

**THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN “DB” BENCH: DEHRADUN**

**BEFORE SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

[THROUGH VIRTUAL MODE]

**ITA No.69/DDN/2024
[Assessment Year :2020-21]**

M/s. THDC India Ltd. Ganga Bhawan, Pragatipuram, Bye Pass Road, Rishikesh, Uttarakhand-249201 PAN-AAIFT4183F	vs	National Faceless Assessment Centre JAI-ACIT, Circle-1(1)(1), Dehradun, Uttarakhand-248001
APPELLANT		RESPONDENT
Assessee by	Shri Sanjay Arora, CA & Ms. Pallavi, CA	
Revenue by	Shri Mohal Lal Joshi, Sr. DR	
Date of Hearing	09.10.2025	
Date of Pronouncement	24.12.2025	

ORDER

PER MANISH AGARWAL, AM :

The present appeal is filed by the assessee against the order dated 19.03.2024 by Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre (“NFAC”), Delhi [“Ld. CIT(A)”] in Appeal No. NFAC/2019-20/10183461 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dt. 27.09.2022 passed u/s 143(3) r.w.s.144B of the Act pertaining to Assessment Year 2020-21.

2. Brief facts of the case are that assessee company is engaged in the business of generation and supply of hydro power as well as wind power and constructed hydro power project as approved by the Government of India. The return of income was filed on 05.01.2021, declaring total income of INR 869,04,14,340/-. The case was selected for complete scrutiny under CASS and notice u/s 143(2) of the Act was issued on 29.06.2021. Thereafter notices u/s 142(1) alongwith questionnaire were issued from time to time which were duly replied by the assessee. After considering the submissions made alongwith requisite documents and details filed by the assessee, total income of the assessee stood assessed at INR 12,08,85,53,720/- vide order dated 27.09.2022 passed u/s 143(3) r.w.s. 144B of the Act.

3. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide impugned order dated 19.03.2024, dismissed the appeal of the assessee.

4. Aggrieved by the order of Ld.CIT(A), assessee is in appeal before the Tribunal by taking following grounds of appeal:-

1. *That on the facts and circumstances of the case and in law, the impugned order is based upon conjectures, surmises and assuming incorrect facts and therefore, is bad in law.*
2. *That on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the Ld. AO in denying the benefit of deduction u/s 80-1A of the Act to an extent of Rs. 3,57,87,308 alleging certain incomes to be in the nature of other incomes not having direct nexus with the eligible business of the Appellant inter alia because-*

- 2.1. *The incomes are directly and inextricably linked with the power generating business and cannot be disentitled from the benefit of 80-1A deduction*
 - 2.2. *The Hon'ble CIT(A) has completely ignored the detailed submissions made by the Appellant in this regard and blindly followed the orders of its predecessors.*
3. *That on the facts and circumstances of the case and in law, the invocation of the provisions of section 251(1)(a) of the Act by the Hon'ble CIT(A) and enhancing the income of the Appellant is invalid and contrary to the provisions of law, and the enhancement deserves to be deleted.*
4. *That on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in enhancing the income of the Appellant by Rs. 56,06,82,000 as well as in upholding the action of the Id. AO in making an addition of Rs. 280,34,10,000 on account of late payment surcharge levied on debtors outstanding as on 31.03.2020 by treating the same as income accrued to the Appellant, inter alia because:*
 - 4.1. *The late payment surcharge has been consistently accounted for as income on receipt basis by the Appellant due to uncertainty of its realization, and has been so accepted by the Department.*
 - 4.2. *The accounting policies followed by the Appellant are consistent with the industry/business practices.*
 - 4.3. *The accounting of late payment surcharge is done in accordance with the principles of ICDS IV and IND AS 115 i.e., recognition is based on the reasonable certainty of the collection of revenue.*
 - 4.4. *Rule of consistency demands that the accounting policy followed by the Appellant with regard to the recognition of income in respect of late payment surcharge ought to have been accepted.*
 - 4.5. *The judgments relied upon by the Appellant have not been appreciated by the Hon'ble CIT(A).*
5. *That on the facts and circumstances of the case and in law, the initiation of penalty proceedings u/s 270A of the Act is grossly erroneous in as much as there has not been any under-reporting of income by the Appellant.*

6. *That on the facts and circumstance of the case and in law, the levy of interest under section 234A of the Act is erroneous and illegal in as much as*
 - 6.1. *The return of income was filed within the due date prescribed u/s 139(1) of the Act.*
 - 6.2. *The Hon'ble CIT(A) has erred in not adjudicating the ground of appeal pertaining to levy of interest u/s 234A by holding that the Appellant has not pressed for this ground of appeal, and in not appreciating the written submissions filed by the Appellant.*
7. *That on the facts and circumstances of the case and in law, the levy of interest under section 234B and 234C of the Act is erroneous and deserves to be deleted.*
8. *The above grounds are without prejudice to each other and the Appellant craves leave to add, to amend, to delete and/or to modify all or any of the fore going ground(s) of appeal.”*

5. **Ground of appeal No.1** raised by the assessee is general in nature, needs no separate adjudication hence, dismissed.

6. **Ground of appeal No.2** is with regard to the reduction in the deduction u/s 80IA to the extent of INR 3,57,87,308/- by holding that certain income is not derived from the undertaking and thus not eligible for deduction u/s 80IA of the Act.

7. Ld.AR for the assessee submits that assessee has claimed u/s 80-IA of the Act on interest received from advances to employees of INR 1,10,09,815/-; rent receipts of INR 30,57,729/-; sundry receipts of INR 37,77,666/- and fair value gain of INR 1,74,92,098/-, totaling to INR 3,57,87,308/-. However, the AO disallowed the deduction u/s 80IA on this income by holding that the same were not directly linked with the generation and distribution of power and therefore, were not derived

from eligible undertaking. Ld. AR further submits that interest was received from the employees on the advances given to them and was in the nature of incentive to perform better and since they were directly engaged in the power generation project therefore, such interest income is derived from eligible business. Ld.AR submits that interest on fixed deposits has been allowed as part of the income derives however, the interest from employees though identical in nature but deduction u/s 80IA was not allowed on the same.

8. Regarding rent receipts, Ld.AR submits that the rent was received from employees residential quarters and temporary shades provided to the contractors on projects sites. Since the employees are directly and internally attached to the generation and distribution of power and the shades were provided to contractors for carrying out work on projects sites therefore, rental income is derived from eligible undertaking and eligible for deduction u/s 80IA of the Act.

9. Regarding Sundry receipts, Ld. AR submits that it includes charges, guest house receipts, subsidized foods and utilities and transport and other utilities receipts from the employees and contractors who all were directly engaged in power generation projects, thus such income is eligible for deduction u/s 80IA of the Act.

10. Regarding fair value gain, Ld. AR submits that assessee follows IND AS 113, according to which fair value of financial assets and financial liabilities was recognized on recurring basis. The fair value gain of financial assets is reported in “Note No.32” titled as “other

income” and similarly in “Note No.34” under the head “finance cost”, the fair value loss on financial assets is recorded. However, the AO has failed to appreciate these facts and disallowed the deduction u/s 80 IA of the Act on the fair value credited to P&L A/c by ignoring the fact that the corresponding entry of loss is also debited in Profit & Loss Account and it is mere book entry. It is thus submitted by Id. AR that it is revenue neutral exercise and making disallowance u/s 80 IA, the same is taxed without any real income. Ld. AR thus, requests that deduction u/s 80IA of the Act on these items of income deserves to be allowed.

11. On the other hand, Ld.Sr.DR vehemently supported the orders of the lower authorities and submits that Ld.CIT(A) has passed a reasoned order wherein items on which the deduction u/s 80 IA of the Act is allowable have already been considered and allowed the assessee and therefore, he requested for the confirmation of the same.

12. Heard the contentions of both the parties and perused the material available on record. In the instant case, sole reason for making disallowance of deduction u/s 80 IA on four [04] items of other income was that such income was not derived from the eligible undertaking. We find that the rental receipts and sundry receipts are not directly related to the activity of the business of the assessee company. It is further seen that in respect of interest received from employees, rental receipts and sundry receipts, identical issue has been decided in assessee’s own case by the CO-ordinate Bench of Tribunal in AY 2014-15 & 2015-16 vide order dated 14.02.2022 wherein the deduction u/s 80 IA on these items of income was denied by Co-ordinate Bench of the Tribunal.

Therefore, in our considered opinion the AO has rightly denied the deduction u/s 80IA of the Act on these items of income.

13. Regarding the denial deduction u/s 80IA on the fair value gain, claim of the assessee is that the corresponding losses were debited to P&L Account and business profits stood reduced by such notional loss therefore, the notional income being a book entry without having actual income and neutral exercise deserved to be allowed as deduction.

14. From the perusal of the records placed before us, it is seen that assessee has not filed financial statements to verify its claim that fair value gain and fair value loss were credited and debited respective, in the Profit & Loss account thus, we direct the AO to verify whether any amount towards fair value loss is included in Note No.34 under the head "finance cost" and debited in Profit & Loss account as claimed by assessee, and the corresponding amount of fair value gain is included in the other income in Note No. 32 in financial statements and if this claim of the assessee is found correct, the amount of fair value gain is to be allowed as eligible for deduction u/s 80 IA of the Act. With these directions, Ground of appeal No.2 raised by the assessee is partly allowed.

15. **Ground of appeal Nos. 3 & 4** raised by the assessee are with respect to the addition on account of late payment surcharge (LPSC) from debtors as well as enhancement made by Ld.CIT(A) on account of addition on late payment surcharge.

16. In this regard, Ld. AR made detailed written submission which is reproduced as under:

13. *Ground nos. 3 & 4 are qua the enhancement of assessed income by Rs. 56,06,82,000 by the Hon'ble CIT(A) by invoking the provisions of section 251(1)(a) on account of late payment surcharge levied on the debtors and on addition made by the Ld. AO amounting to Rs. 280,34,10,000/- on LPSC levied on debtors outstanding as on 31.03.2020 by treating the same as income accrued to the Appellant.*

- 3.1. With regard to ground Nos. 3 & 4, the relevant facts are, Appellant is engaged in the generation of electricity which is being sold to distribution company – in the present year to Uttarakhand Power Corporation Limited (UPCL) who in turn distributes the same to the ultimate customers. Under the Electricity Act 2003, PPA were entered into by the Appellant with UPCL to regulate the terms and conditions in respect of sale of power. In terms of the said PPA, late payment surcharge (LPSC) as per CERC regulations is leviable in order to settle the power purchase bills within the stipulated time frame.
- 3.2. Late payment surcharge or LPSC means charges payable by a distribution licensee to a generating company for power procured from it or by a user of a transmission system to a transmission licensee on account of delay in payment of monthly charges beyond the due date. Late payment surcharge is governed by the regulations issued by Central Electricity Regulatory Commission [hereinafter referred to as 'CERC']. For the period under consideration, i.e., FY 2019-20 relevant to AY 2020-21, CERC Regulations 2014-19 as issued on 21.02.2014 are applicable. Clause 45 of the CERC Regulations 2014-19 provides for late payment surcharge as under –
- 45. Late Payment Surcharge – In case the payment of any bill for charges payable under these regulations is delayed by a beneficiary of long term transmission customer / DICs as the case may be, beyond a period of 60 days from the date of billing, a late payment surcharge at the rate of 1.50% per month shall be levied by the generating company or the transmission licensee, as the case may be'*
- 3.3. The above provides that in case the purchaser fails to pay the power bill within the prescribed period of 60 days, delayed payment surcharge is applicable at the rate of 1.5% p.m.
- 3.4. As per the accounting policy adopted and disclosed by the Appellant, amount of monthly bills raised by the Appellant for sale of power to the DISCOMS are accounted for as income. However, LPSC is recognized as income only when the same is actually received, i.e., no significant uncertainty as to measurability or collectivity exists. (Sl. No. 15.8 of note 15 of Notes to accounts). The said accounting policy is in accordance with IND- AS-115, AS-9, & ICDS-IV, ICAI guidance note & Section 5 r/w section 145 of the Income Tax Act.
- 3.5. During the assessment proceedings, Ld. AO had directed the Appellant vide show cause notice dated 15.3.2022 as to why Rs. 280,34,10,000 be not added to the total income of the assessee on account of late payment surcharge leviable on debtors outstanding as on 31.3.2020 on accrued basis for 10 months for the year under consideration. The Appellant submitted its response

vide letter dated 19.3.2022. (Copy placed at pages 131-143/PB.) However, Assessing Officer rejected the submissions made by the Appellant and made the addition of Rs.280,34,10,000 to the income of Appellant primarily stating that since the Appellant has followed mercantile system of accounting, any receipts accrued in the nature of revenue must be recognized as revenue, whether it is collected or not during the year.

- 3.6. Against this addition, Appellant filed an appeal before CIT(A)/NFAC, relying upon various case laws. However, the Hon'ble CIT(A) sustained the additions.
- 3.7. Moreover the Ld. CIT(A)/NFAC has enhanced the taxable income of the Appellant by Rs. 56,06,82,000 on the ground that the Assessing Officer while calculating the period for LPSC has considered only 10 months on estimate basis whereas debtors carried forward from earlier years are outstanding for 12 months and the same was required to be adopted for the purpose of calculation of LPSC.
- 3.8. The Appellant submits that the mercantile system of accounting does not warrant taxation of hypothetical income and therefore revenue recognition must be postponed when there is uncertainty of realization. As per the provisions of section 5, income can be said to have accrued as well as arisen only when there is no improbability of realization. Section 5 prescribes the scope of total income. It encompasses within its fold three forms accrual, arisen and receipt as basis for taxing income. In so far as "receiving of income" is concerned, there is no difficulty, however the terms "accrues" and "arises" are two distinct terms. Mercantile system of accounting does not warrant taxation of hypothetical income and therefore revenue recognition must be postponed when there is uncertainty of realization due to disputes and defaults by the other party. As per the provisions of section 5, income can be said to have accrued as well as arisen only when there is no improbability of realization.
- 3.9. In strict terms, the term accrual means growth/accumulation/increase/addition, however the same can be said to have "arisen" only when it acquires a tangible shape so as to be receivable. There can be situations where income might have been accrued but the same cannot be said to have arisen until the recipient gets a vested right for the same. It is a well settled law that tax cannot be levied on hypothetical income. Income tax is a levy on income, Liability to tax is attracted on accrual of income or on its receipt but the substance of the matter is the income. If income does not result at all there cannot be a tax, even though in book keeping, an entry is made about a hypothetical income which does not materialize.

In the case of *Godhara Electricity Co. Ltd. v. CIT* [1997] 91 Taxman 351/225 ITR 746 (SC) Supreme Court relied upon the following cases: *CIT v. Shoorji Ballabhdas & Co.* [1962] 46 ITR 144 (SC) *CIT v. Birla Gwalior (P) Ltd.* [1973] 89 ITR 266 (SC) *Morvi Industries Ltd. v. CIT* [1971] 82 ITR 835 (SC) *Poona Electric Supply Company Ltd. v. CIT* [1965] 57 ITR 521 (SC) *H.M. Kashiparekh & Co. Ltd. v. CIT* [1960] 39 ITR 706 (Bombay) *State Bank of Travencore v. CIT* [1986] 24 Taxman 337/158 ITR 102 (SC) and the Supreme Court held in this

case that the question, whether there was real accrual of income to the assessee Co. in respect of the enhanced charges for supply of electricity, has to be considered by taking the probability or improbability of realisation in a realistic manner. Tribunal had rightly held that the claim at the increased rate made by the assessee Co., on the basis of which necessary entries were made, represented only hypothetical income and the impugned amount as brought under tax by the ITO did not represent the income which had really accrued to the assessee during the relevant previous year.

3.10. Most recently the *Hon'ble Delhi Bench of ITAT in Pragati Power v Assistant Commissioner of Income Tax (2024) 166 taxmann.com 201 (Delhi-Trib)* has held that based on the facts on record, it is observed that the assessee has not recovered any LPSC in the past and as per the accounting standard and norms, the assessee has to declare its income not only based on accrual system, also supported by the concept of certainty of recovery. In the similar facts on record, the Supreme Court held in the case of *Godhara Electricity Co. Ltd. v. CIT [1997] 91 Taxman 351/225 ITR 746* that there was real accrual of income to the assessee company in respect of the enhanced charges for supply of electricity, has to be considered by taking the probability or improbability of realisation in a realistic manner. It observed that the Tribunal had rightly held that the claim at the increased rate made by the assessee company, on the basis of which necessary entries were made, represented only hypothetical income and the impugned amount as brought under tax by the ITO did not represent the income which had really accrued to the assessee during the relevant previous year. From the above, it is clear that the mere accrual does not make the income chargeable to tax but also supported by the concept of certainty of recovery. Therefore, the additions made under normal provision of income tax and also under MAT provisions is to be deleted.

3.11. Issue relating to LPSC is no more res integra and has already been settled by the Supreme Court in following cases:

- *Pr. CIT Hissar v. M/s Dakshin Haryana Bijli Vittaran Nigam Ltd. SLP (C) No.18187 of 2015 decided on 17.07.2019*
- *Hon'ble Apex Court has dismissed the SLP filed by the revenue against the judgement of Punjab & Haryana High Court in the case of Pr. CIT Hissar v. Dakshin Haryana Bijli Vittaran Nigam Ltd., ITA No. 209 of 2014 decided on 01.10.2014.* In this judgement Hon'ble Punjab & Haryana High Court has upheld the order passed by Tribunal that when the realisation of surcharge is uncertain due to continuous defaults by the corresponding parties and the assessee has followed its accounting treatment consistently, then tax on such surcharge can be levied only when it is actually received by the assessee.

The Appellant further places reliance on

- *Gauhati Bench of ITAT in the case of M/s North Eastern Electric Power Corporation Ltd. v. Pr. CIT Meghalaya, ITA No. 45/Gau/2019*

decided on 12.12.2022 (ITAT-Gau) dealt with an identical issue and held that change of system of accounting i.e. the LPS on cash basis from the earlier system of accrual basis is revenue neutral because the quantum of LPSC is not a dispute; only the year of taxability is in dispute. Moreover, this treatment has been consistently followed by the assessee and accepted by the Department, the view taken by the Assessing Officer is permissible in law and therefore, action u/s 263 does not lie.

- **In CIT v. Karnataka Power Transmission Corporation Ltd. [2020] 122 taxmann.com 99/276 Taxman 439 (Karnataka)** there was uncertainty with regard to recovery / collection of outstanding amount, hence assessee for the assessment year in question decided not to recognize revenue of Rs.52.89 Cr for wheeling charges. Hon'ble High Court held that the income did not accrue to the assessee but was a hypothetical income which could not have been subjected to tax and in view of AS-9, assessee has rightly decided not to recognize the revenue of Rs.52.89 Cr for wheeling charges for the relevant assessment year.
- **Similar observations are made by Delhi Bench of ITAT in the case of ACIT v. Uttaranchal Jal Vidyut Nigam Ltd. [2022] 138 taxmann.com 448/94 ITR(T) 435 (Delhi - Trib.).** It is submitted that in the present case, the method of accounting followed by the assessee was completely in conformity with the provisions of section 5 r/w section 145 of the Act. If the books of accounts are maintained on the basis of mercantile system of accounting except in respect of those items which involve high level of uncertainty and is recorded by the assessee as and when it is received then in that case it cannot be said that assessee had deviated from the provisions of section 145 of the Act. Hence, no addition could have been made by the Assessing Officer.
- **CIT v. Chambal Fertilizers & Chemicals Ltd. [ITA No.866 of 2008, dated 15-5-2017] (Raj)**
- **CIT v. Annamalai Finance Ltd. [2010] 186 Taxman 296/319 ITR 196 (Madras)**
- **CIT Chennai v. Shriram Investments Ltd. [2015] 62 taxmann.com 298/234 Taxman 868/378 ITR 533 (Madras)**
- **CIT v. Shriram Investments Ltd. [2015] 62 taxmann.com 298/234 Taxman 868/378 ITR 533 (Madras) (Madras)**
- **CIT v. Vasisth Chay Vyapar Ltd. [2018] 90 taxmann.com 365/253 Taxman 401/410 ITR 244 (SC)**
- **Delhi bench of ITAT in the case of Brahamputra Capital & Financial Services Ltd. v. ITO [2009] 119 ITD 266 (Delhi)** have held that there was uncertainty regarding ultimate collection of interest hence assessee was justified in not showing the notional interest income which did not actually materialized during the year under consideration.
- **Delhi High Court in CIT v. Metropolitan Financier (P.) Ltd. [1981] 5 Taxman 216 (Delhi)** have held that in the instant case, assessee Co. found that it was not recovering even the principal amount, let alone the

overdue interest on the higher purchase agreements. So, it chose to keep the impugned interest in suspense account. Hence, the Tribunal was found to be justified in holding that the impugned sum was not liable to income tax.

➤ **Mumbai Bench of ITAT in Bechtel International Inc. v. Dy. DIT, International Taxation [2016] 71 taxmann.com 62 (Mumbai)** have held that the assessee was rightly following AS-9. It cannot be said that income has accrued merely on the ground that the assessee had been following mercantile system. It has to be considered whether there has been real income to the assessee taking into consideration the commercial and business realities of the case. No real income can be said to have accrued during the pendency of suit/disputes.

3.12. Section 5, ICDS-4 notified u/s 145, IND-AS 115, IND-AS 18, EAC opinion, framework from financial reporting, AS-9 and guidance note on accrual basis of accounting, also preempt the significance of realisation certainty.

- Section 5 of the Act lays down the necessary foundation for income recognition under which probability of realization is one of the three tests laid down by the **Apex Court in the case of Parashuram Pottery Works Ltd. v. ITO [1977] 106 ITR 01 (SC)**, in order to determine whether an income has accrued to the assessee or not.
- Principles of section 5 has further been canvassed in section 145 of the Act which prescribes the methods of accounting. It provides that the income under the head "Profit & Gains of Business or Profession" or "Income From Other Sources" shall be computed in accordance with the mercantile or cash system of accounting regularly employed by the assessee and shall be subject to the income computation and disclosure standards (ICDS) notified by the government. Under ICDS-4 notified u/s 145 of the Act, "realization certainty" is the necessary predicament for recognition of revenue. Clause 4 of ICDS-4 (revenue recognition) notified u/s 145(2) provides that "revenue shall be recognized when there is reasonable certainty of the ultimate collection".
- Clause 9.2 of AS-9 states that where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, e.g. for escalation of price, export incentives, interest etc, revenue recognition is postponed to the extent of uncertainty involved. In such cases, it may be appropriate to recognize revenue only when it is reasonably certain that the ultimate collection will be made. When there is no uncertainty as to ultimate collection, revenue is recognised at the time of sale or rendering of service even though payments are made by installment. Para 9.5 of AS-9 states that "when recognition of revenue is postponed due to the effect of uncertainties, it is considered as revenue of the period in which it is properly recognized. The theory of "realization uncertainty envisaged in section 5 and section 145 of the Act also finds place in the financial reporting framework applicable to the Appellant.

- Financial statements of the Appellant Company have been drawn-up in accordance with Indian Accounting Standards (IND-AS) notified u/s 129 of the Companies Act 2013. IND-AS-115 deals with "revenue from contracts with customers". Para-9 of IND AS-115 specifies 5 pre-requisites that is to be satisfied in toto in order to account for a contract with customer. One such pre- requisite is the probability of realisation of consideration which in turn depends upon the customer's ability and intention to pay. Prior to the enforcement of IND AS-115, IND AS-18 dealing with revenue recognition also held that revenue shall be recognized only when it is certain that future economic benefits in relation to a transaction will flow to the entity. In some cases, this may not be probable until the consideration is received or until an uncertainty is removed.
- Even the Expert Advisory Committee (EAC) of ICAI has upheld the above view in volume-XXXVIII of the Compendium of Opinions stating that "to the extent and till the time such uncertainty of collection exists, revenue recognition should be postponed. The revenue needs to be recognised only when it is probable that the economic benefits associated with the transaction will flow to the entity.
- Para 1.17 of "Comprehensive Framework for Financial Reporting (Revised March 2018) issued by International Accounting Standards Board deals with the concept of financial performance reflected by accrual accounting. In simple words, what is accruing and when it is accruing is based on facts and circumstances of that particular transaction i.e. actual occurrence of economic resources and claims is relevant. That is to say the substance of the transaction is vital then the legal form. Para 2.12 specifies that financial reports must faithfully represent the "substance" of the economic phenomena that it purports to represent. Financial information is considered to be faithfully represented when its depiction exhibits three characteristics, "completeness, neutral & free from errors" (xv) It is noteworthy that the above opinion is reiterated in para 10 of AS-9 "revenue recognition" which states that if at the time of raising of any claim for revenue from sales or service transactions, it is un-reasonable to expect ultimate collection, revenue recognition should be postponed"
- Guidance note on accrual basis of accounting issued by ICAI vindicates the above view as under: "4.5 Recognition of revenue requires that revenue is measurable and that at the time of sale or the rendering of service or the use of resources of the enterprise by others, it would not be unreasonable to expect ultimate collection.

Thus, from all the corners a financial reporting framework applicable to the Appellant, it emanates that in case probability of realization of a receipt is uncertain at the time of raising of claims, then revenue recognition on account of it shall be postponed until such uncertainty is resolved.

- 3.13. Even if some bills / invoices would have raised by the Appellant on UPCL in respect of LPSC recoverable from them, the same would have tantamounted

to bestowing a "claim" upon them. In *CIT v. Ashok Bhai Chiman Bhai [1965] 56 ITR 42 (SC)*, it has been observed that mere raising a claim does not by itself create any legally enforceable right to receive any income. Thus, there is a difference between the terms "claim" and "revenue recognition". To convert a piece of claim into recognition of revenue, it is fundamental that there is no probability of uncertainty of realization at the time of raising such claim.

Books of accounts have already been accepted by the Assessing Officer. Even if the Revenue by way of recoverable LPSC is not recognized and the bad debts are not claimed separately by the Appellant, it cannot be prejudiced by differences in such accounting treatment. Under section 145(3), the prime requirement to accept a different accounting method than that adopted by the assessee is to express the dissatisfaction as to the completeness or correctness of the books of accounts of the assessee and reject the same after giving an opportunity of being heard. In the present case, no deformity or irregularity has been pointed out by the Assessing Officer in the books of accounts, however, Assessing Officer has simply changed the method of accounting qua LPSC without any shred of evidence. It is a settled law that method of accounting followed by the assessee cannot be jettisoned/discarded without rejecting books of accounts or pointing out any defect in the method of accounting or any finding that true and fair profits cannot be deduced therefrom.

In this regard the Appellant is relying upon the following cases:

- *PCIT v. Panchsheel Colonizers Pvt. Ltd. [2019] 111 taxmann.com 460/267 Taxman 570 (SC)*
- *Investment Ltd. v. CIT [1970] 77 ITR 533 (SC)*
- *CIT v. McMillan & Company [1958] 33 ITR 182 (SC)*
- *CIT v. Manish Buildwell (P) Ltd. (2011) 63 DTR 369 (Del), Manu/De/4468/2011*

3.14. Moreover, Appellant itself offers LPSC to tax when the uncertainty regarding its collection is resolved. Since the impugned issue is revenue neutral, no addition is sustainable on this count.

17. On the other hand, Ld. Sr. DR vehemently supported the orders of the lower authorities and submits that Ld. CIT(A) has rightly held that the LPSC is to be taken as income of the assessee on accrual basis. Ld. SR. DR further submits that Ld. CIT(A) has enhanced the income with respect to the grace period and he requested for the confirmation of the order of Ld. CIT(A).

18. After considering the submissions of both parties, the claim of the assessee is that it has recognized late payment charges regularly on receipt basis as there is no significant certainty as to measurability or collectivity exists. It is further claimed by the assessee that in preceding years also, assessee has accounted for LPSC on receipt basis which has been accepted by the Department however, in two [02] years i.e. 2017-18 and the year under appeal, the same has been taxed on accrual basis. The copies of the assessment orders passed for various assessments years are placed before us wherein this income is assessed on receipt basis.

19. The Hon'ble Supreme Court in the case of **Radhasoami Satsang vs CIT [1992] 193 ITR 321 (SC)** has held that the principle of consistency should be maintained. Further, the Hon'ble Supreme Court in the case of **CIT vs Excel Industries Ltd. [2013] 358 ITR 295 (SC)** has held as under:-

31. *"It appears from the record that in several assessment years, the Revenue accepted the order of the Tribunal in favour of the assessee and did not pursue the matter any further but in respect of some assessment years the matter was taken up in appeal before the Bombay High Court but without any success. That being so, the Revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather than spend the tax payers' money in pursuing litigation for the sake of it."*

19.1. The same view is expressed by the Hon'ble Supreme Court in the case of **CIT vs Bilahari Investment P.Ltd. [2008] 299 ITR 1 (SC)** wherein it is held as under:-

19. *"In the judgment of the Bombay High Court in Taparia Tools Ltd.'s case (supra) it has been held that in every case of substitution of one method by another method, the burden is on the Department to prove*

that the method in vogue is not correct and it distorts the profits of a particular year. Under the mercantile system of accounting based on the concept of accrual, the method of accounting followed by the assessee is relevant. In the present case, there is no finding recorded by the Assessing Officer that the completed contract method distorts the profits of a particular year. Moreover, as held in various judgments, the Chit Scheme is one integrated scheme spread over a period of time, sometimes exceeding 12 months. We have examined computation of tax effect in these cases and we find that the entire exercise is revenue neutral, particularly when the scheme is read as one integrated scheme spread over a period of time.

20. *As stated above, we are concerned with assessment years 1991-92 to 1997-98. In the past, the Department had accepted the completed contract method and because of such acceptance, the assessee, in these cases, have followed the same method of accounting, particularly in the context of chit discount. Every assessee is entitled to arrange its affairs and follow the method of accounting, which the Department has earlier accepted. It is only in those cases where the Department records a finding that the method adopted by the assessee results in distortion of profits, the Department can insist on substitution of the existing method. Further, in the present cases, we find from the various statements produced before us, that the entire exercise, arising out of change of method from completed contract method to deferred revenue expenditure, is revenue neutral. Therefore, we do not wish to interfere with the impugned judgment of the High Court."*

20. It is also a matter of facts that the assessee has regularly declared LPSC on receipt basis and if the said income is taxed on accrual basis in the year under appeal, there might be a possibility that the income has been taxed twice, **firstly**, on accrual basis in the year under appeal and **secondly**, in subsequent year when the amount is received, it is again taxed on receipt basis. Thus, in order to avoid any such situation, the Hon'ble Courts have held that the principal of consistency is to be followed.

21. It is further seen that when the income is offered for tax in subsequent year on receipt basis as against accrual basis as has been considered by the AO, there is no loss of revenue as in both the years, assessee is subject to tax at similar rate of tax and thus the entire exercise is revenue neutral. The **Hon'ble Supreme Court** in the case of **Excel Industries Ltd.** (supra) has held that if the Revenue has not been deprived of any tax, the dispute raised by the Revenue is entirely academic or at best made for a minor tax, therefore, no need for the Revenue to continue with this litigation when it was concluded clear that not only was it fruitless (on merits) but also had made not added anything much to the public coffers.

22. In view of the above discussion and by respectfully following the judgments of Hon'ble Supreme Court on the principal of consistency and revenue neutral exercise, we hereby hold that AO as well as Ld. CIT(A) has erred in including the LPSC on accrual basis to the total income of the assessee as against on receipt basis as declared by assessee. Therefore, we direct the AO to delete the addition made towards the LPSC on accrual basis and further direct to delete the enhancement made by Ld. CIT(A). Accordingly, Ground of appeal Nos. 3 & 4 raised by the assessee are allowed.

23. **Ground of appeal No.5** raised by the assessee is with respect to initiation of penalty proceedings u/s 271(1)(c) of the Act which is premature at this stage and thus, dismissed.

24 **Ground of appeal No.6** raised by the assessee is with respect to charging of interest u/s 234A whereas the assessee though the return of income was filed within the extended due date.

25. Heard both the parties. As per the press release dated 30.12.2020 due to Covid-19 Pandemic, the due date of filing of return was extended upto 15.02.2021 and admittedly, assessee had filed its return of income on 05.01.2021 which is well within the extended due date of 15.02.2021, therefore, interest u/s 234A should not be levied as there is no delay in filing the return of income u/s 139(1) of the Act. Accordingly, we direct the AO not to charge interest u/s 234A of the Act. Thus, Ground of appeal No.6 raised by the assessee is allowed.

26. **Ground of appeal No.7** raised by the assessee is regarding charging of interest u/s 234B & 234C of the Act.

27. Heard the parties. The AO is directed to charge interest u/s 234B of the Act on the income computed after giving effect to the order of Tribunal and interest u/s 234C is to be charged on the income declared in the return of income filed. With these directions, Ground of appeal No.7 raised by the assessee is partly allowed for statistical purposes.

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

Order pronounced in the open Court on 24.12.2025.

Sd/-

(YOGESH KUMAR U.S)
JUDICIAL MEMBER

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Date:- 24.12.2025

Amit Kumar, Sr.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT
6. Guard File

ASSISTANT REGISTRAR
ITAT