

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

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER  
AND  
SH.L.P.SAHU, ACCOUNTANT MEMBER**

**I.T.A .No.-2808/Del/2007  
(ASSESSMENT YEAR-2001-02)**

DCIT, Circle-12(1), New Delhi <b>(Appellant)</b>	vs	M/s G.E. Capital Services India, AIFACS Building, 1, Rafi Marg, New Delhi-110001.. <b>(Respondent)</b>
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**I.T.A .No.-2898/Del/2007  
(ASSESSMENT YEAR-2001-02)**

M/s G.E. Capital Services India, AIFACS Building, 1, Rafi Marg, New Delhi-110001. <b>(Appellant)</b>	vs	ACIT, Range-12, C.R.Building, New Delhi <b>(Respondent)</b>
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<b>Appellant by</b>	Sh.S.Sabharwal, Sr.Adv.& Sh. Rahul Sateerja, Adv.
<b>Respondent by</b>	Sh. A.K.Sharma, CIT DR

<b>Date of Hearing</b>	06.04.2016
<b>Date of pronouncement</b>	06.06.2016

**ORDER**

**PER SMT. DIVA SINGH, JUDICIAL MEMBER**

By these cross appeals filed by the Revenue and the assessee pertaining to 2001 – 02 assessment year the correctness of the order dated 29.03.2007 of CIT(A)-XV has been assailed on the following grounds respectively:-

**ITA No.2808/Del/2007**

1. "On the facts and in the circumstances of the case and law, the CIT(A) erred in deleting the disallowance of Rs.12,65,44,530/- made u/s 14A on account of interest paid on the borrowed funds utilized for making investment in

- shares on which the tax free dividend income of Rs.6,85,58,082/- has been earned, without appreciating the facts on record.*
2. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of foreign exchange fluctuation loss of Rs.1,13,35,384/- incurred as result of forward agreement executed for purchase of US \$ in future at a fixed rate, ignoring the fact that the liability in respect of forward cover premium amortized in the accounts of the year under consideration was neither incurred nor discharged during the year.*
  3. *The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of the hearing."*

**ITA No.2898/Del/2007**

1. *"That the Order dated March 29, 2007 passed by the learned Commissioner of Income Tax (Appeals)-XV ["CIT(A)"] is erroneous and bad in law in so far as it has confirmed the additions/disallowances/levy of interest made in the assessment order.*
2. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the disallowance of expenses on purchase of software for updating the existing data processing system of the appellant company amounting to Rs.23,04,500/- considering the same as capital expenditure.*
  - 2.1. *That the Ld. CIT(A) erred on facts and in law in not appreciating the fact that claim for similar expenditure as revenue expenditure in the past has been upheld by the Hon'ble Tribunal and that the same has been accepted by the department.*
3. *That on the facts and in the circumstances of the case, the learned CIT(A) has erred in upholding an ad-hoc disallowance u/s 14A of the Act amounting to Rs.25,00,000/-, on account of purported management / administrative expenses and other costs attributed towards earning dividend income, even though the AO had brought nothing on record to show that the appellant had incurred any expenditure to earn the dividend income.*
4. *That on the facts and in the circumstances of the case, the learned CIT(A) has erred in upholding addition of Rs.8,14,14,298/- on account of revenue expenditure incurred in respect of raising loan funds by treating the same as Deferred Revenue expenditure.*
  - 4.1. *That the learned CIT (A) erred on facts and in law in not appreciating that for purposes of the Act, revenue expenses have to be allowed in full in the year of accrual unless specifically deferred as provided under the Act.*
5. *That on the facts and in the circumstances of the case, the learned CIT(A) has erred in upholding addition of Rs.13,21,40,466/- on account of the provision created for Bad and doubtful debts in compliance with the Non-banking Financial Companies Prudential Norms (RBI) Directives, 1998 issued by The Reserve Bank of India in pursuance of the powers granted to it under section 45JA of the RBI Act.*
6. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the disallowance in respect of Amortization of loss on forward cover premium of Rs.1,13,35,384/- being a part of the forward*

*contract premium payable on account of foreign currency loans obtained for working capital requirements, on the erroneous premise that the same pertained to the subsequent assessment year and hence allowable only in that year.*

*6.1. That the Ld. CIT(A) erred on facts and in law in not appreciating that the sum of Rs. 1,13,35,384/- actually pertained to the assessment year under appeal.*

*7. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the levy of interest u/s 234D amounting to Rs.12,63,900/-.*

*The Appellant craves leave to alter, amend and / or withdraw the Ground of Appeal herein or add any further grounds as may be considered necessary and to submit such statements, documents and papers as may be considered necessary either before or during the appeal hearing."*

**2.** Taking up the appeal filed by the assessee first with the concurrence of the CIT DR, the Ld. AR invited attention to the chart of Issues filed in the assessee's appeal submitted that the issue raised by the Revenue in Ground No. 1 is interlinked with Ground No. 3 of the assessee and the Ground No.2 of the Revenue is interlinked with Ground No.6 of the assessee.

**2.1.** Ground No. 1 in the assessee's appeal was stated to be general.

**3.** Addressing Ground No. 2 in assessee's appeal, the Ld. AR invited attention to the facts recorded on page 3 of the assessment order. Relying on the same it was his submission that the Assessing Officer on facts has wrongly relied upon **Maruti Udyog Ltd. 92 ITD 119 (Del.)** which has been upheld by the CIT(A) also at pages 2 and 3 of his order. It was his submission that the AO after holding that the expenditure incurred was for an application software erred in holding it to be capital in nature. Relying upon the past position it was submitted that the ITAT vide its order dated 10/06/2015 in 2000-01 assessment year in ITA No.2897 & 2807/Del/2007 has held the identical expenditure to be Revenue in nature and infact right from 1995 – 96 AY to 1997 – 98 AY the ITAT has all

along on similar facts and circumstances held the expenditure to be a Revenue expenditure and allowed it as an expense and this decision has been affirmed by the Hon'ble High Court in assessee's own case. Reliance was further placed upon **CIT vs Asahi India Safety Glass Ltd. 203 Taxman 277** for the proposition that expenditure incurred in application software is a revenue expenditure.

4. The Ld. CIT DR vehemently opposed the submission made. It was his categorical stand that the nature of the software has not been addressed anywhere by the assessee in the facts of the present case. The mere recording of assessee's submission on facts that the expenditure incurred is for an application software by the Assessing Officer it was argued does not lead to the conclusion that it was an application software. It was his submission that firstly no evidence has been led by the assessee to show how it can be held to be application software and even otherwise it is the use; the utility which the assessee puts the software to that with lead to the conclusion. Thus it was argued the matter being purely factual cannot be decided on the basis of past precedent as facts justifying the holding that the expenditure was revenue may have been available then however, as far as the facts in the present case are concerned it was his submission that the issue needs to be examined on facts. Thus the matter at best can be restored for correct determination.

5. In reply, the Ld. AR reiterated his submissions. Referring to page No. 7 to 17 of the Paper Book it was submitted that the assessee before the CIT(A) had given the following breakup of its software expenses which would show that it was a Revenue expenditure:-

<b>S.No.</b>	<b>PARTICULARS</b>	<b>AMOUNT(Rs.)</b>
1.	CFD Software	5,04,000
2.	OFA Software	4,25,000
3.	Intra Net	3,00,000
4.	Macromedia Web Design	48,000

5.	<i>MS Project</i>	<i>19,500</i>
6.	<i>Macromedia Dreamweaver</i>	<i>63,000</i>
7.	<i>Liab Mgt Software</i>	<i>9,45,000</i>
<b>Total</b>		<b>23,04,500</b>

**5.1.** Objecting to the submission made the Ld. CIT. DR. referring to the same submitted that nowhere does the description given demonstrate that it is a software application having a short life duration. In the absence of specific evidence it was submitted that the assessee's ground should not be allowed.

**6.** We have heard the rival submissions and perused the material available on record. We find that the way the Assessing Officer has worded the issue in para 3 of his order it does give cause to a debate however when examined in the context of the submissions and the findings on record, we find that there is no discussion on relevant facts. It is seen that considering the claim of the assessee, the AO showcauses the assessee to explain why the expenditure should not be held as capital expenditure as in the earlier years. The impugned order also shows that the CIT(A) has also not cared to address the facts and was persuaded to decide the issue in the light of the decision of the ITAT in the case of Maruti Udyog Ltd. (cited supra). We find that the said approach of the CIT(A) was not correct. Whether a particular expenditure for computer software was to be allowed as a revenue expenditure or capital expenditure is an issue to be decided on the basis of specific facts of each case wherein not only the specific software needs to be addressed but also the functional utility and contribution to the assessee's business-whether in the capital field or Revenue field needs to be considered. Support is drawn from **Amway India Enterprises vs DCIT, Circle-1(1), New Delhi [2008] 111 ITD 112 (Del.) (SB)**. A perusal of the facts before the Special Bench would show that the assessee-company therein incurred certain

expenditure for acquiring computer softwares for use in its business. The assessee claimed that the expenditure in question was of revenue nature as all the softwares were essentially in the nature of application software and they only facilitated it in its day to day operations,. It was also claimed that the said expenditure did not result in enduring benefit as the life of application software was invariably short and the same was bound to become technically obsolete very fast. The Assessing Officer disallowed the assessee's claim on the ground that the said software was part of the plant and machinery of the assessee and had long lasting use of more than three to four years and, thus, the same resulted in an enduring benefit to it. He, therefore, treated the expenditure incurred by the assessee as capital in nature and by treating the same as part of its plant and machinery, allowed depreciation thereon at the normal rate of 25 per cent in the absence of any specific rate prescribed in the schedule for the software. On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer. On second appeal, the assessee contended that by incurring the impugned expenditure, it had acquired only the license to use the software and there was no outright purchase of software giving ownership to the assessee of the said software so as to treat the same as capital expenditure. On the other hand, the Revenue contended that acquiring a license to use software was the common mode of purchase of software and, therefore, the expenditure incurred on such purchase of software giving enduring benefits to the assessee was a capital expenditure. The Division Bench found that there were divergent views expressed by the various Division Benches of the Tribunal on the issue relating to the exact nature of expenditure incurred on software being capital or revenue. Therefore, it referred the matter to the Special Bench. The Special Bench considering the judicial precedent concluded that there cannot be any specific or precise test which can be applied

conclusively or universally for distinguishing whether an expenditure is capital or revenue. It was observed that it is a blurred and undefined area in which anyone can get lost and different minds may come to different conclusions with equal propriety as there is no single definitive criterion which by itself can be said to be determinative as to whether a particular outlay is for capital or revenue. Accordingly, after considering the merits of various tests for deciding the issue namely; ownership test; benefit of enduring nature and functional test, it was concluded that the most appropriate test would be the functional test. It was considered that is the purpose of the outlay and its intended object which would be effected having regard to the specific business realities which could help in deciding the issue. It has been held that the cardinal rule for deciding the question whether a certain expenditure is on capital or revenue account should be decided from the practical and business view-point and in accordance with sound accountancy principles and this rule is of special significance in dealing with expenditure on expansion and development of business. It has been observed that while dealing with this complex issue, three tests are generally applied to decide the nature of expenditure as to whether it is capital or revenue, they are: the test of enduring benefit; ownership test; and functional test. For the purposes of computer software it has been held that the functional test becomes more important and relevant because of the peculiar nature of a computer software and its possible use in different areas of business touching either capital or revenue field or its utility to a businessman which may touch either capital or revenue field. The manner in which the computer software is used it has been noted is again peculiar wherein the general mode is to acquire computer software on a license. However, that by itself it has been held will not be sufficient to conclude that the expenditure is revenue expenditure, if on an application of the functional

test, it is found that the it confers a benefit in the capital field. On the other hand, some computer software may have a very limited economic life so as to be treated as capital expenditure, though owned by an assessee. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may ensure for an indefinite future. In other words, the functional test would become material and if on application of the same, it is found that the expenditure operates to confer benefit in the revenue field, then the same would be revenue expenditure, irrespective of the duration of time for which the assessee acquires rights in a software. It has been held that the period of advantage in the context of computer software should not be viewed from the point of view of different assets or advantage like tenancy or use of know-how because software is a business tool enabling a businessman to run his business. It is thus necessary that in order to treat any expenditure as capital expenditure the same should result in accrual of advantage of enduring benefit and the benefits should accrue to the assessee in the capital field. What is meant by accrual of benefit in the capital field that the said benefit should form part of the profit making apparatus of the assessee's business. In the facts of the present case, we find there is no discussion on facts. The argument that the issue should be decided on the basis of past precedent cannot be accepted as the issue is purely factual and the relevant discussion on facts both by the taxpayer and the tax authorities is found to be missing. We find that the description of the softwares acquired given before the CIT(A) does not throw any light on the nature, use or purpose of the software which has to be understood in the context of its functional use to

the taxpayer's specific business. Accordingly, for this necessary exercise the issue is restored to the file of the AO. The assessee is given liberty to place necessary supporting evidences in support of its claim.

**7.** The next issue agitated by the assessee in its appeal is addressed in Ground No.3 and is interlinked with Ground No.1 of the Revenue's appeal. The facts relatable thereto are found addressed in assessment order pages 3 to 4. A perusal of the same shows that the AO qua the dividend receipt of Rs.6,85,58,082/- required the assessee to justify its claim that no expenditure had been incurred attributable to the earning of the exempt income.

**7.1.** The assessee in response thereto has replied that it was a Non Banking Financial Company dealing in activities in respect of ingredients of the NBFC. The investment it was stated had been made in the earlier years primarily out of its own fund thus it was argued that no expenditure had been incurred.

**7.2.** The said submission of the assessee was not accepted by the AO holding as under:-

*4.2. "I have considered the submissions of the assessee. **This matter was examined in the assessment in the assessee's case for A.Y. 00-01.** In that assessment, it was found that the investments made in F.Y.99-00 were more than the increase in accruals during that year. It was also noted that the borrowings of the assessee had increased substantially during that year and that the assessee's own funds as on 31.03.99 were invested in the business of the assessee along with the borrowed funds. It was also found that the assessee could not show the exact source of its investments in the shares through entries in the bank statements. **After examining certain judicial precedents it was held that part of the investments in the shares were out of the assessee's own funds and the balance was out of the borrowed capital of the assessee. The assessee has pointed out no new facts.** Under the circumstances, following the findings in A.Y.00-01, it is held that part of the interest expenditure incurred by the assessee in the present assessment year also is towards earning of the dividend income. On the basis adopted in the previous assessment, the interest attributable to the investments works out to Rs.12,40,44,530/-. The interest on earning of dividend income is allowable only u/s 57 of the income Tax Act, and since the corresponding dividend is exempt,*

*the expenditure is also held to be not allowable as provided for in section 14A. In addition, a sum of Rs.25 lakhs out of the administrative expenditure is held to be incurred for earning the dividend income since the time and effort of the officers and staff of the company is spent in monitoring the investments making proper accounting entries, collecting the dividend, making investment decisions, and so on."*

**(emphasis provided)**

**7.3.** Aggrieved the assessee contested the issue in appeal before the First Appellate Authority. Considering the arguments the CIT(A) granted part relief leading to the filing of the departmental Ground No.1. The specific finding leading to the filing of the departmental ground is addressed in para 4.4 at pages 7 & 8 and is reproduced hereunder for ready-reference:-

*4.4. "I have considered the submissions of the appellant with reference to the facts on record and the AO's findings thereon. It is not in dispute that dividend which were subjected to the provisions of section 14A were with respect to investments made by the appellant during F.Y. 93-94 to F.Y. 96-97. It is in that context that the investments are to be analyzed as per the financials of A.Y. 94-95 to A.Y. 97-98 in order to arrive at a conclusion as to whether the investment made during the said 4 years were from the appellant's own interns; accruals or from the interest charged loan funds. From the accounts of the appellant for A.Y. 94-95, the version of the appellant that investment of Rs. 10.83 crores for that year arose out of the internal accruals of Rs. 23,00 crores has not been controverted. For A.Y. 95-96, the investment were for Rs. 18.33 crores and the internal accrual for that year was Rs.193,00 crores. For A.Y, 96-97, the investments were for Rs. 34.99 crores as against an internal accrual of Rs. 248.00 crores. Similarly also, the version of the appellant that investment of Rs. 46.93 crores during A.Y. 97-98 arose out of internal accruals of Rs. 253.00 crores during that year has not been factually disproved by the AO.*

*Under the provisions of section 14A, it has been provided that for the purpose of computing total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. In the case of Eicher Ltd. 101 TTJ 369 (Del.), it has been said "The words "in relation to" income which is exempt under the Act, no doubt, appear it be broad at first impression, but on deeper examination, and read in conjunction with the word ""incurred", it seems that these are restrictive words, restricting the power of the AO to estimate a part of the expenditure incurred by the assessee as relatable to exempted income. It seems that implicit in the expression "in relation to" is the concept that the AO should be in a position to pin point, with an acceptable degree of accuracy, the expenditure which was incurred by the assessee to produce non-taxable income. The word "incurred" signifies that the expenditure must have been actually incurred and not notionally. Reading both the above mentions expression*

*together, the conclusion seems escapable that the expenditure which the AO seeks to disallow u/s 14A should be actually incurred and so incurred with a view to producing non taxable income". Similar view in the context of section 80M is available in the case of Punjab State Industrial Corp. Ltd. Vs DCIT 102 ITD 1 (Chd.)(SB).*

*I agree with the views of the appellant that since the dividend received during the year under appeal related to investment of A. Y. 94-95 to 97-98, the AO was not right in deciphering the source of all investments (including the investment for A.Y. 94-95 to 97-98) with reference to the availability of own funds and borrowed funds as on 31.03.01. Since the dividend related to investments made during A.Y. 94-95 to 97-98, it would have been sufficient compliance to the provisions of section 14A to evaluate the source of investment of those specific shares to the appellant's accounts only for A.Y. 1994-95 to 97-98. In that view the appellant's contention that its internal accruals of Rs. 23.00 crores for the year ending 31.03.94, Rs. 193.00 crores for the year ending 31.03.95, Rs. 248.00 crores for year ending 31.03.96 & Rs. 253.00 crores for year ending 31.03.97 have been employed for making investment of Rs.10.83 crores, Rs. 18.33 crores, Rs. 34.99 crores and Rs. 46.93 crores for the respective 4 years, have not been disputed in any manner anywhere in the assessment order. The figure of internal accrual for the 4 years are 2 to 6 times more than the figure of investment for these 4 years and there should be no apparent presumption against the appellant to hold a view that the investments for these 4 years arose out of the borrowed funds. From an analysis of the appellant's accounts for A.Y 94-95 to 97-98 and the decision in the case of ACIT Vs Eicher 101 TTJ 369 (Del.), I hold that the provision of section 14A are not applicable to the facts of the case and in that view the disallowance stands deleted. The ground is allowed."*

**7.4.** The discussion in the impugned order leading to sustaining the disallowance of Rs.25 lacs which further led to filing of assessee's Ground No.3 in the present proceedings shows that the claim was rejected by the CIT(A) holding that the decision whether to stay invested in a particular share or financial instrument or to offload the investment were strategic decisions calling for skill, energy, time etc. These factors it was held can be measured only in money as a quantifiable expenditure. It was concluded that the very fact that the assessee has an investment portfolio of Rs.309.67 crores at the beginning of the year and the accounts of the earlier years suggest that fresh investments and liquidation of investment in a major way from year to year have taken place the CIT(A) was of the view that this indicates that *the investment department is fairly robust and active.* In the

circumstances, disallowance of Rs.25 lacs out of the gross dividend received of Rs.6.85 crores was held to be reasonable.

**8.** Qua the issue in the Revenue's appeal, the Ld.CIT DR relies upon the assessment order. The Ld.AR on the other hand relying upon the aforesaid order of the ITAT in 2000-01 AY internal page 23 to 25 submitted that since the facts are same following the precedent the Revenue's appeal may be dismissed. Relying upon the said finding it was further submitted that the addition by way of an adhoc disallowance made by the AO and sustained by the CIT(A) @ 5 % of the gross dividend in the immediately preceding assessment has not been approved by the ITAT. Accordingly, it was submitted that the dividend received in the year under consideration are admittedly from the very same companies as considered by the ITAT in the aforesaid finding i.e Rs.51.80 lacs from *Maruti Countrywide Auto Financial Services Ltd.* and Rs.6,33,78,082/- from *G.E. Countrywide Consumer Financial Services Ltd.* as would be evident from para 5.2 of the impugned order itself. Thus it was his submission that the issue is covered in assessee's favour not only by the decision of the ITAT in assessee's own case but is also covered in assessee's favour by the decision of Punjab & Haryana High Court in the case of **Hero Cycles Ltd. 323 ITR 518** which has been relied upon by the order of ITAT in the aforesaid order. Accordingly re-iterating that there was no finding on facts that the assessee has incurred any expenditure, reliance was placed on the consistent finding on record that the investments have been made during 1993-94 to 1996-97 AYs and no investment has been made in the year under consideration. Written submissions filed before the CIT(A) specific pages 33 to 36 were relied upon. Referring to the same it was submitted that the strategic investments are only in these two companies and it is not a case that the assessee has a large portfolio

of shares in multiple companies. In the said background, the precedent available in the assessee's case was heavily relied upon.

9. We have heard the rival submissions and perused the material available on record. It is seen that the dividend earned on the very same investment made in the earlier years has been considered by the ITAT in 2000-01 AY wherein considering identical Ground no.1 of the Revenue and identical Ground No.4 of the assessee, the Revenue's appeal was dismissed and the assessee's claim was allowed. In the facts of the present case as per the submissions advanced before the CIT(A) at specific page 34, adhoc disallowance of Rs.25 lacs is found to be 4% of the amount of dividend received by the assessee in the year and while making the adhoc disallowance herein also no specific effort has been made by the tax authorities in regard to incurring of expenditure. Reverting to the decision of the ITAT in assessee's own case, we find that the conclusion arrived at relying upon the decision of the Hero Cycles Ltd. (cited supra) has been followed to dismiss the Revenue's ground and allow the assessee's ground. The same is reproduced hereunder for ready-reference:-

*14. "As regards ground No.2 of Revenue's appeal, and ground No.4 of assessee's appeal, we find that the A.O. has made addition on a lump sum basis without noting down incurring of any expenditure @ 25% of dividend income whereas Ld. CIT(A) has restricted the disallowance to the extent of 5% of gross total income. Both the authorities have not made any finding of fact of incurring of any expenditure in this respect. Hon'ble Punjab & Haryana High Court in the case of Hero Cycles Ltd. 323 ITR 518 has held that disallowance u/s 14A requires finding of incurring of expenditure and where it is found that for earning exempt income, no expenditure has been incurred, disallowance u/s 14A cannot be made. Ld. A.R. has also invited our attention to para 28 of Maxopp Investments case decided by Hon'ble Delhi High Court and has argued that the Hon'ble High Court has held that the expenses incurred mentioned in Section 14A referred to accrual expenditure and not some imaginary expenditure and the accrual expenditure as contemplated u/s 14A is the actual expenditure in relation to earning of exempt income and, therefore, had held that if no expenditure is incurred in relation to exempt income no disallowance can be made u/s 14A of the Act. However, we find that the provisions of Section 14A are mandatory in nature and sub-section (3) of Section 14A applies to the cases where assessee*

*claims that no expenditure has been incurred in relation to income which does not form part of total income under the said act. In other words, sub-section (2) deals with cases where the assessee specifies incurrence of some expenditure in relation to income which does not form part of total income whereas sub-section (3) applies to cases where the assessee asserts that no expenditure had been incurred in relation to exempt income. In both the cases, the A.O. should be satisfied with the contents of the claim of assessee in respect of which, expenditure or no expenditure as the case may be and without this satisfaction he cannot embark upon to determine the amount of expenditure in accordance with any prescribed method as mentioned in sub-section (2) to section 14A of the Act. It is only if the A.O. is not satisfied with the correctness of claim of assessee in both the cases that A.O. gets jurisdiction to determine the amount of expenditure incurred in relation to such income which does not form part of total income under the Act in accordance with the prescribed method. While rejecting the claim of assessee with regard to expenditure or no expenditure as the case may be, in respect of exempt income, the A.O. would have to indicate cogent reasons for the same which has not been done in the present case. Therefore, relying upon the ratio of Hero Cycles Ltd. 323 ITR 518, we hold that without recording of finding of fact as to the incurring of some expenditure, disallowance made by A.O. and partly confirmed by Ld. CIT(A) is not justified. Moreover, we find that dividends were received from the group companies wherein the investment was made as a strategic investment and not for the purpose of earning dividend and since these are strategic investments there is no chance of incurring of any expenditure on day to day basis. In view of above facts and circumstances, ground No. 4 of assessee's appeal is allowed, whereas ground No.2 of Revenue's appeal is dismissed."*

**9.1.** On a consideration of the factual and legal matrix of the issue, we find that the Co-ordinate Bench in the immediately preceding assessment year has concluded both the issues in favour of the assessee. No change in fact, circumstance or legal position has been brought to out notice by the Revenue in order to justify deviation from the view taken. In the absence of any cogent argument on either fact or law we find no good reason to deviate. Respectfully following the precedent, considering the peculiar facts and circumstances of the case, Ground No.1 of the Revenue is dismissed and Ground No.3 of the assessee is allowed.

**10.** The facts qua the next issue agitated by the assessee vide Ground No.4 are found discussed in page 5 of the assessment order. A perusal of the same shows that the

assessee claimed that it had incurred an expenditure of Rs.28,26,90,506/- out of which Rs.20,12,76,208/- had been debited to the P&L account and the balance amount of Rs.8,14,14,298/- had been claimed as a deduction in the return of income. The expenditure was claimed to be a Revenue expenditure as it was incurred on debenture issued, discount on issue of debenture, discounting and premium of foreign currency loans. The Assessing Officer considering the past history of the assessee specifically AY 2000-01 rejected the assessee's claim of Revenue expenditure holding as under:-

*5.2. "This issue was examined in the assessee's case in the A.Y. 2000-01. It was held in that assessment that the benefit of the expenditure was spread over the period of the debentures. The discount on commercial paper and discount on issue of debentures were in any case in the nature of interest and only the portion relating to the relevant previous year on a pro-rata basis was allowable as deduction in mercantile method of accounting. In respect of the other expenses also, it was held that since the benefit of the expenditure was spread over the period of the instrument, which was clearly identifiable, the assessee's treatment of expenditure in the books would form the basis of its allowance in the computation of total income. Accordingly, the assessee is also allowed deduction in respect of the expenditure disallowed in the previous assessment year and debited in the accounts of the current assessment year on the basis of their pro-rata amortization (subject to the decision of by the Appellate authorities)."*

**10.1.** The assessee carried the issue in appeal before the CIT(A) who too rejected the ground holding as under:-

*"I agree with the AO that the decision in the case of Madras Industrial Syndicate (225 ITR 802 [SC]) holds good and in that view of the matter, there is no case for allowing the appellant's claim of deferred revenue expenses. The A.O. may also refer to the appellant's claim of deferred revenue expense, in respect of debenture issue expenses. There is a specific provision in sec. 35-D dealing with this claim and the same has to be considered under the specific provision and not under the general/residuary provision. If the claim of debenture issue expenses falls within the ambit of section 35-D, the A.O. would accordingly take necessary remedial measures."*

**11.** Aggrieved by this, the assessee is in appeal before the ITAT. The Ld.AR inviting attention to the aforesaid order of the ITAT in 2000-01 AY submitted that the issue has been concluded in favour of the assessee in the immediately preceding assessment year. Accordingly following the past precedent, Ground No.4 may be allowed. It was his submission that in support of the said prayer no lengthy arguments need be addressed as it is evident from the assessment order itself on record that the AO relies on the view taken in 2000-01 AY and the CIT(A) also considering the past history rejected the claim. The ITAT in assessee's own case in the said year considering the views taken not only by the Apex Court in the case of **Taparia Tools Ltd. vs JCIT in Civil Appeal no.6946-6948 of 2004 (S.C)** [copy filed in the Court] and **CIT vs Citi Financial Consumer Finance Ltd. 335 ITR 29** also but also the Apex Court in **Madras Industrial Investment Corporation Ltd. vs CIT 225 ITR 802** relied upon by the CIT(A) allowed the assessee's appeal relying upon the following observation in the said judgement:-

*"Ordinarily, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years."*

**11.1.** It was submitted that not only on the submissions advanced before the CIT(A), specific page 36 to 48 but also recognition of the above quoted principle in **Madras Industrial Investment Corporation Ltd. (cited supra)** of the Apex Court which the ITAT has taken note of it was argued that the assessee's ground may be allowed. Referring to the order of the ITAT, it was submitted that the ITAT was pleased to hold that the expenditure can be spread over a period of time providing the assessee deciding to do so and therefore it was held that the right to claim deferred revenue expenditure is given to

the assessee and to the Revenue. Thus, it was his submission that it has been interpreted that it is an enabling observation.

