आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डा॰ एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 235/JP/2024
निर्धारण वर्ष/Assessment Year :2017-18

Deputy Commissioner of Income Tax, Circle-06, Jaipur	बनाम Vs.	Rajasthan State Ganganagar Sugar Mills Limited 4th Floor, Nehru Sahkar Bhawan, Bhawani Singh, Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAACR8906R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 279/JP/2024
निर्धारण वर्ष/Assessment Year :2017-18

Rajasthan State Ganganagar Sugar Mills Limited 4th Floor, Nehru Sahkar Bhawan, Bhawani Singh, Jaipur	बनाम Vs.	Assistant Commissioner of Income Tax, Circle-06, Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAACR8906R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Saurav Harsh, Adv.
राजस्व की ओरसे/Revenueby: Mrs. Anita Rinesh, JCIT-DR

सुनवाई की तारीख/Date of Hearing : 17/04/2025
उदघोषणा की तारीख/Date of Pronouncement : 08/05/2025

आदेश/ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Both the present cross appeals are filed because revenue and assessee feel aggrieved by the order dated 09.01.2024 by the learned National Faceless Appeal Centre, Delhi [for short CIT(A)] dated 09/01/2024 for the Assessment Year 2017-18. The said order of the ld. CIT(A) was passed because the assessee challenged before him the assessment order passed by ACIT, Circle-6, Jaipur [for short AO] u/s 143 (3) of the Income Tax Act, 1961 [for short "Act"] on 29.11.2019.

2. Since these cross appeals relates to the same assessee involving the same assessment year on the separate grounds raised by rival parties in their respective appeal and we have heard both the cases together with the consent of the parties, passing this consolidated order, as the issues involved are interconnected and interdependent.

2.1 The grounds of appeal taken by the revenue in ITA No. 235/JP/2024 for A.Y 2017-18 is as under-;

> 1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO on account of excise duty of Rs. 1,33,81,324/- while the same has to be included in the closing stock as per provisions of sec. 145A(b) of the I.T. Act, 1961.
>
> 2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Export pass fee of Rs. 90,00,000/-made by

the AO without appreciating the fact that liability to make such payment is not finalized.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 20,00,000/- made by the AO by disallowing contribution of state Renewal Fund.

2.2 Whereas the grounds appeal raised by the assessee in ITA No. 279/JP/2024 for assessment year 2017-18 reads as follows:

1. The learned AO erred in law and on facts in making addition of Rs. 34,65,547/- in respect of interest on Income Tax Refund.]

2. Action of the Commissioner of Income Tax (A) in disallowing the contribution towards ESI/PF, by considering the same not paid on or before due date and consider the Finance Act 2021 amendment is illegal, bad in law and void-ab-initio, as amendment to section 36(1)(va) is only prospective in nature and not retrospective i.e. not related to relevant Assessment Year 2017-18.

3. First, we take up the appeal filed by the revenue and the brief facts of the case as emerges from the orders of the lower authority are that in this case, the assessee company e-filed its return of income for the Assessment Year 2017-18 on 29.10.2017 declaring total income of Rs. 69,18,97,500/-. The case was selected for scrutiny under CASS and accordingly, statutory notices were issued and served upon the assessee. In compliance to those notice issued, necessary details / documents/ clarifications have been furnished by the assessee on e-proceedings portal. The assessee company continues to derive income from the manufacturing

and trading of sugar and liquor. Necessary details/documents/clarification has been sought from the assessee and the same were furnished by him during the course of assessment proceedings. After considering the facts of the case and written submission made by the assessee, following issue emerged which resulted into following addition:

> Valuation of closing stock as per the provision of section 145A
>
> During the course of examination of records and document annexed with the return of income, submitted by the assessee, it was pointed out that in the valuation of closing stock, the excise duty amounting to Rs. 1,33,81.324/- had not been included in the closing stock of finished goods. The assessee vide query letter dated 15.10.2019 was asked to explain as why Excise duty not included in valuation of closing stock of Sugar, Malasses& Denatured spirit lying at Sriganganagar and Jhotwara.
>
> In response to this assessee vide reply dated 21.10.2019 stated as under-
>
> "In respect of query no 3 of the Annexure annexed with the notice it is submitted that in respect of Note N. b appeaning in Note No. 2.14 on page no. 45 of printed Audited Statement of accounts in respect of valuation of Closing Stock of Sugar, molasses and Denatured Spirit lying at Sriganganagar and Jhotwara.
> it is submitted that-
> (a) The assessee company did not include Excise Duty of Rs. 1,33,81,324/- whille valuing closing inventory of Sugar, Molasses and Denatured Spirit lying at Sriganganagar and Jhotwara in accordance with the method of accounting regularly employed by the assessee. The assessee has been following a consistent system of excluding excise duty in the valuation of its stock from year to year.
>
> (b) The assessee company has neither debited the amount of Excise Duty to es Trading Account nor to its Profit and Loss account and thus there would be no effect on gross profit or net profit of the company. The inclusion of excise duty, in the valuation of closing stock was held to be permissible only if the liability for that amount in the excise duty account was given a deduction.
> (c) The Excise Duty becomes payable only when the goods are removed from the factory and therefore provisions of Sec. 145A(b) are not attracted.
> (d) The excise duty on sugar, molasses and denatured spint is paid as and when sales are affected and same is deposited in Govemment Treasury within specified time

(e) The valuation of closing stock cannot be a source of profit as held by Hon'ble Supreme Court in the case of Chainrup Sampatram v. CIT. 241 ITR 481 The assessee company has neither actually paid nor incurred excise duty on the value of closing stock of sugar as per section 145A(b) of income tax act and therefore, it is not to be included Although excise duty is being levied on manufacture of goods but it becomes payable only when goods are taken out of bonded warehouse and sold and thus it becomes payable only in the event of sale of goods or removal (Rule 9 A of the Central Excise Rules)

The assessee company places reliance on following decisions-
-252 CTR 351 CIT Vs. Dynavision Ltd. (SC)2012
-290 ITR 663 (Mad) CIT v. Lakshmi Mills Co. Ltd.
-267 ITR 660 (Mad.) CIT, v. Dyanavision Ltd.
-147 Taxman 77 (Delhi ITAT) Continental Device (India) Ltd V JCIT
-243 ITR 512 (Mad.) CIT v. English Electric Co. of India Ltd.
The, Gujarat High Court in the case of ACIT v. MermadaChematur Has held that excise duty is not includible in valuation of closing stock (2010) 39 DTR 120 (Gujarat)

The Hon'ble Tribunal has decided the issue in assessee'sfavourfor Assessment Year 2003-04 to 2014-15. The learned CIT(A) has also decided the issue in assessee sfavour for the Asstt. Year 2007-08 to 2014-15. The departmental appeal on this ground has also been rejected from Asstt. Year 2007-08 to 2014-15 by the Hon'ble ITAT, Jaipur Bench."

3.2. Reply of the assessee has been considered but the same is not found acceptable as provisions of section 145A are mandatory. As per these provisions closing stock valuation should be "(b) further adjusted to include the amount of any tax duty cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location.

3.3. The contention of the assessee that it has not included excise duty on closing stock of finished goods as a regular accounting policy is not relevant as clause (b) of section 145A is mandatory. It requires that inventory has to the valued after inclusion of any amount of excise duty paid or incurred by the assessee. The income of the assessee has to be computed taking into consideration this section and the regular accounting policy. Furthermore, it has been held by the Hon'ble Supreme Court in the case of British Paints India Ltd. 188 ITR 44 that if the assessee has adopted a regular system of accounting, it was the duty of the AO u/s 145 of the I.T. Act to consider whether the correct profits and gains could be deduced/ determine from the accounts.

3.4. The same issue was also examined during the course of assessment proceedings for the preceding years also. Though the issue has been decided by the Hon'ble ITAT as well as Hon'ble High Court in favour of the assessee but not accepting the said decision, the department preferred an SLP before Apex Court

on this issue. As the issue has not attained finality, therefore, the said disallowance is called for during this year also as there is no change in the facts during this year also.

3.5. In view of the facts and circumstances of the case the excise duty of Rs. 1,33,81,324/-has to be included in the closing stock as per provisions of section145A (b) of the I.T. Act. Therefore, Rs. 1,33,81,324/- is added back to the returned income of the assessee.

4. Export Pass Fees:

4.1 On perusal of Note No. 2.33 appearing at page No. 49 of printed Audited Statement of accounts, it is seen that Rs.90,00,000/- has been paid towards export pass fees. During the assessment proceedings, vide notice dated 15.10.2019, the assessee was asked to explain the allowability of claim of Export Pass Fess.

In response to this assessee vide his reply dated 21.10.2019 stated as under:-

"4. In respect of Query No. 4 of the Annexure annexed with the notice, it is submitted that the assessee company has claimed Rs. 90,00,000/- (kindly see note no. 2.33 on Page No. 49 of Audited Financial Statements) in respect of Export Pass lee charged by suppliers in Purchase Bills in respect of purchases of rectified spint made by the assessee company

4.1 Export Pass Fee is paid on purchase of rectified spirit from distillenes of UP who have charged the same in their sales bill just as charging of sales tax. The purchases are affected through tenders. The distilleries of UP. are continuously charging the same and the assessee company has been making payment under protest with a view to maintain uninterrupted supply of country liquor.

4.2 The term and conditions of contract between the suppliers in UP and the assessee company were entirely a matter relating to contract between the parties. As the export Dufy payable for the transit of goods from the State of UP to the State of Rajasthan were the duties payable by the supplier as an exporter, a therefore formed a part of price payable by the assessee to the supplier. The assessee was lable at all times to pay a price agreed to wherein the export duty was included as part of the price just like any other charge or expense incurred or to be incurred by the supplier in relation to the export of goods, and agreed to between the parties. The price formally agreed between by the parties in respect of the impugned transactions therefore included the component of export duty. The export. duty was payable by and actually paid by the exporter ie the supplier in UP. Thus what was lawfully due and payable as a condition for export formed part of the price formally agreed to The price payable by the assessee was against the delivery of goods by the supplier to the assessee company. The goods became appropriated to the contract on the date and at the time the payment was made and the goods delivered to the assessee company. The contract having been performed, sale having been complete, property in the goods having been passed, and appropriation of goods to the contract having taken place, nothing survived in law and/ or on facts for any further claims between the parties except by way of contingent claim.

4.3 The Export Pass Fees mentioned in the purchase Bilts were deposited by the suppliers in Govt account and thus the assessee company has no right to recover it from Govt. Dept The claim for recovery is contingent and dependent only on refund of Export Pass Fee by concerned Govt. Dept to respective suppliers who in tum are obliged to return the same to assessee co. as per terms and condition of the contract/tender. Thus there is a great uncertainty in realizing the same from suppliers. Unless and until the Export Pass Fee is refunded to the suppliers, this assessee co cannot be said to have a right to recover the same from suppliers. Due to such contingency in recovery it cannot be brought to tax

4.4 The basic principle is that the assessee must have acquired a right to receive the income. There must be a debt owed to him by somebody. There must be as is otherwise expressed debitum in praesentisovendum in futuro. (ED. Sassoon & Co. Ltd. v. CIT(1954) 26 ITR 27, 51 LalManniLal v CIT, (1967) 69 ITR 581 (All) Te legal position is that a frabaty depending upon a contingency is not a debt in praesenti or in future till the contingency happens and therefore, export pass fee which is contingent in nature is not to be taxed.

4.5 Such contingent Income cannot be taxed unless and until it is admitted by the supplier A debt must have come into existence and assessee must have acquired a night to receive this payment. Unless and until such a right to received the payment is created or a debt is created it cannot be said that any income had accrued E.D. Sassons Co. Ltd. v. C/T (1954) 26 ITR 27 (S C).

4.6 Although in Audit Report reference has been made to the judgment of the Hon'ble Supreme Court in the matter, but as per letter of Excise Commissioner, Allahabad dated 10-08-2007 there has been no such order prohibiting the levy of export permit fee it is stated that stay has been granted and till now no decision has been taken by Hon'ble Supreme Court prohibiting the State Government to levy export pass fees. On the contrary, it is stated that export permit fee is not a tax but it is a regulatory fee and State Government has full power to levy such regulatory fees. Copy of this letter is enclosed herewith

4.7 In any case the levy of export pass fee is a disputed matter and therefore disputed claims are not liable to tax

(a) Godhra Electricity Co Ltd vs CIT 225 ITR 746 (SC)

(b) CIT vs Smt. Vinita D. Sonwane&Ors. 212 ITR 489 (Bom)

(c) In a case reported in 170 Tax World 148 (All)-CIT vs. Sir Shadilal Enterprises Ltd

It has been held that where right to receive payment had been in dispute, it could not from part of trading receipt, excess price realized by assessee on levy sugar did not become part of trading receipt and, therefore, was not taxable

(d) In the case of Shrda Sugar Industries Ltd (1999) 239 ITR 393, the Bombay High Court held that the law is thus well settled that where the night to receive payment is in dispute, no income will arise or accrue. In this case reliance was placed on the decision of Apex Court in the case of Hindustan Housing and Land Development Trust Ltd. (1986) 161 ITR 524.

4.8 The Hon'ble I.T.AT. Jaipur Bench, Jaipur in assessee's case for Assessment Year 2005-06 after a detailed deliberation had allowed the assessee's claim of deduction vide order dated 27-03-2009.

The Id. CIT(A) has also decided this issue in assessee'sfavour for Assessment Year 2006-07 to 2014-15. The departmental appeal on this ground has also been rejected tillAsstt. Year 2014-15 by the TheHon'ble ITAT, Jaipur Bench."

4.2. Reply of the assessee has been considered but not found acceptable. Export pass fee has been paid against Hon'ble Supreme Court's decision. The amount is only a contingent liability. The auditors have also remarked that export pass fees should have been classified as advances recoverable and not charged as the cost of purchases. The management has also stated that the matter is being taken up by the government of Rajasthan as well as the Government of Uttar Pradesh, A payment made for market supervising when the Government policy was to eliminate such intermediaries by abolishing sole selling agencies, was found to be contrary to such policy intermediaries by abolishing sole selling agencies, was found to be contrary to such policy and, therefore, not allowable as was observed in CIT Vs. Orissa Cement Ltd. (2002) 258 ITR 365(Delhi). The Hon'ble Delhi High Court has held that even if a payment is not illegal, it can be disallowed because it is contrary to Government policy. Also, the export pass fee paid by the assessee under protest is clearly a contingent liability, as negotiations between the Govt. is going on and the liability of the assessee to pay export pass fee has not yet finalized. The levy was against public policy. The payment being prohibited by the law of the land it is not deerned to have been incurred for the purpose of business in view of the explanation to Section 37(1) of the I.T. Act.

4.3. In view of the observation of the auditors of the assessee company themselves, it is evident that the assessee company was not required to pay any export pass fee to the UP distilleries, considering of the decision of the Supreme Court. However, the assessee company has made payment of Rs. 90,00,000/- on account of export pass fee to the U.P. distilleries against the decision of the Supreme Court, in the garb of cost of purchases.

4.3. The same issue was also examined during the course of assessment proceedings for the preceding AYs also. Though the issue has been decided by the Hon'ble ITAT as well as by the Hob'ble High Court in favour of the assessee but not accepting the said decision, the department preferred SLP before Apex Court on this issue. As the issue has not attained finality, therefore, the said disallowance is called for during this year also as there no change in the facts during the year also.

4.4. Therefore, considering the above discussion, the amount of export pass fee charged to purchases an amounting to Rs. 90,00,000/- is disallowed and added to the total income of the assessee. Penalty proceedings u/s 270A(1)

r.w.s.270A(9)(a) is being initiated separately for under reporting of income in consequence of misreporting.

5. Late Deposit of ESI contribution:

As is evident from the tax audit report that the assessee has not deposited the employee's ESI contribution within the prescribed time and therefore, an addition of Rs. 8,042 was made as in terms of provision of section 36(1)(va) r.w.s. 2(24(x) of the Act.

6. Contribution to state Renewal Fund

Ld. AO noted that the assessee has debited a sum of Rs. 20 lac on account of contribution to state renewal fund. This issue was decided in favour of the assessee but since the revenue has challenged that matter before the apex court the ld. AO made the addition for an amount of Rs. 20 Lac.

7. Disallowance of CSR expenses debited to P & L Account:
During the course of assessment proceedings on perusal of audited financial statement of the assessee it was seen that the assessee has debited a sum of 47,90,000 under the head corporate social responsibility. Accordingly, vide notice dated 15.10.2019 the assessee was asked to explain the allowability of the expenses claimed under the head corporate social responsibility in its profit and loss account. The assessee accepted that mistake and the same was added as income of the assessee.

8. Interest on Income Tax Refund:

8.1 On perusal of the records, it is seen that the assessee has received a sum of Rs.34,65,547/-as interest on Income Tax Refund but it has not offered the same for taxation in its ITR filed for the year under reference. Vide this office notice dated 15.10.2019, the assessee was asked to show cause as to why the interest of income tax refund amounting to Rs.34,65,547/- should not be added to its total income. in response to this show cause, the assessee vide letter dated 21.10.2019 submitted that:

"...in respect of query no. 2 of Annexure annexed with the notice. It is submitted that the assessee company has not been served with any order allowing interest of Rs. 34,65,547/- on Income Tax refund. The assessee is not aware of any such refund and interest on refund and as such we request you to very kindly provide the order allowing interest of Rs.34,65,547/- on Income Tax Refund before amkingany addition of Interest of Rs.34.65.547/-on Income Tax refund...."

8.2. I have gone through the reply furnished by the assessee but the same is not found tenable. The assessee had been paid refund u/s 250 of the I.T. Act, 1961 amounting to Rs.1,47,28, 399/- and Rs.1,61,06,719/- which also includes interest component of Rs. 13,25,205/- and 21,40.342/- for A.Y. 2012-13 and 2011-12

respectively but the same was not offered by it as its income for the year under reference. Interest on income tax refund is taxable as income from other sources therefore, an addition of Rs.34,65,547/- is hereby made to the total income of the assessee and taxed in its hands accordingly. Penalty proceedings u/s 270A(1) r.w.s.270A(3)(a) is being initiated separately for under reporting of income.

4. Aggrieved from the order of the Assessing Officer, the assessee preferred an appeal before the ld. CIT(A). Apropos to the grounds so raised the relevant finding of the ld. CIT(A)/NFAC is reiterated here in below:

"4. ISSUE 1- ADDITION OF RS. 1,33,81,324/- AS VALUATION OF CLOSING STOCK AS PER THE PROVISIONS OF SECTION 145A. GROUND NO. 1 IS COVERED IN THIS ISSUE.

4.3 DECISION

4.3.1. In this respect, the AO has accepted that the Honourable Rajasthan HC has decided the same issue of valuation of closing stock in favour of the appellant on the same facts. However, as the department is in appeal with the Honourable SC, the AO made the addition. There is no stay on the judgement of the Honourable Rajasthan Court and therefore, the judgement is operational as on date. Bound by the higher court order, the issue is being decided in favour of the appellant. Further, when the excise duty is not being accounted in the debit side, to only account in the valuation of closing stock to increase the value on credit side, is incorrect and against the principles of accounting (matching and consistency principles). Therefore, the AO is directed to delete the said addition.

5. ISSUE- 2- ADDITION OF RS. 90,00,000/- ON ACCOUNT OF EXPORT PASS FEES. GROUND NO. 2 IS COVERED IN THIS ISSUE.

5.3 DECISION

5.3.1 In ITA No. 72/JP/2020, for A.Y. 2016-17, the ITAT passed the judgement in favour of the appellant following the Tribunal's own earlier judgements in other Assessment years considering the fact that the Honourable SC decision was silent on the fee charged for rectified spirit and since the amount paid into government account was not recoverable for the appellant. Since the issue is

already decided by the jurisdictional higher court in this respect, the same is followed and the AO is directed to delete the said addition.

7. ISSUE -4- ADDITION OF RS,. 20,00,000/- ON CONTRIBUTION TO STATE RENEWAL FUND. GROUND NO. 4 IS COVERED IN THIS ISSUE.
7.3 DECISION

7.3.1 In ITA No. 72/JP/2020, for A.Y. 2016-17, the ITAT passed the judgement in favour of the appellant following the Tribunal's own earlier judgements in other Assessment years considering the same as allowable u/s 37(1) being for benefit of employees. Since the issue is already decided by the jurisdictional higher court in this respect, the same is followed and the AO is directed to delete the said addition.

8. ISSUE 5 – ADDITION OF RS 34,65,547/- ON ACCOUNT OF INCOME TAX REFUND. GROUND NO. 5 IS COVERED IN THIS ISSUE.

8.3 Decision

8.3.1 It is seen in the processing details available on the 360 degree view module that the said refunds were processed vide orders dated 05.07.2016 for A.Y 2011-12 and 20.12.2016 for A.Y 2012-13 wherein the interest of Rs. 13,25,205/- and Rs. 21,40,342/- were calculated. However, the actual output is Rs. -1/-, which means the refunds were adjusted against pending demand. The details of adjustment are not visible in the 360 degree module and the demand modules are not accessible to the first appellate authority.

8.3.2. Thus, in view of the interest on refund granted, the income is to be taxed and therefore, the addition of the AO is upheld. However, the AO is directed to provide the appeal giving effect orders in this respect along with the adjustment details. In even of lack of adjustment details, the refund is to be paid to the appellant.

5. Feeling dissatisfied with the above finding of the ld. CIT(A) both the assessee and the revenue is in appeal before us. Both the parties supported the order of the lower authority as favourable to them.

6. Ld. DR fairly submitted that the issue is squarely covered in favour of the assessee which were raised by the revenue by the Jurisdictional High Court and as is evident from the written submissions of the revenue that they have filed the appeal before the apex court and keep the issue alive the additions were made by the ld. AO. On being asked the ld. DR fairly admitted that apex court has not granted any stay and therefore, he prayed to decide the issue in accordance with the law.

7. The bench noted that so far as ground No. 1 is concerned, the same is covered by the decision of Jurisdictional Rajasthan High Court in the case of CIT vs. M/s Rajasthan State Ganganagar Sugar Mills Ltd. in DB Income Tax Appeal No. 99/2009 dated 26th May, 2016 vide para 40 reads as under:-

> "40. In so far as the second question about excise duty is concerned, in our opinion, the liability to excise arises when goods are removed from the factory/bonded warehouse. The taxable event is manufacture/production but the liability to pay the duty is postponed till the time of removal under Rule 9A. In our view, under section 145A only tax duty, cess or fess actually paid or incurred by the assessee to bring the goods to its place of location forms part value of stock. Unpaid excess duty on goods in stock that have not left the premises/factory/bonded werehouse, could not be added to the value of closing stock. We have taken into consideration the judgemtns of the Apex Court in the case of Wallace Flour Mills Co. Ltd. Vs. Collector of Central Excise (supra) and CIT Vs. Dynavision Ltd. to come to the aforesaid opinion. In fact, even the Revenue has relied upon the judgment of Wallace Flour Mills Co. Ltd. Vs. Collector of Central Excise (supra) but in our view, taking into consideration the view of the Apex Court that a taxable event though is manufacture but the liability

to pay duty is postponed till the time of removal under Rule 9A of the said Rules and admittedly, there is a finding of fact recorded by the authorities that the goods were lying in the bonded warehouse/factory and had not come out of the bonded arehouse/factory, in our view, the judgment of Waliace Flour Mills Co. Ltd. vs. Collector of Central Excise (supra) the supports the contention of the assessee rather than of the Revenue.

8. So far as, the ground No. 2 is concerned, the same is covered by the decision of ITAT, Jaipur in the case of DCIT vs. M/s Rajasthan State Ganganagar Sugar Mills Ltd. in ITA No. 72/JPR/2020 dated 16/03/2020 for the Assessment Year 2016-17, the relevant finding of ITAT in that order reads as under:-

"5. We have considered the rival submissions as well as the relevant material on record. At the outset, we note that an identical issue has been considered by this Tribunal in assessee's own case for the assessment years 2013-14 and 14-15 vide order dated 20th September, 2017 in ITA No. 506 & 507/JP/2017. The ld. CIT (A) has decided this issue in favour of the assessee by following the earlier decisions of this Tribunal. The relevant findings of the ld. CIT (A) in para 3.3 to 3.3.2 of the impugned order are as under :-

"3.3. I have perused the facts of the case, the assessment order and the submissions of the appellant. It is seen that the similar issue in assessee own case has been decided by the CIT(A)-II for A.Y. 2014-15 vide her order no. 1003/2016-17 dated 21.03.2017 by observing that the similar issue also arose in A.Y. 2012-13 which was decided by Hon'ble ITAT vide ITA No. 1002/JP/2015 dated 04.07.2016. The relevant para no. 3.2 of appellate order for A.Y. 2014-15 is as under:-

"3.3 I have perused the facts of the case, the assessment order and the submission of the appellant. It is seen that similar disallowance made in A.Y. 2012-13 in the case of appellant, has been deleted by the ITAT, Jaipur in ITA No. 1002/JP/2015 dated 04.07.2016 by holding as under:-

4. We have heard the rival contentions of both the parties and perused the material available on the record. The identical issue involved in this

appeal, has been decided by the Coordinate Bench in assessee 's own case for 200910 vide order dated 17/04/2015 and in TTA NO.62/JP/2014 order dated 24/2/2016. The operative portion ofthe Coordinate Bench's order case in ITA No.31/JP/2013 for A.Y. 2009-10 is reproduced as under :-

"4. We have heard the rival contentions of both the parties and perused the material available on the record. We find merit in the arguments of the ld. counsel for the assessee. Revenue's grounds No. (i) to (v) are covered in favour of the assessee by successive judgments of the ITAT as mentioned above. The detailed reasoning's are mentioned in the ITAT's order for A.Y. 2008-09. Respectfully following the same, the ground Nos. (i) to (v) of the revenue appeal are dismissed.

4.1 Apropos ground No. (vi) also, the disallowance has been deleted in terms of section 43B on actual payment basis in view thereof, we find no infirmity in the order of the Ld. CIT(A), which is upheld.

By respectfully following the order of the Coordinate Bench in assessee's own case, we reverse the order of the Ld.CIT(A)."

The detailed reasoning of Hon'ble ITAT, Jaipur for the A.Y. 2008-09 is as under:-

"an identical issued having similar facts have been decided by the ITAT Jaipur Bench 'B' Jaipur in assessee's own case ITA No. 1342/JP/2010for the A.Y. 2007-08 and the relevant finding have been given in para 4.4 of the order dated 03.06.2011 which read as under:-

4.4 We have heard both the parties. The Hon'ble Apex Court vide judgment dated 19th July, 2001 decided that Export Pass Fee being imposed on industrial alcohol was not permissible. The decision is silent on issue of Export Pass Fee on rectified spirit for potable use. The assessee company is regularly purchasing the rectified spirit from Distilleries of UP who has been continuously charging Export Pass Fee and export permit fee and the assessee is paying the same as part of the purchase price. The supplier is depositing Export Pass Fee in Govt., a/c

and the assessee had no right to recover the said amount from the Govt. Considering all the factual aspects, the Tribunal while deciding the appeal of the assessee for the assessmentyear 2005-06 held that payment in respect of Export Pass Fee is allowable. Taking the consistent view, we hold that the ld. CIT(A) was justified in deleting the addition of Rs. 2,85,20,000/-.

Following the above judgment and the facts being identical, the disallowance made by the Assessing Officer is directed to be deleted. This ground of appeal is allowed."

3.3.1 Further, it is seen that the similar issue was decided by Hon'ble ITAT, Jaipur for A.Y. 2013-14 and 2014-15 vide ITA No. 506& 507/JP/2017 dated 12.09.2017 in favour of appellant (as discussed in para no. 2.3.2 above).

3.3.2 The facts being similar, respectfully following the above judgments of Hon'ble ITAT/CIT(A), Jaipur, the disallowance made by the Assessing Officer is directed to be deleted. This ground of appeal is allowed."

In view of the earlier decisions of this Tribunal, we do not find any error or illegality in the impugned order of the ld. CIT (A) qua this issue."

9. Apropos to ground No. 3, ld. AR of the assessee submitted that the same is covered by the decision of ITAT, Jaipur in the case of DCIT vs. M/s Rajasthan State Ganganagar Sugar Mills Ltd. in ITA No. 72/JPR/2020 dated 16/03/2020 for the Assessment Year 2016-17, the relevant finding of ITAT in that order reads as under:-

7. We have heard the ld. D/R as well as the ld. A/R and considered the relevant material on record. At the outset, we note that an identical issue has been considered by the Tribunal in assessee's own case for the assessment years 2010-11 to 14-15. The ld. CIT (A) has decided this issue in para 5.3 to 5.3.1 as under :-

"*5.3. I have perused the facts of the case, the assessment order and the submissions of the appellant. It is seen that the similar issue in assessee own case has been decided by the CIT(A)-II for A.Y. 2014-15 vide her order no. 1003/2016-17 dated 21.03.2017 by observing that the similar issue also arose in A.Y. 2010-11, 2011-12 and 2012-13 which was decided by CIT(A) vide appeal no. 237/12-13, 481/13-14 and 406/14-15 respectively in favour of appellant relevant para of appellate order is as under:-*

"5.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. Same issue was involved in the assessee's own case for the A.Y. 2010-11, Appeal No. 237/12-13, A.Y. 2011-12, Appeal No. 481/13-14 and A.Y. 2012-13 Appeal No. 406/14-15, have been decided the issue in favour of the appellant. Relevant para of the order of the A.Y. 2012-13 is reproduced as under:-

"Assessing officer disallowed contribution to State Renewal Fund on the ground that it is an application of income and not the revenue expenses allowable under section 37(1). Appellant submitted that the contribution was made in view of the circular of State Government issued in October 1995 and the objective of this fund is to provide a safety net for workers likely to be affected by restructuring of State Public Sector undertaking. Similar issue came before the Hon'ble ITAT in case of Rajasthan State Seeds Corporation Limited Vs ACIT in A.Y. 2006-07 in TTA No. 233/JP/2009 order dated 25.05.2009 wherein the Hon'ble ITATdeleted the disallowance of contribution made to the State Renewal Fund by holding as under:-

We have considered the rival submission and perused the material available on record. We find that as per the memorandum of State Renewal Fund set up by the State Government, it is created with the object of providing a safety net for the workers likely to be affected by restructuring in the State Public Enterprises. We are thus of the view that contribution made to the said fund is solely for the purpose of the welfare and benefit of the employees. The Rajasthan High Court in case of CIT V. Rajasthan Spinning and Weaving Mills Limited 2741TR 465 has observed that it is for the assessee to decide whether any expenditure should be incurred in course of business. The expenditure can be incurred voluntarily and without necessity. Any contribution made by the assessee to a public welfare fund which is connected or related with his business is an allowable deduction u/s 37. Again the court in the case of CLT V. Shri Rajasthan Syntex Limited 221 CTR 410 (Raj.) held that where assessee gave contribution to the employee's welfare fund, the same is allowable as business expenditure. The case relied by AO of CIT V. Jodhpur Co-operative marketing Society 275 LTR 372 (Raj.) is distinguishable as in this case the amount was set apart for the shareholders of the society whereas in the present case amount was provided for the benefit of the employees. In view of this the contribution made to State Renewal Fund is allowable u/s 37(1)."

Respectfully following the above order of the CIT(A)-11, Jaipur in the appellant's case and the decision of Hon'ble 1TAT Jaipur quoted above, Assessing Officer is directed to allow the claim of contribution to State Renewal fund. The ground of appeal is allowed."

5.3.1 The facts being similar, respectfully following the above judgments of Hon'ble ITAT/CIT(A), the disallowance made by the Assessing Officer is directed to be deleted. This ground of appeal is allowed."

Thus the ld. CIT (A) has followed the decision of this Tribunal in assessee's own case for the earlier assessment years. Accordingly, in view of the order of this Tribunal, we do not find any error or illegality in the impugned order of the ld. CIT (A) qua this issue.

10. While arguing the present appeal, ld. DR vehemently submitted that since the revenue challenged that the additions before the Hon'ble Apex Court and to maintain consistency, the present appeal is filed and at same time she did not bring any contrary order having similar stretcher and binding stature and therefore, considering overall facts presented before us. We see no reason to sustain the present appeal of the revenue and therefore, the same treated as dismissed on all the grounds as the same are covered by the decision of Our High Court and the Co-ordinate bench of Jaipur in the case of the assessee as discussed herein above.

11. Since the ld. CIT(A) has partly allowed, the appeal of the assessee, the assessee has preferred the present appeal on the ground as stated

hereinabove. Apropos to the appeal of the revenue and that of the assessee the ld. AR of the assessee has filed the written submission which reads as under :-

> The assessee company is a State Government undertaking and derived income from manufacturing and sale of Sugar & liquor. In respect of appeal preferred by the assessee company for the Asstt. Year 2017-18 against the order dated 29-1,1,-201,9 passed u/s 143(3) of the Income Tax Act,1961, we submit as under :- The appeal has been preferred for Assessment Year 2017 -1,8 on the following grounds :-
> 1) Addition of Excise duty of Rs. 1.,33,81,324/- in valuation of closing stock of Finished Good.
> 2) Disallowance of Rs.90,00,000/- in respect of Export pass fee.
> 3) Disallowance of Rs.8,042/- in respect of employees 'PF and ESI contributions deposited beyond prescribed time limits.
> 4) Disallowance of Rs.20,00,000/- in respect of Contribution to State renewal fund'
> 5) Addition of Rs.34,65,7 47 /- in respect of Interest on Income Tax refund
> 6) Allowance of TDS/TCS claim Lt Rs.25,617 /- as against actual claim of Rs.2,40,957 /-
> 7) Charging of Interest of Rs.41,99,8951-, u/s 234 as against Rs.33,93,978 and u/s 234C of Income Tax Act,1961 at Rs.5,96 ,967 /- as against Rs.4,84,854/-
> 8) General Ground.
>
> Ground No. 1
>
> "The leamed A.O. erred in law and on facts in adding Excise Duty of Rs. 1,33,81,324/-in Closing Stock of Finished Goods."
>
> 11 In this connection It is submitted that the assessee company had submitted detailed submission vide letter dated 21-10-2019 annexed at Annexure-1 during assessment proceedings of the case. We give below the relevant extract of submission dated 21-10-2019
>
> 3 In respect of query No. 3 of the Annexure annexed with the Notice, It is submitted that In respect of Note No. b appearing in Note No 2.14 on page no 45 of printed Audited Statement of accounts in respect of valuation of Closing Stock of Sugar, molasses and Denatured Spirit lying at Sriganganagar and Jhotwara,

It is submitted that-

(a) The assessee company did not include Excise Duty of Rs.1,33,81,324/-while valuing closing inventory of Sugar, Molasses and Denatured Spirit hing at Sriganganagar and Jhotwara in accordance with the method of accounting regularly employed by the assessee. The assessee has been following a consistent system of excluding excise duty in the valuation of its stock from year to year.

(b) The assessee company has neither debited the amount of Excise Duty to its Trading Account nor to its Profit and Loss A/c and thus there would be no effect on gross profit or net profit of the company. The inclusion of excise dory in the valuation of closing stock was held to be permissible only if the liability for that amount in the excise duty account was given a deduction.

(c) The Excise Duty becomes payable only when the goods are removed from the factory and therefore provisions of Sec. 145A(b) are not attracted.

(d) The excise duty on sugar, molasses and denatured spirit is paid as and when sales are affected and same is deposited in Government Treasury within specified time.

(e) The valuation of closing stock cannot be a source of profit as held by Hon'ble Supreme Court in the case of Chainrup Sampatram v. CIT, 241 ITR 481. The assessee company has neither actually paid nor incurred excise duty on the value of closing stock of sugar as per section 145A(b) of income tax act and therefore, it is not to be included. Although excise duty is being levied on manufacture of goods but it becomes payable only when goods are taken out of bonded warehouse and sold and thus it becomes payable only in the event of sale of goods or removal (Rule 9 A of the Central Excise Rules).

The assessee company places reliance on following decisions-

-252 CTR 351 CIT Vs. Dynavision Ltd. (SC)2012

-290 ITR 663 (Mad) CIT v. Lakshmi Mills Co. Ltd.

-267 ITR 660 (Mad.) CIT, v. Dyanavision Ltd.

-147 Taxman 77 (Delhi ITAT) Continental Device (India) Ltd. V JCIT.

-243 ITR 512 (Mad.) CIT v. English Electric Co. of India Ltd.

The, Gujarat High Court in the case of ACIT v. Mermada Chematur... Has held that excise duty is not includible in valuation of closing stock (2010) 39 DTR 120 (Gujarat). The Hon'ble Tribunal has decided the issue in assessee's favour for Assessment Year 2003-04 to 2014-15. The learned CIT(A) has also decided the issue in assessee's favour for the Asstt. Year 2007-08 to 2014-15. The departmental appeal on this ground has also been rejected from Asstt. Year 2007-08 to 2014-15 by The Hon'ble ITAT, Jaipur Bench.

1.2 Further It is also submitted that the learned CIT(A)-2, Jaipur has also decided the appeal of the assessee company for the immediately preceding year i.e. Assessment Year 2016-17 on the same issue and has deleted the addition vide Para No.2.3.2 on Page No.8 vide order dated 29-11-2019 passed in Appeal No. CIT (A), Jaipur- 2/10986/2018-19. We enclose here with at Annexure2 the copy of order dated 29-11-2019 of learned CIT(A)-2, Jaipur for your ready reference.

It is submitted that No further appeal on deletion of this addition by the learned CIT(A)-2, Jaipur was preferred before Hon'ble Appellate Tribunal by the Income Tax department. We enclose herewith at Annexure3 a Copy of the order dated 16-03-2020 of Hon'ble Income Tax Appellate Tribunal for Assessment Year 2016-17 for your ready reference.

1.3 It is also submitted here that the Hon'ble Rajasthan High Court has also dismissed the departmental appeal for the Asstt. Year 2003-04 to 2008-09 in respect this Ground No. 1 vide order dated 26th May, 2016. We enclose herewith at Annexure4 the copy of order dated 26-10-2016 of Hon'ble Rajastaan High Court for your ready.

1.4 All the issues and the facts are similar and identical in the present case and therefore We request your Honour to very kindly delete the addition and disallowance as per finding of the Higher forum.

Ground No.2

"The learned A.O. erred in law and on facts in disallowing Rs.90,00,000/-claimed in respect of Export pass fee charged by suppliers in purchase Bill of rectified spirit purchased by the assessee company".

2.1 In this connection It is submitted that the assessee company had submitted detailed submission vide letter dated 21-10-2019 during assessment proceedings of the case. We give below the relevant extract of submission dated 21-10-2019:-

4. In respect of query No. 4 of the Annexure annexed with the Notice, It is submitted that the assessee company has claimed Rs. 90,00,000/- (kindly see note no. 2.33 on Page No. 49 of Audited Financial Statements) in respect of Export Pass fee charged by suppliers in Purchase Bills in respect of purchases of rectified spirit made by the assessee company.

4.1 Export Pass Fee is paid on purchase of rectified spirit from distilleries of U.P. who have charged the same in their sales bill just as charging of sales tax. The purchases are affected through tenders. The distilleries of U.P. are continuously charging the same and the assessee company has been making payment under protest with a view to maintain uninterrupted supply of country liquor.

4.2 The term and conditions of contract between the suppliers in UP and the assessee company were entirely a matter relating to contract between the parties. As the export Duty payable for the transit of goods from the State of UP to the State of Rajasthan were the duties payable by the supplier as an exporter, it therefore formed a part of price payable by the assessee to the supplier. The assessee was liable at all times to pay a price agreed to wherein the export duty was included as part of the price just like any other charge or expense incurred or to be incurred by the supplier in relation to the export of goods, and agreed to between the parties. The price formally agreed between by the parties in respect of the impugned transactions therefore included the component of export duty. The export duty was payable by and actually paid by the exporter i.e. the supplier in UP. Thus what was lawfully due and payable as a condition for export formed part of the price formally agreed to. The price payable by the assessee was against the delivery of goods by the supplier to the assessee company. The goods became appropriated to the contract on the date and at the time the payment was made and the goods delivered to the assessee company. The contract having been performed, sale having been complete, property in the goods having been passed, and appropriation of goods to the contract having taken place, nothing survived in law and/or on facts for any further claims between the parties except by way of contingent claim.

4.3 The Export Pass Fees mentioned in the purchase Bills were deposited by the suppliers in Govt. account and thus the assessee company has no right to

recover it from Govt. Dept. The claim for recovery is contingent and dependent only on refund of Export Pass Fee by concerned Govt. Dept to respective suppliers who in turn are obliged to return the same to assessee co. as per terms and condition of the contract\tender.

Thus there is a great uncertainty in realizing the same from suppliers. Unless and until the Export Pass Fee is refunded to the suppliers, this assessee co. can not be said to have a right to recover the same from suppliers. Due to such contingency in recovery it can not be brought to tax.

4.4 The basic principle is that the assessee must have acquired a right to receive the income. There must be a debt owed to him by somebody. There must be as is otherwise expressed debitum in praesentisovendum in futuro: (E.D. Sassoon & Co. Ltd. v. CIT(1954) 26 ITR 27, 51 Lal ManniLal v. CIT, (1967) 69 ITR 581 (All). Te legal position is that a liability depending upon a contingency is not a debt in praesenti or in future till the contingency happens and therefore, export pass fee which is contingent in nature is not to be taxed.

4.5 Such contingent Income cannot be taxed unless and until it is admitted by the supplier. A debt must have come into existcuce and assessee must have acquired a right to receive this payment. Unless and until such a right to received the payment is created or a debt is created it can not be said that any income had accrued. E.D. Sasson& Co. Ltd. v. CIT (1954) 26 ITR 27 (S.C).

4.6 Although in Audit Report reference has been made to the judgment of the Hon'ble Supreme Court in the matter, but as per letter of Excise Commissioner, Allahabad dated 10-08-2007 there has been no such order prohibiting the levy of export permit fee. It is stated that stay has been granted and till now no decision has been taken by Hon'ble Supreme Court prohibiting the State Government to levy export pass fees. On the contrary, it is stated that export permit fee is not a tax but it is a regulatory fee and State Government has full power to levy such regulatory fees. Copy of this letter is enclosed herewith.

4.7 In any case the levy of export pass fee is a disputed matter and therefore disputed claims are not liable to tax.

(a) Godhra Electricity Co. Ltd. vs. CIT 225 ITR 746 (SC)

(b) CIT vs. Smt. Vinita D. Sonwane&Ors. 212 ITR 489 (Bom)

(c) In a recent case reported in 170 Tax World 148 (All)-

CIT vs. Sir Shadilal Enterprises Ltd.

It has been held that where right to receive payment had been in dispute, it could not realized by assessee on part of trading receipt, excess price from part levy sugar did not become part of trading receipt and, therefore, was not taxable.

(d) In the case of Shrda Sugar Industries Ltd. (1999) 239 ITR 393, the Bombay High Court held that the law is thus well settled that where the right to receive payment is in dispute, no income will arise or accrue. In this case reliance was placed on the decision of Apex Court in the case of Hindustan Housing and Land Development Trust Ltd. (1986) 161 ITR 524.

4.8 The Hon'ble 1.T.A.T. Jaipur Bench, Jaipur in assessee's case for Assessment Year 2005-06 after a detailed deliberation had allowed the assessee's claim of deduction vide order dated 27-03-2009.

The Id. CIT(A) has also decided this issue in assessee's favour for Assessment Year 2006-07 to 2014-15. The departmental appeal on this ground has also been rejected till Asstt. Year 2014-15 by the The Hon'ble ITAT, Jaipur Bench.

2.2 Further It is also submitted that the learned CIT(A)-2, Jaipur has also decided the appeal of the assessee company for the immediately preceding year i.e. Assessment Year 2016-17 on the same issue and has deleted the addition vide Para No.3.3.1 to 3.3.2 on Page No.12 vide order dated 29-11-2019 passed in Appeal No. CIT (A), Jaipur-2/10986/2018-19.

We enclose here with at Annexure2 the copy of order dated 29-11-2015 of learned CIT(A)-2, Jaipur for your ready reference.

Further the departmental appeal on this ground has also been rejected by the by the Hon'ble Income Tax Appellate Tribunal, Jaipur Bench, Jaipur in Assessment Year 2006-07 to 2014-15 and 2016-17. We enclose herewith at Annexure3 a Copy of the order dated 16-03-2020 of Hon'ble Income Tax Appellate Tribunal for Assessment Year 2016-17 for your ready reference. In this connection Para No.5 on Page No.3 of the Order of Hon'ble ITAT, Jaipur Bench may be perused.

2.3 All the issues and the facts are similar and identical in the present case and therefore We request your Honour to very kindly delete the addition and disallowance as per finding of the Higher forum.

Ground No.3

"The learned A.O. erred in law and on facts in disallowing Rs. 8,042/- in respect of employees PF and ESI contributions deposited beyond prescribed time limits".

3.1 In this connection It is submitted that the complete details of delay in deposit of ESI of Rs.8,042/- has been mentioned at Para No.5.1 on Page No.8 of the Assessment Order and the assessee company had submitted detailed submission vide letter dated 21-10-2019 during assessment proceedings of the case. We give below the relevant extract of submission dated 21-10-2019:-

7. In respect of payment of PF and ESI, It is submitted that the details of payment of PF/ESI have been given in S. No. 20b of the Tax Audit report. In respect of delay in deposit of employees contribution towards PF and ESI bevond due date of deposit in some cases as reported in the Tax Audit Report but before due date of filing of Income Tax Return applicable in the case of the assessee. In this connection It is submitted that no disallowance of employees contribution towards PF/ESI can be made under section 43B of the Income Tax Act if the payments were made before due date of filing of Return. We place reliance on following judgements :-

CIT Vs. Aimi Lud. (3211TR508) (Delhi HC)

CIT Vs. P.M. Electronics (3131TR161) (Delhi HC)

CIT Vs. ANZ Information Technology Pvt. Ltd. (3181TR123) (Karnataka HC)

CIT Vs. SBBJ (2014)) (365ITR 70) (Rajasthan HC)

CIT VS. JVVNL (2014)) (363ITR 70) (Rajasthan HC)

CIT VS. JVVNL (2014)) (3631TR307) (Rajasthan HC)

3.2 Further It is also submitted that the learned CIT(A)-2, Jaipur has also decided the appeal of the assessee company for the immediately preceding year i.e. Assessment Year 2016-17 on the same issue and has deleted the addition vide

Para No.4.3 on Page No.14 vide order dated 29-11-2019 passed in Appeal No. CIT (A), Jaipur- 2/50986/2018-19, We enclose here with at Annexure2 the copy of order dated 29-11-2019 of learned CIT(A)-2, Jaipur for your ready reference.

Further the deparunental appeal on this ground has also been rejected by the by the Hon'ble Income Tax Appellate Tribunal, Jaipur Bench, Jaipur in Assessment Year 2006-07 to 2014-15 and 2016-17. We enclose herewith at Annexure3 a Copy of the order dated 16-03-2020 of Hon'ble Income Tax Appellate Tribunal for Assessment Year 2016-17 for your ready reference. In this connection Para No.6 on Page No.6 of the Order of Hon'ble ITAT, Jaipur Bench may be perused.

3.3 All the issues and the facts are similar and identical in the present case and therefore We request your Honour to very kindly delete the addition and disallowance as per finding of the Higher forum.

Ground No.4

"The learned A.O erred in law and on facts in not allowing Rs. 20,00,000/-in respect of contribution to State Renewal Fund made by the assessee.".

4.1 In this connection It is submitted that the assessee company had submitted detailed submission vide letter dated 21-10-2019 during assessmen proceedings of the case. We give below the relevant extract of submission dated 21-10-2019 which is mentioned at Para No.1 of the letter

State Renewal Fund Rs.20,00,000/-

The assessee company has claimed deduction of Rs. 20,00,000/- in respect of amount contributed to State Renewal Fund. In this connection it is submitted that the assessee is a State Government Company and it contributed Rs. 20,00,000/- to State Renewal Fund. The contribution was made in view of the circular of state government issued in October, 1995. The State Government has set up a State Renewal Fund with the objective of providing a safety net for workers likely to be affected by restructuring of State Public Sector Undertaking. The expenditure has been incurred wholly and exclusively for business purposes of the assessee company and it is an allowable expenditure u/s 37(1) of Income Tax Act 1961.

Further It is submitted that similar addition was also made in the earlier years by the learned AO. The learned CIT(A) has allowed the claim of contribution to State Renewal fund in all those preceding years. Further Departmental appeal on this

issue has also been rejected by the Hon'ble Income Tax Appellate Tribunal, Jaipur in all these years.

4.2 Further It is also submitted that the learned CIT(A)-2, Jaipur has also decided the appeal of the assessee company for the immediately preceding year i.e. Assessment Year 2016-17 on the same issue and has deleted the addition vide Para No.5.3 to 5.3.1 on Page No.18 to 20 vide order dated 29-11-2019 passed in Appeal No. CIT (A), Jaipur- 2/10986/2018-19. We enclose here with at Annexure2 the copy of order dated 29-11-2019 of learned CIT(A)-2, Jaipur for your ready reference.

Further the departmental appeal on this ground has also been rejected by the by the Hon'ble Income Tax Appellate Tribunal, Jaipur Bench, Jaipur in Assessment Year 2006-07 to 2014-15 and 2016-17. We enclose herewith at Annexure3 a Copy of the order dated 16-03-2020 of Hon'ble Income Tax Appellate Tribunal for Assessment Year 2016-17 for your ready reference. In this connection Para No.7 on Page No.9 of the Order of Hon'ble ITAT, Jaipur Bench may be perused.

4.3 All the issues and the facts are similar and identical in the present case and therefore We request your Honour to very kindly delete the addition and disallowance as per finding of the Higher forum. 2

Ground No.5

"The learned AO erred in law and on facts in making addition of Rs.34,65,747/-in respect of Interest on Income Tax Refund."

In this connection It is submitted that the assessee company had submitted detailed submission vide letter dated 21-10-2019 during assessment proceedings of the case. We give below the relevant extract of submission dated 21-10-2019

2. In respect of query No. 2 of the Annexure annexed with the Notice It is submitted that the assessee company has not been served with any Order allowing Interest of Rs.34,65,547/- on Income Tax Refund. The assessee is not aware of any such refund and interest on refund and as such we request you to very kindly provide the order allowing interest of Rs.34,65,547/- on Income Tax refund before making any addition of Interest of Rs.34,65,547/-on Income tax refund.

5.1 In this connection It is submitted that no appeal effect order with computation sheet for the Assessment Year 2011-12 and 2012-13 passed u/s 250 were served on the assessee in the previous year 2016-17 relevant to Assessment Year 2017-18 and as such no such addition can be made in respect of this Interest on Income Tax refund.

Further without any Intimation and Information the assessee is not expected to book the Interest Income on Income Tax refunds Further the assesse com was granted refund of Rs.8,16,38,380/- vide Refund Order Dated 07-08-2018 fe the Assit Year 2013-14 vide order dated 18-07-2018 u/s 260 of the Income Tax Act and no payment details have been given in the said order. The asemee company has declared interest income on refund at Rs.57,72,900/- in the Assessment Year 2019-20. The assessee company has not been served with any appeal effect orders of earlier Assessment Years. The assessee must be provided the orders passed in financial year 2016-17 allowing interest on Income Tax refunds. The assessee company is a government undertaking and it can not book any Interest Income without any Intimation and information

We, therefore, request your Honor to very kindly delete the addition of Rs. 34,65,547/-in respect of Interest on income tax refund made by the leamed AO in the year under reference without service of any order granting interest on refund. We also request your Honour to very kindly direct the learned AD to provide the copy of the Appeal Effect order passed u/s 250 of the Income Tax Act, 1961 granting Interest on Refund and also intimate the assessee company as to whether the Refund Voucher is lying with the department or adjusted against the demand of the assessee comapny.

Ground No. 6

The ground No.7 to relates to allowance of TDS/TCS credit only at at Rs. 25,617/- as against actual claim of Rs.2,40,957/-.

We request your Honor to very kindly direct the leamed A.O. to allow the TDS/TCS credit as claimed in the return of income filed by the assessee company

Ground No.7

"The learned A.O. erred in law and on facts in charging Interest of Rs.41,99,895/u/s 234B as against Rs.33,93,978 and u/s 234C of Income

Tax Act, 1961 at Rs.5,96,967/- as against Rs.4,84,854/-".

We request your Honour to very kindly direct the learned AO to grant consequential relief in charging interest u/s 234B & 234C of the Income Tax Act, 1961.

Ground No. 8
General ground."

12. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S.No.	Particulars	Page Nos	
		From	To
1.	Copy of Written Submission dated 08.02.2021 filed before ld. CIT(A).	1	13
2.	Copy of ITR along with the Computation of Income.	14	42
3.	Copy of Audit Report along with the P/L and Balance-sheet.	43	66
4.	Copy of reply filed before ld. Assessing officer dated 21.10.2019.	67	71
5.	Copy of Order dated 29.11.2019 passed by the ld. CIT(A) for the Assessment year 2016-2017.	72	92
6.	Copy of Order dated 16.03.2020 passed by the Hon'ble ITAT for the Assessment year 2016-2017 in the appeal preferred by the Revenue against the Order passed by the Ld. CIT(A).	93	104
7.	Copy of Order dated 23.06.2016 passed by the Hon'ble ITAT for the Assessment year 2012-2013 in the appeal preferred by the Revenue against the Assessee appellant.	105	110
8.	Copy of Order dated 08.03.2016 passed by the Hon'ble ITAT for the Assessment year 2011-2012 in the appeal preferred by the Revenue against the Assessee appellant.	111	114
9.	Copy of Order dated 24.02.2016 passed by the Hon'ble ITAT for the Assessment year 2010-2011 in the appeal preferred by the Revenue against the Assessee appellant.	115	119
10.	Copy of order passed by the Hon'ble Rajasthan High Court in DB. ITA No. 99/2009 title as CIT vs. Rajasthan State Ganganagar Sugar Mills Ltd.	120	152

13. The ld. AR of the assessee in support of the ground raised in their appeal and that of the revenue relied upon the written submission.

14. Per contra in the appeal of the assessee ld. DR relied upon the order of the ld. CIT(A).

15. We have heard the rival contentions and perused the material placed on record. The bench noted that the vide ground no. 1 raised by the assessee challenges the addition of of Rs. 34,65,547/- in respect of interest on Income Tax Refund. When the matter carried before the ld. CIT(A) he has upheld that addition by observing as under:

> 8.3.2. Thus, in view of the interest on refund granted, the income is to be taxed and therefore, the addition of the AO is upheld. However, the AO is directed to provide the appeal giving effect orders in this respect along with the adjustment details. In even of lack of adjustment details, the refund is to be paid to the appellant.

We note that effectively ld. CIT(A) upheld the addition but at the same time directed the ld. AO to give adjustment details to the assessee. We feel that the matter on this issue is remanded back to the file of the ld.AO while give sufficient information and show cause notice and charge the income in accordance with law. Thus, ground no. 1 raised by the assessee is allowed for statistical purposes.

16. Vide ground no. 2 assessee challenges the disallowance of contribution towards ESI/PF, by considering the same not paid on or before due date and consider the Finance Act 2021 amendment is illegal, bad in law and void-ab-initio, as amendment to section 36(1)(va) is only prospective in nature and not retrospective i.e. not related to relevant Assessment Year 2017-18. After the decision the apex court in the case of Checkmate Services P. LTD Vs. CIT ld. AR of the assessee fairly not pressed this ground and therefore the same is dismissed.

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

In the result appeal filed by the assessee is partly allowed and that of the revenue stands dismissed.

Order pronounced in the open court on 08/05/2025.

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठोड कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 08/05/2025
*Ganesh Kumar, Sr. PS
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:
1. The Appellant- DCIT, Circle- 06, Jaipur

2. प्रत्यर्थी / The Respondent- Rajasthan State Ganganagar Sugar Mills Limited, Jaipur/ ACIT, Circle-06, Jaipur
3. आयकरआयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA Nos. 235 & 279/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar