

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND
SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

I.T.A. No.617/Lkw/2019
Assessment Year:2014-15

Dy.C.I.T. Range-6, Lucknow.	Vs.	M/s U.P. State Construction & Infrastructure Development Corpn. Ltd., TC/46V, Vibhuti Khand, Gomti Nagar, Lucknow. PAN:AAACU1932C
(Appellant)		(Respondent)

C.O.No.01/Lkw/2020
(in I.T.A. No.617/Lkw/2019)
Assessment Year:2014-15

M/s U.P. State Construction & Infrastructure Development Corpn. Ltd., TC/46V, Vibhuti Khand, Gomti Nagar, Lucknow. PAN:AAACU1932C	Vs.	Dy.C.I.T. Range-6, Lucknow.
(Appellant)		(Respondent)

I.T.A. Nos.367 to 371/Lkw/2017
Assessment Years:2009-10 to 2012-13

Dy.C.I.T. Range-6, Lucknow.	Vs.	M/s U.P. State Construction & Infrastructure Development Corpn. Ltd., TC/46V, Vibhuti Khand, Gomti Nagar, Lucknow. PAN:AAACU1932C
(Appellant)		(Respondent)

C.O.Nos.13 to 17/Lkw/2017
(I.T.A. Nos.367 to 371/Lkw/2017)
Assessment Years:2009-10 to 2012-13

M/s U.P. State Construction & Infrastructure Development Corpn. Ltd., TC/46V, Vibhuti Khand, Gomti Nagar, Lucknow. PAN:AAACU1932C	Vs.	Dy.C.I.T. Range-6, Lucknow.
(Appellant)		(Respondent)

I.T.A. No.67/Lkw/2016
Assessment Year:2011-12

I.T.A. No.318/Lkw/2018
Assessment Year:2013-14

I.T.A. No.331/Lkw/2017
Assessment Year:2011-12

I.T.A. No.620/Lkw/2019
Assessment Year:2014-15

I.T.A. No.621/Lkw/2019
Assessment Year:2015-16

M/s U.P. State Construction & Infrastructure Development Corpn. Ltd., TC/46V, Vibhuti Khand, Gomti Nagar, Lucknow. PAN:AAACU1932C	Vs.	Dy.C.I.T. Range-6, Lucknow.
(Appellant)		(Respondent)

I.T.A. No.623/Lkw/2019
Assessment Years:2015-16

Dy.C.I.T. Range-6,	Vs.	M/s U.P. State Construction & Infrastructure Development
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Lucknow.	Corpn. Ltd., TC/46V, Vibhuti Khand, Gomti Nagar, Lucknow. PAN:AAACU1932C
(Appellant)	(Respondent)

Assessee by	Shri R. P. Tiwari, C.A. Replaced Shri (late) S. C. Agarwal (Advocate)
Revenue by	Shri R. K. Agarwal, D.R.

ORDER

PER ANADEE NATH MISSHRA:A.M.

(A) For the sake of convenience and brevity, these appeals are being disposed off through this consolidated order.

ITA. Nos.67/LKW/2016, 331/LKW/2017, 369 & 370/LKW/2017 for A.Y. 2011-12

The original assessment order for A.Y. 2011-12 was passed by the Assessing Officer on 29.03.2014. This order was subsequently set aside by the Ld. PCIT vide order dated 08.01.2016 passed under section 263 of the Act, wherein the Assessing Officer was directed to frame a fresh assessment. Pursuant to these directions, the Assessing Officer passed the consequential assessment order dated 14.09.2016 under section 143(3)/263 of the Income Tax Act.

(B) Appeals bearing ITA No. 67/LKW/2016, ITA No. 331/LKW/2017, ITA No. 369/LKW/2017 and ITA No. 370/LKW/2017 pertain to A.Y. 2011-12, in which the following grounds have been raised: -

ITA. No.370/LKW/2017

1. The Ld.CIT(A)-2, Lucknow has erred in law and on facts in holding the Pr. CIT while passing the order u/s 263 has cancelled order u/s 143(3) and additions

made to the income do not survive without appreciating the fact that the Pr. CIT cancelled the assessment only with respect to that part of the order which was erroneous and prejudicial to the interest of revenue.

2. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in holding the Pr. CIT while passing the order u/s 263 has cancelled order u/s 143(3) and additions made to the income do not survive without appreciating the fact that the Assessing Officer has correctly computed the income in the order u/s 143(3)/263 passed giving effect to the order u/s 143(3) on the basis of material available on the record.

3. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in holding the Pr. CIT while passing the order /s 263 has cancelled order u/s 143(3) and additions made to the income do not survive ignoring the fact that even though the Pr. CIT has cancelled the assessment, but it cannot be considered that Pr. CIT has also cancelled that part of the order which is not prejudicial to the interest of revenue.

4. The Ld. CIT(A), Lucknow has erred in law and on facts in holding the Pr. CIT while passing the order /s 263 has cancelled order u/s 143(3) and additions made to the income do not survive without appreciating the fact that the order Pr.CIT canceling the assessment and his directions to make a fresh assessment in accordance with law cannot be read in isolation but it must be read in the context in which Pr.CIT initiated the revisional proceedings, the order passed in revision and his final conclusion.

5. The Ld.CIT(A), Lucknow has erred in law and on facts in holding the Pr. CIT while passing the order /s 263 has cancelled order u/s 143(3) and additions made to the income do not survive and thus has acted without jurisdiction and beyond his authority in interpreting the order u/s 263 read with section 251 in such a manner which is contrary to the directions given by Pr. CIT in the order u/s 263 while the Assessing Officer has passed order u/s 143(3)/263 as per provisions of law and in accordance with the directions given by Pr. CIT in the order u/s 263 and such action of CIT(A) has become prejudicial to the interest of revenue.

6. The Ld.CIT(A), Lucknow has erred in law and on facts in holding the Pr. CIT while passing the order /s 263 has cancelled order u/s 143(3) and additions made to the income do not survive without appreciating the fact that the operative part of the order u/s 263 has to be read in the context what has preceded, namely, the discussion in the revision order and both the notice and the order u/s 263 have to be read as a whole and it cannot be read by omitting the context so as to mean deleting those additions which have not been prejudicial to the interest of revenue.

7. The Ld. CIT (A), Lucknow has erred in law and on facts in holding that Pr. CIT while passing the order /s 263 has cancelled order u/s 143(3) and additions made to the income do not survive ignoring the ratio as laid down by the order of Hon'ble Madras High Court in case of CIT vs Geo Industries and Insecticides 235 ITR 541.

8. The Ld. CIT(A), Lucknow has erred in law and on facts in holding that the Pr. CIT additions made by A.O. vide order u/s 143(3) of I.T. Act 1961 dated 29.03.2014 do not survive after order u/s 263 of the I.T. Act, 1961 without appreciating the fact that the assessee had filed appeal before Ld. CIT(A) against the assessment order under section 143(3) of the I.T. Act, 1961 dated

29.03.2014 and the provisions of section 263(1)(c) of the LT. Act, 1961 states that the power of the Principal Commissioner or Commissioner under this sub-section shall extend to such matters as had not been considered and decided in such appeal.

9. That the Appellant crave leaves to add or amend any one or more of the grounds of appeals, as stated above, as and when need to doing so arises with the prior permission of the Court."

ITA. No.67/LKW/2016

1. That the impugned order dated 08.01.2016 passed by Ld. Principal Commissioner of Income Tax-2 Lucknow is beyond jurisdiction and untenable in law.

2. That the Ld. Principal Commissioner of Income Tax-2 Lucknow was wrong in invoking section 263 of the Income Tax Act, 1961 in as much as the original assessment order dated 29.03.2014 passed by the Ld. AO is neither erroneous nor prejudicial to interest of Revenue.

3. That the Ld. Principal Commissioner of Income Tax-2 Lucknow Pg.7.errored in not taking into account the fact that the Ld. AO had relating to salary arrears Rs. 4.61,00,000/- by observing as under in accepted the contention of the assessee while considering the issue proceedings u/s 144A for assessment year 2012-13. "The assessee's reply appears to be acceptable. Also, in the AY 2011-12, the audit para was not accepted. It is requested that specific directions u/s 144A of the 1.T.Act, 1961 on this ground may kindly be issued."

4. That the Ld. Principal Commissioner of Income Tax-2 Lucknow was wrong in invoking section 263 of Income Tax Act, 1961 by holding that the Ld. AO did not conduct 'necessary inquiry' while allowing the deduction of Rs. 281.74 Crores towards Work in Progress (Road and sublet works)

5. That the Ld. Principal Commissioner of Income Tax-2 Lucknow did not consider the reply of the assessee, and has not passed a speaking order in coming to the conclusion that the assessment order was erroneous as contemplated u/s 263 of Income Tax Act, 1961.

6. That the Ld. Principal Commissioner of Income Tax-2 Lucknow was wrong in applying Explanation 2 to section 263 of Income Tax Act, 1961 in as much as the Explanation was brought on the statute book w.e.f. 01.06.2015 as per Finance Act, 2015 and is not applicable to the present proceedings.

7. That the Ld. Principal Commissioner of Income Tax-2 Lucknow wrongly came to the finding and without appreciating the fact that the Debit had the corresponding credit shown under the head turnover along with the centage as reflected in credit side of Profit and Loss Account for relevant assessment year which was offered to tax.

8. That the order under appeal is bad in law, passed in an arbitrary manner and is beyond the scope of section 263 of the Income Tax Act, 1961.

9. The Appellant craves leave of this Hon'ble Tribunal to add or amend the grounds of Appeal during the course of hearing."

ITA. No.331/LKW/2017

- 1. That the Ld. CIT(A) is wrong in restricting the claim of appellant company on account of arrears of salary to Rs.3,08,97,629/-against Rs.4,61,00,000/-.*
- 2. That the authorities were wrong in not appreciating the facts of the case and law in denying the claim of Rs.4,61,00,000/- on account of salary-arrears.*
- 3. That the orders passed by the tax authorities are against facts and law.*
- 4. That the appellant craves the leave to take additional amended grounds during the course of appellate proceedings.”*

ITA. No.369/LKW/2017

- 1. The Ld.CIT(A)-2, Lucknow has erred in law and on facts in directing to compute the income in the order u/s 143(3)/263 on the basis of returned income and not on the basis of assessed income u/s 143(3) without appreciating the fact that the Pr. CIT cancelled the assessment only with respect to that part of the order which was erroneous and prejudicial to the interest of revenue.*
- 2. The Ld.CIT(A)-2, Lucknow has erred in law and on facts in directing to compute the income in the order u/s 143(3)/263 on the basis of returned income and not on the basis of assessed income u/s 143(3) without appreciating the fact that the Assessing Officer has correctly computed the income in the order u/s 143(3)/263 passed giving effect to the order u/s 263 and retained the additions made in the earlier assessment order u/s 143(3) on the basis of material available on the record.*
- 3. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in directing to compute the income in the order u/s 143(3)/263 on the basis of returned income and not on the basis of assessed income u/s 143(3) ignoring the fact that even though the Pr. CIT has cancelled the assessment, but it cannot be considered that Pr. CIT has also cancelled that part of the order which is not prejudicial to the interest of revenue.*
- 4. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in directing to compute the income in the order u/s 143(3)/263 on the basis of returned income and not on the basis of assessed income u/s 143(3) without appreciating the fact that the order Pr. CIT canceling the assessment and his directions to make a fresh assessment in accordance with law cannot be read in isolation but it must be read in the context in which Pr. CIT initiated the revisional proceedings, the order passed in revision and his final conclusion.*
- 5. The Ld.CIT(A)-2, Lucknow has erred in law and on facts in directing to compute the income in the order u/s 143(3)/263 on the basis of returned income and not on the basis of assessed income u/s 143(3) and thus has acted without jurisdiction and beyond his authority in interpreting the order u/s 263 read with section 251 in such a manner which is contrary to the directions given by Pr. CIT in the order u/s 263 while the Assessing Officer has passed order u/s 143(3)/263 as per provisions of law and in accordance with the directions given by Pr. CIT in the order u/s 263 and such action of CIT(A) has become prejudicial to the interest of revenue.*

6. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in directing to compute the income in the order u/s 143(3)/263 on the basis of returned income and not on the basis of assessed income u/s 143(3) without appreciating the fact that the operative part of order u/s 263 has to be read in the context what has preceded, namely, the discussion in the revision order and both the notice and the order u/s 263 have to be read as a whole and it cannot be read by omitting the context so as to mean deleting those additions which have not been prejudicial to the interest of revenue.

7. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in directing to compute the income in the order u/s 143(3)/263 on the basis of returned income and not on the basis of assessed income u/s 143(3) ignoring the ratio as laid down by the order of Hon'ble Madras High Court in the case of CIT vs Geo Industries and Insecticides 234 ITR 541.

8. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in directing to compute the income in the order u/s 143(3)/263 on the basis of returned income and not on the basis of assessed income u/s 143(3) without appreciating the fact that the provisions of section 263(1)(c) of the Income Tax Act, 1961 which states that the powers of Pr. Commissioner or Commissioner under this sub-section shall extend to such matter as had not been considered and decided in such appeal.

9. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in directing to compute the income in the order u/s 143(3)/263 on the basis of returned income and not on the basis of assessed income u/s 143(3) without appreciating the fact that in view of provisions of section 263(1)(c) of the I.T. Act, 1961 the Pr. CIT, Lucknow had not cancelled the addition made by AO in order under section 143(3) I.T. Act, 1961 dated 29.03.2014 which was subject matter of appeal before Ld. CIT(A)-2, Lucknow but had directed the AO vide order u/s 263 of the I.T. Act 1961 dated 08.01.2016 to examine two issues which has not been considered and decided in such appeal.

10. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in deleting the addition of Rs.1,52,02,371/- made on account of provisions of salary without appreciating the fact that the provision has not been made on the basis of order of A.C.P. passed by Corporation and hence it is an unascertained liability.

11. That the Appellant craves leave to add or amend any one or more of the grounds of appeals, as stated above, as and when need to doing so arises with the prior permission of the Court.

(B.1) Cross objection No. 15 & 16/LKW/2016 for A.Y. 2011-12

These cross-objections pertain to A.Y. 2011-12, in which the following grounds have been raised: –

CO. No.15/LKW/2016

"1. That the departmental appeal is bad in law as well as on facts and liable to be dismissed.

2. That appeal of the assessee being dismissed as infructuous by the Ld. CIT (Appeal) in view of order passed u/s 263 of the Income Tax Act, 1961 by Principal CIT-2, Lucknow. The present appeal by the department does not lie u/s 253 (2) of the Income Tax Act, 1961 before Hon'ble Tribunal against the impugned order.

3. That various grounds taken by department does not arise out of the impugned order. The appeal by the department is wrong and liable to be dismissed as not maintainable

4. That the Ld. A.O. is wrong in not appreciating the fact that the Ld. CIT (A) deleted the addition Rs. 1,52,02,371/-on the categorical finding that assessee has following the mercantile system of Accounting and therefore the provision of salary Rs. 1,52,02,371/- as ascertained liability.

5. That assessee craves leave to additions/ amendments in the Grounds of the Cross Objection during the course of the proceedings of the appeal."

CO. No. 16/LKW/2016

1. That the departmental appeal is bad in law as well as on facts and liable to be dismissed.

2. That the Ld. A.O. mis-construed and has taken a wrong view that the Assessment Order dated 29.03.2014 passed u/s 143(3) of the Income Tax Act, 1961 was cancelled u/s 263 by Ld. Principal CIT in part and not as a whole.

3. That the Ld. A.O. is wrong in invoking u/s 263(1)(c) of Income Tax Act, 1961 which is not having any reference with the subject matter under consideration.

4. That the Ld. A.O. is wrong to rely on the order passed by Hon'ble Madras High Court in the case Geo Industries and insecticides 235 ITR 541. in as much as the issue considered by the Hon'ble High Court is entirely different in context.

5. That the Ld. A.O. misdirected herself and taking a wrong view of the directions contained in the order passed u/s 263 of the Income Tax Act, 1961 by the principal CIT, Lucknow.

6. That departmental appeal before the Hon'ble Income Tax Appellate Tribunal, Lucknow does not lie in as much as the Ld. CIT (Appeal) has dismissed the appeal of the assessee as infructuous by the impugned order.

7. That various grounds taken by department does not arise out of the impugned order the appeal by the department is wrong and liable to be dismissed as not maintainable.

8. That assessee craves leave to additions/ amendments in the Grounds of the Cross Objection during the course of the proceedings of the appeal."

(B.2) The original assessment order for A.Y. 2011-12 was passed by the Assessing Officer on 29.03.2014. This order was subsequently set aside by the Ld. PCIT vide order dated 08.01.2016 passed under section 263 of the Act, wherein the Assessing Officer was directed to frame a fresh

assessment. Pursuant to these directions, the Assessing Officer passed the consequential assessment order dated 14.09.2016 under section 143(3)/263 of the Income Tax Act. First, we take up ITA No. 67/LKW/2016 for A.Y. 2011-12, wherein the assessee has appealed against the order passed under section 263 of the Act dated 08.01.2016. The Ld. Authorized Representative (AR) for the assessee relied on the following written submissions: –

"1. UP State Construction & Infrastructures Development Corporation Ltd. has its Head Office at Lucknow (UP) and its Branches/units are spread in all Districts of Uttar Pradesh as well as several units in the State of Rajasthan, Madhya Pradesh, New Delhi, Uttarakhand and Maharashtra.

2. The appellant is a government registered company under section 619 of the Companies Act, 1956. The entire paid-up capital is held by the Government of Uttar Pradesh. Primarily the objective of this Government Company is to promote the interest of members of Schedule caste, Schedule tribes, and Backward classes and the scheme connected therewith, and accordingly, the income arising from the activity is exempt under section 10 (26B) of the Income Tax Act. Besides the assignment of promoting the interest of members of Schedule caste, Schedule tribes, and backward classes, the appellant company also undertakes the works from the government and its agencies to construct hostels and other buildings other than the buildings for Schedule caste, Schedule tribes, and Backward classes.

3. The return of the assessee was originally e-filed u/s 139 of the Income Tax Act on 29.09.2013 declaring the Total Loss of Rs. 3,06,71,691/ The case was selected in scrutiny the assessment u/s 143(3) was completed by the Deputy Commissioner of Income Tax, Range-VI, Lucknow on 11.02.2016 on total income of Rs. 10,45,71,123/- by making certain additions.

4. Later on, the case was set-aside as per provision of Sec. 263(1) of the Income Tax Act, 1961 vide order dated 28.03.2018 (F. No. Pr. CII-2/Tech/Lko/263/AY 2013-14/UPSCIDC/2017-18/1131) OF THE Ld. Pr CIT-2, Lucknow. Accordingly, notices u/s 142(1) of the Income Tax Act, 1961 along with the questionnaires dated 09.08.2018 and 09.11.2018 were issued to the assessee through speed post. In compliance, Sri SC Agarwal, Advocate and Sri P.K. Agarwal, Accounts officer attended, furnished written submission and the case was discussed with them.

5. Subsequently, the Ld. PCIT issued a show cause notice dated 30.11.2017 under Section 263, alleging that the order passed by the AO was erroneous in so far as it was prejudicial to the interests of the Revenue. In response, the appellant filed detailed objections, which were not appropriately considered. The Ld. PCIT passed the impugned order setting aside the assessment with directions to frame a fresh assessment.

6. Aggrieved with this order made by the PCIT, the appeal has been preferred by the assessee to the Appellate Tribunal.

Copy of Form 36 along with Grounds of Appeal are attached as Annexure 'A'.

: Written Submission-

1. Ground No. 1-

That the impugned order dated 28-03-2018 passed by Ld. Principal Commissioner Of Income Tax-2 (PCIT) is beyond jurisdiction and untenable in law.

The appellant respectfully submits that the impugned order dated 28.03.2018 passed by the Learned Principal Commissioner of Income Tax under Section 263 of the Income Tax Act, 1961 is liable to be quashed ab initio, as it is without jurisdiction and contrary to the settled principles of law.

Copy of order u/s 263 attached as Annexure B.

2. Ground No. 2-

That the Ld. PCIT was wrong in invoking section 263 of the Income Tax Act, in as much as the original assessment order dated 11-02-2016 is neither erroneous nor prejudicial to the interest of revenue.

Jurisdictional Precondition Not Met: It is a settled position of law that the jurisdiction under Section 263 can only be invoked when both the following conditions are cumulatively satisfied:

The order passed by the Assessing Officer is erroneous, and such error is prejudicial to the interests of the Revenue.

In the present case, the Ld. PCIT has failed to establish how the assessment order passed under Section 143(3) was erroneous in the first place. The AO made inquiries during the course of assessment proceedings, and the appellant filed detailed responses supported by documentary evidence. The Ld. PCIT has merely substituted his own opinion over the AO's conclusion, which is impermissible under law.

In any case assessment order cannot be revised on the ground that the deeper inquiry ought to have been made or proper exercise was not done while making the assessment. It is not the case of department that books were not presented or examined by the Ld. AO. It also a fact that tax audit report was looked into and the matter was examined in the light of such report. In the notice there is no mention of any fresh material which enabled the Ld. PCIT for assuming jurisdiction u/s 263.

3. Ground No. 3-

That the Ld. PCIT was wrong in not passing a speaking order ignoring the submissions made by the assessee during proceeding u/s 263 rendering the order under appeal bad in law and liable to be cancelled.

Section 263 requires a Speaking and Reasoned Order: The jurisdiction under Section 263 is not automatic. The Commissioner must demonstrate with cogent reasons as to how the AO's order is erroneous, and how such error is prejudicial to the interests of the Revenue. In the present case, the Ld. PCIT has failed to

satisfy these statutory tests and has instead passed a cryptic, generalized order without a reasoned finding. This is impermissible and unsustainable in law.

4. Ground No. 4-

That the Ld. PCIT was wrong in ignoring the reply of the assessee before him regarding prior period expenses of Rs. 46,29,470/- and loss on sale of Fixed Assets Rs. 8,83,439/- along with provision for incentive allowance Rs. 21,40,000/- under the head 'Employee Benefit Expenses' and yet taking an adverse view of the matter which amounts to arbitrary exercise of power. Ld. PCIT Ignored the Assessee's Reply without proper discussion: In the Section 263 proceedings, the appellant submitted a detailed, item-wise reply to the PCIT's show cause notice, which explained all the above three issues clearly.

The matter relating to expenses for prior period Rs. 46,29,470/- was with the Ld. AO as per the details submitted during assessment proceedings. Further, this matter had been examined in earlier years as well and was decided by Hon'ble Tribunal in favor of assessee. As per the Rule of Consistency, no action required u/s 263 under these circumstances. Similar is the case of incentive allowance for the benefit of employee Rs. 21,40,000/- The benefit of employee is consistently given and never there was any objection raised by the department. Regarding loss on sale of fixed assets Rs.8,83,439/- the matter is explained in the final accounts including the particulars of assets and claim of depreciation as shown in the audit report. The contention that the AO should have made enquiry/verification on these items while passing the impugned order raises the question as to how these finding was arrived and basis for issuing notice u/s 263.

However, in the impugned order, the Ld. PCIT has neither discussed nor rebutted the appellant's reply on any of the above points. The impugned order simply proceeds to hold the assessment order as "erroneous and prejudicial" without assigning any specific finding on why the assessee's explanation was incorrect or insufficient.

5. Ground No. 5-

That the Ld. PCIT was wrong in referring the ITAT order dated 25-05-2012 for the Assessment year 2006-07 under ITA No. 168/LKW/2010 which is having no bearing with the issues involved and by passing the points raised in the show cause notice for initiating the proceedings u/s 263 rendering the proceedings invalid.

It is respectfully submitted that the Ld. PCIT has erred in relying upon the order of the Hon'ble Income Tax Appellate Tribunal (ITAT) dated 25-05-2012, passed in ITA No. 168/LKW/2010 for the Assessment Year 2006-07. The said ITAT order pertains to a different assessment year and involves a distinct set of facts and legal issues, which have no direct relevance or bearing on the present case under consideration. By referring to and relying on this unrelated ITAT order, the Ld. PCIT has misapplied precedent and failed to address the specific issues raised in the show cause notice issued for the purpose of initiating proceedings under Section 263 of the Income Tax Act, 1961. Furthermore, the order passed under Section 263 does not adequately deal with the objections and explanations submitted by the assessee in response to the show cause notice. This not only reflects non-application of mind but also amounts to a procedural lapse, thereby rendering the entire revisionary proceedings invalid, unsustainable in law, and liable to be quashed.

In Gabriel India Ltd. v. CIT [(1993) 203 ITR 108 (Bom)], it was held that for Section 263 to be validly invoked, the Commissioner must base his conclusions on relevant and applicable material. Reliance on extraneous or unrelated case law indicates failure to apply mind to the facts of the case. By relying on an unrelated and factually distinguishable ITAT order, the Ld. PCIT has acted without proper application of mind. This further vitiates the assumption of jurisdiction under Section 263 and renders the impugned order unsustainable in law.

Copy of judgment is attached as Annexure C.

6. Ground No. 6-

The Ld. PCIT was wrong and without any basis in coming to a conclusion that "perusal of records shows that during the course of proceedings the Assessing Officer did not conduct any enquiry prior period expenses of Rs. 46,29,470/- before allowing the entire period expenses. Same is the case with loss of sale of fixed asset of Rs. 8,83,439/- and provision for incentive allowance amounting to Rs. 21,40,000/- under the head of Employees Benefit Expenses claimed by the assessee".

The appellant respectfully submits that the conclusion drawn by the Ld. PCIT, that the AO failed to make any enquiry before allowing the expenses of prior period expenses of Rs. 46,29,470/-, loss on sale of fixed assets of Rs. 8,83,439/- and provision for incentive allowance amounting to Rs. 21,40,000/- is factually incorrect, contrary to the assessment record, and legally unsustainable. The assumption of jurisdiction under Section 263 based on this erroneous premise is therefore liable to be quashed. The Ld. PCIT, while exercising revisional powers, has not pointed out any evidence to show that no enquiry was conducted.

Instead, the order merely observes that "no enquiry appears to have been made," which is speculative, superficial, and not supported by the assessment records. Such observation does not meet the threshold laid down under law for invoking Section 263, especially when proper enquiry and application of mind is demonstrable from the assessment file.

In CIT v. Gabriel India Ltd. [(1993) 203 ITR 108 (Bom)], the Hon'ble Bombay High Court held:

"The Commissioner cannot initiate revision merely because he is of the opinion that further enquiry should have been conducted. If the AO has made enquiries and taken a view, the Commissioner cannot substitute his own view."

7. Ground No. 7-

That the Ld. PCIT was wrong in invoking Explanation 2 to section 263 of the Income Tax Act and in any case wrongly made it applicable to the present proceedings.

Ld. PCIT was wrong in invoking Explanation 2 to section 263. Explanation 2 to Section 263, introduced by the Finance Act, 2015 with effect from 01.06.2015, is meant to clarify certain illustrative circumstances under which an order may be considered "erroneous in so far as it is prejudicial to the interests of the Revenue." However: Explanation 2 does not operate in isolation. It does not dispense with the twin jurisdictional conditions laid down by the Hon'ble

Supreme Court in Malabar Industrial Co. Ltd. v. CIT [(2000) 243 ITR 83 (SC)]- i.e., the order must be:

(a) Erroneous, and

(b) Prejudicial to the interests of the Revenue.

Unless both these conditions are demonstrably satisfied based on the facts and records of the assessment, Explanation 2 cannot be mechanically invoked. Copy of judgment is attached as Annexure D.

It has been laid down by the Hon'ble Tribunal in Principal Commissioner of Income-tax, Surat-2 v. Shreeji Prints (P.) Ltd.,

5. The Tribunal has found that in the order passed by the PCIT, Explanation 2 of section 263 of the Act, 1961 is made applicable. The Tribunal observed that the PCIT has not mentioned in the show cause notice to invoke the Explanation 2 of section 263 of the Act 1961. Therefore, by invocation of Explanation in the order without confronting the assessee and giving an opportunity of being heard to the assessee is not appropriate and sustainable in law.

The procedural irregularity vitiates the proceedings, as it deprives the assessee of a reasonable opportunity to present its case and defend the assessment order. Accordingly, the revisionary order passed under Section 263 based on a ground not mentioned in the show cause notice is not legally tenable and is liable to be quashed.

Copy of judgment is attached as Annexure E.

8. Ground No. 8-

That the order is against law, facts and circumstances of the case.

Therefore, the order under Section 263 has been passed without proper appreciation of the facts on record and without bringing any fresh material to establish any error or prejudice, thereby rendering the order unsustainable."

(B.2.1) Ld. Departmental Representative (DR) relied on the impugned order u/s 263 of I.T. Act. In view of the aforesaid written submissions filed by the assessee, we are satisfied that the Assessing Officer had carried out proper inquiries and verification in respect of the issues discussed by the Ld. PCIT in paragraphs 3 and 4 of the impugned order dated 08.01.2016 passed under section 263 of the Act, while passing aforesaid assessment order dated 29.03.2014. Therefore, we hold that Explanation 2 to section 263 of the Act, as invoked by the Ld. PCIT, is neither relevant nor applicable to the facts of the present case. Accordingly, we set aside the impugned order dated 08.01.2016 passed under section 263 of the Act and restore the

original assessment order dated 29.03.2014. As a logical corollary, the consequential assessment order dated 14.09.2016 passed by the Assessing Officer pursuant to the said order under section 263 is hereby annulled.

(B.3) In view of the foregoing findings, the appeal of the assessee in ITA No. 67/LKW/2016, along with all grounds raised therein, is treated as disposed of in accordance with the above directions.

(B.4) Since we have set aside the order dated 08.01.2016 passed by the Ld. PCIT under section 263 of the Act, and have consequently annulled the assessment order dated 14.09.2016, the appeals in ITA No. 331/LKW/2017 and ITA No. 369/LKW/2017 (originating from the new annulled aforesaid assessment order dated 14.09.2016) have become infructuous. These appeals are, accordingly, dismissed as infructuous.

(B.5) Cross Objection No. 15/LKW/2017 (connected to ITA No. 369/LKW/2017) becomes infructuous, in view of our foregoing decision in ITA No. 369/LKW/2017. Therefore, this cross objection is hereby dismissed as infructuous, and all the grounds raised therein are treated as disposed of in accordance with the aforesaid directions.

(C) ITA No. 370/LKW/2017, being the Revenue's appeal, and Cross Objection No. 16/LKW/2017 are now taken up together. These matters arise from the appellate order dated 27.03.2017 passed by the Ld. CIT(A) in respect of the consequential assessment order dated 14.09.2016. The Ld.

CIT(A) proceeded on the premise that the assessment order dated 29.03.2014 had been cancelled by the Ld. PCIT. However, as discussed in paragraph (B.2.1) of this order, we have set aside the impugned order dated 08.01.2016 passed by the Ld. PCIT passed under section 263 of the Act and have restored the original assessment order dated 29.03.2014. Accordingly, the issues in dispute in ITA No. 370/LKW/2017 and Cross Objection No. 16/LKW/2017 are restored back to the file of the Ld. CIT(A) with the direction to pass *de novo* order, in accordance with law, after providing reasonable opportunity of being heard to the assessee.

(D) ITA No. 371/LKW/2017 and CO No. 17/LKW/2017 pertain to A.Y. 2012-13, in which the following grounds have been raised: –

ITA No. 371/LKW/2017

"The Ld.CIT(A)-2, Lucknow has erred in law and on facts in deleting the addition of Rs.8,58,37,385/- on account of interest on unutilized funds without appreciating the fact that the assessee is claiming TDS pertaining to interest on unutilized funds and as per provisions of Sec. 198 & 199 of the I.T. Act, 1961 the above interest income is income of the assessee and not of the U.P. Govt.

The Ld.CIT(A)-2, Lucknow has erred in law and on facts in deleting the disallowance of exemption claimed u/s 10(26B) Rs.29,10,000/- without appreciating the fact that the assessee has not maintained any separate books of account relating to work of SC/ST/OBC as held in Hon'ble All'd. High Court Judgment in Harijan Evam Nirbal Warg Awas Nigam Ltd. for A.Y. 1979-80.

3. The Ld.CIT(A)-2, Lucknow has erred in law and on facts in deleting the disallowance of Rs.6,95,21,880/- u/s 40(a)(ia) of the I.T. Act, 1961 without appreciating the fact that the assessee has procured materials from work contractors and in many cases the transport charges & labour are more than cost of material.

4. The Ld.CIT(A)-2, Lucknow has erred in law and on facts in deleting the addition of Rs3,28,24,607/- on account of centage charges without appreciating the fact that the addition has been made on the basis of difference in centage rate shown by the assessee and actual centage charged by the assessee.

The Ld.CIT(A)-2, Lucknow has erred in law and on facts in deleting the addition of Rs.1,91,54,470/- without appreciating the fact that payment of arrear of salary on account of DA is only quantified when it is declared by state government so it will be allowed on actual payment basis u/s 43B of the I.T.Act, 1961.

6. That the Appellant craves leave to add or amend any one or more of the grounds of appeals, as stated above, as and when need to doing so arises with the prior permission of the Court.

CO No. 17/LKW/2017

1. That the Ld. A.O. wrongly objected the direction of the Ld. CIT Appeal for deleting the addition Rs. 8,58,37,385/ on account of interest of unutilised unds on the face of finding by the Ld. CIT Appeal that the interest accrued on the advances received by the assessee from the govt. for construction activities is an income of the govt. and not of the assessee and also that the income did not accrue and chargeable in the hands of the assessee.

2. That the Ld. A.O. has wrongly objected the deletion of Rs. 29,10,000/- on account of claim of exemption u/s 10(26B) of the Income Tax Act, 1961 ignoring the fact that the claim is allowed u/s 10(26B) the Statute for the projects which are undertaken by the assessee for the benefit and to promote the interest of the members of Scheduled Caste/ Scheduled Tribes and Backward Classes consistently on the strength of the Hon'ble High Court Order in the assessee's own case.

3. That the objections of the Ld. A.O. for deletion of Rs. 6,95,21,880/- u/s 40 (a)(ia) of Income Tax Act, 1961 on the ground of non-production of party-wise dails before the Ld. A.O. is factually incorrect on the face of categorical finding of the Ld. CIT (Appeal) as per Para 7(4) of the Impugned Order.

4. That the Ld. A.O. is wrong in objecting the deletion of Rs. 3,28,24,607/- on account of centage in as much as there is a specific finding of the Ld. C.I.T. Appeal that the centage received by the assessee is recorded in the books of accounts and the Ld. A.O. has failed to show by bringing any evidence on record that centage received was higher than shown in the Books of Accounts.

5. That the Ld. A.O. is wrong in objecting the deletion of Rs. 1,91,54,470/- by Ld. CIT Appeal after recording a finding that such addition was unjustified u/s 43B of Income Tax Act, 1961 on the basis of evidence on record.

6. That assessee craves leave to additions/ amendments in the Grounds of the Cross Objection during the course of the proceedings of the appeal."

(D.1) The relevant portion of the impugned order of the Ld. CIT(A) is reproduced as under: -

"1. This appeal is filed by the appellant against the order under section 143(3) of the Income Tax Act, 1961 dated 11.03.2015 passed by the Deputy Commissioner of Income Tax, Range-VI, Lucknow.

2. The facts of the case are that for the assessment year 2012-2013, the assessee filed its return of income showing Total Income of Rs. 14,07,91,850/-. The assessment was completed by the Deputy Commissioner of Income Tax, Range-VI, Lucknow (hereinafter referred to as the Assessing Officer or simply the AO) on income of Rs. 38,78,73,237/- vide order under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Aggrieved with this assessment framed by the AO, the appeal has been preferred by the appellant.

3. During the course of appellate proceedings, Shri S.C. Agarwal, Advocate and Shri Pradeep Agarwal, Senior Accounts Officer appeared before me and filed written submissions. The Authorized Representatives of the Appellant have also been heard. I proceed now to discuss and decide the issues raised on the basis of grounds of appeal Involved in the appeal before me.

4(1) Ground of appeal number 1 is as under-

1. That the addition in an amount of Rs.8,58,37,385/- on account of Interest on unutilized funds is wrong and unjustified on the following grounds:-

(a) The amount represents liability payable to the Government and is not part of income of the assessee company.

(b) The Ld. A.O. omitted the fact while deciding the issue against the assessee, as he did not consider the reply to the effect that the matter is settled by the order of CIT (Appeals), Lucknow for the assessment year 1988-89 in the assessee's own case.

(c) The Ld. A.O. failed to consider and appreciate that no appeal was filed by the department against the order of the CIT (Appeals) in assessment year 1988-89 and as such was a precedent on the basis of which the subsequent assessments were completed.

(d) The action of the Ld. A.O. is untenable in law as he committed wrong in disregarding the order of Ld. CIT (Appeals) on the issue.

(e) The Ld. A.O. was wrong in coming to the conclusion that "as per accounting principle the whole interest income to be accounted for in P&L account and amount refunded or credited in Govt. account be debited in P&L account.

(5) In the assessment year 2009-10 in the original assessment proceedings the Ld. CIT (Appeals) decided the issue in favour of the assessee based on the order of Ld. CIT (Appeals) in Assessment year 1988-89

(g) The Ld. A.O. was wrong in coming to the conclusion that Sections 198 & 199 of the Income Tax Act are applicable for working out the amount of total income in as much as the amount of TDS can be taken to be the part of income for the purposes of computing the income of the assessee and be deemed to be the income received in & the context QUE COPY amount for the purposes when the amount on which the TDS is deducted is part of total income.

(h) The Ld. A.O. was wrong in not considering the fact that on this issue the Ld. CIT (Appeal) has allowed the contention of the assessee for the assessment years 1988-89 and 2009-10 in assessee's own case and in case any adverse view was to be taken, the addition should have been made on protective basis as per the law which is well settled by the Hon'ble Supreme Court.

4(2) The findings of the Assessing Officer in the assessment order are as under-

The assessee is directly crediting interest income on unutilized fund in the balance sheet under 'other long term liabilities. The assessee is not showing interest income on unutilized fund in his income. The assessee was show caused to explain.

The assessee vide reply dated 29.01.2015 stated that -

1) The interest on investment out of unutilized Govt. funds on fixed deposit (Excluding fixed deposit out of own resources) and savings bank account maintained at Head Office is shown as interest earned on unutilized funds under the head 'Other Long Term. Liabilities', which is payable to U.P. Govt.

ii) The funds for construction works. of various department is either withdrawn through its Personal Ledger Account (PIA) or is provided by the client at Head Office/Units. The fund is withdrawn/provided by the client at head office units. The fund is withdrawn/provided by the client is remitted to the units as per their requirements and the interest earned on funds during the period in which the

funds remain unutilized, is credited to the Govt. account 'under the head 'Interest earned on unutilized funds.' As per past practices, the funds sent to units by the head office and by the clients for execution of Work is treated as funds utilized and the interest earned, if any, during the course of utilization, is credited to the profit and loss account.

As depicted in the accounts, the interest on unutilized funds is our liabilities payable to U.P. Govt., therefore cannot be shown in the income. The copy of the relevant Government orders and orders passed by Ld. CIT (Appeal) in assessee's own cases has also been submitted before your honour. The copy of Govt. order no 8-1-3729/10-2014-M-112/2014 dated 16.12.2014 is enclosed herewith. The corporation has made correct accounting treatment and the query on this account is explained."

The assessee's reply was considered but is not found tenable. All the investments in FDR's and S.B. account are in the name of the assessee. The assessee has not accounted for whole interest income but has claimed TDS on such interest income which is against the provision of Sec. 198 & 199 of I.T. Act. As per the balance sheet Schedule-4 'Other Long Term Liabilities' the interest on unutilized fund at the beginning of the year is Rs.50,15,66,855/- and at the end of year is Rs.58,74,04,240/-. Hence, the interest income on unutilized fund during the year comes to Rs.8,58,37,385/-.

In earlier assessment years 2010-11 and 2011-12, addition on this ground was also made. In view of above discussion, the income on unutilized fund amounting to Rs. 8,58,37,385/- is added to the income of the assessee.

4(3) The appellant has filed written submissions gist of which is as under -

Vide para-3 of the assessment order an addition of Rs.8,58,37,385/- was made by the Ld. A.O. under the head "Interest on unutilized funds" by treating the amount as the Income of the assessee, which is wrong and unjustified.

During the course of assessment proceedings the complete details were submitted as directed by A.O. and also the details about the payment made to U.P. Government. The Learned A.O. nowhere denied the various documents and details submitted during the course of proceedings. It is stated by the Learned A.O. that fixed deposit in bank are in the name of assessee. It is also stated that the assessee has not accounted for whole interest but has claimed TDS on such interest income which is against the provision of Section 198 and 199 of the Income Tax Act. It is further held that as per the balance sheet Schedule-4 'Other Long Term Liabilities', the interest on unutilized fund at the beginning of the year is Rs. 50,15,66,855/- and at the end of year is Rs. 58,74,04,240/-. Hence, the interest income on unutilized fund during the year comes to FRUE COPY 8,58,37,385/- and added to the income of the assessee.

&

In this context it is submitted that the amount of interest which belongs to State Government is reflected under schedule-4 in our Balance Sheet under the head "Interest on unutilized funds". It may further be stated that this amount belongs to Government of U.P. and is NOT part of assessee income. As directed, we are submitting various letters/circulars issued by Government from time to time proving beyond doubt that this income belongs to Government and not to assessee. This practice is followed as per the Government order as in the Past. Copy of the relevant G.O. is enclosed herewith.

We have to submit that vide Government Order dated 31st July, 2002, passed by the Chief Secretary, Government of U.P., you will kindly notice as it is clearly stated in the above referred Order that any amount earned as interest on the un-utilized funds, is to be adjusted against the construction cost of the project. Accordingly, we are either adjusting such amounts of the interest against the construction or refunding the amount to the Government Account as per the directions issued from time to time by the Government. Copies of the relevant Government Order and the documentary evidences are enclosed herewith.

In other words, it is only U.P. Government, to whom the interest is payable on unutilized funds. Similarly, it may also be submitted that so far as our own funds are concerned, the amount accruing as interest is offered to tax and there is no disputes about such interest.

It is also submitted that the accounting policy no.4.00 of the accounts may please be referred to which envisages as under:-

"(1) The interest on investment out of unutilized Govt. funds on fixed deposit (Excluding fixed deposit out of own resources) and savings bank account maintained at Head Office is shown as interest earned on unutilized fund under the head "Other Long Term Liabilities", which is payable to U.P. Govt.

The funds for construction works of various department is either withdrawn through its personal Ledger Account(PLA)or is provided by the client at Head Office/Units. The fund is withdrawn/provided by the client is remitted to the units as per their requirements and the interest earned on funds during the period in which the funds remain unutilized, is credited to the Govt, account under the head "interest earned on unutilized funds." As per past practices, the funds sent to units by the Head Office and by the clients for execution of works is treated as funds utilized and the interest earned, if any, during the course of utilization, is credited to the profit and loss account."

It is further submitted that in the aforesaid point the provision of section198 &199 are not attracted since the interest belongs to the govt. and as such the TDS deducted by banks has also been shown along with the gross amount payable to the Govt. As such, the Corporation has considered the TDS amount deducted as payable to Govt. and accordingly shown in the books of accounts in as much as we are holding the amount on behalf of Govt.

It is worthwhile to mention here that as per the provision of section of 194A of the Income Tax Act, TDS is not deductible on savings bank interest because balance in the savings bank account is not treated as security but the provision of this section applies only to the interest earned on FDR's which is treated as security on which TDS is deducted by bank. The same accounting policy; and practice has been adopted by the Corporation in past for various years which has been accepted and allowed by the Income Tax Department.

It is Pertinent to mention here that the Id.AO. while coming to a finding of fact did not consider the various documents submitted including Government Order dated 31.07.2002 passed by the Chief Secretary, Government of Uttar Pradesh and also copy of letter dated 23.09.2009 showing refund of the amount to the Government Account in accordance with the direction from the Government. Also the Id. AO did not consider the Government Order dated 11.04., 1976 and 27.03.1979, which were filed before the Id. A.O. at the time of the Assessment proceeding,

As the matter of fact the same question was involved at that time and an addition of Rs.10,32,920/- was made in the Assessment Order for the assessment year 1988-89. After going through the case in great details including the case law the Ld. CIT(A) had held "on a perusal of these documents it is quite clear that the interest earned on the unutilized grants is not the income of the appellant but it is a part of the Government grant and is to be included therein. In view of these facts, I agree with the appellant that the addition made, is not justified. It is hereby deleted resulting in relief of Rs. 10,32,920/--

In view of the above noted facts and law it is further submitted that in earlier assessment years the matter was intentionally examined and the department came to the conclusion that the amount is not a part of income of the appellant company.

In view of the above it is requested that the addition of Rs.8,58,37,385/-may kindly be deleted.

4(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. I find that the issue had also come up before the Commissioner of Income Tax-II, Lucknow for assessment year 1988-1989 when the then CIT(A)-II vide order dated 25.09.1991 in appeal No. 49/DC(Asstt)/R-II/LKO/91-92 at paragraph 15 on page 12 of the appellate order allowed relief to the appellant on the issue of interest on unutilized funds after examining the documents produced by the appellant. The issue in the current year is identical to the issue already decided as above in assessment year 1998-1999.

4(5) Nevertheless, I find that the amount of interest of Rs. 8,58,37,385/- earned by the appellant on unutilized funds received from the Government for executing the deposit civil contract work is to be considered as income of the UP Government as per GO No. B-1/564/10-7/97 dated 02.03.1998 and Government Order dated 31.07.2002 passed by the Chief Secretary, Government of Uttar Pradesh. In this letter, it has been specifically mentioned that whatever interest income is accrued on the advances from the Bank, it would be remitted to the Government. A reference in this connection may be made to the decision of Hon'ble ITAT, Lucknow in the case of U.P. Police Avas Vikas Nigam Ltd Vs ACIT in ITA No. 344 & 345/LKW/1999 dated 22.08.2012. A reference may also be made to the decision of the Hon'ble Gujarat High Court in the case of CIT VS SAR Infracon (P) Ltd 222 Taxman 294 wherein on considering stipulation of the Central Government while sanctioning the grant in favour of the assessee that interest earned on the central grant already released would form part of the central grant limit, the Court laid down that:

Held, considering the condition imposed by the Central Government, while releasing the grant in favour of the Assessee, when the interest earned on the Central grant already released was required to be forming part of the Central grant, Tribunal has rightly held that the interest earned on cannot be said to be the income of the Assessee-No error had been committed by the Tribunal in deleting the addition made by the Assessing Officer.

4(6) In view thereof I am of the considered opinion that the interest accrued on the advances received by the appellant from the Government for construction activities would be the income of the Government and not of the appellant. On its accrual, it becomes a liability to the Government which is to be remitted by the appellant to the Government in due course. Since the income has not been accrued to the appellant, it cannot be charged to tax in its hands. The addition of Rs. 8,58,37,385/- made by the AO is deleted giving relief to the appellant.

5(1) Ground of appeal number 2 is as under-

2. That the Ld. A.O. was wrong in making addition in an amount of Rs. 3,68,33,045/- on so called Labour Cess payable U/S 43B of the Income Tax Act, 1961 on the following grounds:-

(0) The details of payments were ignored by Ld. A.O. and the disallowance is made on estimated basis which is not permitted under the law.

(b) It was wrong to disallow payments made during the year ending March 2012 on account of Labour Cess pertaining to Assessment Year 2011-12 in as much as the same were allowable U/S 43 B on the basis of payment as the same were allowed in assessment year 2011-12

(c) The Ld. A.O. was wrong in stating that no evidence for making the payment to government was furnished ignoring the fact that complete books of accounts were produced and the Ld. A.O. did not call for producing the vouchers, etc.

(d) The case cited by the Ld. A.O. Goetz India Ltd, vs. Commissioner of Income Tax 284 ITR 323 (SC) has no applicability to the present case.

5(2) The findings of the Assessing Officer in the assessment order are as under-

As per Schedule-6 'Other Current Liabilities' of Balance Sheet, other payables include Rs. 3,68,33,045/- payable on account of labour cess. 'file labour cess is a statutory liability. The assessee was show caused to furnish detail of labour cess collected and paid & also show caused to explain as to why labour cess collected and not paid to Govt. account should not be disallowed u/s 43B of the I.T. Act.

Vide letter dated 03.02.2015 the assessee submitted the details of labour cess payment pertaining to F.Y. 2011-12. However, no evidence for making payment of labour cess in the Govt. account was filed. Further, from the details filed it is noticed that a major portion of the labour cess was paid after 30.09.2012 i.e.; the due date for the assessee to file its return of income. Also, vide letter dated 26.02.2015 the assessee while making compliance regarding furnishing details of labour cess for A.Y. 2011-12 submitted that the payments made during this year may be allowed as deduction. This contention of the assessee is being rejected on two grounds - First, no evidence for making payment of labour cess in Govt. account has been furnished & Secondly, as held by the Hon'ble Supreme Court in the case of Goetz (India) Ltd. Vs. CIT. 2841TR323(SC) the assessee can make a claim for deduction only in his return of income & not by way of a letter.

Accordingly, labour cess payable amounting to Rs.3,68,33,045/- is disallowed u/s 43B of the I.T. Act & added to the income of the assessee.

5(3) The appellant has filed written submissions gist of which is as under -

On the last date of hearing we were required to furnish details of labour cess collected and paid in the assessment years 2010-11, 2011-12 and 2012-13. We were also required to explain as to why labour cess collected and not paid to Govt. a/c should not be disallowed u/s 43B of the Income Tax Act. In reply we submitted our letter dated 3rd Feb. 2015 along with the list showing particulars and details of payment made to Govt. as per the requirement of Section 43B of the Income Tax Act. Again we submitted letter dated 26.02.2015 to Ld. A.O. along with a list showing details of payments made against labour cess in respect of assessment year 2011-12, as desired. You will appreciate that as per the list, the payments on account of labour cess payable and paid along with date of payment was shown. But Ld. A.O. has not considered the payment made by us

and added Rs. 3,68,33,045/- in wrong manner. It is requested that the addition of Rs. 3,68,33,045/- may kindly be deleted.

5(4) I have examined the facts and circumstances of the case. I have examined findings of the Assessing Officer and the submissions of the appellant. At the outset, I find that the reliance of the AO on the decision of Goetze India is erroneous and misconceived. The case relied upon by the AO is on the issue of a fresh claim being made otherwise than by filing of revised return of income. In the present case there is no fresh claim being raised by the appellant. The appellant has claimed that the disallowance of labour cess under section 43B of the Act which is Rs. 3,68,33,045/- as per profit and loss account may be restricted to the amount paid by the due date of filing of return of income as per the said provisions. The case relied upon by the AO does not come into the picture. In any case the decision of Hon'ble Apex Court in the case of Goetze India Ltd Vs CIT (2006) 284 TTR 323 to the effect that no fresh claim can be made except by filing revised return is limited to the power of the AO and not an appellate authority.

5(5) I find that the appellant filed its return of income on 24.09.2012. As per details available on record, an amount of Rs. 1,75,94,591/- as labour cess was paid before the date of filing of return of income. The amount of Rs. 1,62,38,829/- was paid after the date of filing of return of income and no details are available for payment of labour cess of Rs. 29,99,625/-. The addition of Rs. 3,68,33,045/- made by the AO is sustained to the extent of Rs. 1,92,38,454/- giving relief of Rs. 1,75,94,591/- to the appellant. The AO is however, directed to allow an amount of Rs. 1,62,38,829/- on payment basis in subsequent assessment year 2013-2014 as per section 43B of the Act. The AO is also directed to allow the amount of Rs. 29,99,625/- on payment basis in the year of payment.

6(1) Ground of appeal number 3 is as under-

3. That the Ld. A.O. was wrong in disallowing the claim of exemption under Section 10(268) of the Income Tax Act to the extent of Rs. 29, 10,000/- on the following grounds:-

(a) The Ld. A.O. made the disallowance wrongly and in complete disregard of the judgment passed by the Hon'ble High Court and confirmed by the Hon'ble Supreme Court for the Assessment year 1979-80 in the assessee's own case rendering the Assessment order

(b) The Ld. A.O. wrongly made the addition without considering the facts of the case, replies/documents filed by the Assessee during the course of the Assessment proceedings.

(c) The Department was granting exemption under similar circumstances for more than 25 years without objecting to it and yet taking an adverse view without any change in the facts of the case, is against the rule of consistency and bad in law.

(d) Findings of the Ld. A.O. that the "Assessee is claiming exemption under Section 10(268) in respect of projects which is not for the benefit of SC/ST/OBC and General Community also is not based on correct appreciation of facts and wrong interpretation of law and in complete disregard of the orders passed by Hon'ble Supreme Court/High Court granting exemption to the Assessee under Section 10(268) of the Act.

(e) *The observation of the Ld. A.O. that Assessee did not maintain records in such a manner that income from main object number (1) can be severable from income from other objects is wrong finding of the facts.*

(f) *The contention of the Ld. A.O. that the Assessee is not following the direction of the High Court is without any basis and an unfounded plea for which no opportunity was given to assessee to explain.*

(g) *That the contention of the Ld. A.O. to the effect that the assessee did not furnish G.O. in respect of each project wherein the beneficiaries are mentioned is wrong and not based on correct appreciation of facts and misapplication of law.*

(h) *That the contention of the Ld. A.O. that disallowance was made due to non-cooperation of the assessee is not a correct statement and the conclusion drawn on this basis is not justified.*

6(2) *The findings of the Assessing Officer in the assessment order are as under-*

The assessee has claimed exemption u/s 10(268) of the I.T. Act, 1961 at Rs.29,10,000/-. The assessee was show caused to justify the claim. The assessee vide reply dated 23.01.2015 submitted:-

"Regarding claim of exemption u/s 10(268) of the Income Tax Act, 1961 please find enclosed the details of projects undertaken, as per 'Annexure A and del-ails of respective Government orders relating to such projects which are appearing in 'Annexure -B'. These details and documents prove that the Work was undertaken to promote the interest of the members of the

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Scheduled Castes or Scheduled Tribes or backward classes as defined under the Constitution of India, 1950."

The assessee's contention is examined. In the judgment of Hlarijan Avam Nirbal Varg Awas Nigam for A.Y. 1979-80, Hon'ble High Court has observed as under:-

"Front the memorandum of association, it is patent that assessee may earned income from several objects. But it will be entitled to exemption only in respect of the income entitled from the activity, which is consistent to Clause (268). If the income earned from the Object No.-1 is not severable from the income of other main objects & it income from all the main objects is in extricably mixed up, then the assessee Will not be entitled to exemption even in respect of the income earned from the housing schemes, executed for the benefit of the members of the Scheduled Castes."

It is obligatory on the part of assessee to maintain records in such a manner that income from main Objection No.-1 can be severable from income from other objects.

The assessee has not maintained any separate books of account relating to work of SC/ST. Therefore, in view of above judgment of Hon'ble High Court facts of the case, exemption u/s 10(26B) of T.T. Act amounting to Rs.29,10,000/-is disallowed & added to the income of the assessee.

6(3) *The appellant has filed written submissions gist of which is as under -*

The claim u/s 10 (26B) of the Income Tax Act to the extent of Rs.29,10,000/- is objected on the following grounds:-

(a) The Ld. A.O. made the disallowance wrongly and in complete disregard of the judgment passed by the Hon'ble High Court and confirmed by the Hon'ble Supreme Court for the Assessment year 1979-80 in the Assessee's own case rendering the Assessment order in valid.

(b) The Department was granting exemption under similar circumstances for more than 25 years without objecting to it and yet taking an adverse view without any change in the facts of the case.

(c) Findings of the Ld. A.O. that the "Assessee is claiming exemption under Section 10(268) in respect of projects which is for the benefit of SC/ST/OBC and General Community also" is not based on correct appreciation of facts and wrong interpretation and in complete disregard of the orders passed by Hon'ble Supreme Court/High Court granting exemption to the Assessee under Section 10(268) of the Act.

(d) The observation of the Ld. A.O. that Assessee did not maintain records in such a manner that income from main object number (1) can be severable from income from other objects is wrong finding of the facts.

(e) The contention of the Ld. A.O. that the Assessee is not following the direction of the High Court is without any basis and an unfounded plea.

It is requested that the addition of Rs.29,10,000/- may kindly be deleted.

6(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. The issue involved is the exemption of Rs. 29,10,000/- claimed by the appellant under section 10(268) of the Act, which reads as under -

(268) any income of a corporation established by a Central, State or Provincial Act, or of any other body, institution or association (being a body, institution or association wholly financed by Government) where such corporation or other body or institution or association has been established or formed for promoting the interests of the members of the Scheduled Castes or the Scheduled Tribes or backward classes or of any two or all of them. Explanation.- For the purposes of this clause,-

(a)" Scheduled Castes" and" Scheduled Tribes" shall have the meanings respectively assigned to them in clauses (24) and (25) of article 366 of the Constitution;

(b)" backward classes" means such classes of citizens, other than the Scheduled Castes and the Scheduled Tribes, as may be notified-

(i) by the Central Government; or

(ii) by any State Government, as the case may be, from time to time;
[2:56 pm, 26/11/2025] ∴ 6(5)(i) The provisions of section 10(268) of the Act allow exemption to an assessee corporation established by a Central, State or Provincial Act established or formed for promoting the interests of the members of the Scheduled Castes or the Scheduled Tribes or backward classes or of any

two or all of them. The appellant has been allowed the said exemption over the years on the basis of the decision of Hon'ble Allahabad High Court in the case of the appellant in ITA No. 86 of 1986 dated 06.12.1995 for assessment year 1979-1980. Following questions of Law were raised before the Hon'ble Court-

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1. "Whether on the facts and in the circumstances of the case, learned Tribunal was justified in law in holding that objects No. 2 to 5 as, mentioned in the Memorandum of Association of the Company were supplementary and were introduced with a view to achieve the object mentioned in clause no.1 of the said memorandum of Association and without that the Corporation cannot achieve its main objects ?

2. "Whether on the facts and in the circumstances of the case, learned Tribunal was correct in law in holding that income attributable in executing the housing Schemes and the other connected Schemes therewith for the benefit of Scheduled Castes and Scheduled Tribes are exempt u/s 10 (268) of the I.T Act, 1961 when the Corporation was also formed for promoting interest of backward classes and other weaker sections of the Society ?

6(5)(ii) The Hon'ble Jurisdictional High Court after examination held as under-

Whereas the Tribunal was right to exclude the income earned from the execution of housing schemes undertaken for promotion of backward classes, the Tribunal was wrong in allowing a blanket exemption for all the activities, covered by all the main objects. If the income earned from the object no, 1 is not severable from the income of other main objects and if income from all the main objects is inextricably mixed up, then the assessee will not be entitled to exemption even in respect of the income earned from the housing schemes, executed for the benefit of members of the Scheduled castes. the

The assessee will do better if amended to make it consistent to the provisions of section 10 clause if it gets the main object no 1 suitably (268) of the Income Tax Act.

15. Question no.1 is therefore, answered in the negative .i.e. in favour the revenue and against the assessee and question no.2 is partly answered in favour of the assessee that the income attributable to the housing schemes executed under the main object no.1. for promoting the interests of the members of the scheduled Castes only will entitled to exemption provided that is severable from the income accruing to the assessee from other main objects.

6(5)(iii) The decision of Hon'ble Jurisdictional High Court supra has been confirmed by Hon'ble Apex Court in Petition (a) for special leave to appeal (Civil) No. 4658-4662/98 dated 14.03.1996.

6(6) The exemption under section 10(268) of the Act is therefore allowable to the appellant on income from projects undertaken by the appellant, which are for the benefit of SC/ST/OBC. The appellant filed before the AO during the assessment proceedings, the details of Government orders and the details of projects undertaken for the benefit of and to promote the interest of the members of the Scheduled Castes/Scheduled Tribes and backward classes. Since the details are identifiable and maintained separately, the exemption is allowable to the appellant on the basis of principle of consistency as similar exemption has

always been allowed in earlier years. Accordingly, the addition of Rs. 29,10,000/- made by the AO on account of disallowance of exemption claimed under section 10(268) of the Act is deleted giving relief to the appellant.

7(1) Ground of appeal number 4 is as under-

4. That the Ld. A.O. was wrong in making of addition of Rs.6,95,21,880/- on account of Disallowance u/s 40(a)(ia) to the total income of the assessee of the following grounds :-

(a) The Ld. A.O. was wrong in holding that Section 194C is applicable on facts to the case of the Assessee.

(b) The Ld. A.O. was wrong in holding by ignoring the material on record that the appellant was making payment to contractor/ sub contractor for carrying out the work and not for supply of material.

(c) The Ld. A.O. was wrong in disallowing the entire expenditure incurred by the assessee on purchases of various items like sand, coarse sand, boulders, grits etc. in its business of deposit work and execution of civil contracts under Section 40(a) (ia) of the Income Tax Act and adding it

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Commissioner of Income Tax Range-5, Lucknow (MV)

Fr to the income of the assessee by holding that it was liable for tax deduction under Section 194C of the Income Tax Act.

(d) The Ld. A.O. ignored the contention of the Assessee that this issue was covered by the tax auditor in report under Section 44AB of the Act and no valid reason has been given by Ld. A.O. to take a different view.

7(2) The findings of the Assessing Officer in the assessment order are as under-

The assessee was show caused vide notice u/s 142(1) of I.T. Act dated 24.12.2014 to give details of material purchases bills from various work contractors which includes labour charges on account of goods, stacking. etc. and transportation charges in respect of following units - Sitapur, Hardoi, Banda, Agra Civil, Varanasi, Noida/Okhla, Kanpur & Lucknow.

The assessee vide reply dated 23.01.2015 stated "material is purchased FOR site which includes labour charges on account of goods, stacking etc. and transportation charges as evident from the purchase order placed & bills issued for supply of material. In other words, the transactions are for supply of material as per the purchase orders placed. Further, it may be submitted that it is not a case of work contract but supply of material only." The assessee enclosed some bills of above units with his reply.

The assessee's contention was examined. In earlier assessment year 2010-11 disallowance of Rs. 11,93,86,926/- was made u/s 40(a)(ia) of the I.T. Act, 1961 on the ground that assessee has not deducted 'TDS on supply of material by work contractors. The amount of disallowance was worked out by the Special Auditor. It was noticed that materials have been procured from

contractors/transporters & nature of materials were also mentioned where substance of transport & labour charges is more than the cost of material i.e. purchase of sand, coarse, boulders, grits etc. On the basis of this fact & the same nature of purchases in A.Y. 2011-12, amount of disallowance was worked out at 4.845% of total material purchase of Rs.1,74,19,82,555/-. In the current year, the assessee has furnished only few sample bills to prove that it is not a case of work contract but supply of material only. The assessee's contention is not tenable as in A.Y. 2010-11, it was noticed that materials have been procured from the parties who are JE/CO registered under the category all types of work contracts. The assessee has HAWAR) of Income Tax Lucknow

7(3): not furnished bills of work contractors for verification. Hence, the situation remains the same in this assessment year also.

In A.Y. 2011-12, disallowance was worked out at 4.845% of material purchase. In the current year also, the disallowance u/s 40(a)(ia) is worked out at 4.845% of total material purchase of Rs.1,43,49,20,141/- at Rs.6,95,21,880/-. Accordingly, amount of Rs.6,95,21,880/- is disallowed u/s 40(a)(ia) of the I.T. Act, 1961 & added to the income of assessee.

7(3) The appellant has filed written submissions gist of which is as under -

That the addition of Rs.6,95,21,880.00 is against the facts and laws on the following grounds:

(a) The Ld. A.O. was wrong in holding that Section 194C is applicable to the case of the Assessee.

(b) The Ld. A.O. was wrong in holding by ignoring the material on record that the appellant was making payment to contractor/ sub contractor for carrying out the work and not for supply of material.

(c) The Ld. A.O. was wrong in disallowing the entire expenditure incurred by the assessee on purchases of various items like sand, coarse sand, boulders, grits etc. in its business of deposit work and execution of civil contracts aggregating to Rs.1,43,49,20,141.00 under Section 40(a)(ia) of the Income Tax Act and adding it to the income of the assessee by holding that it was liable for tax deduction under Section 194C of the Income Tax Act.

(d) The Ld. A.O. was wrong in holding that the supplier of goods allegedly under the works contract which the supply of material falling into the category of works contract.

(e) The Ld. A.O. ignored the contention of the Assessee that this issue was covered by the tax auditor in report under Section 44AB of the Act and the Special Auditor acted beyond jurisdiction in giving a conflicting and adverse report by an equally qualified person rendering the assessment order illegal.

[2:58 pm, 26/11/2025] ∴ (f) Under the provisions of Income Tax Act, it was the auditor under Section 44AB who was required to report whether the amount was 'deductible under Section 40(a)(ia) and not the Special Auditor who was required to report whether the amount was deducted or not under Section 194C of the Act. In this context reference is invited to prescribed report formats under Section 44AB and under Section 142(2A) of the Act. It is requested that the addition may kindly be deleted.

7(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. The AO has made a disallowance of Rs. 6,95,21,880/- under section 40(a)(ia) of the Act on the ground that the tax at source has not been deducted on material supplied by the contractors. The estimated disallowance @4.845% of amount of Rs. 1,43,49,20,141/- has been made. I find that the appellant purchases various items like sand, coarse sand, boulders, grits etc. in its business of contract work. These items are supplied by the parties at work sites. The payment is made to suppliers for purchase of goods. The question of any TDS being deducted by the appellant on the goods purchased does not arise. There is no provision in the Act which requires for deduction of TDS on purchase of goods for which payment is made to suppliers. In any case the provisions of section 40(a) (ia) of the Act do not provide for estimated disallowance of the nature made by the AO. Accordingly, the addition of Rs. 6,95,21,880/- made by the AO is deleted giving relief to the appellant.

8(1) Ground of appeal number 5 is as under-

5. That the addition of an amount of Rs 3,28,24,607/- on account of Centage is wrong on the following grounds :-

(a) That the Ld. A.O. wrongly invoked Section 145 (3) of the Act so as to reject the books of accounts of the assessee and the action is without any justification and not based on valid reasons.

(b) That it is wrong on the part of the Ld. A.O. as the Ld. A.O. has put it

"the assessee has not given proper justification for charging Centage below 12.50%" inasmuch as complete details, rate-wise and project-wise was furnished to the Ld. A.O. during the course of assessment proceeding.

(c) That the Ld. A.O. has wrongly worked out the amount of addition of Rs. 3,28,24,607/- and the action of the Ld. A.O. is arbitrary and apparently erroneous.

(d) That it is wrong statement of fact by Ld. A.O. that "the assessee is charging Centage below 12.50% even in the cases where it is stating the Centage rate is 12.50%".

S(2) The findings of the Assessing Officer in the assessment order are as under-

The assessee was show caused to give reasons for charging cent age below 12.5% in projects with documentary evidence.

The assessee vide reply dated 10.02.2015 stated that, "the corporation is engaged in the construction works of various departments of U.P. Govt., other State Govt. and Central Govt. The centage on these works varies from department to department. The centage applicable on various works of State Govt. Departments/Central Govt. Departments are as below:-

(A) U.P State Govt. Works:

(1) Works al..

:The assessee has further enclosed summary of all works which is a very long list containing pages (2) to (20), and in each pages there are nearly (58) projects detail. Hence, the total project roughly comes to 1160. The assessee has

charged centage below specified rate of centage which come to light on test check basis. On examination of above document of the assessee it is seen that even in the projects where the assessee has shown that centage at 12.50.% is charged, the actual centage charged is below 12.5%. Examples are

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8(3) The appellatant has filed written submissions gist of which is as under-

Vide para-7 of the assessment order additions of Rs.3,28,24,607/- was made by the Ld. A.O. under the head "Centage Charges".

The addition is without Jurisdiction for the following reasons.:-

(0) it is to be submitted that the Assessee Company has submitted full details regarding centage and supervisory charges as per contract and the directions given by the A.O. from time to time, during the assessment proceedings. The Assessing Officer has not considered the proceedings and directions of the higher authorities in earlier years.

(b) During the Assessment proceeding, the Learned A.O. required us to furnish rate wise report of centage along with Audit report for these Assessment Year. In response to the specific direction of the Learned A.O., such report was submitted to clarify and to explain manner in which centage is worked out in each Assessment Year as per the regular accounting method followed by the Assessee Company in all years.

(c) The Learned A.O. has observed that "Although centage has been taken in previous year but, correct amount of centage as per rate shown by the Assessee has not been taken. The view taken by the Learned A.O. is inherently wrong. Firstly, in any case, these amount are related to earlier Assessment Year, which was not open before the Learned A.O. resulting into Gross miscarriage of Justice. Secondly, in any case the rate difference is arises out on the expense relating to External Electrification and Service Tax which is also prevailing during the year, relevant to Assessment Year 2012-13, as in earlier years.

(d) The rational in working out the rate difference is beyond comprehension. The addition of Rs.3,28,24,607/- as per Para-7(A), (B) & (C), of the assessment order, is imaginary. In other words, the addition is on such amount for which no centage is allowable.

The Ld. A.O. has rejected the books of accounts of the assessee as per the provision of Section 145 of the I.T. Act, and estimated the amount so-called centage receivable on the works-in-progress (WIP) (@12.5%.

Assessment Order under appeal that "... In view of the above facts, the The Ld. A.O. has stated in the last two para of the point No.7 of relevant books of account and financial statements of the assessee cannot be treated to be reliable and is therefore, rejected u/s 145(3) of the I.T. Act, 1961. "

The following contention of Ld. A.O. is objected to on the following grounds:-

The Ld. A.O. rejected the books of accounts of the assessee and estimated the amount of centage receivable (as mentioned in order) on WIP @ 12.5% which according to Ld. A.O. is not reflected in the books of accounts. The action of the Ld. A.O. is patently erroneous for the reasons that the appellant is following the method of accounting regularly since inception and which was never objected by the Department. No reason has been given or opinion expressed that the income of the appellant could not be properly deduced from the method of accounting regularly followed by the appellant. Kindly see: 'Investment Ltd Vs. CIT (1970) 77 ITR533 SC. Similarly, in CIT Vs. Woodward Governor India (P) Ltd 312 ITR 254 (SC) it was also laid down that the accounting method followed by an assessee continuously, for a given period of time need to be presumed to be correct till the Assessing Officer come to the conclusion for the reason to be given that the said system does not reflect the true and correct profit. It may kindly be appreciated that there is no findings by the Ld. A.O. or any reason recorded to discard the method of accounting followed by the appellant by invoking Section 145 of the I.T. Act as it was held in the case of CIT VS Margdarsi Chit Fund (P) Ltd. 155 ITR 442 (AP).

In the enclosed chart the assessee has given the working of actual centage, Rs. 38,96,43,779/- on the amount of construction expenses on the Deposit Works during the year. If you kindly see the statement showing the working of centage you will kindly notice that the complete details were furnished which are duly supported by the books of accounts produced during the course of assessment year. There was no reason to reject the working of the centage earned by the assessee, which was duly reflected in the books of accounts and accordingly, shown in the Return for the purpose of payment of tax as in the earlier years on the basis of the method of accounting regularly followed.

It is respectfully submitted that the amount received as deposit from the Government and its agencies during the year do not constitute the income of the appellant company for the reason that it is entitled for the centage charges on the deposit works on the basis of expenses incurred on construction during the year. It may further be noted that the amount of deposit so received, is a liability and accordingly, the same is reflected in the books of accounts under the Head "Current Liabilities". It may also be added that the appellant is holding the amount of deposit for construction works as its custodian and therefore, such amount does not represent its income. This fact is further fortified that centage charges are recoverable only the cost of construction work executed and therefore, the amount of deposit is not the "income" as per the provision of Income Tax Act.

That the basis of working out the income, the Ld. A.O. has committed grave error by resorting to estimated profit@ 12.5% on WIP as it was totally unwarranted and unjustified. In the net result, it would amount to an addition twice- one on the work-in-progress and again at the time of completion of work, which is not permitted under the law.

Thus, the additions of Rs.3,28,24,607/- is liable to be deleted and may kindly be deleted.

8(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. I find that the appellant carries on the business of construction for Government. It receives orders for projects on behalf of the Government and is allowed a profit or Centage of a fixed percentage which varies as per Government Orders from 0% to 15% of work done by it. This profit or Centage is allowed to enable it to

meet its administrative and other expenditure. The appellant carries out two types of work i.e. deposit work, which is cost plus centage and tender work. The income of the appellant is therefore from the fixed percentage of centage allowed on the cost of a project undertaken by the appellant. The books of accounts maintained by the appellant are audited both by the Statutory Auditors as well as the C&AG. There are no objections of the Auditors including the C&AG as far as the accounting is concerned.

8(5) During the assessment proceedings, the appellant filed before the AO the details has been made by the AO after rejection of books of accounts under section 145(3) of the all projects showing the working of centage. The impugned addition of Rs.3,28,24,607 Act on the presumption that for each project the appellant is allowed a fixed centage of 12.5%. No inquiries have been conducted by the AO from the Departments concerned to ascertain the actual percentage of centage allowed for a particular project. Under the circumstances the action of the AO in estimating the centage at a fixed percentage of 12.5% for all projects is based on surmises and conjectures. The rejection of books of accounts under section 145(3) of the Act itself is based on the said presumption that the appellant is allowed 12.5% centage uniformly for all projects. On the contrary the centage allowed varies from project to project and no inquiries have been conducted even on test check basis. The addition is therefore made on presumption which is not in accordance with Law. The addition of Rs. 3,28,24,607/- made by the AO is therefore deleted giving relief to the appellant.

9(1) Ground of appeal number 6 is as under-

6. That the addition by the Learned A.O. for Rs. 1,91,54,470/- in account of arrears of salary is wrong and without any basis.

9(2) The findings of the Assessing Officer in the assessment order are as under -

The audit para is not clear and basis of raising objection appears to be non-explanatory. The assessee has been following the same method of accounting in the past years also & no 'objection has ever been raised even by the CAG Auditors. Hence, no query has yet been raised on this ground in A.Y. 2012-13. The scrutiny assessment in A.Y. 2012-13 is still pending. A copy of balance sheet & P&L account, Audit Report etc. for A.Y. 2011-12 on the basis of which RAP has raised these audit Objections are enclosed herewith for your kind perusal & issue of necessary direction u/s 144A of the I.T. Act, 1961 on this ground also.

Accordingly, in view of the above directions of the Addl. CIT, Range-6, Lucknow given vide order u/s 144A dated 10.10.2015, provision of Rs.1,91,54,470/- debited in the P&L account is disallowed & added to the income of the assessee.

9(3) The appellant has filed written submissions gist of which is as under-

(a) in this context it is submitted that the aforesaid amount includes ascertained liabilities i.e. payment of Salary/Leave encashment arrears to the employees of the Corporation. It is submitted that the provision was made accordingly against the ascertained liability. This process is totally based on mercantile system adopted by the Corporation and is normal business expenditure against ascertained liability and is allowable under the law.

(b) Further it is submitted that in respect of corporation employees, the dearness allowance is sanctioned by the Bureau of public Enterprises, U.P. Government. The Government has Laid down certain procedure for sanction of Dearness

Allowance to the employees of the corporation. Normally dearness allowance becoming due on 01st January is declared in the month of July of the next financial year and dearness allowance becoming due on 1st July is declared six months thereafter. The accounts of the Corporation are prepared on 31st March every year; therefore dearness allowance due from 1st January of the relevant year, declared in the month of July is distributed to the employees in the next financial year. The dearness allowance is distributed immediately to the employees. Since the dearness allowance belongs to 1st January, accounts prepared on 31st March and dearness allowance declared in July, there is no option but to make a provision for the period of January to March of the relevant year, in Book of Accounts. The process is totally based on mercantile system adopted by the Corporation. Since the amount of provision towards salary has paid to the employees, the same is normal business expenditure and need not be disallowed and added to the Income.

(d) The liability for arrears of salary and leave encashment is based on the Instructions issued by the Govt. of U.P. which amounts to Rs. 1,91,54,470/- and therefore it cannot be said that the liability is unascertained.

(e) It is submitted that similar treatment was given by assessee in books of accounts and no objection was raised by Revenue knowing well that accounts are maintained on mercantile system. It is the view of the Courts also that when a system is consistently followed and accepted by the

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: Revenue as in case of assessee, it cannot be subject matter of Revision and same was held in the case of CIT vs. Advance Construction Co. Pvt. Ltd. (2005) 271 ITR 30 Gujarat.

We are submitting the documents issued from Govt. of U.P. which made the assessee to ascertain the liability and claim as such being the expense for business as per the system of books regularly maintained.

9(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. I find that the AO has disallowed the provision of Rs. 1,91,54,470/- debited in the profit and loss account following the direction under section 144A of the Act. I find that the liability for arrears of salary (DA Arrears) and leave encashment is based on the Instructions issued by the Government of UP and is not an unascertained liability. The provision is actual liability and is allowable as per mercantile system of accounting followed by the Appellant. The disallowance of Rs. 1,91,54,470/- made by the AO is therefore deleted giving relief to the appellant.

10. In the result the appeal is allowed partly to the extent as discussed.

1. Ld. Commissioner of Income Tax (A) has erred in law and facts by deleting the addition made of Rs. 1,70,77,516/- on account of amount surplus above 15% without appreciating the facts that the assessee instead of utilizing this amount or crediting this amount to income & Expenditure account, this sum was directly credited to Balance Sheet.

2. Appellant craves leave to modify/amend or add any one or more grounds of appeal.

(D.1) The Ld. Departmental Representative relied upon the impugned appellate order. Upon perusal of the said order of the Ld. CIT(A) and the materials available on record, we are of the considered view that the Ld. CIT(A) has passed the appellate order after a detailed discussion of the relevant facts and applicable law. We find no reason to interfere with the impugned appellate order of the Ld. CIT(A). Accordingly, the appeal in ITA No. 371/LKW/2017 is hereby dismissed.

(D.1.1) The connected cross objection in CO No. 17/LKW/2017, which pertains to the order of the Ld. CIT(A), is treated as allowed. Accordingly, all the grounds raised in ITA No. 371/LKW/2017 and CO No. 17/LKW/2017 are treated as disposed of in accordance with the aforesaid directions.

(E) ITA No. 367/LKW/2017 and CO No. 13/LKW/2017 pertain to A.Y. 2009–10, in which the following grounds have been raised: –

“1. The Ld.CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.4,95,,42,049/- on account of interest on unutilized fund without appreciating the fact that the assessee is claiming TDS relating to FDRs of unutilized fund and is not showing the interest in its income which is against the provisions of section 198 & 199 of Income Tax Act, 1961.

2. The Ld.CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.77,80,570/- and Rs.4,20,15,078/- on account short centage of earlier year without appreciating the fact that the Hon'ble ITAT vide combined order dated 28.11.2014 in ITA No. 821 &574/LKW/2012 & ITA No.108/LKW/2013 for A.Y. 2009-10 directed to A.O. to determine the exact value of centage /supervisory charges & Closing Stock of WIP and on examination of centage chart for different years, the short centage in different years were worked out to arrive at closing stock of WIP.

3. The Ld.CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.11,93,00,020/-on account of interest on LIC loan without appreciating the fact that deduction of interest on LIC loan from sale is against the tariff order decided by UPERC.

4. The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.2,14,54,725/- on account of short centage shown by assessee in A.Y. 2009-10 without appreciating the fact that the assessee has not furnished any documentary Evidence regarding non-allowance of centage on service tax & external electrification before the A.O.

5. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in deleting the addition of Rs.9.03.170/-on account of supervision charges without appreciating

the fact that the assessee has not explained the difference of 0.12% in supervision charges with documentary evidence.

6. That the Appellant craves leaves to add or amend any one or more of the grounds of appeals, as stated above, as and when need to doing so arises with the prior permission of the Court."

CO No. 13/LKW/2017

1. That the Ld. A.O. wrongly objected the direction of the Ld. CIT Appeal for deleting the addition Rs. 4,95,42,049/- on account of interest of un-utilised funds on the face of finding by the Ld. CIT Appeal that the interest accrued on the advances received by the assessee from the govt. for construction activities is an income of the govt. and not of the assessee and also that the income did not accrue and chargeable in the hands of the assessee.

2. That the Ld. A.O. is wrong in contending and taking shelter under ITAT Order in Appeal No. ITA 821 and 544 / LKW -2012 and ITA 108/LKW -2013 for Assessment Year 2009-10 so as to justify addition of Rs. 77,80,570/- and Rs 4,20,15,078/- to the total income of the Assessee whereas the Ld. CIT 2. has deleted the addition on the basis that income relating to assessment year 1977-78 to 2008-09 cannot be added to income for assessment year 2009-10.

3. The Ld. A.O. is wrong in objecting to the so-called addition of Rs. 11,93,00,020/- on account of interest on L.I.C. Loan in as much as there is no such addition by Ld. AO nor it was deleted by the Ld. C.I.T. (Appeal), and hence infructuous.

4. The Ld. A. O is wrong in objecting the deletion of Rs. 2,14,54,725/ on the ground that the Assessee has not furnished any documentary evidence regarding service tax and external electrification. Which is contrary to facts on record.

5. That the Ld. A.O. is wrong in contending that the Assessee did not explain the difference of 0.12% which is the part of supervision charges Rs 9,03,170/- as reflected in the books of accounts and rightly deleted by the Ld. C.I.T. (Appeal) after due examination.

6. That Assessment Order is against the law and against the facts and circumstances of the case.

7. That the Assessee craves leaves for additions/ amendments during the course of proceedings of the appeal."

(E.1) At the time of hearing, the Ld. Departmental Representative relied upon the assessment order, whereas the Authorized Representative for the assessee supported the impugned order of the Ld. CIT(A). On perusal of the grounds of appeal raised by the Revenue, it is observed that Revenue has contended that the Ld. CIT(A) failed to consider the consolidated order of the Co-ordinate Bench of the ITAT dated 28.11.2014 for A.Y. 2009-10 in ITA Nos. 821 & 574/LKW/2012 and 108/LKW/2013. We further find that other

issues raised by the Revenue in the appeal, as well as by the assessee in the cross objection, require further verification of facts and material, which are either not presently on record or not adequately examined. Accordingly, all the issues in dispute in ITA No. 367/LKW/2017 and CO No. 13/LKW/2017 are restored to the file of the Ld. CIT(A) with the direction to pass *de novo* order on merits, in accordance with law, after providing reasonable opportunity of being heard to the assessee.

(F) ITA No. 318/LKW/2018 pertains to A.Y. 2013–14, in which the grounds of appeal are as under: –

"1. That the impugned order dated 28-03-2018 passed by Ld. Principal Commissioner of Income Tax-2 (PCIT) is beyond jurisdiction and untenable in law.

2. That the Ld. PCIT was wrong in invoking section 263 of the Income Tax Act, in as much as the original assessment order dated 11-02-2016 is neither erroneous nor prejudicial to the interest of revenue.

3. That the Ld. PCIT was wrong in not passing an speaking order ignoring the submissions made by the assessee during proceeding u/s 263 rendering the order under appeal bad in law and liable to be cancelled.

4. That the Ld. PCIT was wrong in ignoring the reply of the assessee before him regarding prior period expenses of Rs. 46,29,470/- and loss on sale of Fixed Assets Rs. 8,83,439/-along with provision for incentive allowance Rs. 21,40,000/- under the head Employee Benefit Expenses' and yet taking an adverse view of the matter which amounts to arbitrary exercise of power.

5. That the Ld. PCIT was wrong in referring the ITAT order dated 25-05-2012 for the Assessment year 2006-07 under ITA No. 168/LKW/2010 which is having no bearing with the issues involved and by passing the points raised in the show cause notice for initiating the proceedings u/s 263 rendering the proceedings invalid.

6. The Ld. PCIT was wrong and without any basis in coming to a conclusion that " perusal of records shows that during the course of proceedings the Assessing Officer did not conduct any enquiry prior period expenses of Rs. 46,29,470/- before allowing the entire period expenses. Same is the case with loss of sale of fixed asset of Rs. 8,83,439/- and provision for incentive allowance amounting to Rs. 21,40,000/- under the head of Employees Benefit Expenses claimed by the assessee".

7. That the Ld. PCIT was wrong in invoking Explanation 2 to section 263 of the Income Tax Act and in any case wrongly made it applicable to the present proceedings.

8. That the order is against law, facts and circumstances of the case.

9. The Appellant craves leave of this Hon'ble Tribunal to add or amend the grounds of appeal during the course of hearing."

(F.1) This appeal pertains to the impugned order passed under section 263 of the Act. The Ld. AR for the assessee relied on the following written submissions at the time of hearing: –

"1. UP State Construction & Infrastructures Development Corporation Ltd. has its Head Office at Lucknow (UP) and its Branches/units are spread in all Districts of Uttar Pradesh as well as several units in the State of Rajasthan, Madhya Pradesh, New Delhi, Uttarakhand and Maharashtra.

2. The appellant is a government registered company under section 619 of the Companies Act, 1956. The entire paid-up capital is held by the Government of Uttar Pradesh. Primarily the objective of this Government Company is to promote the interest of members of Schedule caste, Schedule tribes, and Backward classes and the scheme connected therewith, and accordingly, the income arising from the activity is exempt under section 10 (26B) of the Income Tax Act. Besides the assignment of promoting the interest of members of Schedule caste, Schedule tribes, and backward classes, the appellant company also undertakes the works from the government and its agencies to construct hostels and other buildings other than the buildings for Schedule caste, Schedule tribes, and Backward classes.

3. The return of the assessee was originally e-filed u/s 139 of the Income Tax Act on 29.09.2013 declaring the Total Loss of Rs. 3,06,71,691/ The case was selected in scrutiny the assessment u/s 143(3) was completed by the Deputy Commissioner of Income Tax, Range-VI, Lucknow on 11.02.2016 on total income of Rs. 10,45,71,123/- by making certain additions.

4. Later on, the case was set-aside as per provision of Sec. 263(1) of the Income Tax Act, 1961 vide order dated 28.03.2018 (F. No. Pr. CII-2/Tech/Lko/263/AY 2013-14/UPSCIDC/2017-18/1131) OF THE Ld. Pr CIT-2, Lucknow. Accordingly, notices u/s 142(1) of the Income Tax Act, 1961 along with the questionnaires dated 09.08.2018 and 09.11.2018 were issued to the assessee through speed post. In compliance, Sri SC Agarwal, Advocate and Sri P.K. Agarwal, Accounts officer attended, furnished written submission and the case was discussed with them.

5. Subsequently, the Ld. PCIT issued a show cause notice dated 30.11.2017 under Section 263, alleging that the order passed by the AO was erroneous in so far as it was prejudicial to the interests of the Revenue. In response, the appellant filed detailed objections, which were not appropriately considered. The Ld. PCIT passed the impugned order setting aside the assessment with directions to frame a fresh assessment.

6. Aggrieved with this order made by the PCIT, the appeal has been preferred by the assessee to the Appellate Tribunal.

Copy of Form 36 along with Grounds of Appeal are attached as Annexure 'A'.

Written Submission-

1. Ground No. 1-

That the impugned order dated 28-03-2018 passed by Ld. Principal Commissioner Of Income Tax-2 (PCIT) is beyond jurisdiction and untenable in law.

The appellant respectfully submits that the impugned order dated 28.03.2018 passed by the Learned Principal Commissioner of Income Tax under Section 263 of the Income Tax Act, 1961 is liable to be quashed ab initio, as it is without jurisdiction and contrary to the settled principles of law.

Copy of order u/s 263 attached as Annexure B.

2. Ground No. 2-

That the Ld. PCIT was wrong in invoking section 263 of the Income Tax Act, in as much as the original assessment order dated 11-02-2016 is neither erroneous nor prejudicial to the interest of revenue.

Jurisdictional Precondition Not Met: It is a settled position of law that the jurisdiction under Section 263 can only be invoked when both the following conditions are cumulatively satisfied:

The order passed by the Assessing Officer is erroneous, and such error is prejudicial to the interests of the Revenue.

In the present case, the Ld. PCIT has failed to establish how the assessment order passed under Section 143(3) was erroneous in the first place. The AO made inquiries during the course of assessment proceedings, and the appellant filed detailed responses supported by documentary evidence. The Ld. PCIT has merely substituted his own opinion over the AO's conclusion, which is impermissible under law.

In any case assessment order cannot be revised on the ground that the deeper inquiry ought to have been made or proper exercise was not done while making the assessment. It is not the case of department that books were not presented or examined by the Ld. AO. It also a fact that tax audit report was looked into and the matter was examined in the light of such report. In the notice there is no mention of any fresh material which enabled the Ld. PCIT for assuming jurisdiction u/s 263.

3. Ground No. 3-

That the Ld. PCIT was wrong in not passing a speaking order ignoring the submissions made by the assessee during proceeding u/s 263 rendering the order under appeal bad in law and liable to be cancelled.

Section 263 requires a Speaking and Reasoned Order: The jurisdiction under Section 263 is not automatic. The Commissioner must demonstrate with cogent reasons as to how the AO's order is erroneous, and how such error is prejudicial to the interests of the Revenue. In the present case, the Ld. PCIT has failed to satisfy these statutory tests and has instead passed a cryptic, generalized order without a reasoned finding. This is impermissible and unsustainable in law.

4. Ground No. 4-

That the Ld. PCIT was wrong in ignoring the reply of the assessee before him regarding prior period expenses of Rs. 46,29,470/- and loss on sale of Fixed Assets Rs. 8,83,439/- along with provision for incentive allowance Rs. 21,40,000/- under the head 'Employee Benefit Expenses' and yet taking an adverse view of the matter which amounts to arbitrary exercise of power. Ld. PCIT Ignored the Assessee's Reply without proper discussion: In the Section 263 proceedings, the appellant submitted a detailed, item-wise reply to the PCIT's show cause notice, which explained all the above three issues clearly.

The matter relating to expenses for prior period Rs. 46,29,470/- was with the Ld. AO as per the details submitted during assessment proceedings. Further, this matter had been examined in earlier years as well and was decided by Hon'ble Tribunal in favor of assessee. As per the Rule of Consistency, no action required u/s 263 under these circumstances. Similar is the case of incentive allowance for the benefit of employee Rs. 21,40,000/- The benefit of employee is consistently given and never there was any objection raised by the department. Regarding loss on sale of fixed assets Rs.8,83,439/- the matter is explained in the final accounts including the particulars of assets and claim of depreciation as shown in the audit report. The contention that the AO should have made enquiry/verification on these items while passing the impugned order raises the question as to how these finding was arrived and basis for issuing notice u/s 263.

However, in the impugned order, the Ld. PCIT has neither discussed nor rebutted the appellant's reply on any of the above points. The impugned order simply proceeds to hold the assessment order as "erroneous and prejudicial" without assigning any specific finding on why the assessee's explanation was incorrect or insufficient.

5. Ground No. 5-

That the Ld. PCIT was wrong in referring the ITAT order dated 25-05-2012 for the Assessment year 2006-07 under ITA No. 168/LKW/2010 which is having no bearing with the issues involved and by passing the points raised in the show cause notice for initiating the proceedings u/s 263 rendering the proceedings invalid.

It is respectfully submitted that the Ld. PCIT has erred in relying upon the order of the Hon'ble Income Tax Appellate Tribunal (ITAT) dated 25-05-2012, passed in ITA No. 168/LKW/2010 for the Assessment Year 2006-07. The said ITAT order pertains to a different assessment year and involves a distinct set of facts and legal issues, which have no direct relevance or bearing on the present case under consideration. By referring to and relying on this unrelated ITAT order, the Ld. PCIT has misapplied precedent and failed to address the specific issues raised in the show cause notice issued for the purpose of initiating proceedings under Section 263 of the Income Tax Act, 1961. Furthermore, the order passed under Section 263 does not adequately deal with the objections and explanations submitted by the assessee in response to the show cause notice. This not only reflects non-application of mind but also amounts to a procedural lapse, thereby rendering the entire revisionary proceedings invalid, unsustainable in law, and liable to be quashed.

In Gabriel India Ltd. v. CIT [(1993) 203 ITR 108 (Bom)], it was held that for Section 263 to be validly invoked, the Commissioner must base his conclusions on relevant and applicable material. Reliance on extraneous or unrelated case law indicates failure to apply mind to the facts of the case. By relying on an

unrelated and factually distinguishable ITAT order, the Ld. PCIT has acted without proper application of mind. This further vitiates the assumption of jurisdiction under Section 263 and renders the impugned order unsustainable in law.

Copy of judgment is attached as Annexure C.

6. Ground No. 6-

The Ld. PCIT was wrong and without any basis in coming to a conclusion that "perusal of records shows that during the course of proceedings the Assessing Officer did not conduct any enquiry prior period expenses of Rs. 46,29,470/- before allowing the entire period expenses. Same is the case with loss of sale of fixed asset of Rs. 8,83,439/- and provision for incentive allowance amounting to Rs. 21,40,000/- under the head of Employees Benefit Expenses claimed by the assessee".

The appellant respectfully submits that the conclusion drawn by the Ld. PCIT, that the AO failed to make any enquiry before allowing the expenses of prior period expenses of Rs. 46,29,470/-, loss on sale of fixed assets of Rs. 8,83,439/- and provision for incentive allowance amounting to Rs. 21,40,000/- is factually incorrect, contrary to the assessment record, and legally unsustainable. The assumption of jurisdiction under Section 263 based on this erroneous premise is therefore liable to be quashed. The Ld. PCIT, while exercising revisional powers, has not pointed out any evidence to show that no enquiry was conducted.

Instead, the order merely observes that "no enquiry appears to have been made," which is speculative, superficial, and not supported by the assessment records. Such observation does not meet the threshold laid down under law for invoking Section 263, especially when proper enquiry and application of mind is demonstrable from the assessment file.

In CIT v. Gabriel India Ltd. [(1993) 203 ITR 108 (Bom)], the Hon'ble Bombay High Court held:

"The Commissioner cannot initiate revision merely because he is of the opinion that further enquiry should have been conducted. If the AO has made enquiries and taken a view, the Commissioner cannot substitute his own view."

7. Ground No. 7-

That the Ld. PCIT was wrong in invoking Explanation 2 to section 263 of the Income Tax Act and in any case wrongly made it applicable to the present proceedings.

Ld. PCIT was wrong in invoking Explanation 2 to section 263. Explanation 2 to Section 263, introduced by the Finance Act, 2015 with effect from 01.06.2015, is meant to clarify certain illustrative circumstances under which an order may be considered "erroneous in so far as it is prejudicial to the interests of the Revenue." However: Explanation 2 does not operate in isolation. It does not dispense with the twin jurisdictional conditions laid down by the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. v. CIT [(2000) 243 ITR 83 (SC)]- i.e., the order must be:

(a) Erroneous, and

(b) Prejudicial to the interests of the Revenue.

Unless both these conditions are demonstrably satisfied based on the facts and records of the assessment, Explanation 2 cannot be mechanically invoked. Copy of judgment is attached as Annexure D.

It has been laid down by the Hon'ble Tribunal in Principal Commissioner of Income-tax, Surat-2 v. Shreeji Prints (P.) Ltd.,

5. The Tribunal has found that in the order passed by the PCIT, Explanation 2 of section 263 of the Act, 1961 is made applicable. The Tribunal observed that the PCIT has not mentioned in the show cause notice to invoke the Explanation 2 of section 263 of the Act 1961. Therefore, by invocation of Explanation in the order without confronting the assessee and giving an opportunity of being heard to the assessee is not appropriate and sustainable in law.

The procedural irregularity vitiates the proceedings, as it deprives the assessee of a reasonable opportunity to present its case and defend the assessment order. Accordingly, the revisionary order passed under Section 263 based on a ground not mentioned in the show cause notice is not legally tenable and is liable to be quashed.

Copy of judgment is attached as Annexure E.

8. Ground No. 8-

That the order is against law, facts and circumstances of the case.

Therefore, the order under Section 263 has been passed without proper appreciation of the facts on record and without bringing any fresh material to establish any error or prejudice, thereby rendering the order unsustainable."

(F.2) The Ld. Departmental Representative relied on the impugned order passed u/s 263 of I.T. Act.

(F.2.1) In view of the aforesaid written submission from the assessee's side, we are satisfied that the Assessing Officer had carried out proper inquiries and verifications while passing the assessment order dated 28.03.2018. Therefore, the impugned order dated 28.03.2018 passed u/s 263 of I. T. Act is set aside, and the assessment order dated 11.02.2016 is restored. Accordingly, ITA. No.318/LKW/2018 of assessee's appeal is allowed.

(G) ITA No. 368/LKW/2017 and CO No. 14/LKW/2017 pertain to A.Y. 2010–11, in which the following grounds have been raised: –

ITA No. 368/LKW/2017

"1. The Ld.CIT(A), Lucknow has erred in law and on facts in directing the Assessing Officer to accept the revised computation of income without appreciating the fact that as per provisions of I.T.Act, the assessee can revise its income only by filing revised return of income.

(2) The Ld.CIT(A), Lucknow has erred in law and on facts in directing the Assessing Officer to accept the revised computation of income without appreciating the fact that despite financial statements, the assessee did not do so.

2. The Ld.CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.2,07,96,543/- on account of saving bank interest without appreciating the fact that the assessee is following mercantile system of Accounting and therefore it was mandatory for him to show saving bank interest of Rs.2,07,96,543/- accrued during the F.Y. 2009-10 in A.Y. 2010-11.

3. The Ld.CIT(A), Lucknow has erred in law and on facts in deleting the addition of 6(5) Rs.13,50,364/- without appreciating the fact that the assessee did not produce journal voucher no. 769 & 1866 before A.O.

4. The Ld.CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.9,49,29,497/- on account of centage without appreciating the fact that the 8/5 Assessing Officer has clearly pointed out defects in submission of the assessee before making the additions.

5. The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs. 12,75,42,000/- on account of excess expenditure incurred without 9/4 appreciating the fact that the assessee has not given any justification for incurring Excess expenditure over sanctioned cost.

6. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in deleting the addition of Rs.6,32,00,473/- on account of interest income without appreciating the fact that the assessee is claiming TDS pertaining to interest on unutilized funds and as per provisions of sec. 198 & 199 of the I.T. Act, the above interest income is income of the assessee and not of the U.P. Govt.

7 The Ld.CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.4,30,49,278/- on account of excess deduction claimed in the revised financial statement without appreciating the fact that the assessee can revise its income and claim any additional deduction only by filing revised return of income.

8. The Ld.CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.50,24,774/- on account of prior period expenses without appreciating the fact that the assessee did not produce documentary evidence before A.O. to prove that the expenses has crystallized during the year.

9. The Ld.CIT(A), Lucknow has erred in law and on facts in restricting the addition of Rs.38,90,456/- to Rs.12,13,182/- u/s 43B without appreciating the fact that the assessee did not furnished the details of taxes paid amounting to Rs.26,77,274/- and therefore the disallowance was correctly made by the A.O.

10. The Ld. CIT(A), Lucknow has erred in law and on facts in deleting the addition of AO Rs. 16,00,000/- on account of incentive paid without appreciating the fact that the ISCY assessee has not furnished documentary evidence before A.O. to prove that tax has been deducted on incentive.

11. The Ld.CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.37,49,186/- on various disallowances without appreciating the fact that the expenses are not supported by bills/vouchers.

12. The Ld.CIT(A), Lucknow has erred in law and on facts in deleting the disallowance of exemption claimed u/s 10(26B) Rs.3,01,99,000/- without 170) appreciating the fact that the assessee has claimed exemption u/s 19(26B) of 1.T.Act, 1961 in respect of seven projects where the work is not limited for promotion of interest of members of SC/ST & OBC only but is for General Category also and the detail of projects have been mentioned in the assessment order.

13. The Ld.CIT(A), Lucknow has erred in law and on facts in deleting the disallowance of Rs.68,11,193/- made under section 40(a)(ia) without appreciating) the fact that the assessee has not produced party wise details of Rs.68,11,193/-with nature of payments before the Assessing Officer during the assessment /remand proceedings and TDS of Rs.1,53,967/- could not be tallied with gross amount of Rs.68,11,193/-

14. The Ld.CIT(A), Lucknow has erred in law and on facts in deleting the disallowance of expenditure claimed to the tune of Rs.94,66,732/- without appreciating the fact that the assessee did not furnish any documentary evidence either during assessment proceeding or remand proceedings.

15. The Ld.CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.2,51,550/- on account of difference in figures of stock and directing the A.O. to accept revised computation of income without appreciating the fact that the assessee can revise its income by filing revised return of income only.

16. The Ld.CIT(A), Lucknow has erred in law and on facts in deleting the Par921/4 disallowance of Rs. 11,93,86,926/- u/s 40(a)(ia) of the I.T. Act, 1961 without appreciating the fact that the assessee has procured materials from work contractors and in many cases the transport charges & labour are more than the cost of material.

17. That the Appellant crave leaves to add or amend any one or more of the grounds of appeals, as stated above, as and when need to doing so arises with the prior permission of the Court."

CO. No.14/LKW./2017

1. That the Ld. A.O is wrong in assailing the direction Ld. C.I.T. (Appeal) for accepting the revised Financial Statement dated 09.02.2011 in as much as the direction is based under similar facts as per Order of Hon'ble ITAT passed in ITA No. 168/LKW/2010 dated 25.05.2012 in the assessee's case for Assessment Year 2006-07.

2. The Ld. A.O. is wrong in assailing the deletion of Rs. 2,07,96,543/- on account of savings bank interest in as much as the correct amount of interest of Rs. 1,18,01,436/ had already been offered to tax and assessed in Assessment Year 2011-12 a fact not appreciated by the Ld. A.O.

3. That the Ld. A.O. is wrong in assailing the action of the Ld. C.I.T. (Appeal) so as to delete the addition of Rs. 13,50,364/ on the plea that the assessee did not produce voucher number 769 and 1866 on the face of clear cut finding by the

Ld. C.I.T. (Appeal) that said vouchers were produced during the course of Assessment proceedings.

4. That the Ld. A.O. is wrong in objecting the deletion of Rs. 9,49,29,497/- on account of centage in as much as there is a specific finding of the Ld. C.I.T. Appeal that the centage received by the assessee is recorded in the books of accounts and the Ld. A.O. has failed to show by bringing any evidence on record that centage received was higher than shown in the Books of Accounts.

5. That the Ld. A.O. is wrong in objecting direction of the Ld. CIT Appeal so as to delete the amount of Rs. 12,75,42,000/- on account of so called excess expenditure incurred over sanctioned cost on the face of finding of Ld. CIT Appeal that the excess expenditure above sanctioned cost is not the bogus expenditure and as incurred during the course of business.

6. That the Ld. A.O. wrongly objected the direction of the Ld. CIT Appeal for deleting the addition Rs. 6,32,00,473/- on account of interest on the face of finding by the Ld. CIT Appeal that the interest accrued on the advances received by the assessee from the govt. for construction activities is an income of the govt. and not of the assessee and also that the income did not accrue and chargeable in the hands of the assessee.

7. That the objection of the Ld. A.O. for deletion of additions of Rs. 4,30,49,278/- is wrong in as much as the issue is covered by Hon'ble ITAT Order Vide ITA No. 168/LKW/2010 for the Assessment Year 2006-07 in the assessee's own case relied by Ld. C.I.T. (Appeal).

8. That the objection of the Ld. A.O. for deletion of Rs.50,24,774/- is not justified in as much as the said amount was deleted by the Ld. C.I.T. (Appeal) on the basis of evidence proving crystallisation of the expenses during the previous year relevant to Assessment Year 2010-11 and further on the fact that such evidences were produced before the Ld. A.O. as well.

9. That the Ld. A.O. is wrong in objecting the deletion of Rs. 26,77,274/- by Ld. CIT Appeal after recording a finding that such addition was unjustified u/S 43B of Income Tax Act, 1961 on the basis of evidence on record.

10. That the objection of Ld. A.O. regarding deletion of Rs. 16,00,000/- as incentives to employees is not justified as the Ld. CIT Appeal has given categorical finding as per Para 15(4) of the Impugned Order.

11. That the objection of the Ld. A.O. regarding Rs. 37,49,186/- relating to various expenses incurred in as much as the Ld. CIT Appeal has given a finding on the basis of evidence proving that liability of such expenses was duly crystallised and approved in the Assessment Year under consideration.

12. That the Ld. A.O. has wrongly objected the deletion of Rs. 3,01,99,000/- on account of claim of exemption U/S 10(26B) of the Income Tax Act, 1961 ignoring the fact that the claim is allowed u/s 10 the Statute for the projects which are undertaken by the assessee for the benefit and to promote the interest of the members of Scheduled Caste/ Scheduled Tribes and Backward Classes consistently on the strength of the Hon'ble High Court Order in the Assessee's own case.

13. That the objections of the Ld. A.O. for deletion of Rs. 68,11,193/- under S. 40 (a)(ia) of Income Tax Act, 1961 on the ground of non-production of party-

wise details before the Ld. A.O. is factually incorrect on the face of categorical finding of the Ld. CIT (Appeal) as per Para 18(4) of the Impugned Order.

14. That the Ld. A.O. is wrong in objecting the deletion of Rs. 94,66,732/- on account of expenditure claimed in as much as the Ld. CIT Appeal has given a detailed finding as per Para 19(4) of the Impugned Order.

15. That Ld. A.O. is wrong in objecting the deletion of Rs. 2,51,550/- by Ld. CIT Appeal on account of difference in figures of stock on the finding recorded by the Ld. CIT Appeal to the fact that income was rightly shown by the assessee as per financial statement dated 09.02.2011.

16. That the objection of the Ld. A.O. regarding deletion of Rs. 11,93,86,926/- u/ S 40(a)(ia) of the Income Tax Act, 1961 is not justified in as much as the Ld. CIT Appeal has given a considered finding based on evidence and material on record and also the nature of payment.

17. That assessee craves leave to additions/ amendments in the Grounds of the Cross Objection during the course of the proceedings of the appeal."

(G.1) At the time of hearing, the Ld. Departmental Representative relied upon the assessment order, whereas the Authorized Representative for the assessee relied on the impugned order of the Ld. CIT(A). Upon perusal of the grounds of appeal raised by the Revenue, it is observed that the Revenue contended that the consolidated order of the Co-ordinate Bench of the ITAT dated 28.11.2014 for A.Y. 2009-10 in ITA Nos. 821 & 574/LKW/2012 and 108/LKW/2013 was not considered by the Ld. CIT(A). We further find that other issues raised by the Revenue in the appeal, as well as by the assessee in the cross objection, require further verification of facts and supporting material, which are either not presently on record or have not been adequately examined. Accordingly, all the issues in dispute in ITA No. 368/LKW/2017 and CO No. 14/LKW/2017 are restored to the file of the Ld. CIT(A) for fresh adjudication on merits, in accordance with law, after affording the assessee a reasonable opportunity of being heard.

(H) ITA Nos. 617/LKW/2019 & 620/LKW/2019 and CO No. 01/LKW/2020 pertain to A.Y. 2014-15, in which the following grounds have been raised:

ITA. No. 617/LKW/2019

1. That the Ld.CIT(A)-2, Lucknow had erred in law and on facts in deleting the addition of Rs. 7,21,70,400/- on account of interest on unutilized funds without appreciating the facts that the assessee is claiming TDS pertaining to interest on unutilized funds and as per provisions of Section-198 and 199 of Income Tax Act 196, the above interest income is income of assessee and not of the U.P. Government.

2. That the Ld.CIT(A)-2, Lucknow had erred in law and on facts in deleting the addition of Rs.47,49,500/- for provision for arrears of Salary and Incentive Allowance without appreciating the facts that the payment of Arrear of Salary and Incentive Allowance is only allowed on actual payment basis u/s 43B of the Income Tax Act 1961.

3. That the Ld.CIT(A)-2, Lucknow had erred in law and on facts in deleting the Addition of Rs.1,10,58,149/- on account of Centage Charges without appreciating the facts that the addition had been made on the basis of difference in centage rate shown by the assessee and actual centage charged by the assessee.

4. That the Ld.CIT(A)-2, Lucknow had erred in law and facts in deleting the disallowance of Rs.5,63,81,248/-made U/s 40(a)(ia) of the I.T. Act, 1961 without appreciating the facts that the the assessee had made payments for purchases of material from work contractors/suppliers without deduction of TDS and in many cases, transport charges and labour cost were more than the cost of material.

5. That the Ld.CIT(A)-2, Lucknow had erred in law and facts in deleting the disallowance of exemption claimed of Rs.42,81,000/- u/s 10(26B) of the Income Tax Act, 1961 without appreciating the facts that the assessee had not maintained any separate books of account and had not been able to submit the details of income relating to work of housing schemes pertaining to SC/ST/OBC in a way to differentiate such income from other incomes as held by Hon'ble Alld. High Court in its judgment dt 06/12/1995 in Harijan Evam Nirbal Warg Awas Nigam Ltd 131 CTR All 169, 1997 226 ITR 696.

6. The appellant crave leaves to add or amend any one or more of the grounds of appeal, as stated above, as and when need to doing so arise with the prior permission of the court."

ITA. No. 617/LKW/2019

1. That the Ld.CIT(A)-2, Lucknow had erred in law and on facts in deleting the addition of Rs. 7,21,70,400/- on account of interest on unutilized funds without appreciating the facts that the assessee is claiming TDS pertaining to interest on unutilized funds and as per provisions of Section-198 and 199 of Income Tax Act 196, the above interest income is income of assessee and not of the U.P. Government.

2. That the Ld.CIT(A)-2, Lucknow had erred in law and on facts in deleting the addition of Rs.47,49,500/- for provision for arrears of Salary and Incentive Allowance without appreciating the facts that the payment of Arrear of Salary and Incentive Allowance is only allowed on actual payment basis u/s 43B of the Income Tax Act 1961.

3. That the Ld.CIT(A)-2, Lucknow had erred in law and on facts in deleting the Addition of Rs.1,10,58,149/- on account of Centage Charges without appreciating

the facts that the addition had been made on the basis of difference in centage rate shown by the assessee and actual centage charged by the assessee.

4. That the Ld.CIT(A)-2, Lucknow had erred in law and facts in deleting the disallowance of Rs.5,63,81,248/-made U/s 40(a)(ia) of the I.T. Act, 1961 without appreciating the facts that the assessee had made payments for purchases of material from work contractors/suppliers without deduction of TDS and in many cases, transport charges and labour cost were more than the cost of material.

5. That the Ld.CIT(A)-2, Lucknow had erred in law and facts in deleting the disallowance of exemption claimed of Rs.42,81,000/- u/s 10(26B) of the Income Tax Act, 1961 without appreciating the facts that the assessee had not maintained any separate books of account and had not been able to submit the details of income relating to work of housing schemes pertaining to SC/ST/OBC in a way to differentiate such income from other incomes as held by Hon'ble Alld. High Court in its judgment dt 06/12/1995 in Harijan Evam Nirbal Warg Awas Nigam Ltd 131 CTR All 169, 1997 226 ITR 696.

6. The appellant crave leaves to add or amend any one or more of the grounds of appeal, as stated above, as and when need to doing so arise with the prior permission of the court."

CO No. 01/LKW/2020

1. That the Ld. CIT(A) is wrong in making observation and confirming the amount of labour CESS to the extent payment made after the date of filing the return on the basis that no details of such payments are available.
2. That the Ld. CIT(A) is wrong in upholding and confirming the so called addition in an arbitrary manner.
3. That the appellant craves the leave to take additional amended grounds during the course of appellate proceedings."

(H.1) At the time of hearing, the Ld. Departmental Representative relied on the assessment order, while the Ld. Counsel for the assessee relied on the impugned order of the Ld. CIT(A) in respect of ITA Nos. 617 and 620/LKW/2019, respectively. Upon perusal of the impugned appellate order of the Ld. CIT(A) and the materials on record, we find that the Ld. CIT(A) has based his decision on earlier orders for A.Y. 2012-13. As discussed in paragraph (D.1) above, we have already upheld the order of the Ld. CIT(A) for A.Y. 2012-13. Consistent with that view, we hereby dismiss the grounds raised in the Revenue's appeal in ITA No. 617/LKW/2019 and allow the grounds raised in the assessee's cross objection, i.e., CO No. 01/LKW/2020.

(H.2) In ITA No. 620/LKW/2019, the assessee raised the issue of disallowance of Rs. 14,55,000/- claimed as provision for incentive allowance. Upon perusal of the impugned appellate order of the Ld. CIT(A), we find that this issue was not raised by the assessee in the appeal filed before the Ld. CIT(A). Moreover, no materials have been brought to our attention to justify interference with the impugned order of the Ld. CIT(A). Accordingly, the appeal in ITA No. 620/LKW/2019 filed by the assessee is dismissed.

(I) Cross appeals vide ITA. Nos. 623/LKW/2019 filed by Revenue and vide ITA. No.621/LKW/2019 filed by assessee pertains to A.Y. 2015-16. The grounds taken in these appeals are as under: -

ITA. No.621/LKW/2019

- 1. That the Ld. CIT(A) is wrong in disallowing the claim Rs.44,32,461/- on account of labour cess.*
- 2. That the Ld. CIT(A) is wrong in confirming the disallowance of Rs.23,65,203/- on the plea that no documentary evidence were filed by the appellant.*
- 3. That the appellant craves leave this Hon'ble Tribunal to add/modify/delete grounds of appeal during the course of appellate proceedings."*

ITA. No.623/LKW/2019

- 1. That the Ld.CIT(A)-2, Lucknow had erred in law and facts in deleting the addition of Rs. 3,62,97,221/- on account of interest on unutilized funds without appreciating the facts that the assessee is claiming TDS pertaining to interest on unutilized funds and as per provisions of Section-198 and 199 of Income Tax Act 1961, the above interest income is income of assessee and not of the U.P. Government.*
- 2. That the Ld.CIT(A)-2, Lucknow had erred in law and facts in deleting the addition of Rs. Rs.3,28,55,000/- for Provision for Arrear of Salary and Incentive Allowance without appreciating the facts that the payment of Arrear of Salary and Incentive Allowance is only allowed on actual payment basis u/s 43B of the Income Tax Act 1961.*
- 3. That the Ld.CIT(A)-2, Lucknow had erred in law and facts in deleting the Addition of Rs.81,51,992/- on account of Centage Charges without appreciating the facts that the addition had been made on the basis of difference in centage rate shown by the assessee and actual centage charged by the assessee.*
- 4. That the Ld.CIT(A)-2, Lucknow had erred in law and facts in deleting the disallowance of Rs.1,95,39,124/- u/s 40(a)(ia) of the I.T. Act, 1961 without appreciating the facts that the assessee made purchases of material from work*

contractor/suppliers and for which payments had been made without deduction of TDS.

5. The appellant craves leave to add or amend any one or more of the grounds of appeal, as stated above, as and when need to doing so arise with the prior permission of the Hon'ble Court."

(J) In the aforesaid two appeals for A.Y. 2015-16; the Ld. AR for the assessee relied on common written submissions, which are reproduced below: -

"UP State Construction & Infrastructures Development Corporation Ltd. has its Head Office at Lucknow (UP) and its Branches/units are spread in all Districts of Uttar Pradesh as well as several units in the State of Rajasthan, Madhya Pradesh, New Delhi, Uttarakhand and Maharashtra.

2. The appellant is a government-registered company under section 619 of the Companies Act, 1956. The entire paid-up capital is held by the Government of Uttar Pradesh. Primarily the objective of this Government Company is to promote the interest of members of Schedule caste, Schedule tribes, and Backward classes and the scheme connected therewith, and accordingly, the income arising from the activity is exempt under section 10 (26B) of the Income Tax Act. Besides the assignment of promoting the interest of members of Schedule caste, Schedule tribes, and backward classes, the appellant company also undertakes the works from the government and its agencies to construct hostels and other buildings other than the buildings for Schedule caste, Schedule tribes, and Backward classes.

3. The return of the assessee was originally e-filed u/s 139 of the Income Tax Act on 30.09.2015 declaring the Total Loss Rs. 2,92,80,341/-. The assessment was u/s 143(3) was completed by the Deputy Commissioner of Income Tax, Range-VI, Lucknow on 29.12.2017 on total income of Rs. 7,43,60,660/- by making certain additions.

4. Aggrieved with the order of the AO, the assessee preferred appeal. The Ld. CIT(A)-2, Lucknow vide its order dated 28.08.2019 in appeal No. CIT(A) 2/Lko./18-19 has decided the appeal with part relief.

5. Aggrieved with this appeal order by the CTT(A), the appeal has been preferred by the Revenue in Appeal No. 623/LKW/2019 and by the Assessee in Appeal No. 621/LKW/2019 to the Appellate Tribunal.

A copy of Grounds of Appeal along with Form 36-623/LKW/2019 filed by the Department is attached as Annexure A.

A copy of Grounds of Appeal along with Form 36-621/L.KW/2019 filed by the Assessee is attached as Annexure B.

Ground-wise Written Submission-

(1) Ground Number 1 (raised by Dy. Commissioner of Income Tax, Range -6, Lucknow in Appeal No. 623/LKW/2019)-

That the Ld. CIT(A)-2, Lucknow had erred in law and facts in deleting the addition of Rs. 3,62,97,221/- on account of interest on unutilized funds without appreciating the facts that the assessee is claiming TDS pertaining to interest on unutilized funds and as per provisions of Section-198 and 199 of Income Tax Act 1961, the above interest income is income of assessee and not of the U.P. Government.

The amount of interest which belongs to State Government is reflected under Schedule-6 in our Balance Sheet under the head "Interest earned on unutilized funds (payable to UP Government)". It may further be stated that this amount belongs to Government and is NOT part of our income. Interest earned cannot be recognized as income of the assessee since as per order of the Government of U.P. dated 27/03/1979, 03/04/1980, 04.12.1993 & 31/07/2002 and letter from the Pashupalan Department, dated 13/08/2002, interest earned on unutilized balance belongs to the Department from whom fund has been advanced to the Corporation for execution of work which is clearly mentioned in the Government Order that interest earned shall be included in the project cost and shall be utilized for the work for whom fund has been received.

In the letter issued by UP Government to the assessee corporation (In its old name M/s Harijan evam Nirbal Varg Awas Nigam Limited), it is specifically mentioned in it that the interest earned on the grant received by the corporation is not the income of the corporation and therefore it need not be credited to the Profit & Loss account of the corporation.

Copy of Government orders is attached as Annexure C.

Copy of Ledger of Interest on Unutilised grants is attached as Annexure D.

As per the various Government Orders as stated above, interest on un-utilized funds are not belong to the assessee and these interest either payable to the government or adjustable with the grant.

Since the projects of the corporation undergo several years, any adjustment in the amounts is made at the end of project only and, therefore, it takes time to adjust the said amount.

The said orders/circulars of UP Government/department have also been submitted to the Assessing Officer during the course of assessment proceedings.

The assessee time to time had deposited the amount against the interest on unutilized funds, we are giving some copy of challans on sample basis for some payments made out of liability account of interest on unutilized funds detailed as below:

- 1. 200 lakhs on 09.07.2015 via cheque no. 564026 dated 02.07.2015, recorded under Journal Voucher No. 221.*
- 2. ₹200 lakhs on 19.12.2015 via cheque no. 851481 dated 15.12.2015, recorded under Journal Voucher No. 652.*
- 3. 177.09 lakhs on 18.01.2016 via cheque no. 214369 dated 14.01.2016, recorded under Journal Voucher No. 921.*

The corresponding challan forms and the office orders/minutes of the Corporation for the above transactions are attached herewith as Annexure E for your reference.

It is pertinent to mention that the C&AG Audit Report do not contain any observation which refers to the loss of the revenue by any means.

Copy of C&AG Audit Report is attached as Annexure F.

It is also submitted that the accounting policy no. 5 of the accounts may please be referred to which envisages as under-

Accounting Policy 5: Treatment of Interest Earned on Unutilised Funds and own funds

(i) The interest on investment out of unutilised government funds on fixed deposit (excluding fixed deposit out of own resources) and savings bank account maintained at Head Office is shown as interest earned on unutilised grants under the head 'Other Long-Term liabilities', which is payable to U.P. Government.

(ii) The fund for construction of various departments is either withdrawn through its Personal Ledger Account (PLA) or is provided by the client at Head Office/Units. The fund is withdrawn/provided by the client is remitted to the units as per their requirement and the interest and on funds during the period in which the funds remain un-utilised, is credited to the government account under the head 'Interest on un-utilised funds'. As per past practices, the funds sent to units by the head office and by the clients for execution of work are treated as funds utilised and the interest, if any, during the course of utilisation is credited to the profit and loss account.

(iii) Interest earned on Corporation's own funds is calculated based on formula by adding up share capital and reserves & surplus by deducting net fixed assets there from.

Copy of Audit Report is attached as Annexure G

Copy of Balance Sheet with Notes to Accounts is attached as Annexure H.

It is respectfully submitted that the provisions of Sections 198 and 199 of the Income Tax Act, 1961, are not applicable in the present case, as the interest income pertains to the Government. Accordingly, the tax deducted at source (TDS) by the banks has also been shown along with the gross amount as payable to the Government.

The Corporation has treated the TDS amount as a liability towards the Government and has duly recorded the same in its books of accounts. Therefore, the Corporation is merely acting as a custodian of the said amount on behalf of the Government, and no income is accrued or vested in the Corporation in this respect.

Vide para 7.1 of the Appellate Order by Ld. CIT (A) respectively, the Ld. CIT(A) deleted the addition of Rs. 3,62,97,221/- after thoroughly examining the facts and circumstances of the case.

A copy of CIT(A) order is attached as Annexure I.

The case laws quoted hereby are very much relevant to this case as these case laws are related to the same ground-U.P. Police Avas Nigam Ltd. v. ACIT Special Range II Lucknow

(ITA Nos.344 & 345/LKW/1999)- ITAT Lucknow Bench

The relevant extract of the order is given as below-

8. Having given a thoughtful consideration to the rival submissions and from a careful perusal of record, we find that the Tribunal has examined this issue in the assessee's own case for assessment years 1995-96 to 1998-99 and 2002-03 & 2003-04 vide its order dated 14.3.2008 in which the Tribunal has disallowed the claim of the assessee for the reason that the assessee could not place relevant evidence on record in support of its contention that the advances were given to the assessee with a rider that the interest income would be remitted to the Government. But in the instant case, the assessee has filed enormous evidence in support of its contention that the advances were given to the assessee with a condition that interest earned thereon from the Bank would not be the income of the assessee, it would be rather remitted back to the Government. Reliance was placed upon the letter dated 12.1.1988 of the Joint Secretary of the Government of U.P. addressed to the D.G. Police through which advances were sanctioned to the assessee for construction of the residential house. In this letter, it has been specifically mentioned that whatever interest income is accrued on the advances from the Bank, it would be remitted to the Government. Our attention was also invited to another letter dated 3.4.1980 available at page 26 of the compilation of the assessee written by the Finance Secretary, Uttar Pradesh in which it has been categorically stated that the income earned from the Bank on these advances would not be the income of the assessee, it would be rather remitted to the Government. Similar letter is also available at page 30 of the paper book, written by the Finance Secretary, Uttar Pradesh in which it has been stated that the interest earned on advances to various Public Sectors would be the income of the Government and is to be deposited in the Government Treasury.

Besides, copy of ledger account of the assessee is also placed before us, in which it has been shown that the interest income earned on the advances was remitted to the Government.

9. In the light of these enormous facts, we are of the considered opinion that the interest accrued on the advances received by the assessee from the Government for construction of group housing, etc. would be the income of the Government and not of the assessee. On its accrual, it becomes a liability to the Government which is to be remitted by the assessee to the Government in due course. Since the income has not been accrued to the assessee, it cannot be charged to tax in its hands. However, all these facts are placed first time before the Tribunal and hence it was not examined by the lower authorities or by the Tribunal in earlier assessment years. Therefore, this issue requires fresh adjudication by the Assessing Officer. Accordingly, we set aside the order of the id. CIT(A) and remit the matter back to the Assessing Officer with a direction to re-adjudicate the issue afresh in the light of the evidence placed before us. If the assessee succeeds in bringing out that the interest income in fact belongs to the Government and it was remitted to the Government in due course, the same would not be charged to tax in the hands of the assessee.

Copy of judgment of ITAT Lucknow is attached as Annexure J.

Commissioner Of Income Tax And Anr. vs Karnataka Urban

Infrastructure Development and Finance Corporation on 21 February, 2006

(ITA No. 284 ITR 582 (Kar)- High Court of Karnataka)

Few facts leading to this appeal are as under:

The respondent M/s Karnataka Urban Infrastructure Development and Financial Corporation (for short hereinafter referred to as 'the assessee') is a fully Karnataka State Government owned company. The assessee was appointed as a nodal agency for the implementation of the mega-city scheme worked out by the Planning Commission of Ministry of Urban and Employment for development of urban infrastructure to Bangalore city. The Central Government has provided the money to the assessee for implementing the said scheme. The money so received from the Government of India was parked by the assessee in various bank deposits during the unutilised period. The interest earned during the year on these deposits were transferred to the mega-city scheme account directly with an appropriate disclosure in the notes to the accounts. The assessee has been involved in other projects of development of infrastructure apart from the activity as a nodal agency for the implementation of the mega-city scheme undertaken by the Government of India. The interest earned and received by the assessee out of the amount which it had received from the Central and State Governments and deposited in various banks, was treated as an income of the assessee. The AO brought the aforesaid amounts to tax. The assessee preferred an appeal and the said appeal came to be dismissed affirming the order of the AO. Aggrieved by the same, the assessee preferred second appeal to the Tribunal. The Tribunal looked into the guidelines which provided the background of the scheme. The Tribunal also looked into the terms of the scheme. Therefore, the Tribunal proceeded to hold that the assessee is nothing but trustee of funds entrusted to carry out the objects of the Government while implementing the scheme. The assessee in fact acted as an agent of the Governments of both the Central and the State for implementing the scheme of the Government, this being the factual position, the lower authorities committed serious error in treating the interest as income of the assessee and bringing the same to tax. Therefore, the Tribunal set aside the orders of the AO and the first appellate authority and the claim of the assessee was allowed. As noticed by us earlier, aggrieved by the said order the Revenue has preferred this appeal.

Sri M.V. Seshachala, learned Counsel for the Revenue submitted that all incomes, which are not exempted under Section 10 of the Act, are liable to tax under Section 4 of the Act and, therefore, the order of the Tribunal requires to be set aside. The material on record shows that the very purpose of constitution of the assessee was to act as a nodal agency for implementation of mega-city scheme worked out by the Planning Commission. Both the Central and the State Governments are expected to provide requisite finances for implementation of the said project. The funds from the Central and State Governments will flow directly to the specialised institutions/nodal agencies as grant and the nodal agency will constitute a revolving fund with the help of Central and State shares out of which finance could be provided to various agencies such as water, sewerage boards, municipal corporations, etc. The objective is to create and maintain a fund for the development of infrastructural assets on a continuing basis and, therefore, the assessee is a nodal agency formed/created by the Government of Karnataka as per the guidelines; there is no profit motive as the entire fund entrusted and the interest accrued therefrom on deposits in bank though in the name of the assessee has to be applied only for the purpose of welfare of the nation/States as provided in the guidelines; the whole Of the fund belongs to the State Exchequer and the assessee has to channelize them to the objects of centrally sponsored scheme of infrastructural development for mega-city of Bangalore. Funds of one wing of the Government is distributed to the other wing of the Government for public purpose as per the guidelines issued. The monies so received, till it is

utilised, is parked in a bank. The finding recorded by the Tribunal clearly shows that the entire money in question is received for implementation of the scheme which is for a public purpose and the said scheme is implemented as per the guidelines of the Central Government and, therefore, the assessee is only acting as a nodal agency of Central Government for implementation of these projects. It is not the case of the Revenue that the assessee was carrying on any business or activities of its own while implementing the scheme in question. The unutilised money, during which the project could not be fully implemented, is deposited in a bank to earn interest. That interest earned is also again utilised for the implementation of the mega-city scheme which is also permitted under the scheme. Therefore, in computing the total income of the assessee for any previous year the interest accrued on bank deposits cannot be treated as an income of the assessee as the interest is earned out of the money given by the Government of India for the purpose of implementation of mega-city scheme. Therefore, we do not find any error in the conclusion reached by the Tribunal that there was no income earned by way of interest by the assessee and setting aside the order of AO which is affirmed by the first appellate authority. The finding given by the Tribunal is purely a question of fact. We do not find any substantial question of law involved in this appeal and therefore, this appeal is liable to be dismissed at the stage of admission itself.

Copy of judgment of Karnataka High Court attached as Annexure K.

Dy. Commissioner Of Income Tax, Lucknow vs M/S U.P Project Corp. Ltd., Lucknow on 4 July, 2022 (ITA No.616/LKW/2019, ITAT Lucknow)

The Id. CIT(A) has duly taken into consideration the aforesaid Government order dated 2.3.1998 to decide the matter in favour of the assessee. While doing so, the Id. CIT(A) relied, inter alia, on the decision of the Hon'ble Gujarat High Court in 'CIT vs. SAR Infracon (P) Ltd., 222 taxman 294 (Guj.).

Therein, the Central Government, while sanctioning grant in favour of that assessee, had stipulated that interest earned on the Central Grants already released would form part of the Central Grants limit. The Hon'ble Gujarat High Court held that considering the condition imposed by the Central Government, while releasing Grant in favour of the assessee, when the interest earned on the Central Grants already released was required to be forming part of the Central Grants, the Tribunal had rightly observed that the interest earned could not be the income of the assessee. The action of the Tribunal in deleting the addition made by the Assessing Officer was confirmed by the Hon'ble High Court. The Assessing Officer, while distinguishing 'CIT vs. SAR Infracon (P) Ltd. (supra), had observed that in that case, the interest earned was included and formed part of the Grants to the assessee. While doing so, however, the Assessing Officer failed to consider that it was while sanctioning Grant that the Central Government had stipulated that the interest earned on the Central Grants already released would form part of the Central Grants. Once the interest accrued on the unutilised advances, it would obviously be the income of the Government, rather than that of the assessee and it became a liability attributable by the assessee to the Government, in due course. The findings of the Id. CIT(A) in this regard were confirmed by the Tribunal, vide its aforementioned order dated 28.2.2019, for assessment years 2010-11 to 2013-14, in the assessee's case. In this view of the matter, finding no error therein, the action of the Id. CIT(A) in deleting the addition of Rs.54,44,29,313/ on account of interest income, is hereby confirmed, following the aforesaid Tribunal order in the assessee's own case for Assessment Years 2010-11 to 2013. Copy of judgment of ITAT Lucknow is attached as Annexure L. The Appellate Orders in the case of M/s State Urban Development

Society, Vs The DCIT, Haryana, Chandigarh Panchkula (ITA No.17/Chd/2009, ITAT Chandigarh) covers the similar case decided in favour of the assessee. Copy of the said judgment is attached as Annexure M.

(2) Ground Number 2 (raised by Dy. Commissioner of Income Tax, Range -6, Lucknow in Appeal No. 623/LKW/2019)-That the Ld. CIT(A)-2, Lucknow had erred in law and facts in deleting the addition of Rs. Rs.3,28,55,000/- for Provision for Arrear of Salary and Incentive Allowance without appreciating the facts that the payment of Arrear of Salary and Incentive Allowance is only allowed on actual payment basis u/s 43B of the Income Tax Act 1961. Identical issue has been decided in appellant's own case for AY 2012-13 in favour of appellant by CIT(A)-II, Lucknow vide order dated 28.03.2017 in appeal no. 17/03/DCIT/R-IV/Lko/15-16. The relevant portion of the order is reproduced under:

"9(4) I have examined the facts and circumstances of the case. I have examined the findings of the AO and the submissions of the appellant. I find that the AO has disallowed the provision of Rs.1,91,54,470/- debited in the profit and loss account following the direction under section 144A of the Act. I find that the liability for arrears of salary (DA Arrears) and leave encashment is based on the instructions issued by the Government of UP and is not an unascertained liability. The provision is actual liability and is allowable as per mercantile system of accounting followed by the Appellant. The disallowance of Rs.1,91,54,470/- made by the AO is therefore deleted giving relief to the appellant"

(i) Incentive Allowances Rs. 14,55,000/-

The Corporation has implemented an approved Incentive Allowance Scheme applicable to its Class III and Class IV employees, drawing a maximum grade pay of Rs. 5,400/-. Under this scheme, an incentive allowance has been disbursed to eligible employees as part of their salary package. The said allowance was paid along with the regular monthly salary of the concerned employees and was accordingly reflected in their respective salary slips and Form 16. It has also been duly considered for the computation of income and tax liability in the hands of each individual employee.

The total amount of incentive disbursed was accounted for under employee cost in the books of accounts and claimed as a deduction under the head "Salary and Wages" while computing the business income of the Appellant. It is pertinent to mention that this expenditure has been consistently allowed by the Department in prior assessment years after due verification during assessment proceedings. There has been no change in facts or law warranting a deviation from the settled position in the present year.

The amount disbursed qualifies as legitimate business expenditure under section 37(1) of the Income-tax Act, 1961. It was incurred wholly and exclusively for the purpose of business, aimed at motivating and retaining employees in key operational roles, thereby enhancing overall productivity.

(ii) Arrear of Salary Rs. 3,14,00,000/-

The aforesaid amount includes ascertained liabilities i.e. payment of Salary/Leave encashment arrears to the employees of the Corporation. It is submitted that the provision was made accordingly against the ascertained liability. This process is totally based on mercantile system adopted by the corporation and is normal business expenditure against ascertained liability and is allowable under the law.

The Corporation, being a public sector undertaking under the administrative control of the Government of Uttar Pradesh, follows the salary structure and allowances as per directives issued by the Bureau of Public Enterprises (BPE), U.P. Government. Dearness Allowance (DA) is sanctioned and revised in accordance with the BPE guidelines.

Timing of Dearness Allowance Declaration:

DA becoming due on 1st January of a financial year is generally declared in July of the next financial year.

DA becoming due on 1st July is generally declared six months later, in January of the next year.

As the Corporation prepares its annual financial statements as on 31st March, the DA due from 1st January to 31st March is not disbursed by that date but is declared and paid subsequently, in July.

Need for Provision under Mercantile Accounting:

The Corporation maintains its accounts on the mercantile basis of accounting, which mandates accrual-based recognition of expenses. Since DA is known and quantifiable, and it pertains to the period January to March, it is necessary and proper to make a provision in the books of account as on 31st March. This practice is in line with Accounting Standard (AS)-1 and basic principles of accrual accounting.

Justification as Allowable Business Expenditure:

The amount of DA provisioned is paid to employees in the subsequent financial year, upon its declaration by the BPE. Hence, this is not a contingent liability, but a real and ascertained liability, arising from employment obligations. Since the expenditure has accrued during the relevant year and subsequently paid, it qualifies as a deductible business expense under Section 37(1) of the Income Tax Act, 1961.

Courts and tribunals have consistently held that provisions made for accrued expenses are allowable as deduction under the mercantile system of accounting, provided the liability is ascertained and paid. In view of the above, it is respectfully submitted that:

The provision made towards dearness allowance for the period January to March is in accordance with the mercantile system of accounting.

The liability is crystallized, quantified, and paid in the ordinary course of business. Hence, such provision constitutes legitimate business expenditure, and is rightly allowed by the Ld. CIT(A).

The liability for provision of salary and incentive allowance is based on the Instructions issued by the Govt. of U.P. which amounts to Rs. 3,28,55,000/-and therefore it cannot be said that the liability is unascertained. CIT vs. Excel Industries Ltd.

[2013] 358 ITR 295 (SC)

The Hon'ble Supreme Court emphasized the principle of consistency, holding that if a certain view has been accepted in earlier years by the Revenue and there is no change in facts or law, a contrary view should not be taken in subsequent years.

A copy of the judgment is attached as Annexure N.

(3) Ground Number 3 (raised by Dy. Commissioner of Income Tax, Range -6, Lucknow in Appeal No. 623/LKW/2019):-

That the Ld. CIT(A)-2, Lucknow had erred in law and facts in deleting the addition of Rs. 81,51,992/- on account of Centage Charges without appreciating the facts that the addition had been made on the basis of difference in centage rate shown by the assessee and actual centage charged by the assessee.

The appellant carries on the business of construction for Government. It receives orders for projects on behalf of the Government and is allowed a profit or Centage of a fixed percentage which varies as per Government Order from 0% to 15% of work done by it. This profit or Centage is allowed to enable it to meet its administrative and other expenditure. The appellant carries out two types of work i.e. deposit work, which is cost plus centage and tender work. The income of the appellant is therefore from the fixed percentage of centage allowed on the cost of project undertaken by the appellant.

The Appellant maintains proper books of account, which are subject to:

Statutory audit under applicable law, and

Audit by the Comptroller & Auditor General (C&AG) of India.

Neither of these audits has reported any adverse remarks or discrepancies in the accounting method or treatment of centage income.

The Learned Assessing Officer (Ld. AO) has rejected the books of account under Section 145(3) of the Income-tax Act, 1961 and proceeded to estimate income by assuming a uniform centage rate of 12.5% for all projects. This approach is flawed for the following reasons:

- ▶ *The rejection is based entirely on presumption, without pointing out any specific defect or inconsistency in the audited books.*
- ▶ *No enquiries were made by the AO from the concerned Government departments to verify the actual centage applicable for individual projects.*
- ▶ *The estimation lacks any documentary basis or test-check analysis, which is essential for invoking Section 145(3).*
- ▶ *The assumption of a flat centage rate of 12.5% contradicts factual records and established practice, where centage varies on a case-to-case basis as per Government orders.*

It is a settled principle in law that books of account cannot be rejected merely on assumptions or generalizations, and that income estimation must be based on cogent material and verification. The Hon'ble Courts have consistently held that rejection under Section 145(3) must be based on clear, identifiable defects in the accounts, and not on notional estimations.

In the absence of any specific findings against the books of account, and considering the lack of factual or evidentiary basis for the estimated centage rate adopted by the AO, the deletion of the said addition by the Ld. CIT(A) is justified in law.

(4) Ground Number 4 (raised by Dy. Commissioner of Income Tax, Range -6, Lucknow in Appeal No. 623/LKW/2019):-

That the Ld. CIT(A)-2, Lucknow had erred in law and facts in deleting the disallowance of Rs. 1,95,39,124/- u/s 40(a)(ia) of the I.T. Act, 1961 without appreciating the facts that the assessee made purchases of material from work contractor/suppliers and for which payments had been made without deduction of TDS.

It is submitted that all the goods were supplied F.O.R. and in any case it was not the case of works contract. It is important to take note of CBDT circular no. 681 dated 08.03.1991, which puts a payer outside the TDS Net if it satisfies that the contract is supply of article or thing or the property in goods passes in delivery of goods. In the present case CBDT circular no.13/2006 dated 13.12.2006 may also be referred to clarifying the condition under which the section 194C will be applicable. Clause no.3 of the circular read as follows: "It is, therefore, clarified that the provisions of section 194C would apply in respect of a contract for supply of any article or thing as per prescribed specifications only if it is a contract for work and not a contract for sale as per the principles in this regard laid down in para 7(vi) of circular no. 681 dated 08.03.1994."

A copy of CBDT circular dated 13.12.2006 is attached as Annexure O.

a) That it is further submitted that in the case of CIT vs Rajinder Kumar (362 ITR 241), the Hon'ble Delhi High Court categorically gave finding that the object of section 40(a)(ia) was to 'augment recoveries' and further went to lay down that 'the provisions should be interpreted in a fair, just and equitable manner. The relevant extract of the order is as under-26. The provision should be interpreted in a fair, just and equitable manner. It should not be interpreted in a manner which results in injustice and creates tax liabilities when TDS has been deposited/paid and the respondent who is following cash system of accountancy has made actual payment to the third party for services rendered. If the said object and purpose is kept in view, we do not think the Assessing Officer was justified in disallowing and in invoking Section 40(a)(ia) in the present case. The question of law is accordingly answered in negative, ie., in favour of the respondent-assessee and against the Revenue. The appeal is accordingly disposed of. No costs.

A copy of judgment of High Court is attached as Annexure P.

There is no provision of disallowance of expense 4.845% and makes no sense being estimated by the Ld. AO to disallow the said expense at the said rate.

Further ITAT Agra bench in the case of Rajeev Kumar Agarwal vs

ACIT Range 3 Mathura (ITA No 337/Agra/2013) also relied on the observations of Hon'ble Delhi High Court. The relevant extract of the order is as follows-"6. However, the stand so taken by the special bench was disapproved by Hon'ble Delhi High Court in the case of CIT Vs Rajinder Kumar (362 ITR 241). While doing so, Their Lordships observed that, "The object of introduction of Section 40(a)(ia)

is to ensure that TDS provisions are scrupulously implemented without default in order to augment recoveries.....Failure to deduct TDS or deposit TDS results in loss of revenue and may deprive the Government of the tax due and payable" (Emphasis by underlining supplied by us)". Having noted the underlying objectives, Their Lordships also put in a word of caution by observing that, "the provision should be interpreted in a fair, just and equitable manner". Their Lordships thus recognized the bigger picture of realization of legitimate tax dues, as object of Section 40(a)(ia), and the need of its fair, just and equitable interpretation. This approach is qualitatively different from perceiving the object of Section 40(a)(ia) as awarding of costs on the "assesseees who fail to comply with the relevant provisions by considering overall objective of boosting TDS compliance". Not only the conclusions arrived at by the special bench were disapproved but the very fundamental assumption underlying its approach, i.e. on the issue of the object of Section 40(a)(ia), was rejected too. In any event, even going by Bharti Shipyard decision (supra), what we have to really examine is whether 2012 amendment, inserting second proviso to Section 40(a)(ia), deals with an "intended consequence" or with an "unintended consequence"

A copy of ITAT Agra judgment is attached as Annexure Q.

b) It is further stated that the above cited case laws emphasized on the fact that it was on the Revenue to investigate and inquire that the recipients of the payments received had reflected the same transaction while filing their own individual returns, In light of the same it is stated that since the expenditure was for payment against supplies from contractors hence it was clearly outside the purview of section 194C and it is for the Revenue to ascertain whether the said payments made to suppliers were reflected in their return of income or not.

The Ld. A.O. was wrong in disallowing the entire expenditure incurred by the assessee on purchases of various items like sand, coarse sand, boulders, grits etc. in its business of deposit work and execution of civil contracts aggregating to Rs.1,95,39,124/- under Section 40(a)(ia) of the Income Tax Act and adding it to the income of the assessee by holding that it was liable for tax deduction under Section 194C of the Income Tax Act.

There is no provision under the Income Tax Act that mandates deduction of TDS on purchase of goods. Specifically:

Section 194C applies to contracts for work, and not to outright purchases of goods.

The Hon'ble Courts, including various High Courts and Tribunals, have consistently held that no TDS is required where there is a principal-to-principal sale transaction and no element of "work contract" is involved.

The disallowance made under Section 40(a)(ia) is not applicable in the present case for the following reasons:

The payments in question are for pure purchases of materials, and not for work contracts involving any labour or service component.

The AO has made an estimated disallowance, without identifying specific transactions that attract TDS provisions.

b Section 40(a)(ia) does not provide for disallowance on an estimated basis. The section applies only where TDS is deductible and not deducted.

In light of the above, it is respectfully submitted that:

The transactions relate to outright purchases of materials, and therefore, outside the scope of TDS provisions.

The estimated disallowance made by the AO is without legal sanction and is rightly deleted by the Ld. CIT(A).

(5) Ground Number 1 (raised by the assessee in Appeal No. 621/LKW/2019)-: That the Ld. CIT(A) is wrong in disallowing the claim of Rs. 44,32,461/- on account of labour cess.

An identical issue has been decided in appellant's own case for AY 2012-13 in favour of the appellant by CIT(A)-II, Lucknow vide order dated 28.03.2017 in appeal no. 77/03/DCIT/R_IV/Lko/15-16. The relevant portion is reproduced as under:

"5(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing officer and the submissions of the appellant. At the outset, I find that the reliance of the AO on the decision of Goetze India is erroneous and misconceived. The case relied upon by the AO is on the issue of a fresh claim being raised by the appellant. The appellant has claimed that the disallowance of the labour cess under section 43B of the Act which is Rs. 3,68,33,045/- as per profit and loss account may be restricted to the amount paid by the due date of filing of return of income as per the said provisions. The case relied upon by the AO does not come into the picture. In any case the decision of Hon'ble Apex court in the case of Goetze India Pvt Ltd. vs CIT (2006) 284 ITR 323 to the effect that no fresh claim can be made except by filing revised return is limited to the power of the AO and not Appellate Authority. 5(5) I find that the appellant filed its return of income on 24.09.2012. As per details available on record, an amount of Rs. 1,75,94,591/- as labour cess was paid before the date of filing of return of income. The amount of Rs.1,62,38,829/- was paid after the date of filing of return of income and no details are available for payment of labour cess of Rs. 29,99,625/-. The addition of Rs. 3,68,33,045/- made by the AO is sustained to the extent of Rs. 1,92,38,454/ giving relief of Rs. 1,75,94,591/- to the appellant. The AO is, however, directed to allow an amount of Rs. 1,62,38,829/- on payment basis in subsequent AY 2013-14 as per section 43B of the Act. The AO is also directed to allow the amount of Rs. 29,99,625/- on payment basis in the year of payment".

Therefore, considering the above decision, the disallowance of Rs. 44,32,461/- should be deleted.

(6) Ground Number 2 (raised by the assessee in Appeal No. 621/LKW/2019)-: That the Ld. CIT(A) is wrong in confirming the disallowance of Rs. 23,65,203/- on the plea that no documentary evidence were filed by the appellant.

In the P&L statement, an amount of Rs.23,65,203/- has been deducted as 'Extraordinary Items'. It represents mainly centage charges Rs. 15,74,774/-, Depreciation against retained earnings Rs. 2,78,269/-, miscellaneous expenses Rs. 61,579/- & office rent Rs. 3,66,192/-. These expenses relate to earlier AY and same were not claimed as deduction in the respective AY, therefore, the disallowance of the same is not justified in law."

(J.1) The Ld. Departmental Representative relied on the assessment order in respect of Revenue's appeal. He relied on the assessment order and impugned appellate order of Ld. CIT(A), in respect of assessee's appeal.

(J.2) On perusal of the aforesaid common written submissions referred to in foregoing paragraph (J) of this order; we are of the view that it requires factual verification at the level of the Assessing Officer.

(J.2.1) In view of the foregoing, the impugned appellate order of Ld. CIT(A) is set aside, and all the disputes regarding additions made in the assessment order are restored back to the file of the Assessing Officer, with the direction to pass *de novo* assessment order in accordance with law, after providing reasonable opportunity to the assessee, and after due consideration of aforesaid written submissions referred to in foregoing paragraph (J) of this order. For statistical purposes aforesaid cross appeals for A.Y. 2015-16 are treated as partly allowed.

(K) For statistical purposes, the result of the appeals and cross objections is summarized as under: -

A.Y. 2009-10

ITA. No.367 – Partly Allowed for statistical purposes

CO. No.13/LKW/2017 – Partly Allowed for statistical purposes

A.Y. 2011-12

ITA. No.67/LKW/2016 – Allowed

ITA. No. 331/LKW/2017 - Dismissed

ITA. No.369/LKW/2017 - Dismissed

ITA. No.370/LKW/2017 – Partly Allowed

CO. No. 15/LKW/2017 – Dismissed

CO. No.16/LKW/2017 – partly allowed

A.Y. 2012-13

ITA. No.371/LKW/2017 – Dismissed

CO. No.17/LKW/2017 - Allowed

A.Y. 2013-14

ITA. No.318/LKW/2018 - Allowed

A.Y. 2014-15

ITA. No.617/LKW/2019 - Dismissed

ITA. No.620/LKW/2019 - Dismissed

CO No.01/LKW/2020 - Allowed

A.Y. 2015-16

ITA. No.621/LKW/2019 & ITA. No.623/LKW/2019 are partly allowed.

A.Y. 2010-11

ITA. No.368/LKW/2017 – Partly allowed for statistical purposes

CO. No.14/LKW/2017 – Partly allowed for statistical purposes

(Order pronounced in the open court on 28/11/2025)

Sd/-
(SUBHASH MALGURIA)
Judicial Member

Sd/-
(ANADEE NATH MISSHRA)
Accountant Member

Dated:28/11/2025
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. D.R., I.T.A.T., Lucknow