**12.** The Ld.CIT DR relying upon the orders of the authorities below submitted that the decision of the Apex Court in **Taparaia Tools Ltd. (cited supra)** was in respect of section 36(1)(iii) and was not in respect of section 37 thus it was not relevant. It was also his submission that the said decision does not over-rule the decision of the Apex Court in the case of **Madras Industrial Investment Corporation Ltd. (cited supra)** as it only distinguished its case. Addressing the applicability of **Taparaia Tools Ltd. (cited supra)** it was submitted it is not relevant and the relevant decision is the decision in Madras Industrial Investment Corporation (cited supra). In the facts of the present case it was his submission that the facts are akin to the facts as available in Madras Industrial Investment Corporation Ltd. (cited supra) accordingly the consistent orders of the authorities below may be upheld. It was also his submission relying on **State of Punjab & Others vs Surinder Kumar & Others (1992) 194 ITR 434 (SC)** that a precedent is only a precedent if it decides a question of law. However, despite a specific query, no argument was advanced justifying the deviation from the precedent available in assessee's own case in 2000-01 AY.

**13.** We have heard the rival submissions and perused the material available on record. We find that both the parties agree that qua the facts and circumstances and the position of law on the issue continue to remain the same as in the immediately preceding assessment year. The fact on record that in 2000-01 A.Y as in the present year there were consistent orders of the tax authorities in favour of the Revenue is not in dispute. The issue having been carried in appeal before the ITAT which concluded the same in favour of the assessee

is also not in dispute. The assessee apart from supporting the view taken as the correct view heavily relies upon the same and the Ld.CIT DR has sought to argue that the view taken on facts should not be followed. In support of this argument, reliance has been placed on State of Punjab & Others vs Surinder Kumar & Others (cited supra) a perusal of the said decision shows that the Hon'ble High Court in a writ petition passed the following judgement:-

*"On the facts and circumstances of the case, we are of the opinion that the just and fair order should be that the petitioners who have been appointed on part time basis should be continued until the Government makes regular appointments on the recommendations of the Public Service Commission. Meanwhile, the petitioners will get their salary for the period of the vacation."*

**13.1.** In a SLP filed by the State of Punjab against the same the Hon'ble Apex Court was pleased to hold as under:-

*"A decision is available as a precedent only if it decides a question of law. The respondents are, therefore, not entitled to rely upon an order of this court which directs a temporary employee to be regularised in his service without assigning reasons. It has to be presumed that on special grounds which must have been available to the temporary employees in those cases, they were entitled to the relief granted. Merely because grounds are not mentioned in a judgment of this court, it cannot be understood to have been passed without an adequate legal basis therefor. On the question of the requirement to assign reasons for an order, a distinction has to be kept in mind between a court whose judgment is not subject to further appeal and other courts. One of the main reasons for disclosing and discussing the grounds in support of a judgment is to, enable a higher court to examine the same in case of a challenge. It is, of course, desirable to assign reasons for every order or judgment, but the requirement is not imperative in the case of this court. It is, therefore, futile to suggest that if this court has issued an order which apparently seems to be similar to the impugned order, the High Court can also do so. There is still another reason why the High Court cannot be equated with this court. The Constitution has, by article 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any cause or matter pending before it", which authority the High Court does not enjoy. The jurisdiction of the High Court, while dealing with a writ petition, is circumscribed by the limitations discussed and declared by judicial decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from judge to judge."*

**13.2.** On a bare reading of the aforesaid judgement it is evident that without the effort of establishing similarity in material facts and brining out the reasons for justifying following of a "precedent" the Apex Court deprecated the practice followed as it is only the reasons based on facts which can on challenge be examined by a higher forum. The aforesaid principle does not advance the Revenue's case whatsoever as no argument on fact has been advanced justifying a deviation from the view taken in the immediately preceding assessment year. We propose at this stage to reproduce the finding relied upon by the assessee from the order of the Co-ordinate Bench:-

*15. "The last ground of appeal is regarding disallowance of expenditure incurred by assessee for raising loan by treating the same as deferred revenue expenditure. The Ld. A.R. submitted that during the year, the assessee had incurred an expenditure of Rs.35,07,38,065/- for raising loan funds out of which Rs.22,84,74,853/- had been debited to P & L account and the remaining amount of Rs.12,22,63,212/- had been claimed as deduction by way of adjustment in computation of income. He submitted that these expenses consisted of discount on debentures, debenture issue expenses, forward cover premium on foreign currency and discount on commercial papers. Ld. A.R. submitted that it is undisputed fact that these expense were actually incurred and were for the raising loans and were not capital in nature and the only reason for disallowance of expenditure is that the A.O. held that assessee had not written off these expenses in the P & L account. Ld. A.R. submitted that the issue is squarely covered in favour of assessee by the order of Tribunal in assessee's group company case for Assessment Year 1996-97 and 1997-98 vide order dated 30.01.2015 placed at paper book pages 189-213 of compilation of judgements. Ld. A.R. submitted that in the case of assessee's group companies also i.e. SBI card and Payment Services Pvt. Ltd., similar issue had been decided in favour of assessee by Hon'ble High Delhi Court and a copy of which was placed at paper book pages 214-232 of compilation of judgements. Ld. A.R. submitted that the issue was further covered in favour of assessee by the following judgements:*

- i) Taparia Tools Ltd. Vs JCIT in civil appeal NO.6946-6948 of 2004 (S.C.).*
- ii) CIT Vs Citi Financial Consumer Finance Ltd. 335 ITYR 29*
- iii) CIT Vs Panacia Biotech Ltd. in I.T.A. No. 22 & 24/2012 (Del.H.C.)*

*16. Inviting our attention to Section 37 of the Act, Ld. A.R. submitted that as per Section 37, the expenses of capital and personal expenses has to be disallowed while calculating the business income of the assessee. Ld. A.R. submitted that the expenses incurred were not of personal nature neither they were of capital nature and there is no class of deferred revenue expenditure in*

*the income tax Act. He submitted that Ld. A.O had relied upon the decision in case of Madras Indl. 225 ITR 802 (S.C.) whereas in the case of Madras Indl. the Hon'ble Court had decided the issue in favour of revenue as in that case, the assessee had claimed only a part of expense against taxable income and Hon'ble High Court had held that where the assessee itself claimed expenses proportionately keeping in view of the nature of expenses, the assessee was permitted to do so. Whereas in the present case, the assessee has not availed such option and has claimed the amount partly in P & L account and partly in computation of income.*

*17. We have heard rival parties and have gone through the material placed on record. We find that as per Section 37, all expenditure incurred wholly and exclusively for the purpose of business are allowed in the computation of income unless they are of capital nature or of personal nature. There is no mention of deferred revenue expenditure in the income tax Act. In the case of Mad. Industrial as relied upon by Ld. CIT(A), the issue was decided in favour of revenue on account of the fact that assessee itself had claimed proportionate amount in the P & L account and the Hon'ble Court had held that in such a scenario proportionate claim was admissible. We further find that Section 35D is also not applicable in the case of assessee as the assessee is a NBFC and in the year under consideration, Section 35D was applicable only for industrial units. We further find that similar issue was considered by the Tribunal in the case of group companies of assessee and copy of order is placed at paper book pages 189-222. The findings of Tribunal as contained in para 19.1 -19.3 are reproduced as under:*

*"19.1 We have considered the rival submissions and have perused the record of the case. We find that there is no concept of deferred revenue expenditure under the Income Tax Act except under certain specific, provisions like section 35D. Therefore, unless statutory provision is there to defer the revenue expenditure over a period, the entire amount is to be allowed in the year in which it is incurred for running the business as per section 37 of the Income Tax Act. Ld. CIT(A) has relied on the decision of Hon'ble Supreme Court in the case of Woodward Governor (supra), wherein ITA Nos. 2808/0111, 1293/0112, 1047/0112, 3977/0/10 & 2470/0111 18 the issue was regarding claim for foreign exchange loss and there was no issue regarding deferred revenue expenditure. The said decision is not applicable to the facts of the present case. The Hon'ble Supreme Court considered the applicability of accounting standard XI in that context only. As far as the present issue is concerned, we find that this issue is no more Res-integra in view of following decisions:*

*1. 335 ITR 29 in the case of CIT vs. Casio India Ltd., wherein the Hon'ble Delhi High Court held that direct selling expenses, stamping fee and commission paid to the selling agents in the case of assessee who was financing the higher purchase of vehicles and homes and the period of such financing were ranging from less than 1 year upto 5 years was allowable in the year in which the expenditure was incurred and not over 5 years;*

2. 308 ITR 199 in the case of CIT vs. Salora International Ltd., head note reads as under:

*"For the assessment year 2001-02, the assessee had incurred. Advertising expenditure of about Rs. 3.08 crores for launching of its products and the AO held that the expenditure was of an enduring nature and treated one-third of it as capital expenditure. The Tribunal, confirming the findings of the Commissioner (Appeals) that the expenditure was revenue expenditure, held that there was a direct nexus between the advertising expenditure and the business of the assessee and that unless the assessee made its products known in the market, its business would suffer. On appeal by the Department: Held also, that the questions whether the Tribunal was correct (i) in deleting the addition made by the AO by amortizing the expenditure towards the professional fee paid towards the project of supply chain management and human resource revenue-engineering by allowing deduction of one-fifth as expenditure in the year under assessment, and (ii) in holding that the unutilized amount of DEPB would be allowed as expenditure u/s 37(1) of the Income Tax Act,1961, and could be allowed as loss, were substantial questions of Law."*

3. CIT vs. Panacea Biotech Ltd., vide ITA No. 22 & 24/2012, wherein the Hon'ble Delhi High Court observed as under:

4. *"The question of deferred revenue expenditure and the Judgment of the Supreme Court in the case of Madras industrial Investment Corporation Ltd. vs. CIT, MANUISCI049311997 : (1997)225 1TR 802 (SC) was examined and distinguished in CIT vs. Industrial Corporation of India MANUIDE1252112009 (2009) 185 Taxman 296 (Delhi) and it was held:*

22. . . The Ld. Counsel for the Revenue had strongly argued that matching concept is to be applied, as per which part of the expenditure had to be deferred and claimed in the subsequent years and, therefore, approach of the AO was correct. However, this argument overlooks that even LIZ Madras Industrial Investment Corporation (supra), on which the reliance was placed by Ms. Bansal, the general principle stated was that ordinarily revenue expenditure incurred wholly and exclusively for the purpose of business can be allowed in the year in which it is incurred. Some exceptional cases will justify spreading the expenditure and claiming it over a period of ensuing years. It is important to note that in that judgment, it was the assessee who wanted spreading the expenditure over a period of time as was justifying such spread. It was a case of issuing debentures at discount; whereas the assessee had actually incurred the liability to pay the discount in the year of issue of debentures itself The Court found that the assessee could still be allowed to spread the said expenditure over the entire period of five years, at the end of which the debentures were to be redeemed. By raising the money collected under the said debentures, the assessee could utilize the said amount and secure the benefit over number of years.

5. In *CIT vs. Citi Financial Consumer Fin. Ltd. (2011) 335 ITR 29 (Del.)*, a Division Bench referred to *Industrial Finance Corp. of India (supra)* and then quote a passage from the decision of the Supreme Court in *CIT Vs. Empire Jute Co. Ltd. vs. CIT (1980) 124 ITR 1 (SC)*:

13. At this stage, it would be of advantage to discuss the judgment of Supreme Court 111 *Empire Jute (1980) 124 ITR 1 (SC)* which repelled the theory of expenditure of enduring nature, in a great measure. In that case, the SC noted that by decided cases, the courts evolved various tests for distinguishing "between the capital and revenue expenditure but the test is paramount or conclusive. Every case has to be decided on its facts keeping in mind the broad picture of whole operation in respect of which the expenditure has been incurred. At the same time, a few tests formulated by the courts were taken note of One such test which was specifically spelled out and may be relevant for our purpose was "when an expenditure is made not only once and for all, but with a view to bringing into existence of an advantage for which enduring benefit of a trade, the expenditure can be treated as capital in nature and not attributable to revenue". However, cautioned the court, it would be misleading to suppose that in all cases securing a benefit for business expenditure would be capital expenditure. The court added the caution in the following words:

*There may be cases where expenditure, even if incurred for obtaining advantage of enduring benefit, may, none the less, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case. ITA Nos. 28081D111, 12931D112, 10471D112, 39771D110 & 24701D111 22.*

6. It was held that the claim of the Revenue that the revenue expense should be deferred in the absence of a statutory provision or spread over some years cannot be accepted. In the case of *Commissioner of Income Tax vs. Casio India Ltd. MANUIDE12405120II : (2011) 335 ITR 196 (Del.)*, reference was made to the decision in the case of *Citi Financial Consumer Fin. Ltd. (supra)*. It was held that the expenditure incurred on investment and sale promotion was business expenditure U/S 37(1) of

*the Act and the concept of deferred revenue expenditure should not be accepted at the behest of the Revenue. "*

*19.2 Similar view has been taken in following decisions:*

*1. 335 ITR 29, CIT vs. Citi Financial Consumer Finance Ltd., wherein it was observed as under:*

*"We may also add here that in the Income-tax law, there is no concept of deferred revenue expenditure. Once the assessee claims the deduction for the whole amount of such expenditure, even in the year in which it is incurred, and the expenditure fulfils the test laid down u/s 37 of the Act, it has to be allowed. Only in exceptional cases, the nature mentioned in Madras Industrial Investment Corporation Ltd. [1997] 225 ITR 802 (SC), the expenditure can be allowed to be spread over, that too, when the assessee chooses to do so. "*

*2. 338 ITR 177, Cyber Media (India) Ltd. In this case, interalia, held as under:*

*"Once the Tribunal accepted that the assessee had regularly employed the hybrid system of accounting for income-tax purposes and it was only to adhere to procedure under the Companies Act that it changed bona fide to the mercantile system. it erred in concluding that the assessee's income for the purposes of income-tax proceedings could not hark back to the hybrid system. "*

*3. 19 SOT 13, Situ Electro Instruments (P) Ltd. vs. ITO has observed as under:*

*8.4 "This leads us with the only question as to whether it is permissible for the assessee to claim the entire expenditure as revenue expenditure while filing its return of income, while on the other, under the Companies Act, adopted a method of accounting wherein only part of the expenditure in question was debited to the profit and loss account. The issue, in our considered opinion, is covered in favour of the assessee and against the revenue by a number of decisions which were cited before us by the learned counsel for the assessee. In the Hyderabad Bench in the case of Amar Raja Batteries vs. Asstt. CIT [2004] 91 ITD 280 which is squarely applicable to the facts of this case, it was held that-*

*"The undisputed fact is that the expenditure is in the revenue filed. The only issue to be considered is whether the assessee can claim the entire expenditure in this year itself, even though it had written off this expenditure in the books over a period of five years. Though the assessee has written off the expenditure in its books of account over a period of five years, it must be allowed in its entirety in the year in which it was incurred, if it is revenue expenditure and if it is wholly and exclusively incurred for the purposes of business. The assessee had launched a new product and incurred heavy advertisement expenditure. The period for which the assessee can be said to have secured benefit by incurring this expenditure cannot be reasonably estimated. The undisputed fact is that*

*the new product launched may fail to take off in the year of launch itself or may have a long life as a product. There is no way in which it can definitely be estimated that the benefit of the expenditure would last for a particular period of time. The entries in the books of account do not clinch the issue either way and they do not determine the allowability or otherwise of the expenditure. The entire advertisement expenditure for product launching is to be allowed in this year. The disallowance of Rs. 1,03,63,401/- made by the Assessing Officer on account of advertisement expenditure is deleted. "*

*It is well settled that the entries in the books of account cannot be the basis whether a receipt is taxable or not or whether expenses are allowable as a deduction or 110t. Courts are compelled to go by the true nature of receipts and not to go by the entries made in the books of account.*

*If any authorities are required to be cited on this case on this issue we derive strength strongly from the [allowing decisions:*

- 1) CIT vs. India Discount Co. Ltd. [1970] 751TR 191 (SC).*
- 2) Kedarnatn lute Mfg. Co. Ltd. vs. CIT [1971] 82 ITR 363 (SC).*

*19.3 In view of above discussion, these grounds are allowed."*

*18. From the facts of the present case, we find that there is no dispute about the fact that assessee had incurred the expenditure and the expenses are not of capital nature, therefore, as per section 37 of Act, these are allowable in the year in which such expenditure has been incurred. The A.O. had relied upon the judgement of Madras Industrial Corpn. For disallowing a part of expenditure. However, in the judgement of Madras Industrial Investment, the Hon'ble Court had held that expenditure can be spread over a period of time provided the assessee decides to do so and therefore, from the above judgement it can be concluded that right to claim deferred revenue expenditure is given to assessee and not to revenue. In view of the above discussion and judicial precedents, we allow ground No.5 of assessee's appeal.*

**13.3.** In the absence of any argument justifying deviation from the view taken by the Co-ordinate Bench in assessee's own case in the immediately preceding assessment year on admittedly same set of facts and law, we find no good reason to deviate from the same. Respectfully following the precedent available in assessee's own case, Ground No.4 of the assessee is allowed.

**14.** Ground No.5 raised by the assessee is dismissed as not pressed as the Ld.AR fairly stated that the issue is covered against the assessee by the decision of the Apex Court in the case **Southern Technology 320 ITR 577 (SC)**.

**15.** The next issue agitated by the assessee in the appeal filed is addressed by Ground No.6 relating to which the Revenue has filed Ground No.2 in its appeal. The relevant facts of the case are that the assessee claimed a deduction of Rs.13.05.50.380/- as foreign exchange loss in the P&L A/c. The AO required the assessee to justify the claim. The assessee is found to have submitted a letter dated 18.09.2003 stating that the foreign exchange loss was booked on account of year end provision for change in the exchange rate in respect of the outstanding liability on foreign exchange loan computed with reference to the exchange rate prevalent as on the balance sheet date. Reliance was also placed upon Accounting Standard – 11 issued by ICAI. However subsequently the assessee claimed vide letter dated 11.02.2004 that the loss was on account of forward premium amortised in books in respect of loans that were due to be paid after 31.03.2001. The amounts were stated to be amortised on the basis of tenure of loan in accordance with AS– 11 issued by ICAI. It was also submitted that the assessee followed a policy of hedging the forex exposure. The forward contracts were stated to have been entered for the period of the loan by paying a forward cover premium. It was explained that the liability to pay such a premium crystallized on the day contract for hedging the loan was entered into. Relying upon the copies of the two contracts which had been entered into and made available to the AO, it was submitted that the premium was amortised over the tenure of the loan. Reliance was also placed upon the decision of the Apex Court in **Madras Industrial Investment Corporation Ltd. vs CIT 225 ITR 802**.

**15.1.** The said claim was not accepted by the Assessing Officer.

**16.** The assessee carried the issue in appeal before the First Appellate Authority. The CIT(A) considering the arguments concluded the issue in the following manner which is challenged both by the assessee and the revenue before us:-

*8.3. "I have considered the submissions of the appellant and the findings of the AO. Foreign currency loans of Rs.28.02 crores on 08.01.01, Rs. 74.73 crores on 08.01.01, Rs.46.52 crores on 09.03.01, Rs. 23.26 crores on 12.03.01 and Rs. 23.26 crores on 12.03.01 have been obtained by the appellant against which the appellant had obtained forward cover. Since the tenure of the loans extended beyond the relevant accounting year, certain amounts for the period beyond the end of the accounting year had been amortized in the accounts. Such amortized amount in respect of the forward cover pertaining to loans obtained during the relevant assessment year amounted to Rs.1,13,35,384/-.*

*In so far as the appellant follows Account Standard 11 issued by ICAI and the hedging costs are recognized as revenue expenditure in the accounts as per the notes, to the accounts on a consistent basis from year to year, I hold with reference to the case of ONGC Ltd. Vs DCIT 83 ITD 151 (Del), a citation relied on by the appellant, that the loss on payment of forward cover premium could not have been disallowed for the reason that such loss was notional. **I agree with the submissions of the appellant that loss arising on forward cover premium has arisen on revenue account or as a part of the circulating capital of the appellant embarked in the business and that such loss is not contingent or notional.***

*In so far as the claim of deferred revenue expense in respect of the forward cover premium is concerned, the facts are not disputed that forward cover premium remaining amortized in the accounts for the year under appeal was in respect of that portion which had been incurred in respect of a period subsequent to the close of the accounting year. The accounts itself testify to that effect. In the case of Tapania Tools Ltd. vs JCIT 126 Taxman 544 (Bom.), in the context of claim of interest on non convertible debentures, the AO had noted that the assessee had claimed certain up front payment of interest. The AO held that such payment represented deferred interest and not allowable in its entirety in one accounting year. The High Court in that case held that matching concept in which revenue and income earned during an accounting period irrespective of actual cash inflow is required to be matched and compared with expenses incurred during the said period, in respect of actual cash out flow, is relevant for determining total income under the I.T. Act. That though ordinarily revenue expenditure incurred only and exclusively for business purpose should be allowed in its entirety in the year in which it is incurred, deferred interest in the case before the High Court was directed to be spread over the life of the said instrument.*

*The case referred above concerned interest on non convertible debentures and the issue decided in favour of revenue related to the question as to whether up front payment of interest not relating to the year of account could*

*be allowed as an expenditure. Similar decisions have been rendered in the case of CIT Vs Shri Rajasthan Syntex Ltd. 134 Taxman 577 (Raj.) and the decision of the Supreme Court in the case of Madras Industrial investment Corporation Ltd. Vs CIT 225 ITR 802 (SC).*

*On the basis of discussion above, I hold that forward cover premium amortized in the accounts pertained to a period subsequent to the close of the relevant accounting year and in so far as the expense-pertained to the subsequent assessment year, the amortized portion of the claim is required to be allowed in the subsequent year only. The ground is dismissed."*

**(emphasis provided)**

**17.** The Ld.AR submits that the issue is covered in favour of the assessee by virtue of the decision of the ITAT rendered in 2000-01 assessment year wherein reliance has been placed by the ITAT on the decision of the Apex Court in the case of **CIT vs Woodward Governor India P.Ltd. 312 ITR 254.** Apart from that it was also his submission that the CIT(A) at page 26 of his order has held that the loss arising on forward cover premium has arisen on revenue account and the loss is neither contingent nor notional. It was submitted that having so held the CIT(A) should have decided the issue in assessee's favour instead of holding that on matching principle it should be allowed in the subsequent year. Reliance was also placed on **CIT vs Industrial Finance Corporation of India Ltd. [2009] 185 Taxman 296 (Delhi).**

**18.** The Ld. CIT. DR on the other hand places reliance upon the assessment order and the decision of the Apex Court in **Madras Industrial Investment Corporation Ltd.** (cited supra). It was submitted that even considering **Taparia Tools Ltd.** (cited supra) the issue should have been decided in Revenue's favour as it was a notional loss and not an actual loss. Reliance was also again placed upon **State of Punjab & Others vs Surinder Kumar & Others (1992) 194 ITR 434 (SC)** that a precedent is only a precedent if it decides a question of law.

**19.** We have heard the rival submissions and perused the material available on record. We find that the Ld.AR has primarily relied upon the order of the ITAT in 2000-01 AY on the basis of which it has been submitted that the issue is covered in assessee's favour. The Revenue has disputed this claim. Accordingly, at the outset, we first propose to reproduce the relevant discussion on the issue from the order of the Co-ordinate Bench:-

*20. "Ground No.3 is regarding action of Ld. CIT(A) by which he had deleted an addition of Rs.1,16,44,707/- which was made by A.O. on account of disallowance of notional foreign exchange fluctuation loss. Ld. D.R. had relied upon the order of A.O. Ld. A.R. submitted that the assessee had debited the aforesaid amount in the P & L account on account of year end provision for change in exchange rate in respect of outstanding liability on account of working capital loans in foreign exchange. He submitted that the above debit in P & L account was made on the balance sheet date and in accordance with accounting standard 11. He submitted that the A.O. had disallowed the claim treating the same as provision relying on the decision of the Tribunal in the case of ONGC reported in 83 ITD 151 and Ld. CIT(A) after analyzing the facts of the case, has held that the loss written off was not contingent in nature. Ld. A.R. submitted that the issue is squarely covered in favour of assessee by the decision of Hon'ble Supreme Court in the case of CIT Vs Woodward Governors India (P) Ltd. 312 ITR 254.*

*21. We have heard rival parties and have gone through material placed on record. We find that as per accounting policy, the assessee is following mercantile system of accounting and the assessee had restated the liability on account of working capital loans at the balance sheet date on the basis of exchange rate prevailing on balance sheet date and had debited the difference to p & l account. The A.O. has disallowed this claim holding that foreign currency loans were repayable on fixed days and liability to repay had not arisen therefore, claim of assessee was contingent in nature. However, we find that the issue is squarely covered in favour of assessee by the order of Hon'ble Supreme Court in the case of Woodward Governor India (P) Ltd. wherein the Hon'ble Supreme Court has held as under:*

*"13. As stated above, one of the main arguments advanced by the learned Additional Solicitor General on behalf of the Department before us was that the word "expenditure" in section 37(1) connotes "what is paid out" and that which has gone irretrievably. In this connection, heavy reliance was placed on the judgment of this court in the case of Indian Molasses Company P. Ltd. (1959] 37 ITR 66. Relying on the said judgment, it was sought to be argued that the increase in liability at any point of time prior to the date of payment cannot be said to have gone irretrievably as it can always come back. According to the learned counsel, in the case of increase in liability due to foreign exchange*

*fluctuations, if there is a revaluation of the rupee vis-a-vis foreign exchange at or prior to the point of payment, then there would be no question of money having gone irretrievably and consequently, the requirement of "expenditure" is not met. Consequently, the additional liability arising on account of fluctuation in the rate of foreign exchange was merely a contingent/notional liability which does not crystallize till payment. In that case, the Supreme Court was considering the meaning of the expression "expenditure incurred" while dealing with the question as to whether there was a distinction between the actual liability in presenti and a liability de futuro. The word "expenditure" is not defined in the 1961 Act. The word "expenditure" is, therefore, required to be understood in the context in which it is used. Section 37 enjoins that any expenditure not being expenditure of the nature described in sections 30 to 36 laid out or expended wholly and exclusively for the purposes of the business should be allowed in computing the income chargeable under the head "Profits and gains of business". In sections 30 to 36, the expressions "expenses incurred" as well as "allowances and depreciation" have also been used. For example, depreciation and allowances are dealt with in section 32. Therefore, Parliament has used the expression "any expenditure" in section 37 to cover both. Therefore, the expression "expenditure" as used in section 37 may, in the circumstances of a particular case, cover an amount which is really a "loss" even though the said amount has not gone out from the pocket of the assessee.*

*14. In the case of M. P. Financial Corporation v. err reported in [1987] 165 14 ITR 765 the Madhya Pradesh High Court has held that the expression "expenditure" as used in section 37 may, in the circumstances of a particular case, cover an amount which is a "loss" even though the said amount has not gone out from the pocket' of the assessee. This view of the Madhya Pradesh High Court has been approved by this court in the case of Madras Industrial Investment Corporation Ltd. v. CIT reported in [1997] 225 ITR 802 . According to the Law and Practice of Income Tax by Kanga and Paikhiuala, section 37(1) is a residuary section extending the allowance to items of business expenditure not covered by sections 30 to 36. This section, according to the learned author, covers cases of business expenditure only, and not of business losses which are, however, deductible on ordinary principles of commercial accounting. (see page 617 of the eighth edition). It is this principle which attracts the provisions of section 145. That section recognizes the rights of a trader to adopt either the cash -system or the mercantile system of accounting. The quantum of allowances permitted to be deducted under diverse heads under sections 30 to 43C from the income profits and gains of a business would differ according to the system adopted. This 'is made clear by defining the word "paid" in section 43(2), which is used in several sections 30-to 43C, as meaning actually paid or incurred according to the method of accounting upon the basis on which profits or gains are computed under section 28/29. That is why in deciding the question as to whether the word "expenditure" in section. 37(1) includes the word "loss" one has to read section 37(1) with section 28, section 29*

*and section 145(1). One more principle needs to be kept in mind. Accounts regularly maintained in the course of business are to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. One more aspect needs to be highlighted. Under section 28(i), one needs to decide the profits and gains of any business which is carried on by the assessee during the previous year. Therefore, one has to take into account stock-in-trade for determination of profits. The 1961 Act makes no provision with regard to valuation of stock. But the ordinary principle of commercial accounting requires that in the profit and loss account the value of the stock-in-trade at the beginning and at the end of the year should be entered at cost or market price, whichever is the lower. This is how business profits arising during the year need to be computed. This is one more reason for reading section 37(1) with section 145. For valuing the closing stock at the end of a particular year, the value prevailing on the last date is relevant. This is because profits/loss is embedded in the closing stock. While anticipated loss is taken into account, anticipated profit in the shape of appreciated value of the closing stock is not brought into account, as no prudent trader would care to show increased profits before actual realization. This is the theory underlying the rule that closing stock is to be valued at cost or market price, whichever is the lower. As profits for income-tax purposes are to be computed in accordance With ordinary principles of commercial accounting, unless such principles stand superseded or modified by legislative enactments, unrealized profits in the shape of appreciated value of goods remaining unsold at the end of the accounting year and carried over to the following year's account in a continuing business are not brought to the charge as a matter of practice, though, as stated above, loss due to fall in the price below cost is allowed even though such "loss has -not been realized actually. At this stage, we need to emphasise once again that the above system of commercial accounting can be superseded or modified by legislative enactment. This is where section 145(2). comes into play. Under that section, the Central Government is empowered to notify from time to time the accounting standards to be followed by any class of assesseees or in respect of any class of income. Accordingly, under section 209 of the Companies Act, the mercantile system of accounting is made mandatory for companies. In other words, an accounting standard which is continuously adopted by an assessee can be superseded or modified by legislative intervention. However, but for such intervention or in cases falling under section 145(3), the method of accounting undertaken by the assessee continuously is supreme. In the present batch of cases, there is no finding given by tile Assessing Officer on the correctness or completeness of the accounts of the assessee. Equally, there is no finding given by the Assessing Officer stating that the assessee has not complied with the accounting standards.*

*15. For the reasons given hereinabove, we hold that, in the present case, the "loss" suffered by the assessee on account of the exchange difference*

*as on the date of the balance-sheet is an item of expenditure under section 37(1) of the 1961 Act."*

*22. We find that in the present case as noted by A.O. in his assessment order the loss on account of foreign exchange fluctuation has occurred on account of working capital loans in foreign exchange and therefore, the loss claimed is allowable u/s 37(1) of the Act.*

**19.1.** We find that as far as the facts are concerned there is no dispute amongst the parties in as much the rates and the dates on which the forward cover hedging contracts have been entered into, the facts are not in dispute. Infact the purpose of entering into such agreements also has been succinctly addressed by the AO himself in para 7.3 of his order in the following manner- "*Forward contracts are agreements where one party agrees to buy a commodity at a specific price on a specific future date and the other party agrees to make the sale. Goods are actually delivered under forward contract. Such contracts were originally used for commodities and **they enabled both the buyer and the seller to lock in prices and thus reduce their risk exposure (emphasis provided).***" Thus there is no dispute amongst the parties also as to the purpose for entering into contracts which was guided by the aim to reduce the risks. We find that in the facts as they stand the Revenue really has no case. We further find that the view taken is also supported by the decision of the Jurisdictional High Court **in the case of CIT vs Industrial Finance Corporation of India Ltd. (cited supra)**. The said decision it may be appropriate to address was taken when their Lordships did not have the benefit of the decision of the Apex Court in Woodward Governor's decision and it may not be out of place to observe that the author of the decision in the decision of the Hon'ble High Court in **CIT vs Industrial Finance Corp. of India Ltd.** is the very same Hon'ble Judge who was the author in the judgement of the Apex Court in the case of Taparua Tools Ltd. To revert back

to the issue at hand the judgement of the Apex Court in Woodward Governor was relied upon by the Co-ordinate Bench in the immediately preceding assessment year in assessee's own case was not available to it. When considering with the facts of the present case it is seen that the facts in **CIT vs Industrial Finance Corp.** are more or less similar facts as considered by the Hon'ble Court. In the facts before the Hon'ble High Court the assessee was also a financial institution, engaged in the business of giving loans and advances to various industrial concerns. The assessee therein raised foreign currency borrowings and swapped such foreign currency into Indian rupees in order to augment its rupee resources for meeting its lending requirements. The borrowed foreign currencies were repayable to the foreign lenders on later dates falling within the current previous year ending on 31-03-1995 and in some cases falling in the next previous year relevant to subsequent assessment year. For repurchasing these currencies on their respective due date of repayments, the assessee therein entered into forward contracts with banks as a safeguard against foreign currency fluctuations. The difference between the forward contract rate and the exchange rate on the date of the transaction was treated by the assessee as cost of borrowings and was claimed as revenue expenditure in the relevant assessment year. The Assessing officer therein allowed only a part of the claim and disallowed remaining expenses on the ground that those pertained to the future period and not to the period relevant to the assessment year under consideration inasmuch as the transaction in question was to safeguard against future currency fluctuations. He held that such expenditure did not cover the obligation of the previous year relevant to the assessment year under consideration and was, therefore, ineligible for deduction. On appeal, the Commissioner (Appeals) upheld the disallowance made by the Assessing Officer. The ITAT however allowed the assessee's claim. The issue

was carried in appeal by the Revenue before the Jurisdictional High Court relying upon the decision of the Apex Court in **Madras Industrial Investment Corporation Ltd.** and **Taparia Tools Ltd. (cited supra)**. The order of the ITAT was stated to be contrary to the "matching principle" highlighting the fact that the *Mercantile System of Accounting was based on accrual and is a Double Entry System of accounting. Under the Mercantile System of Accounting, it was argued profits arising or accruing at the date of the transaction are liable to be taxed notwithstanding the fact that they are not actually received or deemed to be received under the Act. Therefore, under the Mercantile System of Accounting, the book profits are liable to be taxed. It was canvassed that the profits earned and credited in the books of account constitute the basis of computation of income and the system postulates the existence of tax insofar as moneys due and payable by the parties to whom they are debited. Reliance was placed on* As considered in **Keshav Mills Ltd. vs CIT [1953] 23 ITR 230, 239 (SC); Calcutta Co. Ltd. vs CIT [1959] 37 ITR 1 (SC); and CIT vs S.M.Holding & Finance P.Ltd. [2003] 264 ITR 370**. On the strength of these decision and arguments it was submitted that the expenses were to be allowed proportionately i.e. the expenditure pertaining to the relevant year was to be allowed in the year under consideration and the balance had to be deferred to the subsequent year, as was done by the Assessing Officer in the instant case, which was wrongly upset by the ITAT.

**19.2.** The Hon'ble High Court after considering the principle laid down in the aforesaid judgements namely (a) **Jasjeet Films P.Ltd. vs CIT [2007] 165 Taxman 599 (Delhi); (b) Metal Box Co. of India Ltd. vs Their Workmen [1969] 73 ITR 53 (SC); (c) Asstt. CIT vs Shree Synthetics Ltd. [2008] 303 ITR 106 (MP); (d) E.D.Sassoon & Co. Ltd. v CIT [1954] 26 ITR 27; and (e) Bharat Earth Movers v CIT [2000] 245 ITR 428** relied upon

these accepting the arguments advanced on behalf of the assessee namely that the Revenue has not appreciated the nature of the agreements entered into by the assessee which were for raising foreign currency borrowings and forward contracts entered into with the banks as a safeguard against foreign currency fluctuations for repayment of foreign currency borrowings on a due date. It was submitted therein that the swapping cost incurred by the assessee, by entering into forward contract, was capable of determination at the time of execution of the forward contract and such determination does not get postponed as in the facts of the present case. It was argued before the Jurisdictional High Court that once it is crystallized, and formalized on the date of entering into the contract, the liability arising on account of such contractual obligation is to be allowed in entirety in the year in which the same has occurred, having regard to the terms of the contract and cannot be treated as a deferred expenditure. It was canvassed that the assessee in terms of its contractual obligation, is obliged to take, at a later date, delivery of the foreign currency purchased in terms of a legally binding and enforceable contract entered into on an earlier date, at a predetermined price. Under the mercantile system of accounting, the liability it was submitted accrues on the date of the contract itself, notwithstanding that the delivery of foreign currency is to take place at a future point of time. Reliance for this proposition was placed on **E.D.Sassoon & Co. Ltd. v CIT [1954] 26 ITR 27 (SC)**. Reliance was also placed upon another judgement of the Apex Court in the case of **Bharat Earth Movers v CIT [2000] 245 ITR 428** wherein the Supreme Court after referring to its earlier judgements in **Metal Box Co. of India Ltd.'s case (supra)** and **Calcutta Co.Ltd.'s case (supra)**, categorically held that if a business liability had arisen in the accounting year, the deduction should be allowed although the liability may have to be

quantified and discharge at a future date. For ready-reference the relevant extracts of the said decision are reproduced hereunder:-

*14. We deem it appropriate to first understand the principles contained in the aforesaid judgments before proceeding to answer the question posed in the instant appeal.*

*15. In Calcutta Co. Ltd.'s case (supra), the appellant therein bought lands and sold them in plots fit for building purposes undertaking to develop them by laying out roads, providing a drainage system and installing lights etc. When the plots were sold, the purchaser paid only a portion of the purchase price and undertook to pay the balance in installments. The appellant in its turn undertook to carry out the developments within six months but time was not of the essence of the contract. In the relevant accounting year, the appellant actually received in cash only a sum of Rs. 29,392 towards sale price of lands, but in accordance with the mercantile system of accounts adopted by it, it credited in its accounts the sum of Rs. 43,692 representing the full sale price of lands. At the same time, it also debited an estimated sum of Rs. 24,809 as expenditure for the developments it had undertaken to carry out, even though no part of that amount was actually spent. The Department disallowed the expenditure.*

*The Supreme Court was of the view that the aforesaid expenditure was allowable in the year in question though no part of that amount was actually spent as it was 'accrued liability' and not merely a contingent one. The Court quoted from the book "Income-tax" (2nd Edn., Vol. II (page 204), authored by Simon, wherein 'accrued liability' is defined as under :-*

*" In cases, however, where an actual liability exists, as is the case with accrued expenses, a deduction is allowable; and this is not affected by the fact that the amount of the liability and the deduction will subsequently have to be varied. A liability, the amount of which is deductible for income-tax purposes, is one which is actually existing at the time of making the deduction, and is distinct from the type of liability accruing in Peter Merchant Ltd. v. Stedeford (Inspector of Taxes) [1948] 30 Tax Cas. 496, C.A., which although allowable on accountancy principles, is not deductible for the purposes of Income-tax." (p. 6)*

*16. In the light of the aforesaid observations, the Apex Court proceeded to determine the nature of liability which was undertaken by the appellant therein in regard to the development of the land in question. It held that though the appellant had to carry out the developments within six months from the dates of deeds of sale, the undertaking to carry out the development was unconditional and the appellant had bound itself absolutely to carry out the same. It was not depending on any condition being fulfilled or the happening of any event. Because of this undertaking, opined the Court, liability had already accrued on the dates of the deeds of sale, though that liability was to be discharged at a future date. It was, thus, an accrued liability and the estimated expenditure to*

*be incurred in discharging the same could very well be deducted from the profits and gains of the business. The Court observed that inasmuch as the liability which had thus accrued during the accounting year was to be discharged at a future date the amount to be expended in the discharge of that liability would have to be estimated in order that under the mercantile system of accounting the amount could be debited before it was actually disbursed.*

*17. Even when the aforesaid accrued liability was on the basis of 'estimated expenditure' and not actual expenditure, the Court held that it was still allowable inasmuch as the difficulty in the estimation thereof again would not convert an accrued liability into a conditional one, because it is always open to the Income-tax authorities concerned to arrive at a proper estimate thereof having regard to all the circumstances of the case. That it can be so done is illustrated by Cold Coast Selection Trust Ltd. v. Humphrey (Inspector of Taxes) [1948] 17 ITR (Suppl.) 19, 23, where a particular asset which could not be immediately realized in a commercial sense was valued in money for income-tax purposes in the year of its receipt.*

*18. In Metal Box Co. of India Ltd.'s case (supra), where bonus payable to the workmen and liability under a scheme of gratuity in respect of the accounting year was stated in the profit and loss account, though not actually paid, the Court allowed the same in the following words, relying upon the judgment in Calcutta Co. Ltd's case (supra) :-*

*". . . In the case of an assessee maintaining his accounts on mercantile system, a liability already accrued, though to be discharged at a future date, would be a proper deduction while working out the profits and gains of his business, regard being had to the accepted principles of commercial practice and accountancy. It is not as if such deduction is permissible only in case of amounts actually expended or paid. Just as receipts, though not actual receipts but accrued due are brought in for income-tax assessment, so also liabilities accrued due would be taken into account while working out the profits and gains of the business.*

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*In the instant case, the question is not whether such estimated liability arising under the gratuity schemes amounts to a debt or not. The question that concerns us is whether, while working out the net profits, a trader can provide from his gross receipts his liability to pay a certain sum for every additional year of service which he receives from his employees. This, in our view, he can do, if such liability is properly ascertainable and it is possible to arrive at a proper discounted present value. Even if the liability is a contingent liability, provided its discounted present value is ascertainable, it can be taken into account. Contingent liabilities discounted and valued as necessary can be taken into account as trading expenses if they are sufficiently certain to be capable of valuation and if profits cannot be properly estimated without taking them into account. Contingent rights, if capable of valuation, can similarly be taken into*

*account as trading receipts where it is necessary to do so in order to ascertain the true profits: see C.N. Beatti's Elements of the Law of Income and Capital Gains Taxation, 8th edition, p. 54." [Emphasis supplied] (pp. 62-64).*

19. The principle is merely summed up by the Supreme Court in Bharat Earth Mover's case (*supra*) in the following manner :-

*"The law is settled: if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain." (p. 431)*

20. When we apply the aforesaid principle to the facts of this case, the irresistible conclusion would be that the ITAT rightly held that the assessee was entitled to claim deduction of Rs. 67.06 crores incurred in connection with swapping of foreign currency funds in the year under consideration, i.e., the assessment year 1995-96. It is clear from the nature of the transaction, that the assessee had raised foreign currency borrowings and swapped such foreign currency into Indian rupees in order to augment its rupee resources for meeting its lending requirements. The foreign currencies borrowed were repayable to the foreign lenders on later dates falling within the current previous year ending on 31-3-1995 and in some cases falling in the next previous year relevant to subsequent assessment year. In order to ensure that it is able to repay the foreign lenders in the foreign currency on their respective due dates of repayments, the assessee had entered into forward contracts as a safeguard against foreign currency fluctuations. It is the difference between the forward contract rate and the exchange rate on the date of transaction which was claimed as deduction in that very year. The forward contract is an agreement between two parties, requiring the delivery at some specified future date of a specified amount of foreign currency by one of the parties, against payment in domestic currency to the other party, at the price agreed upon in the contract. The rate of exchange applicable to the forward contract is called the forward exchange rate and the market for forward transactions is known as the forward market. Thus, in case of a forward contract, assessee enters into a legally binding, enforceable contract for purchase of foreign currency on a future date at the pre-determined rates. The date and the rate of purchase of the foreign currency are decided at the time of entering into contract. The difference between the forward contract and the exchange rate on the date of entering into the contract has to be recognized as income or expenses, which is ascertained and definite, in terms of the contract and cannot be regarded as notional or contingent. It is clear that the swapping cost incurred by the assessee is capable

*of determination at the time of execution of the forward contract and such determination does not get postponed.*

*21. Therefore, the test laid down in the aforesaid judgments to treat it as business expenditure in the same year, though part of the liability occurs on a future date, is allowable as expenditure in this very year. It was a debt owed by the assessee, which accrued on the date of entering into the forward contract itself, though as per the contract, part payment was to be made in succeeding years. The expenditure under the accrual system of accounting had, thus, crystallized on the date of the contract.*

**19.3.** It is seen that while arriving at the above conclusion their Lordships were aware of the decision of the Apex Court in Madras Industrial Investment Corporation Ltd. and have considered the proposition therein in the following manner:-

*22. "The judgments on which reliance is placed by the learned counsel for the revenue would be of no avail in the instant case. The learned counsel for the revenue had strongly argued that matching concept is to be applied, as per which part of the expenditure had to be deferred and claimed in the subsequent years and, therefore, approach of the Assessing Officer was correct. However, this argument overlooks that even in Madras Industrial Investment Corpn. Ltd.'s case (supra ), on which the reliance was placed by Ms. Bansal, the general principle stated was that ordinarily revenue expenditure incurred wholly and exclusively for the purpose of business can be allowed in the year in which it is incurred. Some exceptional cases can justify spreading the expenditure and claiming it over a period of ensuing years. It is important to note that in that judgment, it was the assessee who wanted spreading the expenditure over a period of time as was justifying such spread. It was a case of issuing debentures at discount; whereas the assessee had actually incurred the liability to pay the discount in the year of issue of debentures itself. The Court found that the assessee could still be allowed to spread the said expenditure over the entire period of five years, at the end of which the debentures were to be redeemed. By raising the money collected under the said debentures, the assessee could utilize the said amount and secure the benefit over number of years. This is discernible from the following passage in that judgment on which reliance was placed by the learned counsel for the revenue herself :-*

*"The Tribunal, however, held that since the entire liability to pay the discount had been incurred in the accounting year in question, the assessee was entitled to deduct the entire amount of Rs. 3,00,000 in that accounting year. This conclusion does not appear to be justified looking to the nature of the liability. It is true that the liability has been incurred in the accounting year. But the liability is a continuing liability which stretches over a period of 12 years. It is, therefore, a liability spread over a period of 12 years. Ordinarily, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its*

*entirely in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years. However, the facts may justify an assessee who has incurred expenditure in a particular year to spread and claim it over a period of ensuing years. In fact, allowing the entire expenditure in one year might give a very distorted picture of the profits of a particular year. Thus in the case of Hindustan Aluminium Corporation Ltd. v. CIT [1983] 144 ITR 474, the Calcutta High Court upheld the claim of the assessee to spread out a lump sum payment to secure technical assistance and training over a number of years and allowed a proportionate deduction in the accounting year in question.*

*Issuing debentures at a discount is another such instance where, although the assessee has incurred the liability to pay the discount in the year of issue of debentures, the payment is to secure a benefit over a number of years. There is a continuing benefit to the business of the company over the entire period. The liability should, therefore, be spread over the period of the debentures." (p. 812)*

**19.4.** Thus the legal position was summed up by their Lordships in the decision rendered by the Jurisdictional High Court in the following manner:-

*23. "Thus, the first thing which is to be noticed is that though the entire expenditure was incurred in that year, it was the assessee who wanted the spread over. The Court was conscious of the principle that normally revenue expenditure is to be allowed in the same year in which it is incurred, but at the instance of the assessee, who wanted spreading over, the Court agreed to allow the assessee that benefit when it was found that there was a continuing benefit to the business of the company over the entire period.*

*24. What follows from the above is that normally the ordinary rule is to be applied, namely, revenue expenditure incurred in a particular year is to be allowed in that year. Thus, if the assessee claims that expenditure in that year, the Income-tax department cannot deny the same. However, in those cases where the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of matching concept is satisfied, which up to now has been restricted to the cases of debentures.*

*25. The upshot of the aforesaid discussion is to answer the question in favour of the assessee and against the revenue. The consequence would be to dismiss this appeal, which is hereby dismissed with costs."*

**19.5.** While so holding, we have already taken into consideration the decision of the Apex Court in the case State of Punjab & Others vs Surinder Kumar & Others (cited supra) which

issue we have discussed at greater length in the earlier part of this order. On considering the same, we find that though there can be no quarrel with the afore-said principle laid down therein. However, in the facts and circumstances, we find that it has no applicability to the facts of the present case. Accordingly considering the issue from all angles, we find that the assessee's Ground deserves to be allowed and by setting aside the impugned order the Revenue's ground can also be said to be allowed for statistical purposes to the extent observed above. The Assessing Officer is directed to grant necessary relief withdrawing relief given if any relatable to the issue in subsequent years.

**20.** Ground No.6 in the assessee's appeal is consequential.

**21.** Ground No.3 of the Revenue's appeal is residuary, not pressed.

**22.** In the result, the appeals of the assessee and Revenue are partly allowed for statistical purposes.

**The order is pronounced in the open court on 06<sup>th</sup> of June, 2016.**

**Sd/-**

**(L.P.SAHU)  
ACCOUNTANT MEMBER**

**Sd/-**

**(DIVA SINGH)  
JUDICIAL MEMBER**

*\*Amit Kumar\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI