

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.6507/DEL/2018
(Assessment Year :2014-15)**

**ITA No.6508/DEL/2018
(Assessment Year :2015-16)**

**ITA No.6766/DEL/2019
(Assessment Year :2016-17)**

Hindustan Coca Cola Beverages Private Ltd.,
Unit No.303-308, 3rd Floor,
Bani Address One,
Golf Course Road, Sector 56,
Gurugram – 122 011 (Haryana).

vs. Addl. CIT,
Spl. Range 4,
New Delhi.

(PAN: AAACH3005M)

**ITA No.6297/DEL/2018
(Assessment Year :2014-15)**

**ITA No.6298/DEL/2018
(Assessment Year :2015-16)**

**ITA No.6487/DEL/2019
(Assessment Year :2016-17)**

Addl. CIT,
Spl. Range 4,
New Delhi.

vs. Hindustan Coca Cola Beverages Private Ltd.,
B-91, Mayapuri Industrial Area, Phase 1,
New Delhi – 110 064.

(PAN: AAACH3005M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sachit Jolly, Advocate
Ms. Soumya Singh, Advocate
REVENUE BY : Shri Dayainder Singh Sidhu, CITDR

Date of Hearing : 22.10.2024
Date of Order : 03.01.2025

ORDER

PER S. RIFAUR RAHMAN, AM :

1. These cross appeals filed by the assessee and Revenue are against the separate orders of Id. Commissioner of Income-tax (Appeals)-35, New Delhi (hereinafter referred to 'Ld. CIT (A)') dated 25.07.2018, 25.07.2018 and 29.05.2019 for AYs 2014-15, 2015-16 and 2016-17 respectively.
2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order.

ASSESSEE'S APPEAL

(ITA No.6507/DEL/2018 FOR AY 2014-15)

(ITA No.6508/DEL/2018 FOR AY 2015-16)

(ITA NO.6766/DEL/2019 FOR AY 2016-17)

3. Ground No.1 in all the three Assessment Years i.e. 2014-15, 2015-16 & 2016-17 is not pressed, hence the same are dismissed as not pressed.
4. With regard to Ground No.2 in all the three Assessment Years i.e. 2014-15, 2015-16 & 2016-17 regarding disallowance of traffic challans, at the outset, Id. Counsel of the assessee submitted that the same issue arising in assessee's own case for AY 2009-10 has been allowed by a coordinate

Bench of ITAT in its order dated 07.06.2023 passed in ITA No.4588-4589/Del/2015 (refer para 24 at pages 14 – 15 of the order). He submitted that the said decision for AY 2009-10 has also been followed in assessee's own case for subsequent AY 2010-11 by a coordinate Bench of ITAT in its order dated 18.07.2023 passed in ITA No.5671/Del/2018 (refer paras 24 to 27 at pages 9 to 11 of the order). Furthermore, he submitted that the said issue has been again adjudicated in favour of the assessee by this Tribunal in assessee's own case for subsequent assessment years 2011-12 to 2013-14 vide order dated 05.03.2024 passed in ITA No.5925/Del/2018 (refer paras 14-20 at pages 14 to 19 of the order). Accordingly, he prayed that this ground may be allowed in favour of the assessee.

5. On the other hand, ld. DR for the Revenue did not controvert this proposition.
6. Considered the rival submissions and perused the material available on record. We observed that the same issue arose in assessee's own case for AY 2009-10 has been allowed by coordinate Bench of ITAT in its order dated 07.06.2023 passed in ITA Nos.4588-4589/Del/2015 and the said decision for AY 2009-10 has also been followed in assessee's own case for subsequent AYs 2010-11, 2011-12 to 2013-14. Respectfully following the decision of

the coordinate Bench of the Tribunal, we allow this ground of assessee's appeal in all the AYs under consideration.

7. As regards Ground No.3 in all the three Assessment Years i.e. 2014-15, 2015-16 & 2016-17 i.e. disallowance of deposits from customers, at the outset, ld. Counsel of the assessee submitted that the same issue arising in assessee's own case for AY 2010-11 has been allowed by the coordinate Bench of ITAT in its order dated 18.07.2023 passed in ITA No.5671/Del/2018 (refer paras 36 & 41 at pages 13 to 15 of the order). He submitted that the said decision for AY 2010-11 has also been followed in assessee's own case for subsequent AY 2017-18 by the coordinate Bench of ITAT in its order dated 14.09.2023 passed in ITA No.975/Del/2023 (refer paras 5 to 8 at pages 2 to 5 of the order). Furthermore, he submitted that the said issue has again been adjudicated in favour of the assessee by this Tribunal in assessee's own case for subsequent assessment years 2011-12 to 2013-14 vide order dated 05.03.2024 passed in ITA No.5925/Del/2018 (refer paras 23-29 at pages 20 to 24 of the order). Accordingly, he prayed that this ground may be allowed in favour of the assessee.
8. On the other hand, ld. DR for the Revenue did not controvert this proposition.

9. Considered the rival submissions and perused the material on record. We observed that the same issue was taken up by the ITAT in assessee's own case for AY 2010-11 and the same was allowed by a coordinate Bench of ITAT in its order dated 18.07.2023 passed in ITA No.5671/Del/2018 and further the said decision for AY 2010-11 was followed in assessee's own case for subsequent AYs 2017-18 and 2011-12 to 2013-14. Therefore, respectfully following the aforesaid decisions of the coordinate Bench of the Tribunal, we allow this ground in the all AYs under consideration.
10. Ground No. 4 in AY 2014-15 is on account of Corporate Social Responsibility ("CSR") expenditure amounting to Rs.5,29,86,175/-. Brief facts of this ground are, the AO while making the above disallowance on account of CSR for A.Y 2014-15 relied upon Explanation 2 to section 37 of the Act to disallow expenditure incurred on account of CSR. Against this order, assessee preferred an appeal before the Id. CITA) and Id. CITA) agreed with the submission of the assessee that Explanation 2 to section 37 would not apply in the year under consideration, however, he sustained the said disallowance on the basis that CSR expenditure does not assume the character of business expenditure which is required to claim deduction u/s 37 of the Act.

11. At the time of hearing, ld. AR for the assessee submitted that the AO while making the said addition wrongly invoked Explanation 2 to Section 37 of the Act, which applies prospectively from assessment year 2015-16 and hence is not applicable to the year under consideration as rightly held by the ld. CIT(A). In this regard, ld. AR relied on the decision of the Hon'ble jurisdictional High Court in the cases of PCIT-7 vs. PEC Ltd. in ITA 268/2022 and PCIT-7 vs. M/s. Steel Authority of India Ltd. in ITA 3/2023, wherein the Hon'ble High Court dismissed the appeals of the Department on the challenge to allowability of the CSR expense prior to the amendment and categorically held that Explanation 2 to Section 37 which was inserted via Finance (No.2) Act. 2004 w.e.f. 01.04.2015 would apply in relation to assessment year 2015-2016 and the subsequent years.
12. He further submitted that however, the ld.CIT(A) has wrongly summarily, without examining the nature of the CSR expenditure, upheld the disallowance by holding that the said expense has no direct nexus with respect to the business of the assessee. Further, more he submitted that for claim of an expense under the provisions of Section 37 of the Act, a direct nexus is not necessary and that even if there is an indirect nexus with the business, the same is allowable in terms of the provisions of Section 37 of

the Act. He accordingly submitted that while conducting CSR activities, such as construction of "CAREER DEVELOPMENT CENTRE", the assessee indirectly obtained an intangible benefit by way of advertisement as the board placed at such places, displayed the name of the assessee company and hence, the same is for the purpose of business of the assessee. In this regard, he brought to our notice pages 1834 to 1838 and 1850-1860 of the paper book Vol. II wherein the nature and details of the CSR expense incurred by the assessee was submitted before the Id. CIT(A). He further placed reliance on the decision rendered by this Tribunal in the case of Ranbaxy Laboratories Ltd. v. Additional Commissioner of Income-tax (2010) 39 SOT 17 (Delhi) (URO) wherein the claim of expenditure incurred in order to bring goodwill to the assessee or for promoting the business was held as allowable. The relevant finding of the decision reads as under:-

"31. We have carefully considered the rival submissions in the light of material placed before us. The contribution of Rs. 50 lacs was made by the assessee to Ranbaxy Community Health Care Society in assessment year 1997-98 and the said issue was considered by the Tribunal in paras 6 to 6.16. After discussing the issue in detail, it was held that such contribution was an expenditure incurred by the assessee to bring goodwill to the assessee or for the purpose of promoting its business and is an allowable expenditure. The conclusion of Tribunal is in paras 6.9 to 6.16 and the same is reproduced below for the sake of convenience:

...
Just because the expenditure was voluntary in nature and was not forced on the assessee by a statutory obligation, it could not cease to be a business expenditure. Therefore, the authorities below indeed erred in law in declining deduction of the expenditure incurred on 20-point programme which was beyond dispute or controversy, at the instance of the Government and was to discharge the assessee's obligations towards society as a responsible corporate citizen (para 10)

6.16 In view of the above authorities, it is clear that even if there is no statutory obligation on the part of the assessee to incur the expenditure, but the expenditure has been incurred to bring goodwill to the assessee or is or the purpose off promoting its business then such expenditure is to be allowed as business expenditure. In view of the above, we uphold the claim of the assessee and allow ground No.5."

32. In this view of the situation, as the abovementioned order of the Tribunal is regarding contribution to the same institution, respectfully following the above order we find no infirmity in the order of CIT(A) vide which it has been held that assessee is entitled to claim the said contribution as an expenditure. We decline to interfere and this ground of revenue is dismissed:"

13. Ld. AR further submitted that the expense was claimed under the head "Miscellaneous Expense" and referred to page 30 of the paper book Vol. I and hence, was booked above the line. He therefore submitted that the query raised by the Hon'ble Bench regarding the CSR expenses being above the line or below the link is not germane to the issue at hand.
14. On the other hand, ld. DR for the Revenue submitted that the High Court

decision relied by the assessee are applicable prospectively. Not relevant for this assessment year. He submitted that the nature of expenditure also relevant and important to decide whether the same are revenue in nature or capital in nature. The capital assets cannot be claimed as business expenditure. He wondered, how the CSR expenditures are beneficial to the assessee, which are incurred for the benefits of community. He relied on the findings of lower authorities.

15. Considered the rival submissions and material placed on record. We observed that the assessee has incurred CSR expenditure on activities involving benefits to its employees, community and local area where it exists. During the year, Assessing Officer observed that assessee has incurred Rs.529.86 crores towards donation under the head 'misc. expenses'. He was of the opinion that CSR expenditures are not allowable expenditure u/s 37 of the Act w.e.f. AY 2015-16. He is also of the view that Explanation 2 of section 37 of the Act is not applicable in the current assessment year. However, the expenses incurred by the assessee cannot be considered as wholly or exclusively for the purpose of business as the application of income is not allowed as deduction for the purpose of computing taxable income since the amount spent on CSR activities. Therefore, any

expenditure incurred on CSR is not an allowable expenditure as the same is not incurred for the purpose of business and also Explanation 2 of section 37 of the Act clarifies the same. Accordingly, he disallowed the same. However, we observed that the Assessing Officer himself acknowledged the fact that expenses pertained to CSR activities are effective from AY 2015-16. The issue involved under consideration is related to AY 2014-15. Even the amendment made in Companies Act, 2013 as per the policies, it is effective from 01.04.2014, as held in the case of PEC Limited (supra) and Steel Authority of India Limited (supra), the amendment made in Companies Act as well as in section 37 are not applicable to the current assessment year. Therefore, these expenditures are incurred without there being any obligation on the assessee. Further we observed that Id. CIT (A) also came to the same conclusion, however he has taken a different view after examining the nature of CSR expenditure holding that such expenses have no direct nexus with respect to the business of the assessee. We observed that the expenditure incurred on CSR activities may not have direct nexus with the activities of the assessee but it may have indirect and may bring goodwill to the assessee. We observed that similar view was expressed by the coordinate Bench in the case of Ranbaxy Laboratories Ltd. (supra) and

decided the issue in favour of the assessee at pars 31 and 32 of the order.

Therefore, we are inclined to decide the issue in favour of the assessee as the assessee has incurred expenditure for the development of their own staff/workers as well as in the general public interest without there being any obligation imposed upon them. Accordingly, ground no.4 raised in AY 2014-15 raised by the assessee is allowed.

16. Ground No.5 of AY 2014-15 is regarding addition on account of Long-Term Capital Gain ("LTCG) on sale of land amounting to Rs.12,60,77,690/-. The relevant facts of this ground are, during the year under consideration, the assessee claimed Rs.12,60,77,690/- on account of LTCG, which was set off by the assessee with Capital Loss and Unabsorbed Depreciation brought forward from earlier years. During assessment proceedings, AO raised a query on the ground that schedule of fixed asset shows value to be Rs.10.84 crores instead of what assessee shows cost of acquisition at Rs.20,69,46,071/-.In response, assessee replied stating that the said land was acquired as part of slump sale which the assessee had acquired from M/s Brindavan Beverages, Karnataka as part of slump sale in 1998 when the assessee acquired the complete business of Brindavan Beverages, therefore there is no purchase deed for this land alone as it was part of slump sale

agreement. Further, assessee also submitted sale deed, conveyance deed, books of accounts and certificate issued by the income tax department for the said land vide its response dated 13.12.2013, which are placed at pages 133-135, 137-157 of the Convenience Compilation 149-151, 153-173 of the paper book Vol.1, however, the AO incorrectly noted in the assessment order that the assessee has not furnished the details. The stamp duty value of land and building was Rs.23.55 crores (Rs.20.93 crores plus Rs.2.62 crores)

17. Further, it was submitted that towards the close of AY 2000-01, the assessee had carried out a detailed review of its business basis a long-term discounted cash flow approach on account of the following reasons:-
 - a. Withdrawal of backward area incentives for future expansions.
 - b. Non-reduction as initially expected of the effective excise duty levies.
 - c. Increase in other indirect tax levies in some states.
 - d. Highly elastic nature of demand for beverages inhibiting simultaneously sales growth as well as ability to raise prices.
18. Basis of the above business valuation exercise, it was concluded that a business impairment of Rs.1400 crores was required to be made.
19. In the absence of guidelines on impairment in Indian Accounting Standards at that time, the Company decided to allocate the impairment, inter-alia, by allocating a portion of the business impairment on assets acquired from

Bottlers and assets of Greenfield projects on a pro rata basis.

20. Accordingly, the gross block and depreciation was restated and total impairment of Rs.47.59 crores was shown in the fixed asset schedule on land in the financial statement. This resulted in the land transferred during the subject assessment year being shown at Rs.10.84 crores in the books of accounts of the Assessee.
21. As regards the cost of acquisition showing at Rs.10,84,01.36l/-, ld. AR submitted that the same was on account of impairment loss recorded under Companies law for the purpose of books of account and the same cannot be considered under Income Tax law, as the provisions of the Act do not recognize any impairment addition/ reduction for the purpose of calculating Capital Gain and Loss. However, the AO observed that in FY 1999-2000, the very next year of acquisition by the assessee, the assessee revalued its assets, valuing the land at Rs.10.84 crores and therefore, the said value reflects its Fair Market Value ("FMV") at the time of acquisition. The AO held that the cost of acquisition for capital gains computation cannot be Rs.20.69 crores due to lack optimized prices. Accordingly, the FMV of Rs.10.84 crores was considered as the acquisition cost for capital gains calculation.

22. The assessee challenged the said addition before the Id. CIT(A), who upheld the addition.
23. At the time of hearing, Id. AR for the assessee submitted that the AO as well as the Id. CIT(A) have grossly erred on facts and in law in taking the value reflecting in the books of account as the cost of acquisition for the land in question. He submitted that the cost of acquisition has to be what was paid to M/s Brindavan Beverages as part of slump sale in 1998 when the assessee acquired the complete business of Brindavan bottle. He further submitted that the reduction in the cost of acquisition on account of business impairment loss recorded under Companies law for the purpose of books of account cannot be considered as cost of acquisition under Income Tax law for the purposes of determining the capital gains as the provisions of the Act do not recognize any impairment addition/ reduction for the purpose of calculating Capital Gain and Loss. He submitted that at this juncture, it is pertinent to note that in the financial statements for financial year 1999-2000 relevant to assessment year 2000-01, the impairment loss was recorded as an exceptional item in the Profit and loss account. However, for income tax purposes, the same was disallowed in the computation of income and hence, no loss was claimed.

24. He placed on record copy of financial statements for financial year 1999-2000 relevant to assessment year 2000-01 along with income tax return and computation of income as Enclosure 1 and copy of financial statements for financial year 2000-2001 relevant to assessment year 2001-02 along with income tax return and computation of income as Enclosure 2.
25. Furthermore, ld. AR for the assessee submitted that the Notes to the financial statement for F.Y. 1999-2000 (refer Note 10 @pg. 19 of the financial statements) clearly states that basis long term discounted cash flow, a business impairment was to be recognized. He submitted that in the financial statements, it is clearly mentioned that the valuation of the assets determined at the time of acquisition is correct. Accordingly, it is submitted that there was no fall in the value of the asset but only a business impairment was recognized in the books of accounts. Further, he submitted that since the Indian Accounting Standards did not prescribe for any method to recognize such impairment loss, the Company had allocated a portion of the impairment loss towards its fixed assets. He submitted that there was no fall in the market value of the assets per se.
26. It is further submitted that if the approach of the Revenue is accepted, it would lead to absurdity as it would enable a person to claim higher cost of

acquisition only on account of the inflated cost of acquisition recorded in the books of account and therefore, the addition made by the AO and sustained by the Id. CIT(A) without considering the material on record, is completely erroneous. Furthermore, he submitted that the lower authorities have wrongly observed that the Assessee had not produced the copy of slump sale agreement with M/s Brindavan Beverages, whereas a perusal of submission dated 13.12.2016 filed before the AO and submissions dated 24.10.2017 and 15.06.2018 filed before the Id. CIT(A), which are placed on record at pages 160- 185 of the Convenience Compilation 1790-173 of the paper book Vol I, clearly shows that the said agreement was filed with the lower authorities. He therefore submitted that the lower authorities have wrongly recorded that the said agreement was not filed before them and have thus, failed to judiciously consider the material on record. He also brought to our attention to the No Objection Certificate issued by the income tax authority under Section 269-UD (1) of the Act regarding the transfer of the land in question for a consideration of Rs.20,93,29,162/- and in this regard, referred pages 159 of the Convenience Compilation 175 of the paper book Vol 1. He submitted that in this certificate issued on 19.05.1998, the Assistant Commissioner of Income Tax certified that the Income Tax Department has

no objection to the transfer of the subject property for an apparent consideration of Rs.20,93,29,162 from M/s. Brindavan Beverages Private Limited to the assessee. He further submitted that the cost of acquisition considered by the assessee for capital gains was Rs.20,69,46,071 /- which is still lesser than the cost certified by the income tax authority. He further submitted that the assessee had rightly computed the capital gains on the land sold taking the cost of acquisition at Rs.20,69,46,071/- and that the AO as well as the Id. CIT(A) have erroneously made/upheld the addition on account of LTCG. Accordingly, he prayed that the said ground of appeal be allowed and the addition made on account of LTCG be deleted.

27. On the other hand, Id. DR for the Revenue relied on the findings of the Assessing Officer at para 24 of the assessment order and rejected the detailed submissions of the Id. AR in this regard.
28. Considered the rival submissions and material placed on record. We observed that assessee has sold some land for a total consideration of Rs.68,83,50,000/- and claimed indexed cost of acquisition of original cost of the land at Rs.20,69,46,071/- and determined the indexed cost of acquisition at Rs.55,36,24,959/-/-. The Assessing Officer observed from the Balance Sheet and depreciation schedule that assessee has deducted/adjusted an

amount of Rs.10.84 crores from the gross block relating to the abovesaid sale of land. In support of that, assessee submitted that it acquired the said land from M/s Brindavan Beverages for FY 1998-99 as part of the Agreement to Transfer its undertaking in whole. The stamp duty value of land and building was recorded as Rs.23.55 crores as per Conveyance Deed dated May 1998. The total value of land and building in the books of account is taken as Rs.22.47 crores only. In FY 1999-00, the company had carried out a total review of its business and during the year prepared a long term discounted cash flow business model for valuation of its business and accordingly it carried out business impairment estimated at Rs.1400 crores. Accordingly, it made adjustment in the books of account. It was submitted that this is the reason of re-stated and total impairment of Rs.47.59 crores towards impairment loss was adjusted in the fixed asset schedule on land and that is the reason for which the land transferred during the current assessment year was shown at Rs.10.84 crores in the books of account.

29. After considering the factual matrix, we observed that the assessee has acquired M/s. Brindavan Beverages in FY 1998-99 i.e. in AY 1999-00. The agreement was submitted before us for the above transaction. The relevant agreement was registered with the value for the purpose of registration of

land and building at Rs.20,93,29,162/- and paid the stamp duty of Rs.2,61,66,145/- and valuation of plant & machinery for the purpose of stamp duty was mentioned as Rs.6,21,77,550/-, referred page 1880 of the paper book. Further we observed that the assessee has acquired following land and building of the abovesaid agreement which is at page 1895-1897. For the sake of clarity, it is reproduced below :-

*“SCHEDULE
 BEING THE DESCRIPTION OF THE SAID PLOT AND THE BUILDING
 CONSTRUCTED ON STANDING UPON OR APPURTENANT TO THE SAID
 PLOT*

A. THE SAID PLOT

The plot of land measuring 8471.25 sq.mts. out of the total extent of 2 acres 20 guntas (10120 sq. mts.) in Sl.No.44/1, converted for industrial use, situated at Hebbal Village, Kasaba Hobli, Bangalore North Aluk and falling under City Municipal Council Byatarayanapura bearing Katha no.401 butted and bounded as follows :-

<i>East By</i>	<i>Bangalore- Bellary Road</i>
<i>West By</i>	<i>Byatarayapura Anjaneya Temple in Inamati Land and Byatarayapura Gudi.</i>
<i>North By</i>	<i>Kodigehalli Road and</i>
<i>South By</i>	<i>Neeubhavi Deddasonappa's land i.e. Sy.No.44/2</i>

*B. THE SAID BUILDING CONSTRUCTED ON STANDING UPON OR
 APPURTENANT TO THE SAID PLOT.*

Building and civil works, with plinth area admeasuring 7659.71 sq.mts. situated at 44/1, Bellary Road, Kodigehalli Gate, Bebbal, Bangalore-560024 and comprising the following :-

- 1. Manufactuirng Unit including*
- 2. Corridors crowns and chemical stores with RC Roof and CC flowing, roof height of 12 ft.*
- 3. Raw syrup room (old plus new), canister wash room, old syrup room with RC roof ht. of average 15 ft., glazed tiles for walls upto ceiling, acid*

- resistance ceramic tiles of 20 mm thick for flowing.*
4. *Bottling Hall with glazed tiles for Walls upto 20 feet acid resistance ceramic tiles of 20 mm thickness for flooring RCC roof with beams, aluminium doors & windows and false ceiling of perforated particle board.*
 5. *Microlab, quality, assurance lab, production office with glazed tiles for walls upto 7 ft. Cuddappah tiles for floor RCC roof of 12 ft.*
 6. *CO2 Room, LT panel room, workshop & shipping office of RCC roof of ht.19 CC flooring.*
 7. *Bottling washing area, packing area Tandoor and CC flooring, assessee company Sheet roof 18 ft. to bottom of Trussels.*
 8. *Passage for conveyors, gen room, boiler room, with PCC flooring & AC sheet roof.*
 9. *Finished goods store, loading yard with CC flooring AC sheet roof of 20 ft. height over R.S. Joists.*
 10. *Finished goods store with AC sheet roof of 20 ft steel ventilation with north tile glazing CC flooring and walls on all sides.*
 11. *Storage tanks of RCC for treated and untreated water.*
 12. *Overhead tank of plastic make*
 13. *Overhead tank of RCC.*
 14. *Empty bottle godown with AC sheet roof over RS joists at ht. of 19 ft. PCC flooring over a bed of CC of 1 mt. Ht. 2 side walls of hollow CC block.*
 15. *Wooden crates stored shed with AC sheet roof Y brickwalls.*
 16. *Security room (2 nos.) with RC roof and CC flooring.*
 17. *Effluent treatment plant and terminal manhole, setting tank, aeration & neutralisaiton tank, grease trap, bar screen, sludge drying beds.*
 18. *MS gate at entrance (3 nos.)*
 19. *Toilets (ladies & gents) change room of RC roof, glazed tiles for walls upto 7 ft. ceramic tiles flooring.*
 20. *Cycle/Scooter parking with AC sheet roof PCC floorings.*
 21. *Chemical stores, general stores, chilling plant, repairs garage, spare part room etc. with AC sheet roof PCC flooring.*
 22. *Accounts Section with AC sheet roof PCC floor, thermocol false ceiling MS doors.*
 23. *Compound wall at Ransport Division partly of brickwork (2 M) & partly of SS masonry 92.5m.*
 24. *Compound wall at main plant with SS masonry and ht of 2.28 mts. & 4.9 mts.*
 25. *Conveyor cover room with AC sheet roof.*
 26. *Internal roads with black top.*
 27. *Tubewells with submersible pumps*
 28. *Hume pipes in bottling plant of dia ranging between 1 ft to 1.5 ft. Water pipe lines & storm water drains.*

29. *Transformer yard with barbed wiremesh fencing along with transformer of 250 KVA Kirloskar make.*
30. The abovesaid schedule clearly shows that assessee has acquired plot of land measuring 8471.25 sq.mts. out of the total extent of 10120 sq.mts. and also building constructed upon the abovesaid plot of land which includes manufacturing unit and several other related buildings as listed in the above schedule. During the hearing, we directed the ld. AR for the assessee to submit the Balance Sheet of FY 1999-00 in which the abovesaid assets were recorded or cost assigned to each assets acquired on the basis of slum sale. The assessee has submitted fixed asset schedule in which we observed that assessee has recorded gross value of total assets of Rs.679,68,48,544/- and in the addition to the goodwill and land freehold were at Rs.90,72,23,817/- and Rs.15,60,92,008/- respectively. However, assessee has not filed any notes of such slum sale anywhere in the Notes to Accounts or submitted any cost allocation. From the above, we were not in a position to separate the land and valuation of goodwill relating to the acquisition of slum sale during the year. At the same time, the assessee has submitted that in the FY 2000-01, it has revalued the assets to absorb business impairment loss and it submitted fixed assets schedule adjusting various values in goodwill as well as in

various assets and to that effect it has adjusted Rs.47.59 crores in the value of freehold land. At the same time, depreciation schedule for the purpose of income-tax was also filed. But assessee has not filed or submitted before us, the depreciation schedule prepared for the purpose of income-tax. What is relevant in this case is the depreciation schedule prepared for the purpose of income-tax for the AYs 1999-00, 2000-01 & 2001-02. As per the Act, no depreciation is allowed for block of land. In our view, whatever business impairment loss, assessee has recorded in the fixed assets schedule prepared for the purpose of Companies Act has no relevance considering the fact that no depreciation is allowed for the freehold land. Considering the overall facts on record, the assessee has not brought on record after acquiring the assets from M/s. Brindavan Beverages, how the cost are allocated and for the purpose of registration, it has booked the value of Rs.20,93,29,172/-, the combined value for land and building and when such slum sales are being recorded in the books of account the value has to be recorded on the basis of transfer value and if there is any difference between assets acquired and the liability, normally the difference would be charged to goodwill. Nothing has been brought on record to show that what is the value recorded by the assessee in FY 1999-00 after acquisition of the abovesaid factory with the

parcel of freehold land and it has only filed fixed assets schedule it contains details of addition on freehold land of Rs.15,66,92,008/- and also there are several additions in building as well. It is the duty upon the assessee only to show the fixed assets schedule prepared for the purpose of income-tax alone and in which value of respective assets are disclosed in terms of addition and deletions which tallies with the fixed assets schedule prepared for the purpose of Companies Act. No depreciation schedule prepared for the purpose of income-tax for AY 1999-00 to AY 2014-15 are submitted. The reason for demanding depreciation schedule is, the assessee has acquired not only freehold land but also various buildings. The assessee must have declared the buildings separately and claimed depreciation. No depreciation is allowed in freehold land. Therefore, the claim of the assessee due to business impairment loss adjustment has altered the value of freehold land which assessee has subtracted during the year upon sale is not acceptable and considering the fact that the index cost of acquisition has to be calculated from the actual cost of land acquired by the assessee in FY 1999-00. In the absence of any proper details, we are inclined to reject the submissions of the assessee. Therefore, we sustained the additions made by the Assessing Officer and accordingly, ground no.5 of AY 2014-15 is

dismissed.

31. With regard to Ground No.4 of AY 2015-16 regarding disallowance on account of penalty paid for wrong CENVAT utilized amounting to Rs.14,68,935/- and Rs.6008/-, the AO disallowed the said expenses holding the same to be in the nature of penalty for violation of any law for the time being in force. Ld. CIT (A) dismissed this ground by observing as under :-

“4.7.3. A perusal of the assessment order reveals that the AO observed Point 21 (a) of the Tax Audit report (3CD) and found a sum of Rs. 14,68,935/- and Rs. 6008/- which had been incurred on account of penalty paid for wrong way bill by the appellant company and wrong CENVAT was utilized by the company. The AO disallowed the same being expenses in the nature of penalty for violation of any law for the time being in force. The appellant has stated that the company had incurred an expense of Rs. 14,68,935 on account of penalty/ fine towards seizure of its truck (carrying finished goods) on account of wrong way bill under Bihar State VAT law. The appellant company has not accepted the said demand and the matter is pending before Commissioner, Commercial Taxes, Bihar, Patna. The appellant has submitted that the aforesaid amount was claimed as a deduction as the appellant was of the view that these payments were compensatory in nature and relief will be granted in appeal and the amount was debited to P&L A/c and reported in clause 21(a) of the Form 3CD.

The submissions filed by the appellant company and the case laws cited have been considered. It is seen that the AO has disallowed the aforesaid expenses as the nature of the payments are penal and therefore, cannot be allowed as business expenditure. I find no reason to interfere with the AD's order on this issue. Appeal on this ground is dismissed.

32. Aggrieved, the assessee in appeal before us raising the ground no 4 of the appeal. At the time of hearing learned AR of the assessee submitted that the assessee incurred an expense of Rs. 14,68,935/- on account of penalty/fine towards seizure of its truck, carrying finished goods, on account of wrong waybill under State VAT law. It was submitted that assessee has filed appeal before Commissioner, commercial Taxes, Patna, which is still pending for disposal. It was also submitted that it is in the nature of compensation and it is incurred wholly for the purpose of business. The issue under consideration is similar to the ground no.1, in which the similar issue of traffic challans was considered by the ITAT and decided in favour of the assessee.
33. On the other hand, Ld DR relied on the decision of the lower authorities.
34. Considered the rival submissions and material placed on record. We observe that the issue under consideration is relating to penalty or fine imposed on seizure of its truck with wrong way bill under VAT proceedings. The issue under consideration is whether the imposition of penalty on declaration of wrong way bill, which is contravention of VAT Law, is actually a offence or prohibited by law or it is only compensating in nature or compounding is allowable or not. At this stage, the issue under consideration is pending

before Commissioner of Commercial Taxes, Patna, not reached finality. This issue is quite different from the issue of Traffic Challans. As per the provisions of Section 37, Explanation 1, any expenditure incurred which is offence or prohibited by law shall not be deemed to be incurred for the purpose of business, which shall not be allowed to claim as business expenditure. That be the case, the issue under consideration is not yet settled, unless it is settled as compensation or compounding in nature, the same cannot be allowed to claim as expenditure. Therefore, the above expenditure is not allowable at this stage considering the nature of violation. Hence, we are inclined to dismiss the ground raised by the assessee. At the same time, we give liberty to the assessee to file application u/s 154 of the Act, in case the issue pending before the first appellate authority is decided in favour of the assessee or it is adjudicated as compensation or compounding, then assessee can claim them as allowable expenditure before AO. We are giving similar direction to the AO as well. In the result, ground raised by the assessee is dismissed as indicated above.

35. In the result, appeals filed by the assessee are partly allowed.

DEPARTMENT'S APPEAL
(ITA NO.6297/DEL/2018 FOR AY 2014-15)
(ITA NO.6298/DEL/2018 FOR AY 2015-16)

(ITA NO.6487/DEL/2019 FOR AY 2016-17)

36. Ground No.1 of AY 2014-15 is relating to the deletion of the addition of Rs.2,71,115/- made by the Assessing Officer in respect of delayed payment of the Employees contribution to the Provident Fund, ESI and other welfare funds, not appreciating that the employees contribution to PF & ESI is governed by the provisions of section 2(24) read with section 26(1)(va) and by section 43 B of the Act.
37. At the time of hearing, ld. DR for the Revenue submitted that the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT 143 taxmann.com 178 and accordingly, the ground may be allowed.
38. Ld. AR for the assessee did not object to this proposition.
39. Considered the rival submissions and material placed on record. We observed that this issue is now settled by the Hon'ble Supreme Court in the case of Checkmate Service Pvt. Ltd. (supra). Accordingly, in our considered view, this issue is already settled in favour of the Department. Hence, this ground of Department's appeal is allowed.
40. With regard to Ground No.2 of AY 2014-15 and Ground No.1 of 2015-16 &

2016-17 regarding deletion of addition made by the AO on account of inventory loss and leakage, ld. Counsel of the assessee submitted that the same issue adjudicated in assessee's own case for AY 2010-11 has been decided in favour of the assessee by a coordinate Bench of ITAT in its order dated 18.07.2023 passed in ITA No.5810/Del/2018 and referred paras 45 to 52 at pages 15 to 17 of the order. He submitted that the said decision for AY 2010-11 has also been followed in assessee's own case for subsequent AY 2017-18 by a coordinate Bench of ITAT in its order dated 14.09.2023 passed in ITA No.928/Del/2023 and referred paras 10 to 14 at pages 5 to 7 of the said order. He further submitted that the said issue has again been adjudicated in favour of the assessee by this Tribunal in assessee's own case for subsequent assessment years 2011-12 to 2013-14 vide order dated 05.03.2024 passed in ITA No.5903/Del/2018 and referred paras 31-36 at pages 25 to 30 of the order. Accordingly, he prayed that this ground may be dismissed.

41. On the other hand, ld. DR for the Revenue did not controvert this proposition.
42. Considered the rival submissions and perused the material on record. We observed that the same issue arose in assessee's own case for AY 2010-

11 and the same was dismissed by a coordinate Bench of ITAT and the said order in AY 2010-11 has also been followed in subsequent AYs 2011-12 to 2013-14 and 2017-18. Accordingly, respectfully following the decision of coordinate Bench of this Tribunal, we dismiss this ground of Revenue's appeals.

43. In the result, all the appeals of the assessee's for AYs 2014-15 to 2016-17 are partly allowed and Department's appeals for AYs 2014-15 to 2016-17 are also partly allowed.

Order pronounced in the open court on 3RD January, 2025.

**SD/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

**SD/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated : 03.01.2025
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-35, New Delhi.
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**