide impugned appellate order dated 29.02.2016 of the Ld. CIT(A) confirmed this addition.

13.1 At the time of hearing before us, the Ld. AR for the assessee relied on the submissions made during the appellate proceedings

in the office of the Ld. CIT(A). The relevant portion of the impugned order of the Ld. CIT(A) is reproduced as under: -

"6.3 Ground no. 8(7) & 18 pertains to addition/disallowance of pre operative expenses. The relevant portion of assessment order dealing with the addition is reproduced as under: -



During the year, assessee has debited Rs. 1,91,264/- towards amortization of preoperative expenses. Normally amortization of this expenditure is permitted u/s 35D of 'Income Tax Act 1961. In this case, in the spirit of said section 35D of Income Tax Act ,^961, the assessee has been claiming Rs. 95,632/- as amortization of pre-operative expenses in earlier years. This year, assessee has claimed entire residual amount Rs. yl ,91.264/- in Profit & Loss account. Looking to earlier year claimed deductions, the assessee should have claimed Rs. 95,632/- only towards amortization of pre-operative expenses in current year instead of claiming Rs. 1,91.264/- in profit and loss account.

As such, Rs. 95,632/- it was proposed to be disallowed and added with total income of the assessee company.

In compliance to the above query, assessee furnished following submission vide its reply filed on 12.09.2014 as under-

"That as required, assessee is furnishing herewith the details of pre-operative expenses written off Rs. 1,91,264/-. In this regards it is submitted that as per provisions of section 35D, assessee is entitled to amortize preliminary expenses in ten successive previous year beginning with the previous year in which the business is commenced. In our case, due to wrong working, assessee was claiming lower amount as amortization in earlier years and this was the last year which was left for claim of expenses, and accordingly entire balance amount has been claimed as amortization of preliminary expenses in the year under assessment."

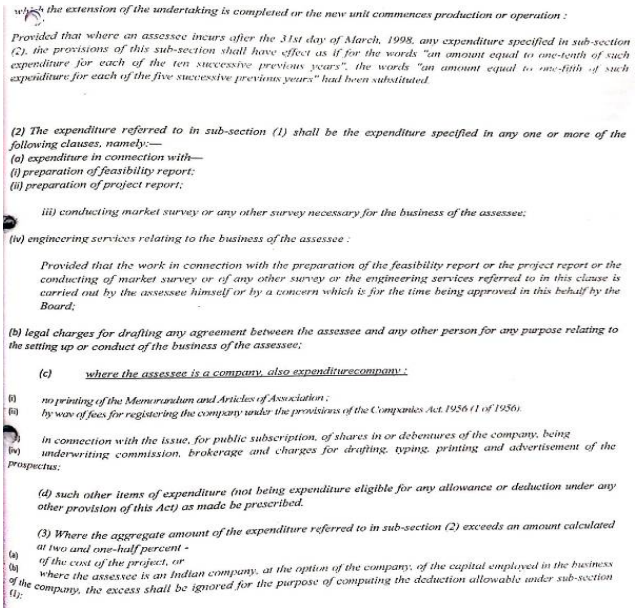
Vide the reply submitted, the assessee has admitted that it had made wrong claim of the deduction of Pre-operative expenses u/s 35D in earlier years and has claimed the balance amount, pertaining to the earlier years, during the year under consideration which is not permissible under the provisions of the Act. Accordingly, Rs. 95,632/- is being disallowed and added to the total income of the assessee company.

(Addition - Rs. 95,632/-)

In this regard, appellant furnished its written submission, relevant portion of which is also reproduced as under:-

The brief facts of the case are that during the year, assessee has writeoff preliminary and preoperative expenses to the extent of Rs.1,91,264/- as against earlier claims of Rs.95632/-. The A.O has thus disallowed the claim as excessive.
In this regards first, assessee would like to re-produce the provisions of section 35D for your good self kind perusal:

35D. Amortization of certain preliminary expenses.- (1) Where an assessee, being an Indian company or a person (other than a company) who is resident in India, incurs, after the 31st day of March, 1970, any expenditure specified in sub-section (2),—
(1) before the commencement of his business, or
(i) after the commencement of his business, in connection with the extension of his undertaking or in connection with his setting up a new unit, the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of an amount equal to one- tenth of such expenditure for each of the ten successive previous years beginning with the previous year in which the business commences or, as the case may be, the previous year in



which the extension of the undertaking is completed or the new unit commences production or operation :

Provided that where an assessee incurs after the 31st day of March, 1998, any expenditure specified in sub-section (2), the provisions of this sub-section shall have effect as if for the words "an amount equal to one-tenth of such expenditure for each of the ten successive previous years", the words "an amount equal to one-fifth of such expenditure for each of the five successive previous years" had been substituted.

(2) The expenditure referred to in sub-section (1) shall be the expenditure specified in any one or more of the following clauses, namely:—
(a) expenditure in connection with—
(i) preparation of feasibility report;
(ii) preparation of project report;

iii) conducting market survey or any other survey necessary for the business of the assessee;

(iv) engineering services relating to the business of the assessee :

Provided that the work in connection with the preparation of the feasibility report or the project report or the conducting of market survey or of any other survey or the engineering services referred to in this clause is carried out by the assessee himself or by a concern which is for the time being approved in this behalf by the Board;

(b) legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up or conduct of the business of the assessee;

(c) where the assessee is a company, also expenditurecompany :

(i) no printing of the Memorandum and Articles of Association ;
(ii) by way of fees for registering the company under the provisions of the Companies Act,1956 (1 of 1956).

in connection with the issue, for public subscription, of shares in or debentures of the company, being
(iv) underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus;

(d) such other items of expenditure (not being expenditure eligible for any allowance or deduction under any other provision of this Act) as made be prescribed.

(3) Where the aggregate amount of the expenditure referred to in sub-section (2) exceeds an amount calculated at two and one-half percent -
(a) of the cost of the project, or
(b) where the assessee is an Indian company, at the option of the company, of the capital employed in the business of the company, the excess shall be ignored for the purpose of computing the deduction allowable under sub-section (1);

Provided that where the aggregate amount of expenditure referred to in sub-section (2) is incurred after the 31st day of March, 1998,the provisions of this sub-section shall have effect as if for the words "two and one-half per cent", the words "five per cent" had been substituted.

On perusal of the above, your goodself may please very kindly be appreciate that as per provision of section 35D, assessee is entitled to amortize preliminary expenses in then successive previous year beginning with the previous year in which the business is commenced. In our case, due to wrong working, assessee was claiming lower amount as amortization in earlier years and this was the last year which was left for claim of expenses, and accordingly entire balance amount has been claimed as amortization of preliminary expenses in the year under assessment.

In view of the above, your honour is requested to allow the claim and oblige.

6.4 I have carefully gone through the assessment order, written submission as well as verbal arguments made by the Ld. A.R.. I do not find force in the submission of A.R. The appellant can claim only 1/10th of expenditure for each of the eligible assessment year according to section 35D. Appellant cannot claim preoperative expanses more than this. In view of this the addition made by A.O. is hereby confirmed.

13.2 The Ld. Sr. DR for the Revenue relied on the orders by the AO and the Ld. CIT(A). On perusal of the impugned order of the Ld. CIT(A), we find that the decision of the Ld. CIT(A) confirming addition on this issue is in accordance with law. Having regard to the facts and circumstances of the present appeal before us, no material has been brought for our consideration to persuade us to interfere with the order of the Ld. CIT(A). In view of the foregoing, the disallowance of Rs.95,632/- is confirmed and the assessee's ground of appeal on this issue is dismissed.

14. The Assessing Officer disallowed an amount of Rs.2,91,960/- claimed by the assessee on account of Travelling Expenses. The Ld. CIT(A) is confirmed this disallowance. At the time of hearing before us, the Ld. AR for the Assessee relied on the written submission, the relevant portion of which is reproduced below: -

Submission on Ground No. -9 regarding disallowance of Travelling Expenses Rs. 2,91,960/-, correct amount of addition upheld is Rs. 1,45,980/-

It is prayed that Ld. C.I.T. (A) as upheld the addition of Rs. 1,45,980/- being 10% of total ad-hoc disallowance instead of 20% of ad-hoc disallowance made by Ld. A. O.

The Ld. C.I.T. (A) after going through the details submission made by the Assessee which is reproduced in the C.I.T. (A) order from Internal page 49 to 57 of the CIT (A) order.

The Ld. C.I.T. (A) restricted the addition to 10% by stating that "***that the appellant company has failed to justify the purpose of each journey, destination, particulars, name of the director or employee who used vehicle etc and no log book was maintained and also the personal use of vehicle cannot be ruled out.***"

It is prayed that during the course of **Assessment Proceeding as well as before Special Auditor entire bills and vouchers, supporting evidence and purpose of use of the vehicle has been explained. Part of these details were also reproduced in the Assessment Order at page 33 .**

It is prayed that No specific defect / deficiency in Bill and vouchers were identified and disallowance has been made solely on ad-hoc basis. The same is not permitted as per law as held by ***Hon'ble Supreme Court in the case of CIT Vs. Walchand and Co. Limited reported in 65 ITR 381 (SC)***, where in the lordships held as under :-

"***In apply the test of commercial expediency for determining whether the expenditure was wholly and exclusively laid out for the purpose of the business, reasonableness of the expenditure has to be adjudged from the point of view of the businessmen and not of the Revenue."***

Copy of Full case law is at page 88 – 91 of the Paper book.

Similar view was taken by Hon'ble Supreme Court in the case of Travancore Titanium Products Limited Vs. C.I.T. reported in 60 ITR 227 (SC). Copy of Full case law is at page 92 – 95 of the paper book.

Further, following case laws are also relevant on this issue :-

1-	[2018] 99 taxmann.com 2 84 (SC) SUPREME COURT OF INDIA in the case of Principal Commissioner of Income Tax *v.* R.G. Buildwell Engineers Ltd.* Copy of Full Case law is at page 96 - 97 of the paper book.	Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Onus to prove) - In course of assessment, assessee claimed deduction of expenses towards bricks, machinery repair, cartage, labour expenses etc. - Assessing Officer disallowed 10 per cent of said expenses on ground that insufficient evidence was adduced - Tribunal set aside said ad hoc disallowance on two grounds, firstly, assessee's books of account were not rejected and secondly, such expenses were allowed consistently in post in scrutiny assessments - High Court upheld order passed by Tribunal - Whether SLP filed against view taken by High Court was to be dismissed - Held, yes [Para 2] [In favour of assessee]
2	Before, The Hon'ble Members, Income Tax Appellate Tribunal , Bench-SMC, Lucknow, ITA No. 474/LKW/2019, A.Y.-2014-15 in the appeal of Shri Rajendra Kumar Chowdhary, Faizabad Vs. Income Tax Officer-II, Faizabad. Copy of Full Case law is at page 98 - 102 of the paper book.	4.1 As regards the other grounds of appeal, which are against the ad hoc disallowance, I find that the Assessing Officer has nowhere in the assessment rejected the books of account and has simply disallowed certain expenses to cover up the possible leakage and irregularities. The making of ad hoc disallowances, without rejection of books of account and without pointing out any discrepancy in the books of account, is contrary to law. The learned CIT(A) himself has deleted 50% of the ad hoc disallowances but in my view the additions itself are not sustainable in view of the decision of various Benches of the Tribunal wherein it has been held that without rejection of books of account and without pointing out any discrepancy in the books of account, the ad hoc disallowance cannot be made. The Allahabad Bench of the Tribunal in the case of Shri Sanjeev Vaish vs. ACIT in I.T.A. No.184/Allahabad/2018 vide order dated 19/12/2018 has held that no such ad hoc disallowance can be made without rejection of books of account and has held as under: "6. The facts are not disputed. It is settled law that where the taxing authorities do not point out any defect in the claim of the assessee, nor are the books of account maintained by the assessee rejected, no such ad hoc disallowance at a whimsical figure can be made and the claim of the assessee required to be accepted as such. In this regard, reference can be made to the following decisions: 1. ACIT vs. Allied Construction [2007] 106 TTJ 616 (I.T.A.T. Delhi Bench. 2. Seasons Catering Services (P) Ltd. vs. DCIT [2010] 43 DTR 397 (I.T.A.T. Delhi Bench) 3. M/s Kanha Vanaspati Ltd. vs. JCIT [2006] 7 MTC 339 (I.T.A.T. Lucknow Bench) 4. CIT vs. Subhash Chand Agarwal [2013] 58 SOT 122 (I.T.A.T. Allahabad Bench) 7. In view of the above, the grievance of the assessee is found to be justified. It is accepted as such. The additions made are, hence, deleted in their entirety." 5. In view of the above, the ad hoc disallowances sustained by CIT(A) are deleted.

14.1 As stated in the aforesaid written submission, the Ld. AR for the Assessee submitted that in similar facts and circumstances the issue regarding Travelling Expenses has been

decided by the aforesaid order dated 20.02.2023 (in ITA. No.460/LKW/2016) of ITAT Lucknow Bench in assessee's own case for AY. 2012-13. Ld. Sr. DR for the Revenue relied on the orders passed by the AO as well as Ld. CIT(A). No facts and circumstances or provisions of law have been brought for our consideration from either side to distinguish the case before us from assessment year 2012-13 from the present appeal before us. In view of the foregoing and respectfully following the aforesaid order dated 20.02.2023 in assessee's own case for AY. 2012-13 in ITA. No.460/LKW/2016, we decide the issue in the present appeal also in assessee favour and direct the Assessing Officer to delete the aforesaid disallowance of Rs.2,91,960/-.

15. The Assessing Officer made disallowance of an amount of Rs.84,375/- under section 40a(ia) of the Act on the ground that the assessee did not deduct tax at source out of payment made to the contractor. Vide impugned appellate order dated 29.02.2016 of the Ld. CIT(A), the Ld. CIT(A) confirmed the aforesaid addition. At the time of hearing before us, the Ld. AR for the Assessee relied on the submissions made in the course of appellate proceedings in the office of the Ld. CIT(A). The relevant portion of the order of Ld. CIT(A) is reproduced below: -

6.7 Ground no. 8(9) & 20 pertains to the disallowance of expenses Rs. 84,375/- because no TDS has been made on such expanses.The relevant portion of assessment order dealing with the addition is reproduced as under:

Special Auditor has reported that TDS deductible and has not been deducted at all in the following cases -

Date	PARTY	Amount	Nature of Payment
08-04-2010	Aarif Khan	920.00	U/S 194C
28-04-2010	Aarif Khan	13,242.00	U/S 194C
15-04-2010	Fariyad Khan	13,004.00	U/S 194C
20-04-2010	Fariyad Khan	313.00	U/S 194C
20-04-2010	Fariyad Khan	6,507.00	U/S 194C
15-04-2010	Munazir Khan	15,167.00	U/S 194C
20-04-2010	Munazir Khan	609.00	U/S 194C
20-04-2010	Munazir Khan	800.00	U/S 194C
08-04-2010	Ram Swaroop	6,125.00	U/S 194C
15-04-2010	Ram Swaroop	2,250.00	U/S 194C
17-05-2010	Ram Swaroop	7,375.00	U/S 194C
27-09-2010	Ram Swaroop	7,125.00	U/S 194C
27-09-2010	Ram Swaroop	7,500.00	U/S 194C
27-09-2010	Ram Swaroop	7,000.00	U/S 194C
27-09-2010	Ram Swaroop	5,500.00	U/S 194C
22-10-2010	Ram Swaroop	6,375.00	U/S 194C
25-11-2010	Ram Swaroop	5,625.00	U/S 194C
20-12-2010	Ram Swaroop	5,750.00	U/S 194C
07-01-2011	Ram Swaroop	5,875.00	U/S 194C
07-02-2011	Ram Swaroop	7,125.00	U/S 194C
09-03-2011	Ram Swaroop	5,500.00	U/S 194C
23-03-2011	Ram Swaroop	5,250.00	U/S 194C
TOTAL	Rs. 1,34,937/-		

(C. P. Pathak)
Commissioner of Income Tax (Appeals)-II
Kanpur

As such, Rs. 1,34,937/- is proposed to be disallowed and added to your total income.

In compliance to the above query, assessee furnished the following submission vide its reply filed on 01.09.2014-

Payment to Contractors:
In this regards it is respectfully submitted payments as stated above are coming under the definition of service contract and therefore payments are coming under the clutches of section 194C of the I.T Act, 1961. First of all, assessee would like to reproduce the provision of section 194C for ready reference:

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194C.(1)Any person responsible for paying any sum to any resident, (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family, of such sum as income-tax on income comprised therein.

(2) Where ---------- accordingly.
(3) Where,---------- tax shall be deducted at source—
(i) on the invoice value---------- or
(ii) on the whole of the invoice value, invoice

(4) No individual or Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

(5) No deduction shall be made from the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor, if such sum does not exceed [thirty] thousand rupees :

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds[seventy- five] thousand rupees, the person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income-tax under this section.

a) From the above definition it is clear that assessee liability to deduct TDS is arise only when payment is made exceeding to Rs.30000/- and further if the aggregate of payment exceeds to Rs.75000/- during the financial year.

b) That in our case, company has made payment to Arif Khan Rs.14,162/-, Fariyad Khan Rs.19,824/- and Munazir Khan Rs.16,576/- and accordingly appellantcompany was not required to deduct any TDS in view of provision of sub-section 5 of section 194C of the Act.

c) The entire payment was below to Rs.75000/- and therefore assessee company has not deducted TDS at the time of payment. Since payments are below the threshold of section 194C, the provision of section 40a(ia) does not come into play.

d) Now the assessee would like to re-produce the provisions of section 40(a)(ia) for ready reference:

40 (a)(ia) amounts not deductible: Notwithstanding anything to the contrary in 55. 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head 'Profits and gains of business or profession -

(a) in the case of any assessee
Oh-.

- (ia) any interest, commission or brokerage; rent, royalty, fees: professional services for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work) on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction has not been paid.

(A) in the case where the tax was deductible and was so deducted during the last month of the previous year, on or before the due date specified in sub-s. (1) of s. 139 or

(B) in any other case, on or before the last.....

_ d) The bare provision of s. 40(a)(ia) provides for non-deduction of amount which remains payable to a resident in respect of fees for technical services etc. It is not applicable where expenditure is paid. It is applicable only in cases where the payments are due and outstanding.

e) The Supreme Court in the case, of Asstt. CIT v. Velliappa Textiles Ltd. (2003) 184 CTR (SC) 193: (2003) 263 ITR 550(SC) held that the words in the statute are to be strictly interpreted and plugging loopholes is only for legislature and not for the Court.

f) The provision of section 40(a)(ia) applies to cases in which the amount are 'payable' and not applicable to the amounts which have been already paid. Reliance is placed on the decision of Hon'ble IT AT Hyderabad in the case of M/s Tej Constructions in ITA No. 308/Hyd/2009 for the assessment year 2005-06 vide order dated 23rd Oct. 2009.

g) Further Hon'ble High Court of Allahabad in the case of Commissioner of Income-tax, Muzaffarnagar vs. Vector Shipping Services (P.) Ltd. reported in [2013] 38 taxmann.com 77 (Allahabad) held that "10. It is to be noted that for disallowing expenses from business and profession on the ground that TDS has not been deducted, the amount should be payable and not which has been paid by the end of the year" confirming the order of CIT(A) deleting the addition. The Finding of Cit(A) is being re-produced as under:

> "In the light of the above facts and following the ratio decided of the Hon'ble Courts (supra), it is held that firstly, the provisions of section 194C read with sec 40 (a) (ia) of the Act are not applicable to the case of the appellant. Secondly, nature of expenses incurred by the assessee do not form part of expenses disallowable under section 40 (a) (ia) of the Act. Thirdly, when such type of expenses incurred by the appellant were totally paid and not remained payable as at the end of the relevant accounting period, provisions of section 40a (ia) of the Act are not applicable. Further, the appellant has clarified all the five questions raised as above and its clarifications are found satisfactory and convincing. Thus no adverse inference could be drawn on the issues even after making intrusive inquiries in respect of the transition of business made by the appellant. Thus it is held that the AO was not justified in making addition of Rs.1,17,68,621/- on account of disallowance made under section 40 (a) (ia) of the I.T. Act, 1961. The same is directed to be deleted."

h) Your good self may please very kindly be appreciate that consequent to the decision of the Hon'ble High Court, department filed SLP before the Hon'ble Supreme Court which has been dismissed by the Hon'ble Apex Court affirming the order of the High Court.

In view of the above facts as well as judicial pronouncements, your honour is requested to allow the claim and oblige.

Since the submission of the assessee was not found tenable, a further query was made vide order sheet entry dated 12.09.2014 as under-

As regards reply to Point 21, considering the reply filed by you, Rs. 84,375/- towards payment made to Shri Ram Swaroop deserves to be disallowed and added with your total income for violating the provisions of Sec. 194C(1) of the Act.

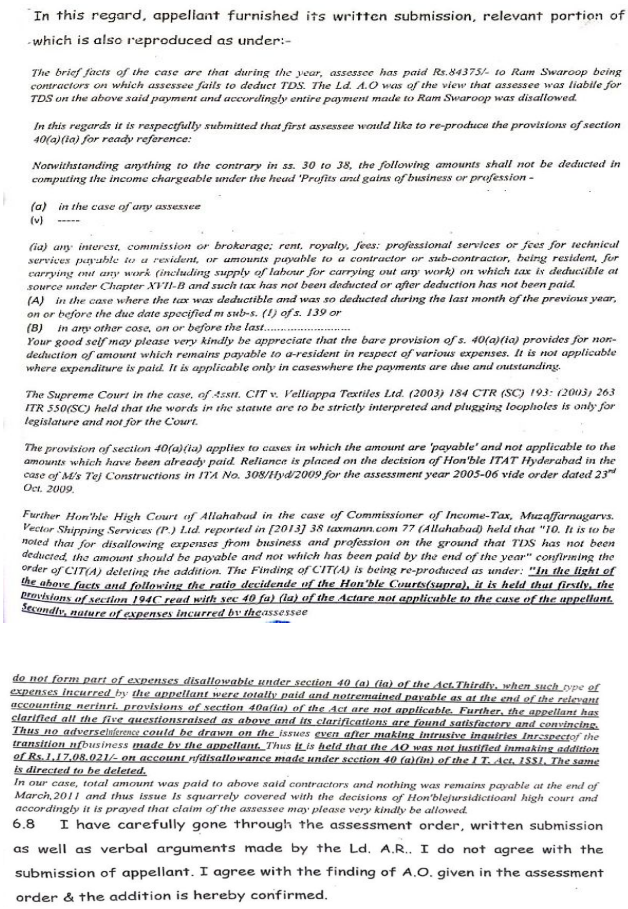
In compliance to the above query, assessee furnished following reply vide written submission filed on dated 22.09.2014 as under-

Point, 21
- As regards to disallowance of Rs.84,375/- being amount on which tax was deductible but assessee has not deducted tax is concerned, assessee rely on earlier submission. The assessee submission is based on the decision delivered by the Hon'ble High Court of Judicature at Allahabad in the case of Commissioner of Income-tax, Muzaffarnagar vs. Vector Shipping Services (P.) Ltd. reported in [2013] 38 taxmann.com 77 (Allahabad) which has been upheld by the Hon'ble Apex Court of India and therefore decision is binding to department. The abstract of the decision is being re-produced for ready reference:

> "10. It is to be noted that for disallowing expenses from business andprofession on the ground that TPS has not been deducted, the amount should bepayable and not which has been paid by the end of the year"' confirming the order ofCIT(A) deleting the addition. The Finding ofCit(A) is being re-produced as under:
>
> "In the light of the above facts and following the ratio decided of the Hon'bleCourts (supra), it is held that firstly, the provisions of section 194C read with sec 40 (a)(ia) of the Act are not applicable to the case of the appellant. Secondly, nature ofexpenses incurred by the assessee do not form part of expenses disallowable undersection 40 (a) (ia) of the Act. Thirdly, when such type of expenses incurred by theappellant were totally paid and not remained payable as at the end of the relevant accounting period, provisions of section 40a (ia) of the Act are not applicable. Further,the appellant has clarified all the five questions raised as above and its clarifications are found satisfactory and convincing. Thus no adverse inference could be drawn onthe issues even after making intrusive inquiries in respect of the transition of businessmade by the appellant. Thus it is held that the AO was not justified in makingaddition of Rs. 1,17,68,621/- on account of disallowance made under section 40(a) (ia) of the /. T. Act, 1961. The same is directed to be deleted.
> The assessee is also furnishing herewith the copy of the decision for your good self kind perusal. It is further submitted that though assessee has already placed reliance of the case law cited above and your honour has not pointed out any reason why the decision of Hon'ble Court is not applicable in the case of assessee. In view of the above it is very humbly prayed that if your honour has some difference, the same may please very kindly be provided to assessee for further explanation before taking any adverse view giving the reason how the case of assessee is distinguishable with the decision of the Hon'ble High Court of Allahabad.

Submission of the assessee company has been carefully considered. And after careful consideration, submission of the assessee has been found to be routine and general. Provisions of section 40(a) (ia) are clearly attracted in the case. As per provisions of the Act, an assessee has to deduct tax at source on payments made to a contractor where aggregate amount of Rs. 30,000/- and above is paid during a financial year. In the instant case, Assessee Company has not made deduction of tax at source on payment of aggregate amount of Rs. 84,375/- to the contractor Shri Ram Swaroop during the year under considerations. Accordingly, Rs. 84,375/- is being disallowed as expenditure and being added to the total income of the assessee company.

(Addition: Rs. 84,375/-)



In this regard, appellant furnished its written submission, relevant portion of which is also reproduced as under:-

The brief facts of the case are that during the year, assessee has paid Rs.84375/- to Ram Swaroop being contractors on which assessee fails to deduct TDS. The Ld. A.O was of the view that assessee was liabile for TDS on the above said payment and accordingly entire payment made to Ram Swaroop was disallowed.

In this regards it is respectfully submitted that first assessee would like to re-produce the provisions of section 40(a)(ia) for ready reference:

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

(a) in the case of any assessee
(v) -----

(ia) any interest, commission or brokerage; rent, royalty, fees: professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work) on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or after deduction has not been paid.
(A) in the case where the tax was deductible and was so deducted during the last month of the previous year, on or before the due date specified m sub-s. (1) of s. 139 or
(B) in any other case, on or before the last.....
Your good self may please very kindly be appreciate that the bare provision of s. 40(a)(ia) provides for non-deduction of amount which remains payable to a-resident in respect of various expenses. It is not applicable where expenditure is paid. It is applicable only in caseswhere the payments are due and outstanding.

The Supreme Court in the case, of Asstt. CIT v. Vellieppa Textiles Ltd. (2003) 184 CTR (SC) 193: (2003) 263 ITR 550(SC) held that the words in the statute are to be strictly interpreted and plugging loopholes is only for legislature and not for the Court.

The provision of section 40(a)(ia) applies to cases in which the amount are 'payable' and not applicable to the amounts which have been already paid. Reliance is placed on the decision of Hon'ble ITAT Hyderabad in the case of M/s Tej Constructions in ITA No. 308/Hyd/2009 for the assessment year 2005-06 vide order dated 23rd Oct. 2009.

*Further Hon'ble High Court of Allahabad in the case of Commissioner of Income-Tax, Muzaffarnagarvs. Vector Shipping Services (P.) Ltd. reported in [2013] 38 taxmann.com 77 (Allahabad) held that "10. It is to be noted that for disallowing expenses from business and profession on the ground that TDS has not been deducted, the amount should be payable and not which has been paid by the end of the year" confirming the order of CIT(A) deleting the addition. The Finding of CIT(A) is being re-produced as under: **"In the light of the above facts and following the ratio decidende of the Hon'ble Courts(supra), it is held that firstly, the provisions of section 194C read with sec 40 fa) (ia) of the Actare not applicable to the case of the appellant. Secondly, nature of expenses incurred by the** assessee*

do not form part of expenses disallowable under section 40 (a) (ia) of the Act.Thirdly, when such** type of **expenses incurred** by **the appellant were totally paid and notremained payable as at the end of the relevant accounting neriori, provisions of section 40a(ia) of the Act are not applicable. Further, the appellant has clarified all the five questionsraised as above and its clarifications are found satisfactory and convincing. Thus no adverse**inference **could be drawn on the** issues **even after making intrusive inquiries inrzspectof** the **transition nf**business **made by the appellant.** Thus **it is held that the AO was not justified inmaking addition of Rs.1,17,08,021/- on account nfdisallowance made under section 40 (a)(in) of the I T. Act, 1S$1. The same is directed to be deleted.
In our case, total amount was paid to above said contractors and nothing was remains payable at the end of March,2011 and thus issue Is squarrely covered with the decisions of Hon'blejurisdictioanl high court and accordingly it is prayed that claim of the assessee may please very kindly be allowed.

6.8 I have carefully gone through the assessment order, written submission as well as verbal arguments made by the Ld. A.R.. I do not agree with the submission of appellant. I agree with the finding of A.O. given in the assessment order & the addition is hereby confirmed.

15.1 On perusal of the impugned order of the Ld. CIT(A), it is found that the order of the Ld. CIT(A) on this issue regarding disallowance under section 40a(ia) of the Act is not a speaking order. He has rejected the submissions made by the assessee in a summary manner without any discussion and without stating any reasons. This is a violation of Section 250(6) of the Act whereby the Ld. CIT(A) was duty bound to pass a speaking order. The Ld. Sr. DR for the Revenue relied on the orders by the AO and the Ld. CIT(A). In view of foregoing, and having due regard for Section 250(6) of the act, we restore this issue to the file of the Ld. CIT(A) with a direction to adjudicate the issue on merits in accordance with law after providing reasonable opportunity to the assessee.

16. The Assessing Officer disallowed an amount of Rs.50,800/- claimed by the assessee on account of battery and mobile expenses. The Ld. CIT(A) confirmed this disallowance. At the time of hearing before us, the Ld. AR for the Assessee relied on the written submission, the relevant portion of which is reproduced below: -

Submission on Ground No. – 11 – Disallowance of Rs. 50,800/- towards Mobile Expenses and its depreciation.

Details submission has been made before Ld. A. O. and Ld. C.I.T. (A) which were reproduced in the C.I.T. (A) Order from page 63 to page 66 of the C.I.T. (A) Order.

In this regard, it is submitted that Mobile sets were purchased and issued to employees and Directors of the Company for the use for the purpose of business of Company. Required details of Purchase of Mobiles and the details of person to whom mobile have been given for the business purpose of the Company as been explained. The Ld. A. O. examine these details from the list of Employees given in the Bonus Record and held that 19 names to whom mobile were given are not the employees of the Company. The finding of the Ld. A. O. is also upheld by the C.I.T. (A) without appreciating that they are other Employees in addition to employees mentioned in Bonus Record. Thus, the Mobile were also given to employees whom bonus was not paid. However, mobile has been issued by the Assessee Company to facilitate the business.

The Ld. Authorities below without appreciating the above fact, disallowed on ad-hoc basis 20% of the amount of mobile expenses which is Rs. 45,400/- and 10% of depreciation which is Rs. 5,080/-, thus total disallowance Rs. 50,800/-. The Authorities below fails to appreciate that no ad-hoc disallowance should be made in this regard as the

mobiles were issued to the Directors and Employees of the Company irrespective of fact bonus is not paid to the employees. However, Authorities below without properly examine the list of employees to whom bonus has not been paid solely relied upon the detail of the Employees to whom Bonus has been paid and upheld the disallowance without providing any further opportunity is contrary to the provision of law.

WITHOUT PREJUDICE TO ABOVE

It is prayed that no such disallowance is made in A. Y. 2012-13 where under the similar sets of facts and circumstances, Special Audit u/s 142(2A) of I. T. Act has been conducted. Copy of Order of Hon'ble I.T.A.T. for A. Y.-2012-13 in ITA No. 460/LKW/2019. Copy of Order is at page __76 - 87__ of the Paper book.

17. As stated in the aforesaid written submission, the Ld. AR for the assessee submitted that in similar facts and circumstances, the issue regarding battery and mobile expenses has been decided in assessee's own favour by the aforesaid order dated 20.02.2023 (in ITA. No.460/LKW/2016) of ITAT Lucknow Bench for AY. 2012-13 in assessee's own case. Ld. Sr. DR for the Revenue relied on the orders passed by the AO as well as Ld. CIT(A). No facts and circumstances or provisions of law have been brought for our consideration from either side to distinguish the case before us from assessment year 2012-13. In view of the foregoing and respectfully following the aforesaid order dated

20.02.2023 for AY. 2012-13 in assessee's own case in ITA. No.460/LKW/2016, we decide the issue in the present appeal also in assessee favour and direct the Assessing Officer to delete the aforesaid disallowance of Rs.50,800/-.

18. The Assessing Officer disallowed an amount of Rs.19,46,402/- under section 80IB(10) of the Act. The Ld. CIT(A) confirmed this disallowance. At the time of hearing before us, the Ld. AR for the Assessee relied on the written submission, the relevant portion of which is reproduced below: -

Submission on Ground No. 12- ***That Ld. C.I.T. (A) has erred in confirming the disallowance of deduction claimed u/s 80IB(10) of I. T. Act, 1961.***

It is prayed that assessee in the Return of Income has wrongly claimed deduction of Rs. 75,61,471/- u/s 80IB(10) of I. T. Act. The Correct amount of deduction was Rs.19,46,402/-. This fact was mentioned in the Assessment Proceeding. During the course of assessment proceeding, mandatory Form No. 10CCB was also furnished in which total allowable deduction was given Rs. 19,46,402/-. Copy of the same is at page _61 - 64____ of the Paper book. It is prayed in the Assessment Proceeding that the mistake was due to oversight and without any wrong or malafide intention. However, the Ld. A. O. disallowed the entire claim inspite of the fact that the Special Audit Report worked out the deduction of Rs. 19,46,402/-. The detail of

Project on which Assessee had claimed deduction u/s 80IB(10) is being furnished as under :-

Sr. No.	Name of Project	Sanctioning Authority	Sanction Letter No.	Sanction Letter date	Layout No.
1	Super City	BDA	3309	30.08.2006	38A/2003 (Revised)

It is prayed that the said deduction has been claimed in A. Y. - 2010-11. The Facts and Circumstances of this year are same as was in A. Y. – 2010-11. The Hon'ble I.T.A.T. Bench-B, in ITA No. 127/LKW/2016 vide order dated 11.04.2017 has set aside this issue to Ld. C.I.T. (A) . Copy of Order of Hon'ble I.T.A.T. dated 12.04.2017 is at **page _103 - 105__** of the Paper book. Thus, the issue of allowability of deduction is pending before Ld. C.I.T. (A) for A. Y. 2010-11 for readjudication.

We pray that since the facts and circumstances of A. Y. – 2010-11 are similar to A. Y.-2011-12 regarding allowability of deduction u/s 80IB(10) of I. T. Act. Therefore, this issue may also be restore to Ld. C.I.T. (A) during this year.

19. As stated in the aforesaid written submissions, the Ld. AR for the assessee submitted that in similar facts and circumstances, the issue regarding assessee's claim u/s 80IB of the Act has been restored back to the file of Ld. CIT(A) in assessee's own case by the aforesaid order dated 20.02.2023 (in ITA. No.460/LKW/2016) for AY. 2012-13 of ITAT Lucknow

Bench. Ld. Sr. DR for the Revenue relied on the orders passed by the AO as well as Ld. CIT(A). No facts and circumstances or provisions of law have been brought for our consideration from either side to distinguish the present case before us from assessment year 2012-13. In view of the foregoing and respectfully following the aforesaid order dated 20.02.2023 in assessee's own case in ITA. No.460/LKW/2016, we also set aside this issue regarding assessee's claim u/s 80IB of the Act to the file of the Ld. CIT(A), with the direction to pass fresh order on this issue in accordance with law, after providing reasonable opportunity to the assessee.

20. Ground Nos. 2 to 17 of appeal of the assessee is hereby treated as disposed of in accordance with the aforesaid direction.

21. In the result, the appeal of the assessee is partly allowed.

Order is pronounced today in open court on 05/12/2024.

Sd/-	Sd/-
[KUL BHARAT]	[ANADEE NATH MISSHRA]
VICE PRESIDENT	ACCOUNTANT MEMBER

DATED: 05/12/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

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

By order

//True Copy//

Assistant Registrar