IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW

BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.317/LKW/2017
Assessment Year: 2010-11

Uttar Pradesh Rajkiya Nirman Nigam Limited Vishweshariya Bhawan Vibhuti Khand, Gomti Nagar Lucknow	v.	DCIT Range VI Lucknow
TAN/PAN:AAACU5701F		
(Appellant)		(Respondent)

ITA No.314/LKW/2017
Assessment Year: 2010-11

DCIT Range VI Lucknow	v.	Uttar Pradesh Rajkiya Nirman Nigam Limited Vishweshariya Bhawan Vibhuti Khand, Gomti Nagar Lucknow
		TAN/PAN:AAACU5701F
(Appellant)		(Respondent)

Assessee by:	Shri K. R. Rastogi, FCA		
Departmen by:	Shri A. K. Bar, CIT (DR)		
Date of hearing:	30	04	2019
Date of pronouncement:	17	05	2019

O R D E R

PER A. D. JAIN, V.P.:

These cross-appeals are preferred by the assessee as well as the Revenue against the order of the ld. CIT(A)-II, Lucknow, dated 10/3/2017 for the assessment year 2010-11.

2. The sole ground of appeal, taken by the assessee in its appeal in ITA No.314/LKW/2017 is, as follows:-

"The ld. CIT(A)-2, Lucknow erred on facts and in law in not appreciating that no addition should be made with regard to the direct expenses incurred on behalf of the client shown in the Contract Account. Thus, the addition on account of Labour Cess should not be made.

3. The grounds of appeal taken by the Department are, as below:-

1. *The CIT(A), Lucknow has erred in law and on facts in deleting the disallowance u/s 40(a)(ia) of the I. T. Act, 1961 amounting to Rs.86,96,73,557/- ignoring the fact that the provisions of sec 40(a)(ia) are applicable in respect of expenses claimed as deduction under the head "Profit & Gains from business or Profession".*
2. *The CIT(A), Lucknow has erred in law and on facts in deleting the disallowance u/s 40(a)(ia) of the I.T. Act 1961 amounting to Rs.86,96,73,557/ ignoring the fact section 40(a)(ia) read with section 194C of the I.T. Act is applicable in case of carrying out any work including supply of labour for carrying out any work.*
3. *The CIT(A), Lucknow, has erred in law and on facts in deleting the addition of Rs.11,31,25,121/- without appreciating the fact that the credit balance in clients account is in respect of projects which were completed more than 15 years ago and hence there is cessation of liability.*
4. *The CIT(A), Lucknow has erred in law and on facts in directing the Assessing Officer to accept the revised computation of income and deleting the addition of Rs.2,42,57,570/- on account of depreciation ignoring the fact that the assessee can revise its income only by filing revised return of income.*
5. *The CIT(A), Lucknow has erred in law and on facts in directing the Assessing Officer to accept the revised computation filed*

by the assessee wherein the assessee has added back Rs.11,96,948/- on account of loss on sale of ignoring the fact that the assessee can revise its income only by filing revised return of income.

6. *The CIT(A), Lucknow has erred in law and on facts in deleting the disallowance of Rs.23,54,235/- on account of prior period expense without appreciating the fact that the assessee was unable to prove before the assessing officer that the expenses crystallized during the year under consideration.*

7. *The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.39,46,18,444/- on account of interest income without appreciating the fact that in F.Y. 2008-09 (A.Y.2009-10) the assessee has not credited accrued interest of Rs.39,46,18,444/- in interest income and thus reversal of above amount from current year's interest income is not allowable.*

7.1 *The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.39,46,18,444/- on account of interest income without appreciating the fact that assessee is claiming TDS relating to accrued interest on unutilized funds and therefore as per provisions of Sec. 198 & 199 of the I.T. Act, the accrued interest is the income of the assessee.*

8. *The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.19,27,197/- on account of expenses relating to purchase of material without appreciating the fact that the bills/vouchers for the purchase were not raised during the year under consideration.*

9. *The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.9,43,41,057/- on account of "income wrongly credited in previous year written back" without appreciating the fact that the assessee company's accounting*

policy cannot override Accounting Standard and Income Tax Act and therefore irrespective of the fact that the company has reversed the profit shown in earlier years as per CAG comment the same should be added back for computing taxable income at the time of filing of return.

10. The CIT(A), Lucknow has erred in law and on facts in deleting the addition of Rs.26,95,93,097/- on account of interest income earned on client's unutilized funds without appreciating the fact that the assessee is following mercantile system of and therefore interest income of Rs.26,95,93,097/- relating to A.Y. 2010-11 has to be assessed in the A.Y. 2010-11 only.

10.1 The CIT(A), Lucknôw has erred in law and on facts in deleting the addition of Rs.26,95,93,097/- on account of interest income earned on client's unutilized funds without appreciating the fact that in A.Y. 2011-12, the assessee has considered Rs.27,18 34,136/- as income in prior period adjustments in th P&L account but reduced this amount from income in computation of income.

11. The CIT(A) Lucknow has erred in law and on facts in deleting the addition of Rs.1,38,77,000/- by observing that the amount of Rs.1,38,77,000/- has been shown as income in subsequent year without appreciating the fact the above fact is not verifiable from the assessment record.

4. The facts of the case are that for the assessment year 2010-2011, the assessee had filed the return of income showing total Income of Rs.225,87,22,062/-. The assessment was completed by the AO on an income of Rs.422,01,39,715/-, making various additions, vide order passed under section 143(3) of the Act.

5. Aggrieved by the order of the A.O, assessee preferred an appeal before the ld. CIT(A), who partly allowed the appeal of the

assessee. Aggrieved with the order of the ld. CIT(A), assessee as well as the Revenue are in appeal.

6. With regard to the ground of appeal taken by the assessee in its appeal in ITA No.314/LKW/2017, the assessee, as before the authorities below, contends that this was the first year when payment of labour cess was made applicable on the part of the assessee Corporation @ 1% of the cost of construction incurred by it; that this provision was made applicable by the State Government itself, in its Labour Department, vide Notification dated 20/11/2009, which forms pages 193 to 196 of the Special Audit Report of the assessee; that in pursuance of this Notification, the assessee Corporation issued Circular dated 19/2/2010 (page 192 of the Special Audit Report); that through this Circular, it was informed that all the unit heads/General Managers were required to make provision for labour cess @ 1% of the cost of construction of the concerned work sanctioned by the Government and which was in progress; that it was specifically stated further in the Circular that the estimate be accordingly revised and the revised estimate be sent to the concerned Government Department, so that provisions of labour cess, as being made by the assessee Corporation, may be collected from the concerned Government Department and be deposited in the Government account; that since this process took time, the Corporation made a provision of Rs.8,44,07,080/- in its books and the payment thereof was made in the subsequent year; that the total provision consists of the provision made by 159 works, which fact stands reflected by the special auditors in the Special Audit Report (pages 189 to 191 thereof); that the provision was not charged to the profit & loss account of the assessee; that it was made part of the Value of Works Done, as demonstrated in the contract account prepared by the assessee, concerning each work site, as presented before the authorities

below, along with trial balance, profit & loss account and balance sheet of Purvanchal College, Jhansi, Urdu Arbi Farsi University, Lucknow and ECO Park, Lucknow; that in each case, the labour cess was charged to the Value of Work Done in addition to the centage charged by the assessee Corporation, as notified by the Government orders for the respective works; that the provision for labour cess was not debited to the profit & loss account; that thereby, the profitability of the assessee Corporation, in the form of centage being earned as gross profit, remained unaffected; that the assessee Corporation only acted as the collecting agency for collection of labour cess, which fact is evident from the Notification dated 1/7/2011 (pages 197 to 201 of the Special Audit Report); that this makes it clear that the collection and deposit of labour cess has no relation whatsoever with the profitability of the assessee Corporation; that the labour provision for labour cess does not stand debited to the profit & loss account; that the assessee is a wholly owned undertaking of the Government of Uttar Pradesh; that it undertakes Government works only; that the income earned by it is limited to the centage allowed by the Government by issuing Government orders from time to time; that the assessee prepares separate contract account for each work site in order to ascertain and demonstrate the centage to be charged from the work concerned; that all the operational expenses incurred for the work are compiled and then, centage is charged, as prescribed by the Government; that all the administrative expenses are then deducted from the centage/gross profit and the net is offered to tax; that since the provision for labour cess was not debited to the profit & loss account, the provisions of section 43B of the Act did not get attracted and there was no occasion to invoke the same; that the provisions of section 43B of the Act do not concern the situations where expenses are not payable as on the date of filing of the return of

income; that as such, the provision for labour cess has not affected the profitability of the assessee Corporation in any manner and the profit of the assessee Corporation has not got reduced by such provision; that the provision was also not claimed as an expenditure; and that in assessment year 2000-01, vide order dated 18/12/2008, passed in ITA No.382/LKW/2004, similar additions made by the A.O, by disallowance of expenses debited to the profit & loss account, were deleted by the ITAT, holding that no addition could be made by disallowing the expenses debited to the contract account; that it was further observed by the ITAT that since the assessee Corporation had already recognized the income on the expenses debited to the contract account as per Government notifications issued from time to time, disallowance of the expenses was not called for; and that therefore, the disallowance in question be deleted. The ld. A.R of the assessee has directed our attention to APB pages 139 to 149, which are the copies of the audited balance sheet, profit & loss account and computation chart of the assessee for assessment year 2010-11, as placed before the authorities below.

7. The ld. D R., on the other hand, has placed strong reliance on the impugned order. It has been reiterated that sections 40(a)(ia) and 43B of the Act are completely different and distinct inter se; that no exclusion, as contained in the non obstante clause with which section 40(a)(ia) of the Act starts, is existent in section 43B of the Act; that section 43B is applicable even to the expenditure incurred for earning income under section 28 of the Act; that the expenditure disallowed under the provisions of section 43B of the Act is allowable in the year of payment; that therefore, the ld. CIT(A) has correctly rejected the assessee's contention that the expenditure was incurred as a direct expenditure shown in the Contract Account, which was not disallowable;

and that therefore, the order of the ld. CIT(A) on this issue being on all fours, the same be upheld and the grievance sought to be raised by the assessee be rejected as being shorn of merit.

8. Having considered the rival contentions in the light of the material placed on record, we find the grievance of the assessee to be justified. It is not in dispute that the assessee Corporation is a wholly owned undertaking of the Government of Uttar Pradesh. It is also unchallenged that the assessee Corporation, i.e., 'Uttar Pradesh Rajkiya Nirman Nigam Limited' (U.P.R.N.N.) undertakes Government works only. It is patent that the income earned by the assessee Corporation is by way of centage allowed by the Government by issuing Government orders from time to time. It receives orders for projects on behalf of the Government and it is allowed a profit or centage on a fixed percentage, which varies, as per Government orders, from 10% to 15% of the work done by it. This centage or profit is allowed to enable the Corporation to meet its administrative and other expenditure. The assessee Corporation carries out two different types of work, i.e., deposit work and tender work. The deposit work, as opposed to the tender work, is at cost plus centage. The work of the assessee Corporation is regulated by its Working Manual. This Working Manual provides for recognition of the income of the assessee, as follows:-

> "Some of the Government Departments, Government Organizations and other clients agree to get their works executed on the basis of actual costs of material, labour, etc., incorporated in the actual works concerned, plus certain percentage of additional payment towards overheads and profits of U.P.R.N.N. Limited for executing these works."

9. Accordingly, as per para 59 of the Working Manual, a contract account is to be prepared, which is a statement showing resulting profit or loss accruing during a construction period, which has a direct relation to the works dealt with in the business, which ascertains the cost of profit of the assessee Corporation. Thus, the contract account is, basically, accounting of work done where the gross profit worked out is the centage allowed towards the overheads and profits of the assessee Corporation. In the contract account, all direct costs, as are to be borne by the clients of the Corporation, are debited and the value of the work done is credited by adding 15% towards centage charges. As such, in case any disallowance is to be made in the cost debited to the contract account, a corresponding deduction is also required to be made in the cost debited to the work done, as this is a case of contra entries only. This accounting procedure of the assessee Corporation stands accepted by the Department in assessment year 1990-91, as taken note of by the Tribunal in the assessee's case for assessment year 1991-92, in its order dated 30/11/2006, passed in ITA No.714/LKW/2002. For assessment year 2000-01, the Tribunal, vide its order dated 18/12/2018, passed in ITA No.382/LKW/2004, also took note that all the expenditures incurred by the assessee Corporation on material consumed is recovered from its clients along with 15% profit thereon and that so, even if there is inflation in the expenses in material consumed, the same is recovered along with 15% profit thereon, resulting in no loss of profit or loss to the Revenue in the form of tax. the ld. CIT(A) has confirmed the disallowance, holding that this disallowance was correctly made by invoking the provisions of section 43B of the Act. It remains undisputed that the labour cess is part of the contract account. That being so, the assessee is correct in contending that the addition, if any, is maintainable only in the hands of the client of the assessee Corporation

and not in the hands of the assessee. The provisions made for labour cess, do not stand debited to the profit & loss account and the profitability of the Corporation in the form of centage earned as gross profit, is not affected. The assessee Corporation is only a collecting agency for the purposes of the labour cess and deposit thereof with the Government account. Thus, the action of the ld. CIT(A) in confirming the addition for the provisions for labour cess, is reversed and the addition is deleted. The sole ground raised by the assessee in its appeal is allowed.

10. Now we will take up the appeal filed by the Department in ITA No.314/LKW/2017.

11. Ground Nos. 1 and 2 relate to the deletion of addition amounting to Rs.86,96,73,557/- under section 40(a)(ia) of the Act.

12. The brief facts of the issue under consideration are that the A.O made addition of Rs.86,96,73,557/- in the hands of the assessee under section 40(a)(ia) of the Act for non-deduction and deposit of tax with the Central Government within due date on the provisions of labour charges made by the assessee's various units in various districts of Uttar Pradesh.

13. Before the ld. CIT(A), the assessee submitted that these expenses are direct expenses incurred in earning centage from contract account from business activities under section 28 of the Act; that the amount of labour charges paid to various parties have been treated as part of the computation of income under section 28 of the Act; and that the assessee has shown contract work completed in the contract account for the year ended on 31/10/2010 and the payment made towards labour charges is a direct expenses, which is allowable under section 28 of the Act. It was further submitted that the provisions of

section 40(a)(ia) can be invoked for disallowances of claim for deduction made under sections 30 to 38 of the Act and not on the expenses, which is admissible under section 28 of the Act. The ld. CIT(A) deleted the addition, observing, as below:-

> *"5(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. At the outset I find that in the addition of Rs.92,95,51,686/- made by A.O, there is a totaling mistake and the correct amount is Rs.86,95,73,737/-. The issue involved is the disallowance made under section 40(a)(ia) of the Act by the AO on various expenses incurred by the appellant for which payment has been made without deduction of TDS. The appellant contends that disallowance is uncalled for as the expenditure incurred is part of the computation under section 28 of the Act and the section 40(a)(ia) of the Act can be resorted to only in case of expenses being incurred under section 30 to section 38 of the Act.*
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> *5(5)(i) The appellant carries on the business of construction for Government It receives orders for projects on behalf of the. Government and is allowed a profit or Centage of a fixed percentage which varies as per Government Orders from 10% to 15% of work done by it. This profit or Centage is allowed to enable it to meet its administrative and other expenditure. The appellant carries out two types of work i.e. deposit work, which is cost, plus centage and tender work. During the assessment.ear2010-2011 under consideration, the appellant has credited an amount of R 3504;45,59,061/- as deposit work and Rs.166,12,09,970/- as tender work to the Contract Account. All direct expenses have been debited to the Contact account. The gross profit worked out from the contract account, which is essentially the amount of centage allowed for work done and profit on tender work is transferred to the profit and loss account*

where all indirect expenses are debited to eventually work out the net profit of the appellant. The Contract account is basically a computation under section 28 of the Act.

5(5)(ii) The moot point is therefore that the labour expenses were part of direct expenses claimed in contract account and not indirect expenses in profit and loss a1count. In the contract account the appellant has shown labour charges of Rs.564,49,92,323/- out of which an amount of Rs.92,95,51,686/- (correct amount is Rs. 86,95,73,737/-) has been disallowed under section 40(a)(ia) of the Act for payment made without deduction of TDS. To ascertain the issue a reference may also be made to the working manual which provides for recognition of income of the appellant as under -

> *Some of the Government Departments, Government Organizations and other clients agree to get their works executed on the basis of actual costs of materials, labour etc., incorporated in the actual works concerned, plus certain percentage of additional payment towards overheads and profits of U.P R.N.N. Limited for executing these works.*

5(6)(i) This would show that contract account is basically accounting of work done where the gross profit worked out is the centage allowed towards overheads and profits of the appellant. The issue was also decided by the Hon'ble ITAT, Lucknow in the case of the appellant for the assessment year 1991-1992 in ITA No. 714/LUC/02 dated 30.11.2006 as under -

> *We have considered the rival submissions and have perused the record of the case. As per the Working Manual and Forms 1984, submitted by the Ld. Counsel as contained at Pages 191 to 200 of the Paper Book, it is noticed that the assessee's work can be broadly, divided into following three categories.*
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> *(a) Tender works (competitive or by negotiations).*

(b) Cost plus Centage Works

(c) Deposit works as per Uttar Pradsh Financial Hand Books and U.P.P.W.D. practice

In the present case, we are concerned with item (b) noted above which has been considered in Para 33 of the manual. This primarily describes what are the items of cost and how they are to be dealt with, the in Para 59, it is laid down that a contract account is to be prepared which is a statement showing the resulting profit or loss occurring during a construction period which has direct relations to the works dealt in the business, which ascertains gross profit. The Ld. Counsel has explained that in the contract account all direct cost as are to be borne by the client are debited and value of work done is credited by adding 15% towards Centage charges. Therefore, if any disallowance is to be made in the cost debited to the Contract account, then corresponding reduction is required to be made in the work done also, this being a case of contra entries only. The assessee's accounting procedure has been accepted by the Department in assessment year 1990-91 and therefore, there is no reason to adopt a different approach in other assessment years. In this view of the matter, we are of the opinion that as far as the disallowance of Rs.24,00,392/- is concerned, the same is not justified in the facts and circumstances of the case and therefore, in regard to this extent we confirm the findings of the Ld. C.I.T. (A). This ground is dismissed.

5(6)(ii) The said findings of the Hon'ble ITAT, Lucknow have been followed in the case of the appellant for the assessment year 2000-2001 in ITA No. 382/LUC/04 dated 18.12.2008 asunder —

"Against this, the Ld. A. R. submitted that similar issue had, arose before the Tribunal in Assessment Year 1991-92 which was decided by the Tribunal vide its order dated 30 11 2006 in

ITA No 714/LUC/02 wherein it is held that as per accounting procedure followed by the assessee and accepted by the Department in assessment year 1990-91, the direct cost are taken by the client which are debited and value of the work is credited by adding 15% as profit margin of the assessee. Thus, all the expenditure on material consumed is recovered from the clients along with 15% profit thereon. So even if there is any inflation in expenses in material consumed, the same is recovered along with 15% profit thereon from the clients hence, there is no loss of profit or no loss to the Revenue in the form of Tax. Since the Tribunal has already taken a view on this subject, the issue covered in favour of the Assessee."

5(6)(iii) In view of the aforesaid decisions and as discussed the expenses debited to the Contract account are direct expenses which cannot be said to be those claimed under section 30 to section 38 of the Act.

5(7)(i) A reference may now be made to provisions of section 40(a)(ia) of the Act which lays down as under -

40. Amounts not deductible.- Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

(a) in the case of any assessee-

(ía) any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on

or before the due date specified in sub-section (1) of section 139:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

(5(7)(ii) The provision specifically provides for disallowance of expenditure claimed under section 30 to section 38 of the Act where the expenditure is incurred without deduction of TDS The direct expenses claimed by the appellant in the Contract account are therefore not covered by disallowance under section 40(a)(ia) of the Act)

5(8) In Section 40(a)(ia) of the Act the AO is empowered to make deduction only in respect of the items of expenses covered by the provisions of Sections 30 to 38 of the Act and any items of expenditure allowable in respect of items of expenses covered by any section preceding or succeeding Sections 30t o 38 of the Act are not covered by the statutory disallowances envisaged under Section 40 of the Act the instant case the labour expenses disallowed by the AO represent direct costs incurred by the appellant to earn income from the business under Section 28 of the Act. Therefore, such allowable expenditure will not come under the purview of Section 40 of the Act. In other words, direct expenses incurred by the assessee to earn income which is assessable against revenue for the purpose of determining the profits earned under Section 28(1) of the Act are not disallowable under section 40(a)(ia) of the Act

5(8)(i) The said issue was considered by the Hon'ble ITAT, Delhi in the case of ITO Vs. Aahar Consumer Products Pvt. Limited in ITA No. ITA No.1354/DEL/2010 (10 Taxmann.com 181) as under-

Only when the claim of the assessee for deduction is u/s 32 to section 38, the provisions of Section 40(a) (ia) can be pressed into service to disallow such claims for deduction. At the cost of repetition, we may say that to invoke said provision of Section 40(a) (ia), first of all, the case should be made out by the department that the assessee is contemplating deduction u/s 32 to 38 on which tax is deductible and the assessee has not deducted tax at source. In our opinion, tax is not deductible and the assessee has not claimed any deduction u/s 32 to section 38.

5(8)(ii) A reference may also be made to the decision of Hon'ble ITAT, Hyderabad in case of M/S Teja Construction Vs ACIT 39 SOT 13 wherein it was laid down as under

Further, 'notwithstanding anything to the contrary in sections 30 to 38', with which the provisions of section 40 begin, take the items of expenses covered by the provisions of sections 30 to 38 alone within, the ambit of section 40, and any item of expenditure allowable under the provisions of the Act, preceding section 30, is not covered by the said statutory disallowances envisaged under section 40. It may also be observed that if an assessee claims any expenditure as necessary to earn the business income and, as such, the same is allowable under section 28 and not under section 37, because section 28 taxes profits of the business which can be worked out only after allowing expenditure, such expenditure goes out of the clutches of the disallowance in terms of the provisions of section 40. In this view of the matter, an assessee may claim all his expenditures except for those which are clearly covered by some other sections, e.g., section 30 covering rent, rates, taxes, insurance, etc., as allowable under section 28. It may be further observed that all the expenditure, just as labour charges in the instant case, which

represents direct costs and, therefore, adjustable against revenue for the purpose of determining the profit under section 28(i) do not come within the provisions of section 40(a)(ia).

As such, it may be observed that it is only the deductions referred to in sections 30 to 38 which would definitely fall for consideration of disallowance under section 40 and they cannot be claimed as deduction under section 28. This reasoning applies with equal force to the analogous provision of sections 43, 44AD, 44AE, 448, 44ABA, 44BBB, 44C and 44D and so on, which all relate to computation of business income and clearly start with a non obstante clause, which is similar to the one in section 40, but read ng 'Notwithstanding anything to the contrary in sections 28 to 43C. In this view of the matter, it may be observed that the provisions of section 40(a)(ia) are applicable only to items covered by section 30 to section 38 and not to section 28 and all the direct cost/expenditure covered by section 28 are beyond the scope of disallowance under section 40(a)(ia).

5(9) In view of the discussion above and on examination of the method of accounting followed by the appellant which has been accepted in earlier assessment years and applying the decision of Hon'ble ITAT, Lucknow in case of the appellant supra I find that the labour expenses are direct cost incurred for earning of centage which is income of the appellant under section 28 of the Act. The disallowance under section 40(a)(ia) of the Act cannot be resorted to as discussed on expenditure incurred to earn income which is assessable against revenue, for the purpose of determining the profits earned Under Section 28(1) of the Act. The disallowance of Rs.92,95,51,686/- (correct amount is Rs.86,95,73,737/-) made by the A.O under section 40(a)(ia) of the Act is deleted giving relief to the appellant."

14. The ld. D.R. placed reliance on the order of the A.O and submitted that the ld. CIT(A) was not justified in deleting the addition made by the A.O under section 40(a)(ia) of the Act.

15. The ld. A.R. of the assessee, on the other hand, submitted that in respect of Cost plus Centage Work, the Government Department/Govt. Organization etc. agreed to get their works executed on the basis of actual cost of material, labour etc., incorporating the actual work concerned plus certain percentage of additional payment towards the overhead and profits of the assessee Corporation for executing these works, which is defined in the assessee's Works Manual. Copy of the same is placed at pages 10 o 19 of the paper book. He further submitted that this issue has been considered by Lucknow Bench of the Tribunal in the assessee's own case for A.Y 1991-92 in ITA No.714/LUC/02, wherein, it has been categorically held that "therefore, if any disallowance is to be made in the cost debited to the Contract Account, then corresponding deduction is required to be made in the work done also, and this being a case of Contra Entry only. The assessee's accounting procedure has been accepted by the Department in the Assessment Year 1990-91 and therefore, there is no reason to adopt a different approach in other assessment years. In this view, of the matter, we are of the opinion that as far as the disallowance of Rs 24,00,392.00 is concerned, the same is not justified in the facts and circumstances of the case and therefore, in regard to this extent we confirm the finding of the Ld. C.I.T. (Appeals). This ground is dismissed". Copy of the order of the Tribunal is placed is at pages 32 to 37 of the paper book.

16. The ld. A.R. of the assessee further submitted that an identical issue has also been considered by the Lucknow Bench of the Tribunal in

ITA No 382/LUC/2004, in the assessee's case for A.Y 2000-01, wherein also, the Tribunal dismissed the appeal of the Revenue.

17. It was further submitted that there is no change in the method of accounting and the facts and circumstances during the year are the same as were in the earlier years; that moreover, the method of accounting being followed by the assessee has always been accepted by the Department; and that accordingly, as per the principle of consistency, a similar view may be taken in the present year.

18. Having considered the rival contentions in the light of the material placed on record, we find that the ld. CIT(A) has dealt with the issue in detail and placing reliance on the order of the Tribunal in the assessee's own case for assessment year 1991-92, he deleted the addition made by the A.O under section 40(a)(ia) of the Act. He has given a categorical finding that in the assessee's case the labour expenses disallowed by the A.O represent direct costs incurred by the assessee to earn income from the business under section 28 of the Act, therefore, such allowable expenditure will not come under the purview of section 40 of the Act

19. As per para 59 of the Working Manual, a contract account is to be prepared which is a statement showing resulting profit or loss accruing during a construction period, which has a direct relation to the works dealt with in the business, which ascertains the cost of profit of the assessee Corporation. Thus, the contract account is, basically, accounting of work done where the gross profit worked out is the centage allowed towards the overheads and profits of the assessee Corporation. In the contract account, all direct costs, as are to be borne by the clients of the Corporation, are debited and the value of the work done is credited by adding 15% towards centage charges. As such, in case any disallowance is to be made in the cost debited to the contract

account, a corresponding deduction is also required to be made in the cost debited to the work done, as this is a case of contra entries only. This accounting procedure of the assessee Corporation stands accepted by the Department in assessment year 1990-91, as taken note of by the Tribunal in the assessee's case for assessment year 1991-92, in its order dated 30/11/2006, passed in ITA No.714/LKW/2002. For assessment year 2000-01, the Tribunal, vide its order dated 18/12/2018, passed in ITA No.382/LKW/2004, also took note that all the expenditures incurred by the assessee Corporation on material consumed is recovered from its clients along with 15% profit thereon and that so, even if there is inflation in the expenses in material consumed, the same is recovered along with 15% profit thereon, resulting in no loss of profit or loss to the Revenue in the form of tax. the ld. CIT(A) has confirmed the disallowance, holding that this disallowance was correctly made by invoking the provisions of section 43B of the Act. It remains undisputed that the labour cess is part of the contract account. That being so, the assessee is correct in contending that the addition, if any, is maintainable only in the hands of the client of the assessee Corporation and not in the hands of the assessee. The provisions made for labour cess, do not stand debited to the profit & loss account and the profitability of the Corporation in the form of centage earned as gross profit, is not affected. The assessee Corporation is only a collecting agency for the purposes of the labour cess and deposit thereof with the Government account. Thus, the action of the ld. CIT(A) in confirming the addition for the provisions for labour cess, is reversed and the addition is deleted.

20. For assessment years 1991-92 and 2000-01, the above respective findings of the Tribunal were not with reference to the issue as to whether the ld. CIT(A) had correctly upheld the addition made by

the A.O by observing that no tax had been deducted at source by the assessee and deposited with the Central Government within the due date on the provisions of labour charges made by the assessee in its books.

21. The ld. CIT(A), while dealing with the issue at hand for the year under consideration, i.e., addition made on account of no TDS on the provisions of labour charges made by the assessee in its books, has placed reliance on the Delhi Tribunal decision in the case of 'ITO vs. Aahar Consumer Products Pvt. Limited', 10 Taxmann.com 181 (Delhi) and that of the Hyderabad Tribunal in the case of 'M/s Teja Construction vs. ACIT', 39 SOT 13 (Hyd). The Department has not been able to controvert these decisions of the Tribunal, which are directly on the issue. In 'Aahar Consumer Products Pvt. Limited' (supra), it has been held that it is only when the claim of the assessee for deduction is under the provisions of sections 30 to 38, that the provisions of section 40(a)(ia) of the Act can come into play. In 'M/s Teja Construction vs. ACIT' (supra), it has been held that it is only provisions of sections 30 to 38, which get cove ed within the ambit of section 40, and any expenditure allowable under any other section, preceding section 30 or succeeding section 38, is not covered by the provisions of section 40 of the Act, as is made clear by the non obstante clause with which section 40 begins. It has further been held that if an assessee claims an expenditure as necessary to earn its business income and, as such, the same is allowable under section 28 of the Act and not under section 37 of the Act, because section 28 taxes profits of the business, which can be worked out only after allowing the expenditure, such expenditure goes out of the clutches of the disallowance in terms of the provisions of section 40 of the Act; and that as such, the assessee may claim all his expenditures, except for those clearly covered by some other sections,

i.e., section 30, covering rent, rates, taxes, insurance, etc., as allowable under section 28 of the Act.

22. Section 40(a)(ia) of the Act, thus, is clearly not applicable to the facts of the present case, wherein, the claim of the assessee is that all the provisions made, represent labour charges, such provisions having been made by the assessee in its books of account, without debiting the profit & loss account. As settled in 'Aahar Consumer Products Pvt. Limited' (supra), in order to enable invoking the provisions of section 40(a)(ia) of the Act, the assessee should first be shown as contemplating deductions under sections 32 to 38, which provisions contained in the non obstante clause beginning section 40, attract disallowability to deductions in these provisions, on which tax is deductible and no TDS has been made by the assessee. Then, as settled in 'M/s Teja Construction vs. ACIT' (supra), all the expenditure, which represents direct costs and hence, is adjustable against the revenue for the purpose of determining profit under section 28(i) of the Act, does not come within the provisions of section 40(a)(ia) of the Act.

23. In view of the above, the ld. CIT(A) has correctly deleted the addition wrongly made. The 'labour charges' were only provisions made by the assessee in its books. The Contract Account containing these provisions had necessarily to be prepared by the assessee Corporation, in keeping with the requirement of its Working Manual. This contract account did not affect the profitability of the assessee. In fact, the profit & loss account of the assessee was never debited with the labour charges in question. The Contract Account merely reflected the resulting profit or loss accruing during a construction period, having a direct relation to the works dealt with by the assessee in its business and which ascertains the gross profit. This has duly been taken into consideration by the ld. CIT(A) and the Department has not been able

to successfully rebut the well reasoned finding of fact and law recorded by the ld. CIT(A).

24. Since the ld. CIT(A) has decided the issue in the right perspective, we do not find any reason to interfere with the order of the ld. CIT(A) on this issue. Accordingly, we confirm his order and reject ground Nos.1 and 2 of the Revenue.

25. Ground No.3 relates to deletion of addition of Rs.11,31,25,121/-.

26. The facts are that the assessee has shown credit balance of Rs. 11,31,25,121/- in client merge account in respect of many projects, which were completed more than 15 years ago. A show cause notice was issued by the A.O to show cause as to why the above credit balance of Rs.11,31,25,121/- should not be recognized as income from the completed projects. In reply, the assessee submitted that the debit balance or the credit balance pertains to the Government Departments and therefore, these amounts cannot be written off. The assessee also stated that when it gets confirmation/refund from the concerned Government Department, the assessee is bound to make payment/adjustment of the same in the books of account. Being not satisfied with the submissions of the assessee, the credit balance of Rs.11,31,25,121/- was treated as income from the completed projects of the assessee and added to its income.

27. Before the ld. CIT(A), the assessee filed detailed written submission. The ld. CIT(A) after considering the written submission of the assessee and the facts and circumstances of the case, deleted the addition observing, as below:-

> *"8(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the*

submissions of the appellant. The issue involved is the addition of long standing credits of Rs.11,31,25,121/- in the books of accounts of the appellant. I find that the AO has nowhere given any finding that the liability in respect of this credit balances have seized to exist. The income of the appellant as per accounting discussed in paragraphs above is the Centage and the credits aforesaid relate to work done in contract account in earlier years. Once the books of accounts are accepted and the contract account is not disturbed; there is no sustainable way in which he impugned addition can be sustained for the reason that these balances were old and unconfirmed. The AO has not issued a single inquiry letter under section 133(6) of the Act, or as the case may be, section 131 of the Act to verify the balances or the work done by the appellant in respect of which the credits were generated in the books of accounts. In view thereof the addition made for old balances existing in the books of account of Rs.11,31,25,121/- is deleted giving relief to the appellant."

28. Having considered the rival contentions in the light of the material placed on record, we do not find any infirmity in the order of the ld. CIT(A) on this issue. As observed by the ld. CIT(A), the A.O has nowhere given any finding that the liability in respect of the aforesaid credit balances has ceased to exist. Moreover, once the books of account of the assessee are accepted and the contract account is not disturbed, there is no justification to sustain the addition for the reason that these balances were old and unconfirmed. We, therefore, confirm the order of the ld. CIT(A) on this issue and reject ground No.3 of the Revenue.

29. Ground No.4 is against the order of the ld. CIT(A) directing the A.O to accept the revised computation of income.

30. The A.O, rejecting the computation of income filed by the assessee on 6/9/2013, wherein assessee had added back depreciation of Rs.8,10,79,044/- to the net profit in the computation, added Rs.2,42,57,570/- to the total income of the assessee.

31. Before the ld. CIT(A), the assessee filed written submission challenging the action of the A.O. The ld. CIT(A) set aside the order of the A.O on this issue and directed the A.O to accept the revised computation of income where the anomaly described by the AO has been corrected and the depreciation as per Income Tax Act has been claimed and depreciation as per Companies Act has been added to the income, observing, as below:

> *"9(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. I find that there was certain anomaly in the computation of income relating to the depreciation as per Companies Act being added to income and depreciation as per Income Tax Act being reduced. The depreciation as per Companies Act to be added to the income was Rs.8,10,79,044/- and depreciation allowable as per Income Tax Act was Rs.7,41,59,205/-. The appellant added an amount of Rs.5,68,21,474/- as against Rs.8,10,79,044/- which has resulted in addition of Rs.2,42,57,570/- being made to the income of the appellant.*
>
> *9(5) The rejection of revised computation filed by the appellant for the reason that the claim is not supported by revised return is in view of the reliance placed by the AO on the decision of Hon'ble Apex Court in the case of Goetze India Ltd Vs CIT (2006) 284 ITR 323. I find that the judgment of Supreme Court in Goetze (India) to the effect that no fresh claim can be made except by filing revised return is limited to the power of the AO and not an appellate authority. I find that the appellant has filed return of*

income showing total income of Rs.225,87,22,062/- and subsequently during the course of assessment proceedings the appellant filed revised computation of income showing total income of Rs.227,53,38,435/-. The AO has made the addition by relying on the computation of income filed with return of income and has rejected the revised computation by relying on the case of Goetze India. I find that it makes no sense to make additions to income shown at Rs.225,87,22,062/- of the nature described above and in paragraphs here in under and arrive at income of Rs.227,53,38,435/- when the appellant has itself accepted the incorrectness and shown higher income as per revised computation. The addition made by the AO though justified in case first computation is considered; is taken care of when revised computation of income filed by the appellant is accepted. In view thereof, the A.O is directed to accept the revised computation of income where the anomaly described by the AO has been corrected and the depreciation as per Income Tax Act has been claimed and depreciation as per Companies Act has been added to the income. The ground of appeal is therefore dismissed for statistical purposes whereas the additional ground of appeal is allowed for statistical purposes."

32. The ld. CIT(A) has set aside the order of the ld. CIT(A) on this issue and restored the matter to the file of the A.O with a direction to accept the revised computation of income where the anomaly described by the AO has been corrected and the depreciation as per Income Tax Act has been claimed and depreciation as per the Companies Act has been added to the income. Since the issue relating to allowability of depreciation has been restored to the file of the A.O to decide the same afresh after accepting the revised computation, we do not find any infirmity in the order of the ld. CIT(A), therefore, we confirm the order

of the ld. CIT(A) on this issue and reject ground No.4 of appeal of the Revenue.

33. Ground No.5 is against the order of the ld. CIT(A) directing the A.O to accept the revised computation of income wherein the assessee added back Rs.11,96,948/- on account of loss on sale of fixed asset.

34. On this issue also, the grievance of the Revenue is against the order of the ld. CIT(A) in directing the A.O to accept the revised computation of income where the anomaly described by the AO has been corrected and the loss on sale of assets has been added to the income. As observed by us in para 32 above, since the issue relating to allowability of depreciation has been restored to the file of the A.O to decide the same after accepting the revised computation, we do not find any infirmity in the order of the ld. CIT(A), therefore, we confirm the order of the ld. CIT(A) on this issue and reject ground No.5 of appeal of the Revenue.

35. Ground No 6 relates to the deletion of addition of Rs.23,54,235/- on account of prior period expenses.

36. The addition on account of prior period expenses made by the A.O was deleted by the ld. CIT(A), observing, as below:

> *"10(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. I find that the expenditure disallowed by the AO consists of Rs 19,01,616/- paid to M/s Dakshinanchal Vidyut Vitran Nigam Limited, Agra against the bill raised by the Electricity Distribution Division, Etawah and the balance amount of Rs. 4,52,619/- is on account of payment made to the M/s U.P. State Bridge Corporation Limited. The AO disallowed the expenses stating that these do not relate to the*

year under consideration whereas the appellant claims that the liability arose in the year under consideration. Alternatively, the appellant claims that the amount pertains to contract account and therefore in case the addition is made then simultaneously, the work in progress should be reduced by like amount.

10(5) I find that the appellant has clearly brought out the fact that the bills were raised by the Electricity department on 30.10.2009, which means that the liability has arisen in the current year and therefore the expenses are allowable in the assessment year under consideration. Notwithstanding, the claim of the appellant that any addition made will result in reduction of work in progress is justified as the income corresponding to the said expenses of Rs.23,54,235/- has already been accounted for in the contract account of earlier years. In this connection a reference may be made to the decision of Hon'ble ITAT, Lucknow in case of the appellant for the assessment year 1991-92 in ITA No 714/LUC/02 dated 30/11/2006, which has been followed in case of the appellant for the assessment year 2000-2001 in ITA No 382/LUC/04 dated 18/12/2008. While deciding a similar disallowance of prior period expenses the Hon'ble Court held that if any disallowance was to be made in the cost debited to the Contract account then corresponding reduction is required to be made in the work done also, this being a case of contra entries only. The decision of the Hon'ble Tribunal is discussed at length in paragraph 5(6) above. Relying on the decision supra and finding that the income corresponding to the expenditure of Rs.23,54,235/- has already been recognized in contract account of earlier years, the addition of Rs.23,54,235/- made by the A.O is deleted giving relief to the appellant."

37. As observed by the ld. CIT(A), we find that the liability arose in the year under consideration, as is evident from the bill raised by the Electricity Department on 30/10/2019. Moreover, as claimed by the

assessee, the amount pertains to the contract account and therefore, in case the addition is made, the equivalent amount is to be reduced from the work-in-progress. We, therefore, find no infirmity in the order of the ld. CIT(A) on this issue. Accordingly, we confirm his order on this issue and reject ground No.6 of the Revenue's appeal.

38. Ground Nos. 7 and 7.1 relate to the deletion of addition of Rs.39,46,18,444/- on account of interest income.

39. The A.O made the addition of Rs.39,46,18,444/- being interest on client fund as income of the assessee, without appreciating the Government Order that interest on client funds is to be added in client fund.

40. The ld. CIT(A) deleted the addition, observing, as below:-

> *"12(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. I find that the amount of Rs39,46,18,444/- shown in the balance sheet as interest accrued on deposits is the running balance of accrued interest on the funds of the clients of the appellant. This amount is inclusive of opening balance not received during the year as well as the interest accrued on the assessee's own funds, which have already been assessed to tax. The appellant undertakes construction work against advances received from the clients. Expenses are met by withdrawing the funds from the bank accounts wherein the funds were deposited. These are running accounts and the balance left in the bank account earns interest. The clients also keep margin money with the appellant in the form of fixed deposits which earns interest. The appellant maintains its books of accounts on mercantile basis and it makes provisions of interest on accrual basis. The appellant credits such interest to the respective client's*

account in view of the Government Order No. A-1-FA-11/386/1976 dated 11.04.1976.

12(5) In view of my examination, I find that the interest accrued on deposits has been credited to the respective client account. The interest earned by the appellant on unutilized funds is therefore credited to the respective accounts and is income of the concerned client and not the appellant. The GO dated 11.04.1976 referred above supports the contention of the appellant. The addition of Rs.39,46,18,444/- made by the A.O on account of interest accrued on deposits is deleted giving relief to the appellant."

41. Having considered the rival submissions and perusal of record, we find that the amount of Rs.39,46,18,444/- shown in the balance sheet as interest accrued on deposits was the running balance of the accrued interest on the funds of the clients of the assessee. The assessee maintains its books of account on mercantile basis and it makes provision of interest on accrual basis. The assessee also credits such interest to the respective clients' accounts as per Government Order dated 11/4/1076 (supra). The ld. CIT(A) has rightly observed that the interest earned by the assessee on unutilized fund is credited to the respective accounts and are the income of the concerned clients and not of the assessee. We do not find any infirmity in the well reasoned order of the ld. CIT(A) on this issue. We accordingly confirm his order on this issue and reject ground Nos.7 & 7.1 of the Revenue.

42. Ground No.8 relates to the deletion of addition of Rs.19,27,197/- on account of expenses relating to purchase of material.

43. The brief facts are that the assessee claimed expenses relating to purchase of material amounting to Rs.19,27,197/- which relates to financial year 2008-09. On a query from the A.O, it was explained that

some materials were delivered in the month of March, 2009 but all the bills aggregating to Rs.19,27,197/- were raised by the supplier only on 9/4/2009 and on this date entry was passed in the books of the assessee and accordingly liability was also treated against the supplier of the material. Being not satisfied with the reply of the assessee, the A.O disallowed the expenses of Rs.19,17,197/- and added to the income of the assessee, observing that the assessee should book the purchase in the same year in which the goods were received by him irrespective of the fact that the bills against the above purchases have been raised by the party in the next financial year.

44. Aggrieved, the assessee preferred an appeal before the ld. CIT(A) and filed written submission. The ld. CIT(A), after considering the submissions of the assessee and the facts and circumstances of the case, held, as below:

> *16(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. I find that the expenditure disallowed by the AO consists of fabricated material used in the newly constructed District Jail, Lucknow purchased from M/s Sree Balaji Enterprises for Rs.19,27,197/-. The bill was raised by the party in April 2009. The AO disallowed the expenses stating that these do not relate to the year under consideration whereas the appellant claims that the liability arose in the year under consideration. Alternatively, the appellant claims that the amount pertains to contract account and therefore in case the addition is made then simultaneously, the work in progress should be reduced by like amount:*
>
> *"16(5) I find that the expenditure relates to cost of construction debited to the contract account and any addition made will result in reduction of work in progress by like amount. In this connection*

a reference may be made to the decision of Hon'ble ITAT, Lucknow in case of the appellant for the assessment year 1991-1992 in ITA No. 714/LUC/02 dated 30.11.2006, which has been followed in case of the appellant for the assessment year 2000-2001 in ITA No. 382/LUC/04 dated 18.12.2008. While deciding a similar disallowance of prior period expenses the Hon'ble Court held that if any disallowance was to be made in the cost debited to the Contract account, then corresponding reduction is required to be made in the work done also, this being a case of contra entries only. The decision of the Hon'ble Tribunal is discussed at length in paragraph 5(6) above. Relying on the decision supra and finding that the income corresponding to the expenditure of Rs.19,27,197/- has already been recognized in contract account of earlier years; the addition of Rs 19,27,197/- made by the A.O is deleted giving relief to the appellant."

45. We find that the ld. CIT(A) has deleted the addition placing reliance on the decisions of the Tribunal in the assessee's own case for assessment years 1991-92 and 2000-01 wherein identical issue has come up for considerat on before the Tribunal and the Tribunal held that if any disallowance was to be made in the cost debited to the contract account, then corresponding reduction is required to be made in the work done also being a case of contra entry. Since the ld. CIT(A) has deleted the addition following the orders of the Tribunal in the assessee's own case in preceding years, we do not find any justification to interfere with the order of the ld. CIT(A), who has rightly deleted the addition placing reliance on the orders of the Tribunal. We accordingly confirm his order on this issue and reject ground No.8 taken by the Revenue.

46. Ground No.9 relates to the deletion of addition of Rs.9,43,41,057/- on account of 'income wrongly credited in previous year written back'.

47. The brief facts are that the assessee debited an amount of Rs.9,43,41,057/- on account of income wrongly credited in previous year as 'written back' in the profit and loss account. The assessee was show caused to explain. The assessee submitted that out of total amount of Rs. 9,43,41,057/-, an amount of Rs.8,50,22,225/- pertains to 500 Bedded Hospital, Basti and this was offered to tax in F.Y. 2007-08, but in F.Y. 2008-09, the CAG directed the assessee to make reversal of the amount of Rs.5,50,22,225/- because of the fact that this amount was wrongly recognized as income in the F.Y. 2007-08; that as the books of accounts for F.Y. 2008-09 had already been finalized, the reversal was made in the current year; that the balance amount of Rs.93,18,832/- pertains to extra centage stood already offered to tax by the assessee in F.Y. 2008-09. Being not satisfied with explanation furnished by the assessee, the A.O added the same to the income of the assessee.

48. Before the ld. CIT(A), the assessee filed written submission. It was the submission of the assessee that the income of Rs.8,50,22,225/- has already been offered to tax in the financial year 2007-08 and the tax has been paid thereon; that as per the CAG directions, no profit on the said project is to be recognized until and unless it is completed and bills are finalized and hence, the reversal was made; that in the year under consideration, no income has been accrued to the assessee in light of AS-7 and finding by the CAG, therefore, in view of the above facts and in light of the directions issued by the CAG, no adverse inference is to be drawn. It was further submitted that the balance amount of Rs.93,18,832/- pertains to extract centage stood already offered to tax by the assessee in the financial year 2008-09. Being satisfied with the submissions of the assessee and considering the facts and the

circumstances of the case, the ld. CIT(A) deleted the addition, observing, as below:-

> *"15(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. I find that the breakup of the amount of Rs.9,43,41,057/- is as under:*
>
> | | |
> |---|---|
> | *ESIC Work Hyderabad* | *Rs.31,97,759/-* |
> | *R/M ESI Bangalore* | *Rs.49,64,031/-* |
> | *500 Bedded Hospital Work-(E) Basti* | *Rs.2,13,04,810/-* |
> | *500 Bedded Hospital Basti* | *Rs 6,37,17,415/-* |
> | *IO Corporation RPP Rampur* | *Rs 11,26,093/-* |
> | *Circuit House Saharanpur* | *Rs.25,481/-* |
> | *Staff Quarters Okhala* | *Rs.5,467/-* |
> | | *Rs. 9,43,41,057/-* |
>
> *I find that centage on the work of Rs.2,13,04,810/- and Rs.6,37,17,415/- has already been assessed to tax in the assessment year 2008-2009. The reversal entry has been passed as the CAG opined that the cost of construction was wrongly recognized in the assessment year 2008-2009. The remaining amount of Rs.93,18,832/- is the excess centage shown in the assessment year 2008-2009. The AO has not given any finding that the centage thereon has not been offered to tax in the assessment year 2008-2009. On the contrary the addition has been made for the sole reason that the objection of CAG was not accepted at the first instant which was against commercial expediency. I find that once the centage has been offered to tax, there is no reason to disturb the contract account for the year under consideration by making a fictitious addition of Rs.9,43,41,057/- as the income offered to tax in assessment year 2008-2009. The addition of Rs.9,43,41,057/- made by the A.O is deleted giving relief to the appellant."*

49. Having heard the rival contentions and after considering the materials on record, we find that the ld. CIT(A) has given a concrete finding taking into consideration all the facts and circumstances of the case. We find, as observed by the ld. CIT(A), that centage on the work of Rs.2,13,04,810/- and Rs.6,37,17,415/- has already been assessed to tax in the assessment year 2008-2009; that the reversal entry has been passed, as the CAG opined that the cost of construction was wrongly recognized in the assessment year 2008-2009; and that the remaining amount of Rs.93,18,832/- is the excess centage shown in the assessment year 2008-2009. Once the centage has been offered to tax, there is no reason to disturb the contract account for the year under consideration by making addition of Rs.9,43,41,057/-, as the income was offered to tax in assessment year 2008-2009. Therefore, no interference is called for in the order of the ld. CIT(A) on this issue. Accordingly, we uphold the order of the ld. CIT(A) on this issue and reject ground No.9 of the Revenue's appeal.

50. Ground Nos 10 and 10.1 relate to the deletion of addition of Rs.26,95,93,097/- on account of interest income earned on clients unutilized funds.

51. The brief facts are that the assessee was receiving advance from the clients against the projects and the advances so received were used in a stage manner. Therefore, the same were fixed deposited by the assessee and earned interest thereon. The amount of Rs.26,95,93,097/-, earned by the assessee on the clients unrealized fund, was added to the total income of the assessee, treating the same as income of the assessee.

52. The ld. CIT(A) deleted the addition, observing, as below:

"17(4) I have examined the facts and circumstances of the case. I have examined the findings of the Assessing Officer and the submissions of the appellant. I find that the appellant has filed details of clients to whom the interest income of Rs.26,95,93,097/- was credited at Page 514 to page 546 of the Paper Book. The amount of Rs.26,95,93,097/- has however been recognized as income in the subsequent assessment year 2011-2012 and the same is included in that year under the head "Prior Period Adjustments Rs.27,18,34,136" in the Profit and Loss account. In case the amount is considered as income in Assessment Year 2011-2012 a corresponding reduction will have to be made in the subsequent year and therefore; the addition is revenue neutral as the amount stands offered to tax in Assessment Year 2011-012. Accordingly the addition of Rs.26,95,93,097/- is deleted giving relief to the appellant for the sole reason that tax has been paid on the said amount in subsequent assessment year."

53. The ld. D.R. submitted that the interest accrued on FDRs of clients' fund is the income of the assessee, as the assessee is claiming TDS in respect of these FDRs, therefore, interest income of Rs.26,95,93,097/- earned on clients' unutilized fund was the income of the assessee and the same has rightly been added to the income of the assessee by the A.O. He placed reliance upon the order of the A.O on this issue.

54. The ld. A.R. of the assessee submitted that the interest on Client unutilized Fund of Rs.26,95,93,097/- has been added in the Audited Balance Sheet of A. Y. 2011-12 under the head "Prior Period Adjustment' and while computing the taxable income of A. Y. 2011-12, the same has been deducted. In support of his submission, the ld. A.R. of the assessee has invited our attention to the copy of Computation Chart of A. Y. 2011-12, which is placed at page 138 of the paper book

wherein it is shown as deduction. The details of interest on client fund received during the year, is placed at pages 98 to 131 of the paper book. It was further submitted that interest earned on F.D.R.'s belongs to Clients and it has duly been credited in the respective accounts of the clients, therefore, no addition should be made on this issue.

55. Having heard the rival contentions and considering the material placed on record, we find that the aforesaid amount of Rs.26,95,93,097/- has been shown as 'prior period adjustment' by the assessee in its profit & loss account for assessment year 2011-12. A perusal of the Income Computation Statement of the assessee for assessment year 2011-12 shows the amount of Rs 26,95,93,097/- in the profit & loss account. Since the amount received by the assessee as interest on FDRs on the funds received as advance from the clients, has duly been credited in the respective accounts of the clients, the ld. CIT(A) was justified in deleting the addition made by the A.O. We accordingly confirm the order of the ld. CIT(A) on this issue and reject grounds No.10 and 10.1 of the Revenue.

56. Ground No.11 relates to the deletion of addition of Rs.1,38,77,000/

57. The A.O had made the additions of Rs.23,88,000/-, Rs.2,89,36,103/- and Rs.1,38,77,000/- on the basis of the comments of the statutory auditors, M/s Vinay Kumar & Company, who have commented that the said amounts were part of the work done during the year, whereas the submission of the assessee was that the same have already been accounted for in assessment year 2011-12.

58. Aggrieved, the assessee preferred appeal before the ld. CIT(A). Since the A.O had made additions of the amount of Rs.23,88,000/- and Rs.2,89,103/- in the current year, the assessee had

reduced the income by Rs.23,88,000/- and Rs.2,89,103/- in the computation of income for the assessment year 2011-12, therefore, the ld. CIT(A) confirmed the additions of Rs.23,88,000/- and Rs.2,89,103/-, but deleted the addition of Rs.1,38,77,000/-, as the same has been shown as income in the subsequent year.

59. We find no error in the order of the ld. CIT(A) in deleting the addition of Rs.1,38,77,000/-, as the same has been shown by the assessee as income in the subsequent year. We, therefore, confirm the order of the ld. CIT(A) on this issue and reject ground No.12 of the Revenue.

60. In the result, the appeal of the assessee is allowed and the appeal of the Department is dismissed.

Order pronounced in the open Court on 17/05/2019.

Sd/-	Sd/-
[T. S. KAPOOR]	[A. D. JAIN]
ACCOUNTANT MEMBER	VICE PRESIDENT

DATED:17/05/2019

JJ:0105

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar