IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER&
Ms. MADHUMITA ROY, JUDICIAL MEMBER

I.T.A. No. 2855/Ahd/2015
(Assessment Years: 2010-11)

Gujarat Energy Transmission Corpn. Ltd., Sardar Patel Vidyut Bhavan, Race Course Circle, Baroda-390007	Vs.	DCIT Circle-1(1), Baroda
[PAN No. AABCG4029R]		
(**Appellant**)	..	(**Respondent**)

I.T. A. No. 2790/Ahd/2015
(Assessment Year: 2010-11)

DCIT Circle-1(1)(1), Vadodara	Vs.	Gujarat Energy Transmission Corp. Ltd., Sardar Patel Vidyut Bhavan, Race Course Circle, Vadodara-390007
[PAN No. AABCG4029R]		
(**Appellant**)	..	(**Respondent**)

I.T.A. No. 2856/Ahd/2015
(Assessment Year: 2011-12)

Gujarat Energy Transmission Cropn. Ltd., Sardar Patel Vidyut Bhavan, Race Course Circle, Baroda-390007	Vs.	DCIT Circle-1(1), Baroda
[PAN No. AABCG4029R]		
(**Appellant**)	..	(**Respondent**)

I.T.A. No. 2791/Ahd/2015
(Assessment Year: 2011-12)

DCIT Circle-1(1)(1), Vadodara	Vs.	Gujarat Energy Transmission Corpn. Ltd., Sardar Patel Vidyut Bhavan, Race Course Circle, Vadodara-390007
[PAN No. AABCG4029R]		
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri M. K. Patel, Advocate
Respondent by :	Shri A. P. Singh, CIT DR

Date of Hearing	28.06.2022
Date of Pronouncement	27.07.2022

O R D E R

PER MADHUMITA ROY, JM:

The bunch of appeals preferred by the assessee and the Revenue are directed against the separate orders dated 31.07.2015 & 17.07.2015 passed by the Ld. CIT(A)-1, Vadodara arising out of the orders passed by the DCIT, Circle-1(1), Baroda dated 13.02.2013 and 05.02.2014 under Section 143(3) of the Income Tax Act, 1961(hereinafter referred to as "the Act") for A.Ys. 2010-11 & 2011-12 respectively.

ITA No. 2855/Ahd/2015(A.Y. 2010-11):-

2. The Grounds of appeal raised by the assessee are as under:

"1.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts has confirmed the additions of Rs. 36,52,03,600/- on account of Capital Grants & Subsidies and Consumers' Contribution on the ground that the appellant should transfer 15% of the total Grants/subsidies/consumer contribution received during the year as against 10% offered by the appellant.

2.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the action of Assessing Officer in treating the income shown under the head "Other Income" in the Profit & loss Account amounting to Rs. 1,79,18,000/- as Income from Other Sources as against the Business Income and thereby disallowing the claim of set off of business loss of earlier years against the said income.

3.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts has confirmed the disallowance of prior period expenses amounting to Rs. 8,79,06,000/- without appreciating the fact that such expenditure crystallized during the year and that the same has never been claimed in earlier years.

4.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has dismissed the ground relating to the initiation of penalty proceedings under section 271(1)(c) of the I T Act.

5.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the charging of interest under section 234B, 234C and 234D of the Income Tax Act, 1961.

6.0 The appellant craves leave to add to, alter, delete or modify any of the grounds of appeal either before or at the time of hearing of this appeal."

3. The additional grounds raised by the assessee are as under:

"1. The ld. Commissioner of Income Tax (Appeals)-I, Vadodara ["the CIT(A)"] as well as the ld. Deputy Commissioner of Income Tax, Circle 1(1), Vadodara ("the AO") erred in fact and in law in not properly appreciating the provisions of Explanation 10 to section 43(1).

2. The ld. CIT(A) as well as the ld. AO erred in fact and in law in making addition of a much higher amount than the amount to be added as per Explanation 10 to section 43(1) and therefore incorrectly making addition of Rs. 32,10,76,556. The working of the same is attached herewith.

3. The learned AO may kingly be directed to consider the claim of additional depreciation available to the Appellant as per law.

4. The learned AO may kindly be directed to not make any addition in the year under consideration if amount to be added as per Explanation 10 to section 43(1) is offered to tax in the subsequent years."

4. **Ground No.1:-** Confirming addition of 15% of Capital Grants as against 10% offered by assessee is under challenged before us.

5. During the course of assessment proceeding upon verification of the balance sheet it was found that the opening balance of capital grant in the reserve and surplus shown at Rs. 24737.93 lakhs and closing balance thereof was shown as Rs. 48032.37 lakhs for the year under consideration. The Ld. AO was of the view that in the event that grant is in the nature of capital it should have been deducted from the capital fix assets or otherwise if it is revenue in nature then it has to be revenue income in the hands of the assessee. The assessee was asked to explain the nature of grant and treatment of capital asset as per Explanation 10 to Section 43(1) of the Act whereupon the said assessee submitted as follows:

"It is submitted that considering the importance of Power Sector and the ever increasing demand for electricity, the Central as well State Government had decided to improve various functions associated with the generation, transmission and distribution of electricity. Further since the PSUs connected with power sector were making consistent losses, the Government had decided to, introduce reforms in the direction of State PSUs. Accordingly, under the provisions of Gujarat Electricity Industry (Reorganization & Regulation) Act, 2003, the erstwhile GEB was unbundled into seven companies. For the purpose a Financial Restructuring Plan (FRP) was approved by the Govt., of, Gujarat and approval was accorded to provide some financial/capital support to GUVNL.

It is submitted that such grant is being given to GUVNL in terms of the Power Reforms for the overall development of the Power Sector. Such grant was not granted to actually meet the cost of assets. It that the Government gives the Grants to the Holding Company GUVNL and then and it is allocated to the assessee company, one of the subsidiary companies. Thus the assessee is not entitled to an amount beyond a certain limit even if it spent large amount on purchase of Fixed Assets. Further the Grant is not with reference to any particular fixed asset.
From the above, it is clear that the subsidies/grants received by us are absolutely capital receipts as the same have been received for specific projects. Since the benefits from the development of the same is accrued to the company over a longer period of time, the company is being writing back to 10% of the year-end balance every year and the same is shown as income as per the Accounting Policy regularly followed by the Company."

Relying upon the ratio set in the earlier Assessment Year the Ld. AO computed 15% out of the total grant in the year end balance of Rs. 59774.44 lakhs and worked out to Rs. 8966.166 lakhs, which according to him, to be transferred to the total income of the assessee. Since the assessee has already transferred an amount of Rs. 5314.13 lakhs, therefore, the remaining amount of Rs. 3652.036 lakhs has been disallowed and added to the total income of the assessee which was, in turn, confirmed by the First Appellate Authority. Hence, the instant appeal before us.

6. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee submitted before us that the Coordinate Bench in the identical ground in the matter of Gujarat Energy Transmission Corpn. Ltd., Baroda in ITA No. 3441/Ahd/2015 for A.Y. 2012-13 set-aside the issue to the file of the

Ld. AO for re-adjudication of the same to pass order upon verification of the proportionate amount of grant relating to different assets and to pass orders. On this aspect, he has drawn our attention to Page 2 of the Paper Book filed before us wherein the order cited above passed by the Coordinate Bench.

7. On the other hand, the Ld. D.R. further has relied upon the order passed by the authorities below.

8. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record.

9. We find that on the identical issue as submitted the Ld. A.R. in ITA No. 3441/Ahd/2015 for A.Y. 2012-13 the Coordinate Bench has been pleased to set-aside the issue to the file of the Ld. AO for adjudication afresh for verifying the proportionate amount of grant relevant to different assets and upon apply the actual rate of depreciation relates to those assets. The relevant observation of the Coordinate Bench is as follows:

> *"4. During the course of assessment, the Assessing Officer noticed that assessee has shown deferred government grant subsidies amounting to Rs. 81,113.31 lacs as on 01-04-2011 and Rs. 96,653.59 lacs at the end of the year as on 31st March, 2012 and transferred an amount of Rs. 12868.89 lacs to the P & L account. However, the Assessing Officer was of the view that in the earlier years, the assessee has transferred to the P & L account 15% of the total grant yearend balance therefore it was asked to explain why not 15% of the total grant yearend balance amount should be transferred to the total income. The assessee explained that the Government disburse the financial assistance in the form of Government grants and the benefit from the same is accrued to the assessee for over a long period of time therefore the amount is written back every year @ 11.75% of the yearend balance and the same was shown as income as per the accounting policy of the company. It was further submitted that up to financial year 2011-12 the assessee company has written back such amount as income @ 10% of the yearend balance. The Assessing Officer has not accepted the submission of the assessee and stated that the subsidy grant received from the state government was in the nature of capital grant and it should have been reduced from the capital asset as per explanation 10 of section 43(1) of the Act. The Assessing Officer has further stated that the government of Gujarat provide capital grant to GUVNL and GUVNL further passes the grant to its subsidiary i.e. assessee company which was involved in transmission of power and*

stated that in the case of M/s. Dakshin Gujarat Vij Co. Ltd. the issue has been confirmed by the ld. CIT(A) @ 15%. grant to offer for the P & L A/c. out of every yearend balance. The detailed break-up of the balance government grant/subsidy available to the assessee company was given at page no. 7 of the assessment order totaling to the amount of Rs. 1,03,081.53 lacs out of which the assessee has taken to profit and loss account grant amounting to Rs. 12,868.89 lacs. However, the Assessing Officer has computed the disallowance at 15% of the total grant yearend balance of Rs. 1,03,081.53 lacs which worked out at Rs. 15,462.22 lacs. Accordingly, the remaining amount of Rs. 25,93,63,950/- was added back to the income of the assessee.

5. Aggrieved assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee by referring that similar addition was upheld by his predecessor in the case of the assessee for assessment year 2009-10.

6. During the course of appellate proceedings before us, the ld. counsel has contended that similar issue arised in assessee's own case for assessment year 2008-09 and the Hon'ble ITAT Ahmedabad vide ITA No. 704/Ahd/2012 for assessment year 2008-09 has remanded the matter back to the file of Assessing Officer directing him to work out the disallowance by taking the rate of depreciation applicable on various assets financed through impugned capital grants. In this regard, the ld. counsel has further referred the decision of Co-ordinate Bench of the ITAT in the case of assessee itself for assessment year 2009-10 vide ITA No. 652/Ahd/2013 wherein on the basis of aforesaid decision of the ITAT for assessment year 2008-09 the matter was restored to the file of the Assessing Officer. The ld. Departmental Representative was fair enough not to controvert these undisputed facts reported by the learned counsel.

7. We have gone through the decision of Co-ordinate Bench of the ITAT vide ITA No. 652/Ahd/2013 for assessment year 2009-10 wherein after referring the decision of Co-ordinate Bench of the ITAT vide ITA No. 704/Ahd/2012 for assessment year 2008-09 the issue was restored to the file of Assessing Officer for re-adjudication after verification of the proportionate amount of grant relating to the different assets and upon applying the actual rate of depreciation relate to those assets. The relevant part of the decision of the Co-ordinate Bench of the ITAT is reproduced as under:-

> *"12. **Ground No.2** The assessee has challenged the confirmation of addition of Rs.24,17,88,400/- on account of Capital Grants & Subsidies and Consumers' Contribution on the ground that the appellant should transfer 15% of the total Grants/subsidies/consumer contribution received during the year as against 10% offered by the appellant.*
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> *13. The Learned AO finalized the issue by making an addition of Rs.24,17,88,400/- which was, in turn, confirmed by the Learned CIT(A) and added to the total income of the assessee. While confirming the addition, the Learned CIT(A) observed as follows:*

"6.3 I have considered the submissions. It has been accepted by the appellant that the grants were for capital purpose and for capital projects specified by the Government. In Schedule-3 of the printed balance sheet as on 31.3.2009, it is clearly mentioned that grants were towards cost of capital assets. Appellant's contention that the grants were not actually for meeting cost of assets is therefore not at all tenable. After insertion of Explanation 10 below section 43(1) by the Finance (No.2) Act, 1998 w.e.f. 1.4.1999, decisions relied upon by the appellant in the case of P. 3. Chemicals etc. are no longer applicable and cost of assets met directly or indirectly by the Central Government or State Government in the form of subsidy or grant or reimbursement (by whatever name called) is not to be included in the "actual cost of asset" to the assessee. Accordingly, depreciation is to be allowed only after making necessary adjustment in "written down value"/"actual cost" of block of assets in accordance with Explanation 10 below section 43(1). In the case of Dakshin Gujarat Vij Co. Ltd. for A.Y.2006-07 referred to by the Assessing Officer, CIT(A) distinguished the treatment to be meted out to revenue grants and capital grants and held that revenue grants are to be taxed in entirety in the year of receipt and capital grant towards assets are to be reduced from "actual cost" of assets as per Explanation 10 below section 43(1). In the case of Dakshin Gujarat Vij Co. Ltd., after noting that grants were only towards cost of capital assets, CIT(A) had held that such grants ought to have been reduced from the cost of capital assets and by not doing so, extra depreciation @ 15% of grants had been claimed. Since 10% of the grants had already been offered as income by the assessee, in the decision in the case of Dakshin Gujarat Vij Co. Ltd., CIT(A) had directed addition to be made after reducing income already offered from 15% of the grants. The AO has made addition in the present case as per this appellate order. Hence following the same, the addition made by the AO is upheld and this ground of appeal is dismissed. "

However, at the vary onset of the proceeding, the Learned AR has taken us to the order passed by the Co-ordinate Bench in ITA No.704/Ahd/2012 for A.Y. 2008-09 in assessee's own case where we find that the issue has been set aside to the file of the Learned AO for adjudication afresh after verifying proportionate amount of grant relating to different asset. The Learned AR prayed for similar relief. The argument advanced by the Learned AR has been failed to be contradicted by the Learned DR. We find following observation was made by the Hon'ble Co-ordinate Bench while granting relief to the assessee:

"15. The ground no. 3 of the appeal of the assessee is directed against the order of the CIT(A) in confirming the action of the AO in transferring 15% of the capital grants as income although the disallowance made under this head has been restricted to

Rs.18,93,11,850/- as against the disallowance of Rs.30,97,61,800/- made by the AO.

16. The brief facts of the case are that on verification of subsidies and grants, the AO observed that the assessee has shown deferred government grants, subsidies, contribution at Rs.7305.70 lakhs as on 1.4.2007 and the assessee had shown Rs. 15941.67 lakhs at the end of the year i.e. as on 31.3.2008. On show cause by the AO to explain the treatment in accounts of the subsidy, grants the assessee stated that during the year capital grant received from Government of Gujarat and other. The assessee submitted that in order to improve various functions associated with the generation, transmission and distribution of electricity, and also because the PSUs connected with power section were making consistent losses, the Government decided to introduce reforms in the direction of State PSUs. Accordingly, under the provision of Gujarat Electricity Industrial (Reorgnisation & Regulation) Act, 2000, the erstwhile GEB was split into seven companies, for the purpose of financial restructuring plan, and the approval was accorded to provide some financial/capital support to GUVNL. The grant was given in terms of the power reforms for the overall development of the power sector. Such grant was not granted to actually meet the cost of assets. Further, the grant was given to the holding company, GUVNL and then it was allocated to the assessee company, one of the subsidiary companies. The assessee was not entitled to an amount beyond a certain limit, even if it is spent large amount on purchase of fixed assets. Further, the grant was not with reference to any particular fixed assets. It was further submitted that the resolution sanctioning the grant no where indicated that the grant was meant to offset the cost of the capital assets purchased by the company. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of CIT Vs. P.J. Chemicals Ltd., 121 CTR 201, wherein the decision of the Gujarat High Court in the case of CIT Grace Paper Industries P. Ltd., 83 CTR 1, which was affirmed by the Hon'ble Supreme Court by observing that the amount of subsidies and grants received by the assessee cannot be reduced from the cost of assets. It was further submitted that the subsidy received under scheme cannot be reduced from the actual cost of the assets by applying the provisions of section 43(1) of the Income Tax Act. The AO did not accept the submission of the assessee and held that the submission of the assessee that the grant was not capital in nature, is factually incorrect, and from the resolution, it was clear that the grant received from the State Government was in the nature of capital grant and it should have been reduced from the capital assets. The decisions quoted by the assessee are not applicable after insertion of Explanation 10 of section 43(1) of the Act, as they pertained to earlier years prior to insertion of Explanation 10 of section 43(1) of the Act. After insertion of Explanation 10 of section 43(1) of the Act, the position of law was very clear. Since the assessee failed to reduce the capital grant against the cost of capital assets, and claimed excess depreciation, which was disallowed and worked out at 15% of the capital assets.

17. On appeal, the CIT(A) held that in assessee's case, 10% of grant under three heads namely "Subsidy towards cost of capital assets", "Grants towards cost of capital assets" and "Consumer contribution for capital assets" i.e. the grants appearing in Schedule -3 of the balance sheet as on 31.3.2008 were offered for tax. The amount of grant on which 10% was calculated was on the opening balance of grants ofRs.73,05,70,492/-, and the grants received during the year was Rs.103,56,34,2267-, aggregating to Rs. 176,62,04,718/-. As these grants were towards cost of capital assets, 15% of the same should have been reduced from the depreciation claimed on account of making adjustment in the 'actual cost' of assts as per Explanation 10 below section 43(1). Since the assessee has already offered for tax, 10% of the opening balance of grants plus grants received during the year under these three heads of Schedule-3 grants, such amount offered for tax was to be reduced from the excess depreciation to be disallowed at the rate of 15% of Rs.176,62,04,718/- i.e. Rs.26,49,30,708/-. The net disallowance on this count worked out Rs.26,49,30,7087- minus Rs.17,20,37,655/-, the amount already offered for taxation i.e. Rs.9,28,93,053/-. Since no portion of grant of Rs.6427.94 lakhs being capital grant for capital support appearing in Schedule-2 of the balance sheet as on 31.3.2008 was offered as income nor it was reduced from the cost of assets, 15% of the same i.e. Rs.964.191 lakh needed to be disallowed as excess depreciation claimed in respect of the same. The total disallowance towards excess depreciation, therefore, worked out to Rs.9.289 crores plus Rs.9.641 crores i.e. Rs.18.93 crores. Thus, instead of net addition of Rs.30,97,61,800/- made by the AO, addition of Rs. 18.93 crore was directed to be made on this count.

18. Before us, the AR of the assessee argued that uniform rate of 15% cannot be applied for making disallowance. He submitted that the grant should be apportioned according to the value of the asset given in the balance sheet. He argued that the rate of depreciation on land was zero percent, building was 5% and the plant & machinery was 15%, and hence, the disallowance at the uniform rate at 15% is not justified.

19. On the other hand, the DR argued and submitted that the order of the CIT(A) was correct, and he after appreciating the entire facts had reduced the disallowance from Rs.30.97 crores to Rs.18.93 crores.

20. We find that in the instant case, the CIT(A) held that excess depreciation claimed on account of capital grant comes to Rs. 18.93 crores being 15% of Rs.176,62,04,718/-, i.e. Rs.26,49,30,708/- minus Rs.17,20,37,655/-, which amounts to Rs.9,28,93,053/-, and 15% ofRs.6427.94 lakhs amounting to Rs.964.191 lakh. The submissions of the assessee before us is that the uniform rate of 15% adopted by the CIT(A) is not justified. As per provisions of section 43(1) of the Act, the capital grant should be reduced from the cost/WDV of the relevant asset, and thereafter the depreciation is to be calculated. Thus, the capital grant receipt in respect of asset, on which depreciation is allowable at the rate different from 15% should be worked out as per the applicable rate. The DR could not point out any mistake in the

above submission of the assessee, which we find is in accordance with law. We, therefore, set aside the orders of the lower authorities on this issue, and restore the matter back to the file of the AO for adjudication afresh after verifying the proportionate amount of grant relating to different asset, and applying the actual rate of depreciation which relate to these assets. Thus, this ground of appeal of the assessee is allowed for statistical purpose.

Hence, in the absence of any changed circumstances as it appears from the records, we find no other alternative but to remit the issue to the file of the Learned AO for re-adjudication of the same and to pass order upon verification of the proportionate amount of grant relating to different assets and upon applying the actual date of depreciation relates to those assets. Hence, this ground of appeal preferred by the assessee is allowed for statistical purposes."

After considering the above cited decisions of Co-ordinate Benches of the ITAT in the case of the assessee itself we restore this issue to the file of Assessing Officer for re-adjudication as directed above after verification of the proportionate amount of grant relating to different assets and upon applying the actual rate of depreciation relates to those assets, therefore, this ground of appeal is allowed for statistical purposes. "

Relying upon the observation and the decision taken by the Coordinate Bench we find it fit and proper to remand the issue to the file of the Ld. AO for re-adjudication of the same and to pass orders upon verification of the proportionate amount of grant relating to different assets and upon applying the actual rate of depreciation relates to those assets and to pass orders accordingly. This ground of appeal preferred by the assessee is allowed for statistical purposes.

10. **Ground No.2:-** Confirming income as "other income" instead of business income interest on loans to staff and other advances to the tune of Rs. 1,79,18,000/- has been challenged before us by the assessee.

11. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee with all his fairness submitted before us that the identical issue has been decided by the Coordinate Bench in the case of Gujarat Energy

Transmission Corpn. Ltd. in ITA No. 3441/Ahd/2015 for A.Y. 2012-13. On this aspect he has drawn our attention to Page 8 of the Paper Book filed before us. However, by and under the order passed by the Hon'ble Orissa High Court in the case of Odisha Power Generation Corporation Ltd. vs. ACIT, Circle-2(2), Bhubaneswar & ors. in ITA Nos. 1, 2, 3 of 2015 and ITA Nos. 24 & 25 of 2009 the issue has been decided otherwise. A copy of the same has also been submitted before us by the Ld. Counsel appearing for the assessee.

12. On the other hand, the Ld. D.R. relied upon the order passed by the authorities below.

13. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record and also gone through the order passed by the Hon'ble Orissa High Court in the case of Odisha Power Generation Corporation Ltd. (supra). It appears that the Hon'ble Orissa High Court while dealing with the issue the Court was pleased to observe as follows:

> *"12. The Assessee offered an explanation regarding interest income earned by it, from advances given to its employees as well as provision of electricity and water charges collected from water through its employees and contractors for facilities in the township, receipt from transit hostel, sale of scrap, insurance claim etc. The facilities were given to its employees for better conditions of employment. This was to improve the overall efficiency of the undertaking which is devoted to the single purpose of generation of power. The Court, therefore, has no difficulty in accepting the submission of the Assessee that the interest received on advances and loans given to its employees are receipts in normal course of carrying its business and should be considered as income derived from its essential business activities. Likewise, the late payment by GRIDCO for the electricity supplied, is sought to be made up by GRIDCO by issuing bonds on which the Assessee earns interest. This also therefore, has a direct nexus with the essential business activity of the Assessee."*

In that view of the matter we find it fit and proper to direct the Ld. AO to consider the issue afresh upon examining the same in regard to the head of income upon considering the relevant evidence in the light of the observation

made by the Hon'ble High Court as mentioned hereinabove. We, thus, pass order accordingly. This ground is allowed for statistical purposes.

14. **Ground No.3:-** Disallowance of prior period expenses of Rs. 8,79,06,000/- is under challenged before us.

15. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee submitted before us that the Coordinate Bench in ITA No. 3441/Ahd/2015 for A.Y. 2012-13 has set-aside the identical issue to the file of the Ld. AO. On this aspect he has drawn our attention to Page 11 of the Paper Book filed before us.

16. We have heard the rival submissions made by the respective parties, and we have perused the relevant materials available on record.

17. We find that Coordinate Bench on the identical issue disposed of the ground by remitting the same to the file of the Ld. AO to adjudicate de novo with the following observation:

> *"12. During the course of assessment, the Assessing Officer noticed that assessee company has shown prior period income of Rs. 130.05 lacs after adjustment of prior period expenses for Rs. 408.01 lacs. On query, the assessee has explained that all expenditure booked under this head crystallized in the hands of the company only during the year under consideration therefore same expenditure cannot be added back. The Assessing Officer has not accepted the submission of the assessee stating that assessee was following mercantile system of accounting in which the expenses related to the prior period were not an allowable expenses. Therefore, the prior period expenses amounting to Rs. 408.01 lacs was disallowed and added to the total income of the assessee.*
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> *13. Aggrieved assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee stating that assessee has not made any submission showing that the prior period income was crystallized in the previous year relevant to the assessment year under consideration.*
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> *14. During the course of appellate proceedings before us, the ld counsel has submitted that similar issue in the case of Group concern Gujarat Urja Vikas Nigam*

Ltd. was adjudicated by the Co-ordinate Bench of the ITAT vide ITA No. 996/Ahd/2011 for assessment year 1988-89 dated 31st May, 2017 and the issue was remanded back to the file of Assessing Officer for deciding afresh in the light of the decision of Hon'ble High Court in the case of PCIT vs. Adani Enterprises Ltd. in Tax Appeal No. 573 of 2016. The ld. Departmental Representative was fair enough not to controvert these undisputed facts and findings of Co-ordinate Bench.

15. With the assistance of ld. representatives, we have gone through the decision of Co-ordinate Bench of ITAT in the case of Group concern Gujarat Urja Vikas Nigam Ltd. vs. ACIT for assessment year 1988-89 wherein similar issue has been set aside to the file of Assessing Officer for adjudicating afresh according to the direction laid down by the Hon'ble Gujarat High Court in the case of Adani Enterprises Ltd. in Tax Appeal No. 573 of 2016. The relevant part of the decision of the Co-ordinate Bench in the Gujarat Urja Vikas Nigam Ltd. supra as cited above is reproduced as under:-

> *"6. We have carefully heard the rival submissions and perused the orders of the authorities as well the case-laws referred. The assessee is aggrieved by the disallowance of prior period expenses of Rs.53.53crores as per Ground No.4 of its appeal. The disallowance has been made on the ground that the expenses under various heads as noted in the assessment order pertained to earlier years and the assessee which is following system of accounting should have made provision for expenses in those respective years and claimed them as deduction. We have gone through the break-up of the expenses as noted in para-8 of the assessment order and observe that certain expenses declared under the head 'other adjustments Rs.30.75 crores'; 'other charges Rs.79.34 lakhs'; 'depreciation under provided Rs.7.86 crores' etc. are ostensibly vague and does not indicate the nature of claim with sufficient particularity obscure. We simultaneously note that assessee is a State Government Undertaking and its accounts are subjected to review by CAG and therefore it cannot be postulated that there was any deliberateness in not furnishing relevant details before the revenue authorities. The bonafides of the Assessee is also augmented by the facts that the Assessee has reported staggering carry forward losses in its returned income. Thus, there is no immediate tax advantage accrued to the assessee by the claim of impugned prior period expenses per se. We therefore deem it expedient to restore the issue back to the file of AO for examining the issue de novo after verifying facts as may be considered necessary and expedient in accordance with law. The AO shall bear in mind the ratio laid down by the Hon'ble Gujarat High Court in the case of Adani Enterprises Ltd. (supra) while adjudicating the issue. Needless to say, reasonable opportunity shall be provided to the assessee while adjudicating the issue. Hence, all the contentions of the assessee are kept open. The issue raised as per Ground No.4 is thus set aside to the file of AO in terms of directions noted above. As a result, Ground No.4 is allowed for statistical purposes."*

In the light of the decision of Co-ordinate Bench as cited above, we restore this issue to the file of Assessing Officer for deciding de-novo after verification the

facts and material as per the ratio laid down by the Hon'ble Gujarat High Court in the case of above cited case of Adani Enterprises Ltd. As a result, this ground of appeal of the assessee is allowed for statistical purposes. "

18. Respectfully relying upon the order passed by the Coordinate Bench we are disposing of the ground by setting aside the issue to the file of the Ld. AO for de novo adjudication upon giving an opportunity of being heard to the assessee and upon considering the evidence which the assessee may choose to file at the time of hearing of the matter. This ground is allowed for statistical purposes.

19. Ground Nos. 4 & 6 has not pressed by the assessee. Hence, both the grounds raised by the assessee are dismissed as not pressed.

20. **Ground No.5:-** This ground is consequential in nature and no separate order needs to be passed.

ITA No. 2856/Ahd/2015(A.Y. 2011-12):-

21. **Ground No.1:-** Identical ground has already been decided by us in ITA No. 2855/Ahd/2015 for A.Y. 2010-11 as Ground No. 1 therein. In the absence of any changed circumstances the same shall apply mutatis mutandis.

22. **Ground No.2:-** Identical ground has already been decided by us in ITA No. 2855/Ahd/2015 for A.Y. 2010-11 as Ground No. 2 therein. In the absence of any changed circumstances the same shall apply mutatis mutandis.

23. Ground Nos. 3 & 4 has not pressed by the assessee. Hence, both the grounds raised by the assessee are dismissed as not pressed.

ITA No. 2790/Ahd/2015(A.Y. 2010-11)(Revenue's Appeal):-

24. **Ground No.1:-** Deletion of guarantee fees paid to the Government of Gujarat to the amount of Rs. 3,38,64,000/- is the subject matter before us.

25. The Ld. DR relied upon the order passed by the authorities below.

26. On the other hand, the Ld. Counsel appearing for the assessee submitted before us that the issue is also covered by the judgment passed by the Coordinate Bench on assessee's own case. On this aspect he has drawn our attention to the observation made by the Coordinate Bench.

27. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record.

28. We have carefully considered the judgment passed by the Coordinate Bench in ITA No. 3356/Ahd/2015 for A.Y. 2012-13. While deciding the ground in favour of the assessee by upholding the order passed by the Ld. CIT(A) in the appeal preferred by the Revenue in ITA No. 3356/Ahd/2015 for A.Y. 2012-13 in assessee's own case the Coordinate Bench has been pleased to observe as follows:

> *"2. The revised grounds of appeal raised by the Revenue is reproduced hereunder:*
>
> *"1. "On the facts and in the circumstances of the case and in law, the Ld.CIT(Appeals) erred in deleting the addition of Rs.262.93 lakhs made on account of disallowance of claim of guarantee fees paid to Government of Gujarat disregarding the applicable statutory provisions contained under S 37 of Income tax Act,1961 which do not allow any expenditure of capital nature. The disallowance was made by disallowing the claim as revenue expenditure as it is of enduring nature in the assessee's business and hence capital in nature."*
>
> *2. "On the facts and in the circumstances of the case and in law, the Ld.CIT(Appeals) erred in deleting the addition of Rs.42.86 lakhs made on account of disallowance of claim of cost of raising finance*

for specialized job as revenue expenditure. The ld.CIT(Appeals) erred in not appreciating the fact that as the result of this expenditure, the assessee had derived benefit of enduring nature, hence the expenditure is of capital nature."

3. As pointed out on behalf of the assessee, both the aforesaid grounds are covered in favour of the assessee in its own case concerning AY 2008-09 in ITA No. 704/Ahd/2012 order dated 12.06.2015. The relevant para of the order of the Tribunal is reproduced hereunder:

"29. In the Revenue's appeal, the ground no.1 of the appeal is directed against the order of the CIT(A) in deleting the addition of Rs.50,90,96,000/- made on account of disallowance of claim of guarantee fees paid to Government of Gujarat.

30. Brief facts of the case are that the AO observed that the assessee paid guarantee fee of Rs.5,69,35,000/- to the Govt. of Gujarat in consideration of guarantee issued by it for repayment of unsecured loan. Further, the assessee also claimed Rs.21,61,000/- on account of cost of raising finance under the head "cost of raising finance" as per the profit & loss account.

31. In reply to show cause notice to the assessee, the assessee submitted that erstwhile GEB has raised various loans, guarantee of which was given by Govt. of Gujarat, and for the guarantee given by the Govt. of Gujarat, the GEB is required to pay guarantee fees as per rules. After the split of the company, the said loan were still continued, which were guaranteed by the Govt. of Gujarat. Therefore, every year these guarantee fees become payable to Govt. of Gujarat on recurring basis. Regarding the cost of raising finance, the assessee submitted that the finance was raised during the year, and accordingly, the cost incurred for raising finance was charged to current year's profit & loss account. The AO did not accept the above explanation of the assessee on the ground that the assessee did not furnish the details of the purpose for which the loans were taken for which the guarantee fees were claimed. Further, if the fees paid for loans facility in respect of fixed assets, nature of assets, the date of put-to-use has not been submitted. The assessee also failed to furnish any agreement with the Govt. of Gujarat for charging guarantee fees and method of its computation against the loan amounts. In the absence of these details it was not possible to entertain the assessee's claim. The AO further observed that the cost of raising the finance can also not be considered as revenue expenses for want of details. He, accordingly, disallowed Rs.5,90,96,000/-.

32. On appeal, the CIT(A) observed that guarantee fee was an annual recurring expenditure incurred by the assessee. Guarantee fee was payable to Govt. of Gujarat every year in respect of loans taken by the assessee and guaranteed by the Govt. of Gujarat. As held by Hon'ble Supreme Court in the case of India Cements Ltd., 60 ITR 52 (SC), loan cannot be treated as asset or advantage resulting in enduring benefits. Guarantee fees paid to Govt. of

Gujarat was in connection with raising of loans and enduring benefit or advantage could not be said to have resulted by taking such loans. Only if the assets acquired out of such loans were not put-to-use till the end of previous year i.e. 31.3.2008, the guarantee fees to such extent i.e. in respect of such loans only could be capitalized as cost of such asset. The assessee has certified that no new project was started or commissioned during the year for which above guarantee was paid, and the guarantee fees was in respect of loans for acquisition of capital assets, which were already put-to-use prior to 1.4.2007. The guarantee fees of Rs.5,69,35,000/- is directed to be allowed as revenue expenditure, subject to verification by the AO of the certificate filed during the appellate proceedings i.e. there was no capital work-in-progress in respect of loans on which guarantee fees was paid.

33. Regarding cost of raising finance of Rs.21.61 lakhs is concerned, the CIT(A) observed that the same was an allowable deduction and being revenue expenditure, following the decision in the case of India Cements Ltd. (supra) disallowance of Rs.21,61,000/- was cancelled.

34. The DR supported the order of the AO, whereas, the AR of the assessee supported the order of the CIT(A) and submitted that the issue was now covered in favour of the assessee by the decision of this Tribunal in the case of assessee itself dated 8.5.2015 passed in ITA No.1931/Ahd/2010, 2974/Ahd/2010 and 3004/Ahd/2010.

35. We find that the Tribunal in its order dated 8.5.2015 cited supra has held as under:

> *"6. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that the ld.CIT(A) decided these issues in paras- 5.2 & 5.3 and 6.2 respectively by observing as under:-*
>
> > *"5.2. I have considered the submissions of the ld.AR and the facts of the case. The issue relating to whether an item of expenditure lies in the capital or the revenue field has exercised the courts in numerous cases. From an analysis of such cases a few guiding principles/tests can be identified. One of the important tests for categorizing any expenditure as capital in nature is whether the laying out of the impugned expenditure results in the acquisition of creation of any new asset. Where no such asset is created, it would be indicative of an expenditure which was not capital in nature. Another test relates to the principle of "enduring benefit". "Enduring benefit" may be in the form of long lasting use of an asset or the acquisition of a right to exploit certain commercial processes, etc. In the instant case, the assessee did not acquire any right to exploit a commercial technology or process, and neither was the benefit "enduring", since the*

payment of guarantee commission was an annual charge. The benefit derived from payment of such commission thus lasted for exactly one year only. Such shortlived benefit cannot be categorized as "enduring". Hence, I am inclined to the view that the payment of guarantee commission was a revenue expenditure. 5.3. Further, the jurisdictional Bench of ITAT had occasion to consider the allowability of guarantee commission paid to a Director of the company in respect of loans taken from the bank. In the case of Himalaya Machinery Pvt.Ltd. (ITA No.738/Ahd/2009) for AY 2006-07, the Tribunal held, vide order dt.5.6.2009, following the decision of the Rajasthan High Court in CIT v. Metalising Equipment Co.Pvt.Ltd., 8 DTR 12, that the payment of commission for guaranteeing repayment of loan was allowable as revenue expense. In the instant case, the loan has been guaranteed by the Government of Gujarat. Hence, quite apart from the other sound reasons for treating the expenditure as revenue, it would be unrealistic to say that the appellant company could derive any undue advantage or collateral benefit by making such payment to the GOG. In view of the totality of the circumstances, I am of the opinion that the AO was not justified in treating the payment of guarantee commission (Rs.8,39,04,550/-) as capital in nature. The addition is directed to be deleted. 6.2. I have considered the submissions of the ld.AR and the facts of the case. The jurisdictional Bench of ITAT has held in the case of Shri Rama Multi Tech vs. ACIT, 92 TTJ 568, that in determining the nature of expenditure incurred for obtaining loan, it is irrelevant to consider the purpose of loan. The amount spent on stamp duty, lawyer fees, etc. for obtaining loan secured by charge on its fixed assets is a revenue expenditure, because the transactions were entered into directly to facilitate the business of the company and payment of consultancy charges was made on ground of commercial expediency. In India Cements Ltd. vs. CIT, 60 ITR 52, the Supreme Court had also held that the expenditure incurred for securing the use of money for a certain period was revenue expenditure. In the instant case, the assessee has secured the loan by creating a charge (hypothecation of its assets). Hence the ratio of the above mentioned two cases would squarely apply. Accordingly, it is held that the AO was not justified in making the disallowance of Rs.45,24,582/-, which is directed to be deleted."

6.1 The ld.CIT(A) has followed the decision of the Tribunal passed in ITA No.738/Ahd/2009 for AY 2006-07 in the case of Himalaya

Machinery Pvt.Ltd., dated 5.6.2009 and in the case of Shri Rama Multi Tech vs. ACIT reported at 92 TTJ 568.

6.2. The ld.CIT-DR could not distinguish the facts of the case, therefore we do not see any reason to interfere with the order of the ld.CIT(A), same is hereby upheld. Thus, these two grounds raised in the Revenue's appeal are rejected."

36. DR could not point out any good reason as to why the above quoted order of the Tribunal should not be followed for the year under consideration. In the absence of distinguishing features being pointed out by the DR, and the facts being identical, respectfully following the above quoted decision of the Tribunal, we confirm the order of the CIT(A), and dismiss this ground of appeal of the Revenue."

4. In parity with the order of the Tribunal, we are of the opinion that CIT(A) has rightly adjudicated the issue in favour of the assessee. We thus decline to interfere with the order of the CIT(A)."

In the absence of any changed circumstances we do not find any reason to deviate from the stand taken by the Coordinate Bench. Hence, we do not find any reason to interfere of the order passed by the Ld. CIT(A) in deleting the guarantee fees paid to the Government of Gujarat to the amount of Rs. 3,38,64,000/-. The ground preferred by Revenue is, therefore, fails and thus, dismissed.

29. **Ground No.2:-** Deleting disallowance of claim of raising finance to the tune of Rs. 2,17,79,000/- is the subject matter before us.

30. The Ld. DR relied upon the order passed by the authorities below.

31. On the other hand, the Ld. Counsel appearing for the assessee submitted before us that the issue is also covered by the judgment passed by the Coordinate Bench on assessee's own case. On this aspect he has drawn our attention to the observation made by the Coordinate Bench.

32. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record.

33. On this count we have carefully considered the judgment passed by the Coordinate Bench in ITA No. 3356/Ahd/2015 for A.Y. 2012-13 as already discussed above. While deciding the ground in favour of the assessee by upholding the order passed by the Ld. CIT(A) in the appeal preferred by the Revenue in assessee's own case.

34. In the absence of any changed circumstances we do not find any reason to deviate from the stand taken by the Coordinate Bench. Hence, we do not find any reason to interfere of the order passed by the Ld. CIT(A) in deleting the disallowance of claim of cost of raising finance to the amount of Rs. 2,17,79,000/-. The ground preferred by Revenue is, therefore, fails and thus, dismissed.

35. **Ground No.3:-** Deleting disallowance of loss due to pilferage, shortage of material in transit etc. to the amount of Rs. 1,10,91,000/- is challenged before us.

36. The Ld. DR relied upon the order passed by the authorities below.

37. On the other hand, the Ld. Counsel appearing for the assessee submitted before us that the issue is also covered by the judgment passed by the Coordinate Bench on assessee's own case. On this aspect he has drawn our attention to the observation made by the Coordinate Bench.

38. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record.

39. We have carefully considered the judgment passed by the Coordinate Bench in ITA No. 761/Ahd/2012 for A.Y. 2008-09. While deciding the ground in favour of the assessee by upholding the order passed by the Ld. CIT(A) in the appeal preferred by the Revenue in ITA No. 761/Ahd/2012 for A.Y. 2008-09 in assessee's own case the Coordinate Bench has been pleased to observe as follows:

> *"37. The ground no.2 of the Revenue is directed against the order of the CIT(A) in deleting the addition of Rs.1,41,15,000/- made on account of disallowance of loss of material through pilferage, shortage of material-in-transit, shortage arising on physical verification etc.*
>
> *38. Brief facts of the case are that the AO observed that the assessee has claimed Rs.1,41,15,000/- on account of miscellaneous loss and write offs. In reply to the show cause notice, the assessee submitted that these losses are on account of loss of materials, through pilferage, shortage of material-in-transit, shortage arising on physical verification, obsolescence of materials/stores, loss in sale of scrap etc. It was submitted that the losses have been incurred in the day-to-day business activities and is purely of revenue nature. The AO observed that from the submission of the assessee, it was clear that the assessee's claim was not substantiated with any documentary evidence. Accordingly, he disallowed deduction of Rs.1,41,15,000/-.*
>
> *39. On appeal, the CIT(A) deleted the addition and held that similar issue was decided by the CIT(A) in favour of the assessee in assessee's own case for the Asst.Year 2006-07 and 2007-08. Following the same, he deleted the disallowance of Rs.1,41,15,000/-.*
>
> *40. The DR relied on the order of the AO. He could not bring any material on record to how that the relief allowed by the CIT(A) in the Asstt.Year 2006-07 and 2007-08 was appealed against before higher forums, and the order of the CIT(A) was varied by any higher authority. In the absence of any such material, we do not find any good reason to interfere with the order of the CIT(A) on this issue, which is hereby confirmed and the ground of appeal of the Revenue is dismissed."*

In the absence of any changed circumstances we do not find any reason to deviate from the stand taken by the Coordinate Bench. Hence, we do not find any reason to interfere of the order passed by the Ld. CIT(A) in deleting the disallowance of loss due to pilferage, shortage of material in transit etc. to the amount of Rs. 1,10,91,000/-. The ground preferred by Revenue is, therefore, fails and thus, dismissed.

ITA No. 2791/Ahd/2015 (A.Y. 2011-12):-

40. **Ground No.1:-** Identical ground has already been decided by us in ITA No. 2790/Ahd/2015 for A.Y. 2010-11 as Ground No. 1 therein. In the absence of any changed circumstances the same shall apply mutatis mutandis.

41. **Ground No.2:-** Identical ground has already been decided by us in ITA No. 2790/Ahd/2015 for A.Y. 2010-11 as Ground No. 2 therein. In the absence of any changed circumstances the same shall apply mutatis mutandis.

42. **Ground No.3:-** This ground relates to deleting separate addition made in respect of prior period income to the tune of Rs. 1,92,78,000/- is the subject matter before us.

43. The brief facts leading to the issue is this that the amount of Rs. 192.78 lakhs to the prior period income should be treated as current year and not as earlier year after netting of the prior period income.

44. At the time of hearing of the matter the Ld. DR relied upon the order passed by the authorities below.

45. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record.

46. It appears that the appellant had set of prior period expenses against the prior period income of equal amount. Furthermore, when the set of is disallowed and the prior period expenses are added back no further addition of prior period income is required to be made as addition of equivalent amount has already been made. In that view of the matter, we do not find any infirmity

in the order passed by the Ld. CIT(A). Hence, this ground of appeal preferred by the Revenue is found to be devoid of any merit and thus, dismissed.

47. **Ground No.4:-**This Ground relates to the deletion of addition of Prior Period Expenses made while computing Book Profit computed under Section 115JB of the Act to the tune of Rs. 7,10,85,000/-.

48. The brief facts leading to the issue is this that the Ld. AO made addition of Rs. 7,10,85,000/- to the Book Profit under Section 115JB of the Act on account of prior period expenses is also added back to the book profit of the assessee.

49. Before the First Appellate Authority the assessee submitted that in assessee's own case for A.Y. 2006-07 the Ld. CIT(A) has deleted the addition. In that view of the matter considering the order dated 17.07.2015 passed by his predecessor, the Ld. CIT(A) hold that the said addition cannot be made to the Book Profit as this item has not been mentioned in any of the Clauses of the Explanation to Section 115JB of the Act. He, therefore, directed the Ld. AO to delete such addition. He has further relied upon the order dated 21.01.2016 passed by the Chandigarh Bench in the case of M/s. Ahsirwad Hgiene Pvt. Ltd. vs. ITO in ITA No. 72/Chd/2014 for A.Y. 2010-11.

50. At the time of hearing of the matter the Ld. DR relied upon the order passed by the authorities below.

51. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record.

52. We find that the Ld. CIT(A) while dealing this ground for assessee's own case observed as follows:

> *"10.1. So far as allowance of such expenses while computing the book profit u/s 115JB is concerned, the appellant's claim cannot be allowed as the AO has got limited power for making adjustment in the book profit shown by the appellant in its audited books of account. Only the adjustment provided in the provision of section 115JB can be made. There is no such provision that if unascertained provision was made in the earlier year and in the current year payment has been made relating to the same, such payment should be allowed as a deduction while computing the book profit, despite the fact that in the audited books of account no such expenditure has been claimed for the current year. Hence, this claim is disallowed."*
>
> *10.2. But, at the same time, if the provision has been disallowed in the earlier year and the appellant has made payment in the current year which is an allowable expenditure as per the provisions of IT Act, 1961, then the same is allowable white assessing the total income of the appellant for the current year. It is seen that the appellant vide letter dated 1.2.2013 had put such claim before the AO for allowing deduction of amount of Rs. 63,94,89,643 on actual payment basis. But the AO has not mentioned such facts in her assessment order. Besides in the appellate order for the Asst. Year 2008-09 and AY 2009-10 in appellant's case, the CIT(A) had held that the claim made by the appellant for allowing such expenses on payment basis had to be made before the AO. Hence the AO was bound to consider such claim on merit. Hence, the AO is directed to verify the facts regarding payment of such arrear salary to the appellant's employees against the provisions made in the earlier years but disallowed while computing its assessed income and if, the same is found to be correct, then will allow deduction of this amount in the computation of the total income as per the normal provisions of the Act.*
>
> *10.3 It may also be mentioned here that provisions for payment of arrear salary to the employees were disallowed by the AO in the earlier years i.e. Asst. Year 2007-08 to Asst. Year 2009-10 and the same has been upheld in the appellate orders by the CIT(A)-I, Baroda. The appellant is in appeal against such order before ITAT Ahmedabad. If the ITAT Ahmedabad decides such issues in favour of the appellant in earlier years, then the deduction allowed in the current year on account of actual payment of these amounts shall stand withdrawn."*

53. We have further considered the order passed by the Chandigarh Bench in the case of M/s. Ashirwad Hgiene Pvt. Ltd. vs. ITO in ITA No. 72/Chd/2014 for A.Y. 2010-11 while deciding the issue in favour of the assessee the Coordinate Bench was pleased to observe as follows:

> *"In the present case the undisputed fact is that the Net Profit shown in the profit & loss account has been arrived at after reducing the prior period expenses. As discussed above, this Net Profit, is in compliance with Schedule-VI Part-II of the*

Companies Act and the prescribed Accounting Standard, i.e. AS-5. No adjustment, on account of prior period expenses, is required to be made to the same. Moreover, even as per Explanation—1 to section 115JB, no adjustment on account of prior period expenses is required to be made to the net profits reflected in the profit and loss account of the assessee. Therefore we hold that no adjustment of prior period expenses is to be made by the assessee to arrive at the book profits for the purpose of levying tax u/s 115JB. The reliance placed by the Ld. DR on the decision in the case of Sree Bhagwathy Textiles Ltd. (supra) is distinguishable on facts, since in that case it was found the assessee had debited the prior period expenses to the Profit and Loss Appropriation account. The Court in that case held that profit as per Profit and Loss Account is to be taken for computing book profits and any adjustments thereafter in the appropriation account are not to be considered. Since in the present case the prior period expense have been debited to the Profit and Loss Account and not appropriation account the ratio propounded therein will not apply to the present case.

7. In view of the above we hold that no adjustment on account of prior period expenses amounting to Rs. 46,64,504/- is to be made in the net profit of the company for arriving at the book profits u/s 115JB of the Act. The appeal of the assessee is therefore allowed."

54. Having regard to the facts and circumstances of the case and the judgments passed by the different Bench. We do not find any reason to interfere into the order passed by the Ld. CIT(A) in deleting addition. The ground of appeal preferred by the Revenue is found to be devoid of any merit and hence dismissed.

55. Ground No. 5 is general and no need to pass any separate order.

56. In the combined results, the appeals preferred by the assessee are partly allowed and the appeals preferred by the Revenue are dismissed.

This Order pronounced in Open Court on	**27/07/2022**

Sd/-	Sd/-
(ANNAPURNA GUPTA)	(Ms. MADHUMITA ROY)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 27/07/2022
TANMAY, Sr. PS ***TRUE COPY***

<u>आदेश की प्रतिलिपि अग्रेषित</u>/Copy of the Order forwarded <u>to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad