

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD “B” BENCH: HYDERABAD

[THROUGH HYBRID HEARING]

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT  
AND  
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

ITA.Nos.291 & 292/Hyd./2023  
Assessment Years 2014-2015 & 2015-2016

Andhra Pradesh Beverages Corporation Limited, VIJAYAWADA. PAN AABCA7385A Andhra Pradesh.	vs.	The DCIT, Circle-1(1), Hyderabad.
(Appellant)		(Respondent)

For Assessee :	Shri Y. Ratnakar, Advocate & CA B Satyanarayana Murthy
For Revenue :	MS. M. Narmada, CIT-DR

Date of Hearing :	24.04.2025
Date of Pronouncement :	06.06.2025

**ORDER**

**PER MANJUNATHA G.:**

The above two appeals are filed by the Assessee against the order dated 30.03.2023 of the learned CIT(A)-National Faceless Appeal Centre [in short, the “NFAC”] Delhi, relating to the assessment years 2014-2015 & 2015-2016. Since common issues are involved in both these appeals, these appeals were heard together and are being

disposed of by this single consolidated order for the sake of convenience and brevity.

2. The assessee pleads the following grounds in it's appeal ITA.No.291/Hyd./2023 for the assessment year 2014-2015:

1. *"The order of the learned Commissioner of Income-tax (Appeals), Income-tax Department bearing DIN and Order No. ITBA/NFAC/S/250/2022-23/1051685248 (1) dated 30/3/2023 for asst. year 2014-15 is contrary to law and facts.*
2. *The learned CIT erred in dismissing the ground that the assessment is barred by limitation. The appellant contends that the asst. order was passed on 24/1/2020 while the limitation period for completing the assessment expired on 31/12/2019. The learned CIT(A) should have appreciated that the Assessment Order without DIN is invalid as per the Board Circular.*
3. *The learned CIT (A) erred in relying upon the clarification sought from Assessing Officer and screen shots without putting the same to the appellant for its objections.*
4. *The learned CIT(A) erred in confirming the addition/disallowance of the following items.*

<i>Addition of privilege fees</i>	<i>Rs.277,62,84,789</i>
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<i>Addition of Spl. Privilege fees for sport promotion</i>	<i>25,00,00,000</i>
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<i>Addition of Additional Privilege fee</i>	<i>429,23,75,131</i>
<i>Disallowance of Payment towards Leave encashment</i>	<i>8,42,385</i>
<i>Disallowance of Payments towards PF/SF GF and other fund</i>	<i><u>15,36,759</u></i>
<i>Total</i>	<i><u>726,10,39,064</u></i>

*The above additions/disallowance made are erroneous and the CIT (A) erred in confirming the additions/disallowance without appreciating the submissions put forth by the appellant.*

- 5. The learned CIT(A) erred in ignoring the objections filed online on 29/3/2023 and also the petition filed for admission of additional grounds.*
- 6. The learned CIT(A) erred in concurring with the observations of the Assessing Officer that the letters issued by the senior officer of the Government cannot be allowed to be relied upon by the appellant as evidence in support that the state government carried on the wholesale business in liquor. It is open to the appellant to rely upon any evidence in support of its plea and the assessing officer and CIT(A) are duty bound to consider the evidence.*
- 7. The learned CIT(A) erred in observing that the senior officers do not have the authority to issue any clarification and they have no power to state the factual position.*
- 8. The evidence produced forming part of paper book filed before CIT(A), in support that the state government carried on wholesale liquor trade were erroneously ignored by the CIT(A).*

9. *The learned CIT(A) erred in not considering the evidence produced before him. These have not been discussed by the Assessing officer or by the learned CIT(A) in any orders. In fact, the genuineness of this evidence was never doubted. The evidence placed on record unmistakably points out to the conclusion that the state government has carried on wholesale liquor business.*
10. *The learned CIT(A) erred in not considering that though the appellant is vested with the right to carry on wholesale liquor trade as per the A.P. Excise Act, 1993 in the financial year 2013-14 relevant for asst. year 2014-15 the wholesale liquor business was actually carried on by the State of A.P. and not by the appellant Corporation. The State Govt. preferred to carry on the business by itself and not through the appellant Corporation.*
11. *The learned CIT(A) erred in ignoring the fact that as to who carry on the business is to be decided from the factual position and not in an abstract manner divorced from reality.*
12. *The learned CIT(A) erred in ignoring the submission relating to the business carried on by the State of A.P. and the reasons for publishing the details of the business carried on by the state of AP separately at page 32 of the annual report.*
13. *The learned CIT(A) erred in not considering any of the submissions relating to the non-applicability of section 40a(iib) of the I.T. Act.*
14. *The learned CIT(A) erred in not considering the plea of the appellant that the levy of the privilege fee is not exclusive and the appellant has specifically raised this ground before CIT(A), which the CIT(A) did not address in the appellate order.*

15. *Without prejudice, the appellant submits that appellant is competent to raise this ground before CIT(A) even at the state of appeal proceedings and the learned CIT(A) erred in not adjudicating sting this issue.*
  16. *The learned CIT(A) failed to consider that it is necessary to determine as to who paid the privilege fees and who received the privilege fees while considering whether or not the wholesale trade in liquor is conducted by the State or the appellant Corporation.*
  17. *The learned CIT(A) was totally in error in observing that the disallowance u/s.40a(iib) is not the subject matter of the remand when the subject falls for consideration for coming to the conclusion as to who carried on liquor business. The CIT(A) erred in ignoring the additional ground filed online on 21/3/2023 on this issue.*
  18. *The learned CIT(A) erred in not accepting the contention that there is double addition in respect of Rs.429,23,75,131/-.*
  19. *The appellant contends that the computation of taxable income, quantification of income tax payable and levy of interest u/s.234B & Care incorrect. The appellant denies its liability towards the same.*
  20. *The appellant craves leave, to add to, amend or alter any of the aforesaid grounds as the occasion may require.*
  21. *For these and other grounds that will be argued at the time of hearing, it is prayed that the appeal be allowed and all additions made be deleted.”*
3. Briefly stated facts of the case are that, the appellant corporation viz., M/s. AP Beverages Corporation

Ltd., [in short “APBCL”] is a 100% State owned Statutory Corporation established u/sec.68A of A.P. Excise Act, 1969 for exclusive trading with IMFL, Beer and other liquors in the State of Andhra Pradesh. The A.P. Regulation of Wholesale Trade Act, 1993 regulates the wholesale trade of IMFL and Beer in the State of Andhra Pradesh. As per sec.4 of A.P. Regulation of Wholesale Trade Act, 1993, the right to carry on wholesale trade and distribution of Indian liquor, foreign liquor, wine and beer, shall and on from the appointed date solely vest with the Government and subjected to Rules as may be made in this behalf, the APBCL, a wholly owned and controlled by the Government shall have the exclusive privilege of importing, exporting and carrying on the wholesale trade and distribution of Indian liquor, Foreign liquor, wine and beer on behalf of the Government for the whole State of Andhra Pradesh and no other person shall be entitled to any privilege of importing/exporting and supplying the same in wholesale or distributing the same for the whole or any part of the State of Andhra Pradesh. The appellant-corporation is carrying

on the business on the terms of Act, 1993. As per secs.4A, 4B and 4C, it has been amended w.e.f. 16.04.2012 and that, the Government shall from time to time specify particulars of privilege fee or any other levy by whatever name called to be collected by the APBCL from the holders of the licence. The amount realised u/sec.4A being the income of the Government shall be remitted by the APBCL to the Government in the manner specified by the Government. Sec.4C states that, all amounts paid by the Corporation from 21.07.1993 to the Commissioner of Prohibition and Excise or the Government as privilege fee or special privilege fee or any other fee or cess, by whatever name called, as per the provisions of sections 23(1), 23A and 23B of the Andhra Pradesh Excise Act, 1968 shall be deemed to be and always deemed to have been the income of the Government and due payment for the relevant years in terms of section 4B of Act 1993. The amendment further states that, in the A.P. Excise Act, 1968, sec.23A and sec.23B shall be omitted.

3.1. For the assessment years 2014-2015 and 2015-2016, assessment was originally completed u/sec.143(3) vide order dated 30.12.2016. During the course of assessment proceedings, the Assessing Officer observed that, there is P & L A/c, to which, certain incomes are credited like retail out-let sales, other income like penalty levied of non-moving stock, penalty levied on un-lifted stock, sale of scrap etc., and special notes to the financial statements wherein the income from wholesale trading activity under GOAP-DDB Account is accounted for by way of a separate account. The Assessing Officer further observed that, from out of such revenues from the wholesale trading activity in IMFL/FL, certain expenditure is also claimed by way of privilege fee, special privilege fee, C.M. Relief Fund contribution etc., The assessee had not admitted the revenue's from the wholesale trading activity in IMFL/FM and the surplus/service of such activity to income tax. The Assessing Officer, then, discussed the issue at length in light of relevant provisions of A.P. Excise Act, 1968 and 2012 and held that, the assessee had the exclusive

privilege of importing, trading and distribution of IMFL/FL in the State of Andhra Pradesh and thus, the entire trading results on account of wholesale trade is the income of the assessee and whatever expenditure debited in the P & L A/c like privilege fee, special privilege fee, C.M. Relief Fund contribution etc., is the expenditure appropriated out of profit which falls under the provisions of sec.40a(ii)(b) of the Income Tax Act, 1961 [in short the "Act"] and thus, disallowed the privilege fee, special privilege fee, additional privilege fee and contribution to C.M. Relief Fund and added back to total income. The Assessing Officer had also disallowed leave encashment and belated payment of PF, SF, GF and other fund and determined the total income of the assessee at Rs.1260,58,77,836/- as against the returned income of Rs.23,79,28,520/-. A similar assessment order has been passed for the assessment year 2015-2016 determining the total income at Rs.702,91,58,900/- by making additions towards disallowance of privilege fee, special privilege fee, additional privilege fee and contribution to C.M. Relief Fund,

disallowance of leave encashment and disallowance of PF, SF, GF and other donation etc., as against the returned income of Rs.617,15,406/-.

4. The assessee preferred appeals against both the assessment orders passed by the Assessing Officer before the learned CIT(A). The learned CIT(A) vide order dated 22.12.2017 for the assessment year 2014-2015 partly allowed the appeal filed by the assessee. The learned CIT(A) dismissed the assessee's appeal relating to the issues of privilege fee, special privilege fee, additional privilege fee. However, directed the Assessing Officer to allow contribution to C.M. Relief Fund, if the wholesale proceeds are treated as income of the assessee.

5. The assessee challenged the order of the learned CIT(A) before the ITAT. The ITAT, Hyderabad Bench vide order dated 29.01.2019 in ITA.Nos.665 & 878/Hyd./2018 has remitted the issue back to the file of Assessing Officer for both the assessment years and directed the Assessing Officer to verify the letters filed by the assessee from various Officers of the Government of Andhra Pradesh and if, they

are found to be correct and if it is found that, it is the Government of Andhra Pradesh which is carrying on the manufacturing and trading of liquor, the assessee cannot be considered to have earned income from sale of such liquor.

6. In pursuance to the directions of the ITAT, Hyderabad Bench (supra), the Assessing Officer has taken fresh assessment proceedings and after considering relevant evidences filed by the assessee and also by noticing relevant A.P. Excise Act, 1968 and 2012, observed that, the assessee is having privilege of importing, trading and distributing the IMFL/FL in the State of Andhra Pradesh and thus, the entire income generated by the assessee out of wholesale trading in IMFL/FL is the income of the assessee. Therefore, held that, the amount paid out of the said income in the name of privilege fee, special privilege fee, additional privilege fee and contribution to C.M. Relief Fund falls under the provisions of sec.40a(iib) of the Act and thus, disallowed the amount paid to the State Government. The Assessing Officer had also made additions towards disallowance of leave encashment, disallowance of PF, SF,

GF and other donation etc. The assessee challenged the assessment order passed by the Assessing Officer u/sec.143(3) r.w.s.254 for both the assessment years. The learned CIT(A) vide order dated 30.03.2023 has partly allowed the appeal filed by the assessee, where the learned CIT(A) upheld the additions made by the Assessing Officer towards disallowance of privilege fee, special privilege fee, additional privilege fee. However, directed the Assessing Officer to verify the payment towards contribution to C.M. Relief Fund, and if the income from the activity is admitted by the assessee, then allow deduction u/s 80G of the Act. The learned CIT(A) confirmed the additions made by the Assessing Officer towards disallowance of leave encashment, PF, SF, GF and other donation etc.

7. Aggrieved by the order of the learned CIT(A), the assessee is now in appeal before the Tribunal.

8. The first issue that came-up for consideration from ground nos.1 to 3 of assessee's appeal for the assessment year 2014-2015 is validity of assessment order

passed by the Assessing Officer in light of multiple DINs and assessment order passed on 31.12.2019 is barred by limitation.

9. Shri Y. Ratnakar, Advocate-Learned Counsel for the Assessee referring to multiple DINs submitted that, in the assessment order, the Assessing Officer in handwriting quoted DIN no. which is different from DIN no. referred to in demand notice and assessment order dated 31.12.2019. The Assessing Officer has referred DIN no.1024249037(1) in the first page of the assessment order, whereas in the screen shot submitted by the Revenue downloaded from ITBA website, it is a different DIN no. i.e., 2019201410001851014C. Although, the Department claims that the assessment order u/sec.143(3) r.w.s.254 of the Act was passed on 31.12.2019 in AST software and the same has been subsequently uploaded in ITBA portal, for which, a separate DIN no. was generated, but the fact remains that in the demand notice, one more DIN no.20141199735 has been generated. Further, DIN no.1024249037(1) has been generated on 24.01.2020. Learned Counsel for the Assessee

further referring to the date of service of the order on 07.01.2020 submitted that, if at all the claim of the Revenue is correct that, assessment order has been passed on 31.12.2019, then, it should have been served on the assessee on the same day. Further, going by the date of service of the order, it is undisputedly clear that the assessment order has been passed beyond the due date i.e., 31.12.2019 and backdated by generation of DIN which is evident from the multiple DIN nos. generated by the Department. Therefore, he submitted that, the assessment order passed by the Assessing Officer with multiple DIN nos. and beyond the due date is barred by limitation and should be quashed.

10. MS. M. Narmada, learned CIT-DR for the Revenue, on the other hand, submitted that the assessment order has been passed with DIN no. 20192014100018510 14C on 31.12.2019 itself which is evident from the conclusion drawn by the learned CIT(A) based on entry in ITBA portal wherein the demand of Rs.313,17,11,113/- was generated on 31.12.2019 for the assessment year 2014-

2015 u/sec.143(3) r.w.s.254 of the Income Tax Act, 1961. She further submitted that, ITBA portal was newly introduced during the period, during which, the assessment order u/sec.143(3) r.w.s.254 for the assessment year 2014-2015 was passed. Further, facilitation to pass assessment order on ITBA portal was provided only with respect to orders for the assessment year 2015-2016. In the present case, since the assessment year involved is 2014-2015, the assessment order could only be passed by the Assessing Officer on AST. In this regard, there is a specific instruction no.144 dated 25.10.2019 issued by the CBDT which provides methodology for auto generation of DIN no. in respect of orders passed in ITD/AST. As per para-2 of Instruction 144, when an order is passed on ITD/AST application, DIN will be automatically generated in the ITD/AST screen which the Assessing Officer has to physically mention in the assessment order and also its annexures i.e. demand notice, computation sheet. It is also specified in Instruction 144 that, the DIN will be common for assessment order and also demand notice. It is clearly

mentioned in the Instruction that, intimation letter with regard to generation of DIN along with date of generation of DIN will automatically be sent by system to the e-filing account of the assessee. Para-4 of Instruction 144 clarified that, since auto-generation of DIN is made available in ITD/AST application, Assessing Officer's should not generate DIN in respect of legacy ITD/AST orders from ITBA common functions module for intimating to the taxpayer. In the present case, the AO has auto generated DIN on ITD/AST application on 31.12.2019 and the DIN generated was DIN no.20141199735 which can be seen from the computation sheet, where the order date is mentioned to be 31.12.2019. As stated at Para-2 of the Instruction 144, intimation letter in this case was generated on ITBA with respect to the assessment order uploaded on AST/ITD on 31.12.2019, but, not on the same day of uploading assessment order. Intimation letter was generated on 24.01.2020 and as per the said letter, it was specified that, the order was passed on 31.12.2019 with DIN No. 20141199735. Since, it was initial days of integration

between two different networks i.e., AST/ITD and ITBA, due to technical issues intimation letter with respect to the assessment order passed on 31.12.2019 was generated on ITBA after a gap of 24 days and this fact has been certified by the Income Tax Officer-(Systems)-(ITBA)-4, Ghaziabad. She further submitted that, though Para-4 of Instruction 144, clearly stated that since auto generation of DIN facility has been provided on AST/ITD, AO should not generate DIN in respect of legacy ITD/AST orders from ITBA portfolio, but, the Assessing Officer again generated separate DIN from ITBA common functions for intimation to the taxpayer on 24.01.2020 with DIN no.1024249037(1) which resulted in generation of additional DIN for order passed on 31.12.2019. Therefore, from the above, it is undisputedly clear that, order has been passed on 31.12.2019 with valid DIN and order is beyond limitation is devoid of merit and cannot be accepted.

11. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. There is no dispute with regard to the fact

that there are three DIN nos. in the present case. As per the assessment order dated 31.12.2019, the Assessing Officer referred DIN no.1024249037(1) and the said DIN has been generated on 24.01.2020 in ITBA Portal. There is another DIN no. generated on 31.12.2019 with DIN no.2019201410001851014C and the same has been appearing in the screen-shot submitted by the Department downloaded from ITBA application and the said DIN no. is against the assessment order passed by the Assessing Officer u/sec.143(3) r.w.s.254 of the Act dated 31.12.2019. One more DIN no. has been generated vide intimation letter dated 24.01.2020 with DIN no.20141199735 and in the said intimation letter it has been specifically referred that DIN no.20141199735 was dated 31.12.2019 on AST/ITD. In light of above facts, we have gone through the Instruction 144 dated 25.10.20190 issued by the CBDT which provides methodology for auto-generation of DIN nos. in respect of orders passed in ITD/AST. As per Para-2 of Instruction 144, when an order is passed on ITD/AST DIN no. will be automatically generated in ITD/AST screen which the

Assessing Officer has to physically mention in the assessment order and also its annexures and as per the said Instruction, there should be one common DIN for assessment order, demand notice and computation sheet etc., It is further stated that intimation letter with regard to generation of DIN along with date of generation of DIN will automatically be sent by the system to the e-filing account of the assessee. In the present case, although, there is a clear Instruction, but the Assessing Officer has once again generated separate DIN no. from ITD/AST common functions for intimation to the taxpayer on 24.01.2020. The Learned DR has explained the reasons for delay in generation of intimation letter due to technical error in ITBA portal and migration from ITD/AST system to ITBA portal and because of initial days there are some technical glitches. Because of this, there is a delay in generation of intimation letter and the same has been generated on 24.01.2020. In this regard, a Certificate from ITO-(Systems)-(ITBA)-4, Ghaziabad has been furnished wherein he has confirmed that, delay in generation of intimation letter on

ITBA website, towards assessment order passed on AST is due to technical glitches. From the above, it is undisputedly clear that, as per Instruction 144 dated 25.10.2019, the assessment order up-to assessment year 2014-2015 was allowed to be passed in ITD/AST system and only from assessment year 2015-2016 it was directed to be passed on ITBA-Portal. Since the Assessing Officer passed assessment order on ITD/AST system and generated DIN on 31.12.2019, while migrating to ITBA-portfolio, he had once again by an inadvertent error has generated a separate DIN and because of this, there are 02 DIN nos for one assessment order i.e., one generated on 31.12.2019 and another was generated on 24.01.2020. Further, in respect of third DIN no., it is the DIN which has been generated for intimation letter for intimating the assessment order passed by the Assessing Officer to the assessee. Therefore, we are of the considered view that, there is no delay in order passed by the Assessing Officer as alleged by the Learned Counsel for the Assessee in light of subsequent two DIN nos. that, the assessment order has been passed beyond due date

specified i.e., 31.12.2019 and further it has been backdated by referring a handwritten DIN no. in the first page of the assessment order and thus, it is devoid of merit and cannot be accepted. Therefore, we reject the grounds taken by the assessee challenging the validity of the assessment order in light of multiple DIN nos. and the argument that assessment order is barred by limitation.

12. The next issue that came up for consideration from ground nos.4 to 18 of assessee's appeal is, addition towards privilege fee, special privilege fee, additional privilege fee and contribution to C.M. Relief Fund.

13. Learned Counsel for the Assessee submitted that, the assessee is a State-Owned Corporation engaged in the business of trading of IMFL/FL, beer and wine in the State of Andhra Pradesh under exclusive licence from the State Government of Andhra Pradesh in terms of sec.68 of A.P. Excise Act, 1968 and A.P. Regulation of Wholesale Trade Act, 1993. Learned Counsel for the Assessee further submitted that, as per sec.4 of A.P. Regulation of Wholesale Trade Act, 1993, from appointed date, the right to carry on

wholesale trade and distribution of Indian liquor, foreign liquor, wine and beer vest in the Government and subject to such Rules as may be made in this behalf, the APBCL a wholly owned and controlled by the Government shall have the exclusive privilege of importing, exporting and carrying on the wholesale trade and distribution of Indian liquor, foreign liquor, wine and beer in the State of Andhra Pradesh. Learned Counsel for the Assessee further referring to the Amended Act of 2012 submitted that, law has been amended w.e.f. 2012 and as per the said Amendment, the wholesale business of trading in IMFL/FL etc., has been taken over by the Government of Andhra Pradesh and the assessee is only a Nodal Agency for storing, transporting and handling the IMFL/FL etc., for which, the assessee has been paid separate charges. Further, the Government of Andhra Pradesh is carrying on the trade and also receives the consideration for sale of goods into PD A/c which is directly managed by the Treasury department. Further, the manner of collection of privilege fee by the State Government, the allocation of the funds by the State

Government, collection from the retailers was dealt with by the directorate of distilleries in terms of various G.Os issued by the Government of Andhra Pradesh and accordingly, the sale consideration has been apportioned towards cost of goods sold, VAT collection, privilege fee, special privilege fee, additional privilege fee and contribution to C.M. Relief Fund etc. The assessee has been paid remuneration for managing the business on behalf of the Government. In this regard, he referred to bills issued by the Government of Andhra Pradesh for sale of products and collection of consideration from the retailers.

14. Learned Counsel for the Assessee further referring to various evidences including letter written by Senior Officers of the Government and affidavit of the Managing Director of the Assessee-APBCL submitted that, they have explained the manner and method of carrying-out the business of wholesale trade in the State of Andhra Pradesh and as per their clarification it is the exclusive right of the Government of Andhra Pradesh to carry-on the business. The Government of Andhra Pradesh collects entire

sale consideration in the PD A/c and the same has been appropriated to relevant Heads. The assessee neither collected the sale consideration nor privilege fee as claimed by the Assessing Officer. Further, the assessee has not paid any privilege fee, special privilege fee, additional privilege fee and contribution to C.M. Relief Fund etc. But, the same has been directly collected by the Government of Andhra Pradesh in the Treasury and, therefore, he submitted that, the allegation of the Assessing Officer that, in terms of sec.4 of A.P. Regulation of Wholesale Trade Act, 1993, the assessee is having exclusive right over wholesale trading in IMFL/FL, Beer and Wine and thus, the entire income is accrued to the assessee including privilege fee, special privilege fee, additional privilege fee and contribution to C.M. Relief Fund etc., collected by the Government is factually incorrect. The Learned Counsel for the Assessee further referring to Amendment to A.P. Regulation of Wholesale Trade Act, 1993, w.e.f. 2012 submitted that, provisions of sec.4A, 4B and 4C has been amended. Further, the provisions of sec.23A and 23B of A.P. Excise

Act, 1968 has been omitted. Before the amendment as per sec.23A and 23B of A.P. Excise Act, 1968, the payment by the Corporation to the Government has been specified and as per the said Act, the margins from the trade should be transferred to the Government in the manner provided in sec.23A and sec.23B. Further, the Act has been amended w.e.f. 16.04.2012 and as per the said amendment sec.4A, 4B and 4C has been inserted. Sec.4A states that, Government shall from time to time specify particulars of privilege fee or any other levy by whatever name called to be collected by the APBCL from the holders of the licence. Sec.4B states that the amount realised u/sec.4A being the income of the Government shall be remitted by the APBCL to the Government in the manner specified by the Government. Sec.4C states that, all amounts paid by the Corporation from 21.07.1993 to the Commissioner of Prohibition and Excise or the Government as privilege fee or special privilege fee etc., in consideration of the privilege conferred on the Corporation as per the provisions of sec.23(1), 23A, 23B of the A.P. Excise Act, 1968 shall be

deemed to be and always deemed to have been the income of the Government and due payment for the relevant years in terms of sec.4B. Similarly, sec.23A, 23B of A.P. Excise Act, 1968 shall be omitted. From the above, it is very clear that, the income of the Government has been diverted by over-riding title by way of an amendment to the law and, therefore, the Assessing Officer is incorrect in alleging that, the assessee has received the amount and the same has been paid to the Government as privilege fee, special privilege fee, additional privilege fee and contribution to C.M. Relief Fund etc. to invoke section 40(a)(iib) of the Act.

15. Learned Counsel for the Assessee further, referring to the financial statements of the Assessee-Corporation submitted that, the assessee has received remuneration from Government for managing the trade on behalf of the Government of Andhra Pradesh and the same has been credited to P & L A/c. Apart from this, the assessee has also manages few retail outlets and sale from the said outlets has been treated as income of the assessee. The assessee has also received discounts from the

manufacturers of liquors and the same has been treated as income of the assessee. If we consider the total income of the assessee and expenditure, nowhere, the assessee has considered the sale proceeds as it's income. Further, the assessee has prepared separate account under GOAP-DDB A/c where the sale proceeds of IMFL and other has been accounted separately. However, the said income is not part of the assessee's financials. Although, these facts has been explained to the Assessing Officer and the learned CIT(A), but, both of them have rejected the explanation of assessee and made additions towards privilege fee, special privilege fee etc.,

16. Further, Learned Counsel for the Assessee referring to addition of Rs.429,23,75,131/- towards additional privilege fee submitted that, it is a receipt in the hands of Government of Andhra Pradesh through PD A/c which is evident from the separate accounts prepared for GOAP-DDB A/c where same has been treated as income. However, the Assessing Officer has made additions towards income and once again made additions towards remittances

out of said income which has been debited under remittances. Therefore, he submitted that, the Assessing Officer has made additions twice i.e., one towards income and another towards remittances, thereby, made double additions on one income. Therefore, he submitted that, the additions made by the Assessing Officer towards additional privilege fee also needs to be deleted.

17. MS. M. Narmada, learned CIT-DR for the Revenue, on the other hand, submitted that, both the assessment orders involve similar issues. The ITAT, Hyderabad Bench vide order dated 29.01.2019 in ITA.Nos.665 & 878/Hyd./2018 has set-aside the issue to the file of Assessing Officer to examine the correctness of claim of Assessee-APBCL that from assessment year 2014-2015 onwards the State Government of Andhra Pradesh has taken-over wholesale trade of liquor which was earlier assigned to the assessee by way of exclusive license vide sec.4 of A.P. Regulation of Wholesale Trade Act, 1993 from the year 2012. The Government of Andhra Pradesh has only conducted the wholesale liquor business from assessment

year 2014-2015 onwards and assessee is only assisted the State Government in its business by keeping stocks supplied by liquor manufacturers by supplying stock to retailers, by providing reconciliation of payments to concerned authorities etc., However, going by sec.4 of the A.P. Regulation of Wholesale Trade Act, 1993, it confers exclusive privilege to the Assessee-Corporation i.e, APBCL for importing and exporting and carrying on the wholesale trade and distribution of IMFL/FL, Wine and Beer and said section has not been amended even in 2012. Further, as per the amended Act nowhere states that, role assigned to APBCL earlier has been restricted or withdrawn. It is also completely silent about the taking-over of business of wholesale trade from the assessee. This fact becomes apparent from the provisions of sec.4C of the Amended Act, as per which, the payment made to the Government in consideration of the privilege conferred on the Assessee-Corporation i.e, APBCL as per sec.23(1), 23A and 23B of the A.P. Excise Act, 1968 shall be deemed to be and always deemed to have been the income of the Government. The

Learned DR further referring to the various G.Os and letters written by the Senior Officers of the Government and affidavit of the Managing Director of Assessee-Corporation submitted that, they have only explained the manner and method of business carried-out by the Assessee-Corporation. However, they never stated that, the business has been carried-out by the Government of Andhra Pradesh. Further, the accounting system in the books of accounts of the assessee and the manner in which the consideration has been received does not alter the nature of receipts. Going by the provisions of the Act, it is undisputedly clear that, the assessee-corporation has got exclusive privilege in trading of IMFL/FL, Beer and Wine etc., and whatever income accrued to the assessee-corporation out of sale proceeds is the income of the assessee and thus, even if the proceeds has been directly appropriated by the Government of Andhra Pradesh through PD A/c, it partakes the nature of income of the assessee and amount appropriated to Government in the names of privilege fee, special privilege

fee, additional privilege fee and contribution to C.M. Relief Fund etc., falls under sec.40a(iib) of the Act.

18. The ld. CIT-DR, further referring to the provisions of sec.40a(iib) of the Act submitted that, as per the said provisions, any amount which is appropriated directly or indirectly from a State Government Undertaking by the State Government shall not be allowed as deduction while computing profits and gains from the business. In the present case, the assessee-corporation indirectly appropriated the income to the State Government by way of carrying on certain amendments to sec.4A, 4B and 4C of the Act without amending sec.4 of the Act, which confers exclusive privilege to the assessee-corporation for trading in IMFL/FL Beer and Wine etc., Therefore, she submitted that, arguments of the assessee that the trading has been carried-out by the State Government and assessee is only a facilitator of the trade, for which, it has been paid remuneration is devoid of merit and cannot be accepted. In this regard, she has filed detailed written submissions which has been reproduced as under:

“11. Both Assessment years 2014-15 and 2015-16 involves similar issues. Hon'ble ITAT Vide order ITA 665/Hyd/2018 & 878/Hyd/2018 dt 29-01-2019 has set aside the issue to the file of AO to examine correctness of claim of APBCL that from AY 2014-15 onwards, state government of Andhra Pradesh has taken over wholesale trade of liquor which was earlier assigned to APBCL by way of exclusive license vide section 4 of The AP regulation of wholesale trade Act, 1993. It is the contention of APBCL that The AP regulation of wholesale trade Act has been amended wef 2012. Consequently, the AP state government has only conducted the whole sale liquor business during assessment years 2014-15 and 2015-16 and APBCL has only assisted the state government in its business by keeping the stocks supplied by liquor manufacturers, by supplying of stock to Retailers, by providing reconciliation of payments to be made to liquor suppliers to concerned authorities responsible for payment etc for which APBCL was paid some amount of commission. It is stated that APBCL has also run 90 retail outlets during the years under consideration. Sales turnover from these Retail outlets alone is reflected in profit and loss account prepared for the years under consideration. It is further stated that turnover of business wrt wholesale trade of liquor conducted by AP state government is separately shown in a separate account

*called GOAPDDB A/c in audited accounts of APBCL filed for both years. Since business is carried by AP state government itself, question of payment of privilege fee, special privilege fee by APBCL to state government do not arise, consequently treatment of the same as application of income in hands of appellant or disallowance of same u/s.40a(iib). Further, it is stated that there is no exclusive levy of privilege fee on APBCL to attract provisions of section 40a(iib). In support of this contention, APBCL has filed letter issued by Commissioner Excise & Prohibition as additional evidence. Hon'ble ITAT has set aside the issue to the file of AO with a direction to consider additional evidence and relevant facts come to conclusion regarding actual conduct of whole sale liquor business by AP statement or otherwise during the years under appeal.*

12. *In this connection, it is to state that Exclusive license to carry wholesale trade of liquor in state of AP was granted to APBCL by AP state government vide section 4 of The AP regulation of wholesale trade Act, 1993. Relevant portion of section reads as follows :*

*“Taking over of wholesale trade in Indian liquor:-  
(1) Notwithstanding anything contained in the Andhra Pradesh Excise Act, 196\$ the right to carry on whole sale trade and distribution of Indian liquor, Foreign liquor, Wine and Beer shall on and*

*from the appointed date solely vest in the Government and subject to such rules as may be made in this behalf the Andhra Pradesh Beverages Corporation Limited, a Corporation wholly owned and controlled by the Government shall have the exclusive privilege of importing, exporting and carrying on the wholesale trade and distribution of Indian liquor, Foreign liquor, Wine and Beer on behalf of the Government, for the whole of the State of Andhra Pradesh and no other person shall be entitled to any privilege of importing, exporting and supplying the same in wholesale or distributing the same for the whole or any part of the State."*

13. In fact, section 4(3) of the Act itself states that till APBCL takes over the business of Wholesale trade, the AP state government would deploy its departmental officers to carry the business. Relevant portion of section is reproduced as follows :

*"(3) Until the date on which the Andhra Pradesh Beverages Corporation Limited commences supplying, by whole sale, Indian liquor, Foreign liquor, Wine and Beer retail dealers or till the date of the expiry of a period of two months commencing on and from the appointed date whichever is earlier, the Government shall as an*

interim measure, effect supply, by wholesale, of Indian liquor, Foreign liquor Wine and Beer to Bars, Clubs and Military Canteens and the retail dealers directly through the officers of the Government." It means that whenever AP state government wanted to carry business on its own through its own officers, the same was specifically provided in The AP regulation of wholesale trade Act itself."

14. It can be noticed from amended Act that there is no such provision which states that henceforth wholesale trade of liquor will be carried through officers of department. It can also be clearly seen from sections 4A, 4B and 4C of amended Act that whatever exclusive license to carry wholesale was granted to APBCL earlier has not been revoked in the amended Act and it continues to be held by APBCL only. Amended Act nowhere states that role assigned to APBCL earlier has been restricted. It is also completely silent about taking over of business of whole sale trade of liquor by government of AP. This fact becomes apparent from provisions of section 4C of amended Act which reads as follows :

"4-C. Notwithstanding anything contained in this Act, the Andhra Pradesh Excise Act, 1968 and the

*rules made there under or any order issued by the Government or the Commissioner of Prohibition and Excise, all amounts paid by the Corporation from 21-07-1993 to the Commissioner of Prohibition and Excise or the Government as privilege Fee or Special Privilege Fee or any other fee or cess, by whatever name called, in consideration of the privilege conferred on the Corporation, as per the provisions of sections 23(1), 23-A and 23-B of the Andhra Pradesh Excise Act, 1968 shall be deemed to be and always deemed to have been the income of the Government and due payment for the relevant years in terms of section 4B".*

15. *If right to carry on business has been assigned to a particular concern by way of insertion of certain provisions in a particular Act, the same can't be revoked unilaterally by state government without making suitable amendments to the concerned Act or without passing any order in writing to that effect. In the present case, Amended Act makes it abundantly clear that no amendments have been made revoking Exclusive license earlier granted to APBCL. Similarly, no order in writing has been passed by state government revoking the Exclusive license, restricting the Role of APBCL in conduct of whole sale liquor trade in state of*

*AP or expressly stating that it has taken over business of wholesale trade. If any such order has been passed, no such order has been furnished before any of the Authorities. Instead APBCL chose to rely on letter of Commissioner of prohibition and Excise to state that wholesale liquor trade has been taken over by state government. In democracy, neither state government nor functionaries of state government can violate law or can function without authority. Similarly, neither state government nor functionaries of state government can take away right of a citizen/concern without necessary orders in writing. The Authority can be provided either by way of specific provision or Rule or GO. It is submitted that in the present case, appellant failed to produce any such evidence. In the absence of any amendment to Wholesale trade regulation Act, if actual business is conducted by AP state government, it amounts to state government machinery helping APBCL in carrying out its business operations but not vice versa since the right to carry wholesale trade still vests with APBCL even after amendment.*

16. *Further, it is Submitted that it is abundantly clear from letter of by Commissioner Excise & Prohibition that only changes that are brought in after 2012 are w.r.t. the way payments are made to suppliers and payments are collected from retailers i.e*

1. *Methodology of payment to Suppliers of Liquor.* Prior to 2012, payment to suppliers of liquor was made by APBCL using letter of credit. Post 2012, basing on list of dues to suppliers supplied by APBCL, payments are made by Director of distilleries and breweries by electronic remittance of amount to the bank accounts of IMFL Suppliers basing on information supplied by APBCL regarding payments due to them. This change was brought in by issuing letter No 22914/EX-iii(2)/2012-13 dt 7-06-2012 to Director of distilleries and breweries

2. *Methodology of payment by Retailers.* Prior to 2012, demand drafts were collected by APBCL from retailers which was initially deposited in its bank account which later was deposited in treasury. Post 2012, Retailers are asked to make the payment online. Apart from above, no other change was made w.r.t. the way in which wholesale liquor business is conducted. Changes that are brought in w.r.t. payments by Retailers are through bringing out specific GOs 114 dt 14-05-2013 and GO 200 dt 13-07-2013. It is submitted that no specific GO was issued where State Government has declared that henceforth it is going to carry whole sale liquor trade in state of AP post 2012. Therefore, it is the submission of department that contention of appellant regarding taking over of business by AP state government is simply based on changes brought in

*w.r.t. the way payments are made to suppliers and payments are collected from retailers but nothing else.*

17. Combined reading of sections 4A, 4B, 4C with section 23C of Andhra Pradesh Excise Act shows that the Exclusive privilege granted to APBCL to carry wholesale trade of liquor has not been withdrawn by AP state Government vide amendment to The AP regulation of wholesale trade Act, 2012. Section 4C of regulation of wholesale Trade Act states that whatever privilege fee, special privilege fee is to be paid is in consideration for exclusive privilege given to APBCL to carry wholesale trade of liquor in AP. Section 4A of regulation of wholesale Trade Act states that it is the responsibility of APBCL to collect privilege fee and special privilege fee etc from licence holders. Combined reading of section 4A with 4B shows that sale proceeds towards supply of liquor to retailers accrue to APBCL in the first instance out of which privilege fee, special privilege fee etc is to be paid to state government being income of state government as per amended Act. Above sections specify that only privilege fee, special privilege fee constitute income of AP state government but not the entire sale consideration on sale of liquor by APBCL. Combined reading of section 4C with section 4A shows that the payment towards privilege fee, special privilege fee is made in consideration for privilege conferred on APBCL.

*Privilege fee, special privilege fee, additional privilege fee cannot be treated as consideration for licence granted in case of retailers since privilege fee, special privilege fee, additional privilege fee are inextricably linked to sale price of liquor/quantum of sales of liquor. Privilege fee, special privilege fee, additional privilege fee to be paid are quantified basing on sales but not linked to licence granted to retailers to conduct retail business of liquor. Licence fee is different from above fees as it is a fixed sum that is required to be paid for granting licence to carry retail business of liquor. If sale consideration on supply of liquor accrues to APBCL in the first instance, privilege fee, special privilege fee, additional privilege fee linked to sales also accrues to APBCL but it is to be paid to state government in consideration for exclusive privilege granted to APBCL. Only when income is diverted without there being accrual of income in the hands of the assessee, it is considered as diversion of income by overriding title. In the present case, entire sale proceeds in the first instance accrue to APBCL irrespective of whether they are deposited in the bank account of APBCL or not. Destination of remittance of sale proceeds of liquor by retailers is not a deciding factor for accrual of income in the hands of APBCL.*

18. *It is stated by Appellant that privilege fee is not collected by APBCL and it is not exclusively levied on APBCL after amendment of regulation of wholesale trade Act 2012. It is stated by Appellant that privilege fee is levied on all retailers and the amount is received directly by government hence privilege fee cannot be treated as application of income in the hands of APBCL. In this connection, it is submitted that state government has issued GO 614 dated 06.05.2005 in which the manner in which privilege fee, special privilege fee, additional privilege fee is to be remitted to state government has been prescribed. The appellant has relied on same GO during course of appeal proceedings before ITAT for assessment years 2006-07, 2008-09 and 2009-10 (ITA No.302-303&545/Hyd/ 2013 dated 21.01.2014). The same GO is referred to in notes given under GOAPDDB A/c for assessment year 2014-15 (page 442/paper book vol. 6). As per the GO, even prior to amendment of regulation of wholesale trade Act 2012, the procedure of remittance of privilege fee, special privilege fee, additional privilege fee has been same since 2005. The GO directs APBCL to collect sale proceeds of IMFL by the licensees of the retailers in the form of demand drafts in the name of GOAPDDB, remit the same to PD account and directs Director of Distilleries and Breweries to apportion the sale proceeds of liquor deposited in treasury account to remit among*

*different heads by way of VAT, privilege fee, special privilege fee sports, CMRF to be paid to state government by way of adjustment from the PD account. Therefore, even before amendment, sale proceeds of liquor were deposited into PD account which are then segregated into different heads by Director of Distilleries and Breweries and remitted to the concerned accounts. The only change that took place post amendment to regulation of wholesale trade Act 2012 is online remittance of sale proceeds of IMFL by retailers to PD account instead of APBCL collecting DDs from retailers in the first instance and then depositing the amount to PD account. As stated earlier, method of remittance of sale proceeds of IMFL has no bearing on accrual of sale proceeds of IMFL in the hands of APBCL both pre or post amendment to regulation of wholesale trade Act 2012. If sale proceeds of IMFL do not constitute income in the hands of APBCL, question of claim of deduction u/s 80G with respect to amount remitted towards CMRF out of sale proceeds by APBCL as claimed by it in its return of income does not arise.*

19. *Kind attention is drawn to sample copy of sale invoice of retailer provided at page 16/paper book vol 1. Sale invoice shows that even post amendment of regulation of wholesale trade Act 2012, sale invoice is issued in the name of APBCL (specifically mentioned as*

*an authority on behalf of section 68A of AP Excise Act, 1968 which exempts any authority acting on behalf of government from taking licence for sale and purchase of any intoxicant). Further, sale invoice does not show any bifurcation of amount towards privilege fee, special privilege fee, additional privilege fee etc. It contains only lumpsum sale amount that is required to be paid by retailer towards supply of IMFL by APBCL GO No.614 dated 06.05.2005 allows APBCL OD account of 100 crores per month to meet its expenditure. This GO has not been amended. Further though MD, APBCL in his letter (Para 6, page 40, paper book vol 1) stated that APBCL is paid commission for rendering of services to AP state government, no Commission income is found credited to profit and loss account of APBCL for Assessment years 2014-15 and 2015-16. There is no GO filed which grants payment of commission income, on what basis commission income is paid and which explains methodology for arriving at commission income payable to APBCL.*

20. *Further, though APBCL states that it has not carried wholesale liquor business, cash discounts received from IMFL suppliers for early clearance of dues amounting to Rs 56,63,38,350/-has been admitted as its income by crediting the amount to profit and loss account for assessment year 2014-15(page 423, paper*

*book vol VI). This is on par with cash discounts received from IMFL suppliers for A.yr 2013-14 of Rs 58,71,31,301/-, period prior to amendment to wholesale trade Act. Kind consideration may be given to Invitation of offers for supply of Foreign Liquor (No APBCL/1/2013-14/1 dt 26-10-2013) submitted during course of hearing which establishes that even after 2012, it is APBCL which enters into "Rate contract agreement" with IMFL suppliers but not state government. The APBCL can extend the rate contract for period of another two years after expiry of contract period without seeking any permission from state government of AP. APBCL can allow suppliers to supply new brands/labels not mentioned in rate contract. APBCL in its own discretion can place supply orders with persons though not participated in tender. It is against APBCL, IMFL suppliers makes claims for payment due to them by furnishing relevant document which are then forwarded by it to DDB (para 2.6, 2.7 and 2.12 of above notification). The above shows active role played by APBCL in actual conduct of wholesale liquor trade contrary to its claim.*

21. Kind attention is also drawn to the fact that during assessment years 2013-14 (prior to amendment) (page 442, Vol-6), 2014-15 VAT of Rs 8082,70,29,918, Rs.13380,68,15,051/- was remitted sales tax

*department of AP w.r.t wholesale liquor trade. If it was actually state government of AP which has conducted business, remittance of tax by one department of state government to another department do not arise. Further Sale Invoice (invoice cum delivery challan) at Page 12, PB Volume I shows that IMFL suppliers treat supply of IMFL as sales to APBCL as mentioned in sale bill. Purchase invoice at page 16, PB Vol-1 only mentions lumpsum amount to be paid by supplier to APBCL, does not provide bifurcation of privilege fee, special privilege fee indicating that only after entire sale consideration on supplies are accrued in hands APBCL, bifurcation of amount under different heads as per GOs of state government of AP is done by Director, Distilleries and Breweries. Even retailers in its books treat APBCL as debtor but not state government even after 2012 which becomes clear from page 90, PB, Volume 2. It is submitted that though APBCL is claimed to agent of state government of AP, there is nothing in the Wholesale liquor trade regulation Act or AP State Excise Act to suggest the same either before or after Amendment.*

22. *W.r.t. claim of double addition of Rs.429 Crores towards additional privilege fee, it is to submit that GOMS No.358 dated 22.06.2013 (page No.547/paper book Vol.7) shows that licence fee that is*

*required to be paid by retailer is a fixed amount decided basing on population of the area for which licence is granted. Apart from licence fee, privilege fee @8% of the invoice value of liquor purchased in excess of 7 times the annual licence fee is to be paid by retailer. Additional privilege fee (earlier called as special margin) would be MRP rounded up to next higher 5 rupees and the difference between MRP before rounding off and MRP after rounding off as per GOMS No.327 dated 21.05.2012 at page No.541/paper book Vol.7 read with GOMS No.17 dated 10.01.2013 at page No.544/paper book Vol.7). It is specifically mentioned as per GOMS No.542 dated 25.08.2012 (page No.543/paper book Vol.7) that special privilege fee would be difference between issue price before and after rounding it off to next highest rupee. Kind attention is drawn to GOMS No.47 dated 30.01.2013 (page No.548/paper book Vol.7) wherein Commissioner of Distilleries and Breweries, Hyderabad is directed to remit additional privilege fee generated from the sale proceeds of IMFL and FL. It may kindly be noted that this instruction was given even after amendment to regulation of wholesale Trade Act. Therefore, it is incorrect to state that since remittances mentioned under GOAP DDB A/c mentioned at page 442/paper book vol.6 does not include specific item named additional privilege fee, there is no remittance of additional privilege fee to the state*

*government during the year, therefore, disallowance of additional privilege fee of Rs.429,23,75,131 amounts to double addition. There is specific G.O given by state government to determine additional privilege fee and another specific G.O in the form of G.O.No.47 which directs remittance of additional privilege fee to state government. Therefore, it is incorrect to state that there is no remittance of additional privilege fee during the year.”*

19. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. The Assessing Officer disallowed privilege fee, special privilege fee, additional privilege fee and contribution to CM Relief Fund under sec.40(a)(iib) of the Income Tax Act, 1961, on the ground that, the appellant-corporation has paid or appropriated profits to the Government of Andhra Pradesh in the name of special privilege fee, additional privilege fee and contribution to CM Relief Fund, which fall under sec.40(a)(iib) of the Act. The Assessing Officer referred to sec.4 of the A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993 and had come to the conclusion that, the appellant-corporation has exclusive

privilege of importing, exporting and carrying on the wholesale trade and distribution of Indian Liquor, Foreign Liquor, Wine and Beer on behalf of the Government for the whole State of Andhra Pradesh and no other person shall be entitled to any privilege of importing, exporting and supplying the same in the wholesale or distributing the same for the whole or any part of the State and thus, whatever the amount collected by the appellant-corporation from the retailers towards sale of liquor, is income of the appellant-corporation and thus, the amount appropriated from the PD account is nothing, but, appropriation of profits or income of the appellant-corporation which falls under the provisions of sec.40(a)(iib) of the Income Tax Act, 1961. The Assessing Officer had discussed this issue at length in light of provisions of section 4 of the A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993 and subsequent amendment to the said Act w.e.f. 2012 and the mode of operation of the appellant-corporation in dealing with wholesale trade in the State of Andhra Pradesh and came to the conclusion that, as per the said Act, the

appellant-corporation is having exclusive privilege over the trade and, therefore, the subsequent amendment to the said Act by insertion of section 4-A to 4-C is only for the purpose of diverting the income of the appellant-corporation in favour of the State Government and thus, the argument of the appellant-corporation that, the Government of Andhra Pradesh has carried-out the wholesale trade of Indian Liquor, Foreign Liquor, Wine and Beer and the appellant-corporation is only a facilitator of the said trade on behalf of the Government is devoid of merit and cannot be accepted.

20. It was the argument of the learned Counsel that, although, the wholesale trade has been taken-over by the Government of Andhra Pradesh by virtue of A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993 from the appointed date and entrusted to the appellant-corporation, but, subsequently the Act has been amended w.e.f. 2012, thereby, the entire trade has been taken-over by the Government of Andhra Pradesh and appellant-corporation is only a Nodal Agency for carrying-out the trade on behalf of the Government of Andhra

Pradesh. The appellant-corporation has referred to various G.Os issued by the Government of Andhra Pradesh and letters addressed by the Senior Officers of the Government of Andhra Pradesh to the Income Tax Department and claimed that, the appellant-corporation is only a facilitator in the trade by handling the stock from various godowns for the purpose of easy disbursement of the goods, but, in fact, the trade has been carried-out by the government of Andhra Pradesh, which is the exclusive business of the Government of Andhra Pradesh. The Learned Counsel for the Assessee has also referred to various documents including relevant invoices raised by the Government of Andhra Pradesh for supply of goods to retailers and collection of proceeds from the retailers into the PD account directly. Learned Counsel for the Assessee had also referred to the provisions of section 4-A to 4-C of the A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993 and argued that, as per the said Act, the Government has inserted new provisions and collected privilege fee, special privilege fee, additional privilege fee and contribution to CM Relief Fund

under sec.4A and further, whatever amount collected under section 4-A of the A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993, shall be treated as income of the Government of Andhra Pradesh in terms of sections 4-B and 4-C of A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993. Learned Counsel for the Assessee has also referred to AP Excise Act, 1968 and more particularly, section 23-A and 23-B and further, omission of the provisions by amending the AP Excise Act 1968 by Act No.5 of 2012 and submitted that, the Government was from time to time specified the particular margin of privilege fee or any other levy by whatever name called to be collected by the APBCL [appellant-corporation] from the holders of licence and remittance of said amount to the Government and as per the said amendment brought into the A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993, whatever amount collected by the appellant-corporation from the license holders in the name of special privilege fee in consideration of the privilege conferred on

the Corporation as per the provisions of section 23(1), 23-A and 23-B of AP Excise Act, 1968, shall deemed to be and always deemed to have been the income of the Government and due payment for the relevant years in terms of section 4-B of A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993. Since the appellant-corporation is only a Nodal Agency carrying trade on behalf of the Government of Andhra Pradesh, whatever amount collected in terms of specific Act of the State Legislature, cannot be treated as 'Income' of the appellant-corporation so as to invoke the provisions of section 40(a)(iib) of the Income Tax Act, 1961.

21. We have given our thoughtful consideration to the relevant provisions of A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993 and the amendment to the said Act w.e.f.2012. As per section 4 of A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993, the right to carry on wholesale trade and distribution of Indian Liquor, Foreign Liquor, Wine and Beer shall on and from the appointed date solely

vest with the Government and subject to Rules as may be made in this behalf, the appellant-corporation shall have the exclusive privilege of importing, exporting and carrying on the wholesale trade and distribution of Indian Liquor, Foreign Liquor, Wine and Beer in the State of Andhra Pradesh and no other person shall be entitled to any privilege of carrying on the business. In terms of section 4(3) of the Act, till APBCL takes-over the business of wholesale trade, the Andhra Pradesh State government would deploy its Department Officers to carry-on the business. On a plain reading of Section-4 of A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993, the right to carry-on wholesale trade and distribution of Indian Liquor, Foreign Liquor, Wine and Beer etc., business shall be solely vests with the Government and subject to such Rules as may be made in this behalf, the appellant-corporation shall have exclusive right to trade in the business. Therefore, the argument of the Counsel for the Assessee that, the Government of Andhra Pradesh has carried-out the business of wholesale trade in the State of

Andhra Pradesh and the appellant-corporation is only a Nodal Agency for implementing the trade on behalf of the Government is devoid of merit and cannot be accepted because, even in the amendment to the said Act from 2012, Section-4 of the A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993 has not been amended. Although, the Counsel for the Assessee has referred to various G.Os and letters of Senior Officers of the Government in respect of it's claim that, the Andhra Pradesh government has exclusive right over the wholesale trade in the State of Andhra Pradesh, but, unless the Law has been amended so as to change the position given as per section-4 of the A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993, on the basis of letters of the Senior Officers of the Government of Andhra Pradesh, it cannot be concluded that the appellant-corporation is only a Nodal Agency which is carrying on the trade on behalf of the Government of Andhra Pradesh. Further, in so far as the contention of the Counsel for the Assessee in light of sale bills issued by the appellant-

corporation and subsequent realisation of proceeds into the PD account, in our considered view, it is only a manner and method of carrying-out the trade by the appellant-corporation according to its requirements, but, on the basis of said evidences, it cannot be concluded that, the trade has been carried-out by the Government of Andhra Pradesh. Therefore, we are the considered view, that the argument of the Counsel for the Assessee that, the Government of Andhra Pradesh has carried-out the wholesale trade in the State of Andhra Pradesh and the appellant-corporation is only a Nodal Agency or as an Agent carrying-out trade for the Government of Andhra Pradesh, cannot be accepted and thus, rejected.

22. Having said so, let us come back whether the amount collected by the appellant-corporation from the retailers or licence holders in the name of privilege fee, special privilege fee, additional privilege fee and contribution to CM Relief Fund is the income of the appellant-corporation and apportionment of said income to the Government of Andhra Pradesh in terms of sections-4A, 4-B and 4-C of A.P.

[Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993, falls under the provisions of section 40(a)(iib) of the Income Tax Act, 1961 or not, has to be seen. The A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993, has been amended w.e.f. 2012 and new sections-4A, 4-B and 4-C were inserted. For better understanding, relevant provisions of sections-4A, 4-B and 4-C of A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993 are reproduced as under :

*“4-A. The Government shall from time to time, specify the Trade margin, Privilege fee or any other levy, by whatever name called, to be collected by the Andhra Pradesh Beverages Corporation Limited from the holders of licences.*

*4-B. The Amount realized under section 4A, being the income of the Government, shall be remitted by the Andhra Pradesh Beverages Corporation Limited to the Government in the manner specified by the Government.*

*4-C. Notwithstanding anything contained in this Act, the Andhra Pradesh Excise Act, 1968 and the rules made there under or any order issued by the Government or the Commissioner of Prohibition and Excise, all amounts paid by the Corporation from 21-07-1993 to the Commissioner of*

*Prohibition and Excise or the Government as privilege Fee or Special Privilege Fee or any other fee or cess, by whatever name called, in consideration of the privilege conferred on the Corporation, as per the provisions of sections 23(1), 23-A and 23-B of the Andhra Pradesh Excise Act, 1968 shall be deemed to be and always deemed to have been the income of the Government and due payment for the relevant years in terms of section 4B".*

23. On perusal of the said provisions of sections 4-A, 4-B and 4-C of the A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993,, it is undisputedly clear that, the Government of Andhra Pradesh in terms of A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993, has levied trade margin privilege fee etc., to be collected by the appellant-corporation from the holders of license. As per section 4-B, amount realised under section 4-A being the "Income" of the Government, shall be remitted by the appellant-corporation to the Government in the manner specified by the Government. Section-4C explained the manner and method of payment of special margin privilege fee etc., collected from the holders of license and as per the said section,

notwithstanding anything contained in this Act, the AP Excise Act, 1968 and the Rules made thereunder or any order issued by the Government or the Commissioner of Prohibition and Excise, all amounts paid by the appellant-corporation from 21.07.1993 to the Commissioner of Prohibition and Excise or the Government as privilege fee or special privilege fee or any other fee or cess by whatever name called in consideration of the privilege conferred on the Corporation as per the provisions of section-23(1), 23-A and 23B of the AP Excise Act, 1968 shall be deemed to be and always deemed to have been the "Income" of the Government. Similar amendment has been made to the AP Excise Act, 1968 and section 23A and 23B has been omitted. From the above amendment, the Government of Andhra Pradesh has levied privilege fee, additional privilege fee, special privilege fee and contribution to CM Relief Fund on the holders of the license and authorised the appellant-corporation to collect along with sale proceeds of Indian Liquor, Foreign Liquor, Wine and Beer etc. Therefore, once the Government of Andhra Pradesh has levied any fees by

whatever name called, in our considered view, the said levy is, in accordance with the State Legislature be the “Income” of the Government of Andhra Pradesh and thus, the amount collected by the appellant-corporation from the license holders cannot be treated as “Income” accrued to the appellant-corporation and the same has been appropriated to the Government which can be considered under section 40(a)(iib) of the Income Tax Act, 1961. In our considered view, it is purely “Fees” or “levy” of the State Government in terms of Act of Legislature, but, not an “Income” of the appellant-corporation in terms of wholesale trade carried-out in accordance with provisions of section-4 of A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993. Therefore, the conclusion drawn by the Assessing Officer and the learned CIT(A) on the basis of the pre-amendment A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993, that the appellant-corporation is having exclusive privilege over wholesale trade in the State of Andhra Pradesh and subsequent amendment made to the said Act is only in

respect of method and manner of carrying of the trade is incorrect and cannot be accepted.

24. We further note that, after the amendment A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993, the Government of Andhra Pradesh has directly collected the proceeds from the license holders into the PD account and the same has been appropriated by the Government in accordance with A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993 and more particularly, in terms of sections 4-A, 4-B and 4-C of the said Act. The amount collected from the license holders towards privilege fee, special privilege fee, additional privilege fee and contribution to CM Relief Fund has been directly credited to the PD account and from the PD account, it has been appropriated to various accounts including contribution to CM Relief Fund by the Director of Distilleries and Breweries by way of adjustment from PD account. This fact is further supported by various Government orders issued by the Government from time to time, wherein it has been clearly explained the procedure of

collection of privilege fee, additional privilege fee, special privilege fee and contribution to CM Relief Fund and as per the one specific G.O, the special privilege fee has been collected from the license holders by rounding-off the amount into the nearest 5 rupees and the difference has been treated as 'special privilege fee'. Therefore, we are the considered view that, the amount collected by the appellant-corporation from the holders of the license towards sale of Indian Liquor, Foreign Liquor, Wine and Beer in terms of section 4-A to 4-C of A.P. [Regulation of Trade in Indian made Foreign Liquor, Foreign Liquor] Act, 1993, is a levy of the Government of Andhra Pradesh authorised by the Statute and shall be the "Income" and deemed to be always "Income" of the Government of Andhra Pradesh, which cannot be subjected to Central Tax in terms of Article 289 of the Constitution of India. Further, it is a clear case of diversion of income by overriding title, which is clearly evident from the fact that the appellant-corporation has been authorised to collect privilege fee, special privilege fee, additional privilege fee and contribution to CM Relief Fund

in terms of section 4-A, 4-B and 4-C of the Act, and, therefore, the amount collected by the appellant-corporation from the holders of the license cannot be treated as “Income” which has been accrued for the year under consideration. Since the income has been diverted by overriding title, the same cannot be treated as “Income” and consequently, the apportionment of the said amount from the PD account, cannot be treated as payment of privilege fee, special privilege fee, additional privilege fee and contribution to CM Relief Fund directly or indirectly from a State Government undertaking by the State Government as defined u/s 40(a)(iib) of the Act. The Assessing Officer and the learned CIT(A) without appreciating the relevant facts, erred in making additions towards privilege fee, special privilege fee, additional privilege fee and contribution to CM Relief Fund under sec.40(a)(iib) of the Income Tax Act, 1961. Thus, we set aside the order of the learned CIT(A) on this issue and direct the Assessing Officer to delete the addition made towards privilege fee, special privilege fee, additional

privilege fee and contribution to CM Relief Fund under sec.40(a)(iib) of the Income Tax Act, 1961.

25. We further note that, the Assessing Officer has made addition towards disallowance of privilege fee, special privilege fee, contribution to CM Relief Fund which is debited into the P & L A/c and further, he had also made addition towards additional privilege fee which is credited to P & L A/c by the appellant-corporation. From the above, it is undisputedly clear that, Assessing Officer has made additions twice in respect of one receipt i.e., one at the time of receipt which has been credited to P & L A/c and second at the time of payment out of appropriation to various accounts. Therefore, on this account also, the additions made by the Assessing officer towards additional privilege fee cannot be sustained. Thus, we direct the Assessing Officer to delete the addition made towards additional privilege fee.

26. The next issue that came-up for consideration from ground no.19 of assessee's appeal is levy of interest under

section 234B and 234C of the Income Tax Act, 1961. In our considered view, ground no.19 of the appeal is consequential in nature on the total income computed by the Assessing Officer and, therefore, we direct the Assessing Officer to re-compute the interest under section 234B and 234C on the total income determined in accordance with Law.

27. In the result, ITA.No.291/Hyd./2023 of the assessee is partly allowed.

**ITA.No.292/Hyd./2023 – A.Y. 2015-2016 :**

28. The first issue that came-up for consideration from grounds of appeal nos.1 to 15 of appellant-corporation's appeal is, addition towards disallowance of privilege fee, special privilege fee, additional privilege fee and contribution to CM Relief Fund. We find that, an identical issue has been considered by us in assessee's own case for the assessment year 2014-2015 in ITA.No.291/Hyd/2023. But for facts and figures, the issues involved in this appeal are similar to the issue which we had considered for

assessment year 2014- 2015. The reasons given by us in the preceding paragraph no.19 to 26 shall equally apply to this appeal, as well. Therefore, for similar reasons, we set-aside the order of the learned CIT(A) on this issue and direct the Assessing Officer to delete the additions made towards privilege fee, special privilege fee, additional privilege fee and contribution to CM Relief Fund etc.

29. The next issue that came for consideration from ground no.16 of appellant-corporation's appeal is disallowance of leave encashment and disallowance of PF, superannuation, gratuity and other amounts.

30. During the course of assessment proceedings, the Assessing Officer has disallowed leave encashment and disallowance of PF, superannuation, gratuity and other amounts upon verification of the 3CD report attached to the financial accounts and noted that the above amounts were not paid within the due date of filing of return of income u/sec.139(1) of the Act and, therefore, disallowed the said amounts. With respect to prior period expenses also, the Assessing Officer observed that it is not an allowable

expenditure u/sec.37 and hence disallowed the same and added to the total income of the appellant corporation.

31. Aggrieved by the assessment order, the appellant-corporation filed an appeal before the learned CIT(A) and the learned CIT(A) in absence of any submissions or proof against the above disallowances, upheld the disallowances made by the Assessing Officer.

32. Aggrieved by the order of the learned CIT(A), the assessee-corporation is now in appeal before the Tribunal.

33. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. We find that, even during the course of appellate proceedings before the Tribunal, since there was no documentary evidence filed by the appellant-corporation to substantiate its claims and in absence of such documentary evidence, we uphold the order of the learned CIT(A) on this issue.

34. Ground of appeal no.17 of the assessee's appeal relates to levy of interest under section 234B and 234C of the Income Tax Act, 1961.

35. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. In our considered view, ground no.17 of the assessee's appeal is consequential in nature on the total income computed by the Assessing Officer and, therefore, we direct the Assessing Officer to re-compute the interest under section 234B and 234C on the total income determined in accordance with Law.

36. In the result, ITA.No.292/Hyd./2023 of the Assessee is partly allowed for statistical purposes.

37. To sum-up, ITA.Nos.291 & 292/Hyd./2023 are partly allowed. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 06.06.2025

Sd/-  
[VIJAY PAL RAO]  
VICE PRESIDENT

Sd/-  
[MANJUNATHA G]  
ACCOUNTANT MEMBER

Hyderabad, Dated 06<sup>th</sup> June, 2025

VBP

Copy to

1.	Andhra Pradesh Beverages Corporation Limited, Prohibition & Excise Complex, Rs No.88/2b, Saivihar Apartments, Poultry Farm Road, Prasadampadu, VIJAYAWADA. Andhra Pradesh.
2.	The DCIT, Circle-1(1), Hyderabad.
3.	The Chief Commissioner of Income Tax, Vijayawada
4.	The Pr. CIT, Vijayawada
5.	The Pr. CIT, Hyderabad
6.	The DR ITAT "B" Bench, Hyderabad.
7.	Guard File.

//By Order//

//True Copy//