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**IN THE INCOME TAX APPELLATE TRIBUNAL**
**(DELHI BENCH 'C ', NEW DELHI)**

BEFORE SHRI G. C. GUPTA, HON'BLE VICE PRESIDENT
AND SHRI T.S. KAPOOR, ACCOUNTANT MEMBER
I.T.A. No.2897 /Del/2007
Assessment year : 2000-01

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| G.E. Capital Services India,<br>AIFACS Building, 1, Rafi Marg,<br>New Delhi – 110 001<br>**GIR / PAN:AAACG0239L** | Vs. | Addl. CIT, Rage 12,<br>New Delhi |

I.T.A.No. 2807/Del/2007
(Assessment Year 2000-01)

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| DCIT, Circle 12(1),<br>New Delhi | Vs. | G.E. Capital Services India<br>AIFACS Building, 1, Rafi Marg,<br>New Delhi-110 001 |
| (Appellant) | | (Respondent) |

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| Appellant by : | Shri Sanjeev Sabharwal, Sr. Adv.<br>Shri Tushar Jarwal, Adv.<br>Shri Rahul Satija, Adv.<br>Shri Ankit Garg, Adv |
| Respondent by : | Shri R.I.S.Gill, CIT (DR) |
| Date of hearing : | 21.05.2015 |
| Date of pronouncement : | 10.06.2015 |

**ORDER**

**PER T.S. KAPOOR, AM:**

These are cross appeals filed by assessee as well as by Revenue against the order of Ld. CIT(A) dated 23.03.2007. These appeals were heard

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together, therefore, for the sake of convenience, a common and consolidated order is being passed. The grounds of appeal taken by assessee as well as by Revenue are reproduced below:

A. I.T.A. No. 2897/Del/2007 (Appeal of Assessee):

*"1. That the Order dated March 23, 2007 passed by the learned Commissioner of Income Tax (Appeals)-XV ["CIT(A)"] is erroneous and bad in law in so far as it has confirmed the additions/disallowances made in the assessment order.*

*2. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the disallowance of expenses incurred on purchase of software for updating the existing data processing system of the appellant company amounting to Rs.23,28,270/- considering the same as capital expenditure.*

*2.1 That the Ld. CIT(A) erred on facts and in law in not appreciating the fact that claim for similar expenditure as revenue expenditure in the past has been upheld by the Hon'ble Tribunal and that the same has been accepted by the department.*

*3. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the disallowance of bad debts written off amounting to Rs.4,49,69,588/-.*

*3.1 That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding the appellant's claim for bad debts to be premature without appreciating that under the provisions of section 36(1 )(vii) of the Act, a claim for bad debt had to be allowed in the year in which the debt is written off as bad.*

*4. That on the facts and in the circumstances of the case, the learned CIT (A) erred in upholding an ad-hoc disallowance u/s 14A of the Act amounting to Rs.2,92,000/- i.e. 5% of the gross dividend income: on account of management/administrative expenses and other costs alleged to be incurred in earning dividend income.*

*4.1 That the learned CIT (A) erred on facts and in law in partly confirming the disallowance on a pure estimate even though the AO had brought nothing on record to establish that the appellant had incurred any expenditure on earning dividend income.*

*5. That on the facts and in the circumstances of the case, the learned CIT (A) erred in upholding addition of Rs 12,22,63,212/ being*

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*expenditure incurred in respect of raising loan funds, by treating the same as Deferred revenue expenditure*

*5.1 That the learned CIT (A) erred on facts and in law in not appreciating that for purposes of the Act, revenue expenses have to be allowed in full in the year of accrual unless specifically deferred as provided under the Act."*

B. I.T.A.No. 2807/Del/2007: (Appeal of Revenue):

*"1. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Rs.12,27,50,000/- made U/S 14A on account of interest paid on the borrowed funds utilized for making investment in shares on which the tax free dividend income of Rs.58,40,028/- has been earned, without appreciating the facts on record.*

*2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in restricting the disallowance of Rs.15,00,000/- made u/s 14A on account of proportionate administrative expenses incurred for earning the tax free dividend, to Rs.2,92,000/- i.e. 5% of the gross dividend, without appreciating the facts on record.*

*3. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of notional foreign exchange fluctuation loss of Rs.l,16,44,767/-, ignoring the fact that the liability is deductible only in the year in which the foreign loans in question are actually repaid."*

2. The brief facts of the case are that the assessee company is carrying on the business of providing finance to industrial traders through hire purchase, lease and loans. The case of the assessee was elected for scrutiny and during assessment proceedings, the A.O. made certain additions which are reproduced below:

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| i) | disallowance of depreciation on software | Rs.17,46,203/- |
| ii) | Disallowance of claim of bad debts | Rs.4,49,69,588/- |
| iii) | Disallowance u/s 14A on account of interest | Rs.12,27,50,000/- |
| iv) | Disallowance u/s 14A on account of expenses | Rs.15,00,000/-. |
| v) | Disallowance on account of payments to club | Rs.48,925/- |

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(this addition was deleted by Ld. CIT(A) and revenue has not challenged it before us).

vi) Disallowance of deferred revenue expenditure Rs.12,22,63,212/-

vii) Disallowance on account of provision for foreign exchange loss Rs.1,16,44,767/-

3. Aggrieved with the additions, assessee filed appeal before Ld. CIT(A) and Ld. CIT(A) partly allowed relief to the assessee by recording his findings in respect of various additions by holding as under:

"a. Depreciation on Software :-

*2.3 I have considered the appellant submissions with reference to the facts and record and also the binding Judicial decisions on the given issue. Although a decision has been rendered In favour of the appellant in its own case in the first appeals for A Y. 96-97 to Assessment Year 1999-2000, with the decision of the ITAT in the case of Maruti Udyog (92 ITD 119 f(Delh), the earlier decision in first appeal in the appellant's own case or earlier years might not hold good. In the case of Maruti Udyog, the ITAT held as under: -*

*"The issue, as to whether expenditure on acquisition of software was revenue or capital expenditure is no more res integra as it is well settled the expenditure incurred on acquisition of an asset (other than trading asset) is always capital expenditure.*

*Software is a capital asset and is an intangible asset. Hardware, commonly called as computer, is a tangible asset which by itself cannot function. The computer can function only with the help of software. Software is akin to know how. Admittedly, the assessee was not in the business of software. Hence, software was a capital asset as far as the assessee-was concerned. The Income-tax Rules, as amended with effect from 1.4.2003 rather helped the revenue and not the assessee inasmuch as it provides for depreciation on software at the rate of 60 per cent. By, providing higher depreciation, it could not be said that prior to 1-4-2003, it was revenue expenditure, It was always a capital asset Prior to 1-4-2003, the assessee was entitled to normal rate of depreciation which was enhanced to 60 percent by the amendment considering the rapid wear and tear. Therefore, the expenditure was incurred on acquisition of capital assets and, thus, it*

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*was a capital expenditure. Resultantly, the same could not be allowed as' revenue expenditure.*

*In view of the .decision in the case of Maruti Udyog Ltd. 92 LTD· 1191 (Delhi. the action of the AO in disallowing the appellant's claim of revenue expenditure on software is confirmed. The ground consequently stands dismissed."*

b. Bad debts : -

*"3.3 I have considered the submission of the appellant. In order to establish a debt to be bad, on balance of probability circumstances must indicate to a reasonable and prudent businessman that the debt is unlikely to be recovered whether or not a debt is bad is a 'question to be determined objectively. It is sufficient if on a bonafide assessment, if it is presumed that that the debtor is unlikely to make the payment of debt, that the assessee may write off the amount as Irrecoverable in terms of section 36(1 )(vii) read with section 36(2) It is correct that length of time the debt is outstanding would be a matter for critical consideration. Similar consideration would be given to the information available with the debtor as to whether there are financial difficulties and default of the debtor towards other customers or insolvency. If the debt is statute barred or the debtor is untraceable, the factors might be relevant. But the death of the Principal officer of the creditor company, might not be really material. It is correct that the nature of information required to decide whether a debt is bad would depend on the particular circumstances of each case. In the case under appeal, no matter that the case of Grapco has been admitted by the BIFR equally relevant is the issue as to whether there are no assets from which the debt can be recovered in the foreseeable future. The issue is critical in so far as the' loan advanced by the appellant to Grapco on 27 09.95 was secured against collateral.*

*3.4 The collateral schedule to the loan agreement contains the details of the following assets which have been pledged against the loan. The assets are (1) Breton - slab polishing machine - 1 No. - Location at Banglore (2) Budiam Brazing tensioning machine - 1 No. - Balasore (3) Budiam Brazing tensioning machine - 1 No. - Banglore*

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*(4) Single head automatic polishing machine - 2 No. - Balasore (5) Circular edge cutting machine - 1 - Balasore (6) Wimac block saw -1 No. - Balasore (7) Wimac block saw - 1 No. - Banglore (8) Hermonite cranes - 2 No. - Orissa (9) Excavator of tata - 2 No. - Orissa (10) Atlas copco portable compressors - 5 No. - Orissa. These assets are by way of creation of security interest in terms of the. agreement whereby the debtor "hereby gives, grants, assigns, hypothecated and charges (by way of first charges as continuing security) to secured party". In case of default, the secured party (the appel/ant) has the right in terms of clause 9 (b) of the loan agreement to enter the premises where the collateral is kept and to take possession remove the said collateral from the premises and also to effect sales thereof. It has been specifically mentioned that in the case of default, the entry of the premises, removal of collateral from the premises and sale thereof would be with or without legal process. In view of the fact that the loans by the appellant to Grapco was secured, it would be relevant to place in perspective the state and the condition of the collateral, and the appellant's submission thereon. The appellant has relied on a report from M/s Panda & Associates, CA of Balasore stating therein that 4 types of machine installed in the debtor's factory at Balasore would not be verified since they were not allowed entry into the factory The report is dated 02.06.2000. Thereafter MIs Fund point said to be service provider for recovery of GE Capital, dues from the party reported vide letter dated 24.02.2003 that on Inspection or Balafore factory, they could locate 2 machines i.e Budiarn Brezing / Tensioning Machine and single head automatic polishing machine. That other assets at Balasore site "have been either transferred to their Bangalore/ Alwar site or have been sold out for payment of dues to other creditors". The inability of M/s Panda & Associates to conduct an inspection of the collateral despite a clear mandate available in the loan agreement, and the inability of the appellant not to pursue recovery proceeding in respect of 2 assets located at Balasore or to inform the BIFR of the discovery of the said assets have to be weighed in, in view of the fact that the loans to Grapco were not clean but were charged against assets, some of which have been located.*

*Now the legal remedies available for instituting recovery proceedings against creditors and proceeding to recover the dues are*

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*different in case of secured and unsecured creditors. In case of recovery of dues against secured creditors, the recovery procedures under-the Code of Civil Procedure are available for enforcement of contractual rights, mortgage, hypothecation, lien etc. In fact under the Code, there is a right of direct private sale of the secured assets, in case of default. The appellant's loan agreement in fact contains a clause to that effect*

*I agree with the views of the A.O. that from the report of the CA and the collection agent, there is no clear finding that the hypothecated assets were not with Grapco. Even when the collection agents would locate two of the machines at Grapco premises at Balasorem such communication was not acted upon by the appellant in order to enforce recovery by sale o such asset as per the loan agreement with Grapco. I agree with the views of the A.O. that only when the proceedings in BIFR are concluded in the case of Grapco and from whatever recoverable asses, the dues are ascertained and apportioned among lenders to Grapco then only the bad debts of the appellant could be said to have been rationally quantified with certitude. Till the finalization of the proceedings at the BIFR the bad debts claims of the appellant against dues of Grapco are premature. The addition is sustained ground No.3 is dismissed."*

c. Disallowance u/s 14A: (Regarding interest)

*"The genesis of the disallowance u/s 14A of the Act in relation to dividend income as per assessment order is contained at para 6.2.1 and para 6.2.2 of the said order. At para 6.2.1, the AO refers to the total internal accrual and investment as on 31.03.99 at Rs. 413.00 crores and Rs. 83.60 crores. Whereas the corresponding figures for 31.03.00 are said to be Rs. 472.00 crores and Rs. 137.48 crores. From the above mentioned narration of figures of investment and internal accrual, the AO goes on to elaborate at para 6.2.2. the logic of disallowance in the appellant's case as under: "The assessee's contention does not appear to be acceptable. For F.Y. 99-00, the increase in accrual is only about. Rs. 41.00 crores, whereas increase in investment is about Rs. 54.00 crores. The borrowed funds on the other hand have increased from Rs. 226.17 crores to Rs. 317.56 crores. The assessee's own funds as on 31.03.99 were invested in the*

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*business of the assessee along with borrowed fund and there is no clear evidence that the own funds were invested directly in investment only". From the above narrations, it is clear that the A.O. has compared the increase in accrual to the increase in quantum of investment for the year under appeal and on such comparison has come to a conclusion that the increase in investment for the year under appeal has not come about through increase in internal accruals, since the quantum of increase in internal accrual was not sufficient to accommodate the increase in investment. Now from the figure of internal accrual as on 31.03.99 and 31.03.00 given at para 6.2.1 at Rs.413.00 crores and Rs.472 crores especially the increase in internal accrual would be Rs.59.00 crores and in that view the increase in internal accrual would have been sufficient to explain the source of investment newly made from the year at Rs.54. 00 crores. I agree with the appellant that the very basis of working out the increase in-internal accrual for invoking the provisions of section 14A is grounded in an arithmetical inaccuracy.*

*Under the provisions of section 14A, it has been provided that for the purpose of computing total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. In the case of Eicher Ltd. 101 IT R 369 (Del.), it has been said "The words "in relation to" income which is exempt under the Act, no doubt appear it be broad at first impression but on deeper examination, and read in conjunction with the word "incurred". it seems that these are restrictive words, restricting the power of the AO to estimate a part of the expenditure incurred by the assessee as relatable to exempted income. It seems that implicit in the expression "in relation to" is the concept that the AO should be in a position to pin point, with an acceptable degree of accuracy, the expenditure which was incurred by the assessee to produce non taxable income. The word "incurred" signifies that the expenditure must have been actually incurred and not notionally. Reading both the above mentions expression together the conclusion seems escapable that the expenditure which the AO seeks to disallow u/s 14A should be actually incurred and so incurred with a view to producing non taxable income". Similar view in the context of section 80M is available in the case of Punjab State Industrial Corp. Ltd. Vs DC IT 102 ITD 1 (Chd.)(SB).*

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*I agree with the views of the appellant that since the dividend received during the year under appeal related to investment of AY. 96-97 & 97-98, the AO was not right in deciphering the source of all investments (Including the investment for A. Y. 96-97 & 97-98) ' with reference to the availability of own funds and borrowed funds as on 31.03.00 Since the dividend related to Investments made during A. Y 96-97 & 97-98 It would have been sufficient compliance to the provisions of section 14A to evaluate investment of those specific shares to the appellant accounts for Assessment Year 1996-97 and 97-98 In that view the appellant's contention that its internal accruals of Rs. 248.00,crores for the year ending 31.03.96 & Rs. .253.00 crores for year ending 31.03.97 have been employed for making investment of Rs. 34.99 crores and Rs. 46.93 crores for the respective 2 years, have-not been disputed in any manner anywhere in the assessment order. The figures of internal accruals for the 2 years are 6 times more than the figure of investment for these 2 years, and there should be no apparent presumption against the appellant to hold to a view that the investments for these 2 years arose out of the borrowed funds From an analysis of the appellant's accounts for A Y. 96-97 & 97-98 and the decision in the case of AC IT Vs Eicher 101 TIJ 369 (Delhi), I hold that the provision of section 14A.are not applicable to the facts of the case and in that view the disallowance stands deleted The ground is allowed.*

*d. Disallowance u/s 14A (regarding expenses):*

*5.3 I have considered the submissions of the appellant and, judicial precedents on the issue. In the case of DCIT Vs S.G. Investments & Inds. Ltd. 89 ITD 4 4(Kol), it has been held that the mandate of the provisions of Section 14A is to curb the practice to claim deduction of the expenses incurred in relation to exempted income against taxable income and at the same time to avail of a tax incentive by way of claiming exempt income without making any apportionment of expenses incurred in relation to exempt income, That the scheme of the Ad is to charge tax on net income an also allow exemption in respect of net income. As per the said decision, the expression "expenditure incurred by the assessee in relation to income which does not form part of the total income" cannot be construed in*

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*a narrow or restricted manner. That the expression encompasses not only direct or proximate expenditure but 'also other expenses attributable to or in relation to the exempt income, Reliance was placed on the parity of reasoning as given in Distributors (Baroda) Pvt. Ltd. Vs Union of India 155 ITR 120 (SC).*

*In the case under appeal, the appellant is mistaken in assuming that in the absence of any direct relatable expenses, the indirect expenses cannot be computed with regard to the earning of exempted income for the purposes of sect.cr 14A. The fact that the appellant has an investment portfolio of Rs 309.67 crores at the yearend up from Rs.140.00 crores in the earlier year would fairly suggest that its investment department is fairly robust and active. To Invest in a particular share or financial instrument. to stay invested or to offload tile Investment are strategic decisions, calling for skill, energy, time, factors which can be measured in money as quantifiable expenditure. While agreeing that disallowance of 25% of the expenses would be unreasonably high, I hold that certain disallowances by invoking the provision of section 14A would be in order, which would comprise expenses in the nature of management salary, communication expenses, custodial charges, other misc. expenses On a reasonable basis, 5% of gross dividend towards the above expenses is estimated as disallowable under section 14A. The ground partly allowed."*

d. <u>Deferred revenue expenditure :</u>

*"6.1 In the assessment order, it has been said that the appellant has incurred an expenditure of Rs.35,07,38,065/- on account of raising of loan funds out of which Rs 2284747853/- has been debited to the P&L account and the balance of Rs.12,22,63,212/- has been claimed as deduction in the computation The breakup of the expenditure on raising of loan funds during the year are stated to be as under.*

*(a) Debenture Issue expenses -- out of a gross expenditure of Rs4,05,10,227/-. Rs.2,16.37594/- has been claimed in the accounts and the remainder claimed in the computation*

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*(b) Commercial Paper discounting - out of a gross expenditure of Rs.14,50.80.450/-. Rs.13,86.10 326/- has been claimed in the accounts and the remainder claimed in the computation.*

*(c) Premium on ICICI forex loan - out of a gross expenditure of Rs.10.1704,718/-, Rs4,46,58,375/- has been claimed in the accounts and the balance claimed in the computation.*

*(d) Discount on debentures - out of a gross expenditure of Rs.6.34,42,670/-, an amount of Rs.2,35,68,058/- has been claimed in the accounts and the balance claimed in the computation.*

*It has been stated by the AO. that the amount of expenditure amortized during the year is proportionate to the period of the fund for the relevant year as compared to the total period for which funds have been raised. It has been stated by the A.O. that discount on debentures, commercial paper discounting charges, premium on forex loans is in the nature of interest and following the decision in the case of Madras Industrial Investment Corporation Limited 225 ITR 802 (SC), the expenses thereon should have been pro-rated as per accounts.*

*6.1 The appellant states that in compliance of its accounting policies, it has debited only in part the payments made on procurement of loan funds and has deferred the balance amount for claim In the next years That expenditure on raising of loan funds does not provide any enduring benefit and have been incurred by the appellant for running the business more efficiently and effectively, and as such as allowable u/s 37(1) of the Act. That an expense will be of revenue nature if the same is incurred for running the business or working it with a view to earn profit. The decision in the case of Empire Jute Company Limited vs CIT 24-ITR-1 (Hon'ble Supreme Court) and India Cement Vs. CIT 68 IR 502 (SC) have been relied upon.*

*It has been submitted that deferment of expenditure is allowable only on specified expenses under the …. u/s 35D for …. Preliminary expenses etc. That since legislature has not provided any amortization of expenses of the nature 'present in the instant case, it will be against the intent of the legislature to amortize such expenses. Decisions in the case of Hindustan*

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*Commercial Bank Limited Vs. R.E. 21 ITR 353 (All), Kedamath June Manufacturing Company Limited Vs. CIT 82 ITR 363 (SC) have been relied on in support of the appellant's arguments.*

*6.1 I have examined the issue in appeal. Although it is correct that no one test or principle or criterion is paramount or conclusive or has universal application to decide the question of amortizing such kind of expenditure, ultimately the question will have to depend upon the facts and circumstances of each case. The A. O. has relied on the decision in the-case of Madras Industrial Investment Corporation Limited Vs. CIT 225 ITR 802 (SC): where the issue related to claim of discount on debentures issued by the company. In that the case, the Supreme Court relying on the decision in the case of M. P Financial Corporation Vs. CIT 165 ITR 765 (MP) held that although the liability for discount has been incurred in the accounting year, the liability is a continued liability spread over a period of 12 years. That although the assessee has incurred the liability to pay the discount in the year of issue of debenture, the payment is to secure a benefit over a number of years. 'There is a continuing benefit to the business of the company over the entire period.*

*The liability should, therefore be spread over the period of debentures"*
*In the case of Taparia Tools Limited Vs. J.CI.T. 126 Taxman 544 (Bombay) 'he assessee had made payments of interest on non convertible debentures issued by the company The debenture holders had option either to periodically receive interest Or half yearly basis for five years or one year up-front payment. In that case two parties opted for upfront payment and after payment to those parties the appellant showed them in the financial statements as deferred revenue expenditure and wrote them off over a period of five years. However, in the return, it claimed the entire upfront payment as Expenditure. The High Court held that matching concept in which revenue and income on dealing an accounting period irrespective of actual cash inflow is required to be compared with expenses incurred during the same period, irrespective of actual outflow of cash. Whereas ordinary revenue expenditure incurred only and exclusively for business purposes must be allowed in its entirety in the year in which it was incurred, in the case before the Bombay High Court, it was held that the A.O. was justified to spread expenditure over life of the debenture, because allowing expenditure in one year could give a distorted picture of profit of a particular year. Similar decision in the*

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*context of a builder has been rendered by ITAT Mumbai in the case of Wall Street Construction Limited Vs JCIT 5 SCO 103 (S.C.).*

*In the case under appeal, the appellant in the books of accounts has allocated the various expenses relating to raising of loan funds in proportion to the maturity of the relevant instruments and the period for which such expenses have been said to be relevant during the year in appeal. Since the appellant has been following a system of accounting where interest expenditure or expenses related to raising of loan funds have been allocated in the accounts pari pasu with the period of user for the relevant year in question, it cannot be the case that the method of accounting regularly followed by the appellant has been rejected by the department. In fact the revenue has supported the appellant in its presentation of accounts relating to spread over of expenditure involving raising of loan funds. The appellant has identified the interest and finance charges relatable to raising of loan funds and has proportionately allocated those expenses to its accounts for the year under appeal. If one were to allow claim of expenses made in the computation relating to the unamortized portion, it is correct that the procedure would result in distortion of correct profit.*

*The Supreme Court in case supra has given its decision on the extent to which an assessee can claim expenditure on discount on debentures. To the extent of Rs.3.98,74,672/- pertaining to the appellant's claim under that Head (within deferred revenue expenses), the decision of the Supreme Court squarely applies. The appellant would not be entitled to its claim of expenditure in respect of discount on debentures.*

*The issue as to whether rest of the expenses within deferred revenue expenditure should be viewed in the same light as per the decision of Supreme Court in the case of Madras Industrial Syndicate is required to be examined as to what are the constituents, connotation and technical relevance of the rest of the loan raising instruments within deferred revenue expenditure. Commercial paper is said to be an unsecured, short term debt instrument issued typically for .short term financing of account receivables or inventories or for meeting short term liabilities. These are issued at a discount reflecting the prevailing market rates. Debenture is an instrument of debt executed by the company acknowledging its obligation to repay the sum at a specified rate and*

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*also carrying an interest. It is like a certificate of loan or a loan bond evidencing the fact that the company is 1iable to pay a specified amount with interest. Similarly in contracting for foreign exchange loan forward contracts are obtained-to insulate the party obtaining the loan from any loss in discounting on the appointed day i.e. if a forward contract has not been booked, then the documents / loans will be discounted/paid @ prevailing on the day of discounting / payment. Whatever be the nomenclature given to the term, whether forward premium / discount on the foreign exchange loan or any other, the fact remains that forward premiums / discounts are purely function of the interest rate differentials between two countries, whose currencies are fully convertible. In other words, forward cover premium or discount is nothing but reflection of the domestic interest rate.*

*In the case of Madras Industrial Syndicate, the court approved the definition of discount on debentures as per the definition given in Spicer and Pegler's Book Keeping and Accounts (17th Edition) Page 240. In the same analogy equating discount on debentures to the deferred interest, it has to be said that discount charges for commercial paper and forward cover premium on foreign currency loan are either pure interest (. or deferred Interest) per-se or are in intimately connected with the domestic interest rate, There is full justification to apply the ratio of the decision in Madras industrial Syndicate to the two expenses under the head of commercial paper discounting charges and forward cover premium on foreign currency loan and to disallow the claim of deferred revenue expenditure.*

*In so far as debenture issue expenses are concerned, it has been stated that these have incurred on stamp duty, legal and professional expenses in connection with issue of debentures for funding of working capital requirements of the company, There is also full justification to rely on the Decision in the case of Madras Industrial Syndicate in respect of this expense also,*

*I agree with the A.O. that the decision in the case of Madras Industrial Syndicate (225 ITR 802 (SC)) holds good and in that view of the matter, here is no case for allowing the appellant's claim of deferred revenue expenses. The A O. may also refer to the appellant's claim of deferred revenue expenses in respect of debenture issue expenses. There is a*

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*specific provision in sec. 35-D dealing with this claim and the same has, to be considered under the specific provision and not under the general / residuary provision. If the claim of debenture issue expenses falls within the ambit of section 35-D. the AO. would accordingly take necessary remedial measures.*

*Disallowance of Rs.12,22,63.212/- is sustained. Ground. no. 6 is dismissed."*

e. Provision for foreign exchange loss:

*" 7.3 I have considered the appellant's submission with reference to the facts on record. The claim of foreign exchange fluctuation loss in schedule 11to the audited accounts amounting to Rs. 1,16,44,767/- has been stated to be in terms of the appellant's own accounting policy. At para vii to Schedule 15 (Notes to the Account), the auditors state that borrowings in respect of which no forward cover has been taken are restated at the exchange rate prevailing on the balance sheet date .. Exchange differences if any on account of re-statement of liability are dealt with in the P & L a/c. Other foreign currency transactions are recorded at the rates prevalent on the date of the transaction. Foreign currency assets and liability are re-stated at the year end rates and exchange gain flosses arising out of such transaction are taken to the P & l a/c.*

*The appellant refers to the decision of the Supreme Court in the case of Sutlej Cotton Mills Ltd. In that case it was held that where profit or loss arises on an assessee on account of appreciation or depreciation in the value of foreign currency held by it, on conversion into another currency such profit or loss will ordinarily be trading profit or loss IT the foreign currency is held by the assessee on the revenue account or as a trading asset or as a part of circulating capital embarked in the business But if on the other hand the foreign currency is held as a capital asset or as fixed. capital, such profit or loss will be of capital nature.*

*In the case of ONGC Ltd. Vs DCIT 83 ITO 151 (Delhi) there was a gain in one year on account of appreciation of Indian Rupees and tile amount was offered to tax. However, the claim of deduction on loss arising on fluctuation was rejected by the Revenue on the ground that*

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*the loss was notional and that it would be allowable in the year in which the payment would made. The Tribunal held in that case that contingent liability remains an ascertained liability on the happening of a defined event. That in the context of forex liability, the defined event happens as soon as there is a fluctuation in foreign currency. Therefore the loss incurred is a fait accompli and not a notional one. The Tribunal inter alia stated that there would be no reason for disallowing the claim of forex loss on the sole ground that the loss is notional.*

*In the appellant's case, the system of accounting is mercantile. The system brings into debit expenditure, the amount for which a legal liability has been incurred before it is actually disbursed and brings into credit what is due, immediately as it become due and before it is actually received The system of accounting followed by the appellant has been consistent over the years with regard to treatment in the accounts of profits and losses arising on foreign exchange fluctuation. There is thus consistency and definiteness with regard to recognizing the revenue impact of forex changes in rates.*

*In view of the decision of Delhi ITAT in the case of ONGC Ltd., there would be no justification for disallowing the claim of forex losses holding such loss as notional. I agree with the submissions of the appellant and accordingly hold that the loss arising on foreign exchange fluctuation has arisen on revenue account or as a part of the circulating capital of the appellant, embarked in its business, and such loss is not contingent. The ground is allowed."*

4. Aggrieved, both the parties are in appeal before us.

5. At the outset, Ld. A.R. invited our attention to a copy of application filed for permission to file additional grounds of appeal and submitted that A.O. had not given full tax credits out of total tax credit claimed by appellant in its return of income. He requested that A.O. should be directed to refer to the tax credit claimed by the assessee and should accordingly allow the same. Ld. A.R. submitted that vide order dated 06.05.2015 passed

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on the application itself, the Hon'ble ITAT had admitted the application for additional ground relying on the case law of NTPC, 229 ITR 383. However, we find that one of the members had not signed on order passed by senior member and, therefore, it cannot be said that the order was passed on 06.05.2015. However, keeping in view the entirety of facts, we allow the admission of additional ground of appeal as the non admission of additional ground will cause irreparable harm and injury to the assessee whereas, it will not create any inconvenience to the Department. Moreover, we find that this ground is based on record and the claim of tax credit was made through income tax return of the assessee.

6. Ld. D.R. had no objection to the acceptance of additional ground of appeal, therefore, we admit the additional ground of appeal and direct the A.O. to verify the claim of assessee in respect of tax credit and allow the same as per law. In view of above, additional ground of appeal is allowed for statistical purposes.

7. Now, coming to the grounds of appeal raised in the appeal, Ld. A.R. had filed synopsis containing the issues involved in the appeal. The 1st ground relates to disallowance of expenditure, incurred for purchase of application software, which the A.O. had disallowed holding the same to be of capital in nature. Ld. A.R. submitted that similar allowance was allowed to assessee in 1996-97 to 1999-2000 and even for Assessment Year 1997-98, Hon'ble Delhi High Court in the case of assessee itself had dismissed the appeal of revenue and in this respect, our attention was invited to paper book pages 12-14 of compilation of judgements. Ld. A.R. submitted that reliance placed by Ld. CIT(A) on the case law of Maruti Udyog Ltd. 2 ITD 119 was misplaced as software in that case was ERP software which was not a

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routine application software and was of an enduring nature whereas the assessee's software gets obsolete / redundant in a short span of time and required regular updation. Ld. A.R. placed his reliance on the following case laws:

i) CIT v. Asahi India Safety Glass Ltd. 203 Taxman 277 (Del.)

ii) CIT v. Amway India Enterprise 346 ITR 341 (Del.)

8. Ld. D.R. however strongly placed his reliance on the orders of authorities below and submitted that specific rate of depreciation is allowed on software and, therefore, it is a capital asset eligible for depreciation at specified rate as provided in the Act.

9. We have heard rival parties and have gone through the material placed on record. We find that Ld. CIT(A) himself supported a finding that in earlier year, the assessee was allowed deduction on account of software by ITAT and we further find that during the year 1995-96 to 1997-98, Hon'ble Delhi High Court had also confirmed the order of ITAT and had dismissed the appeal of Revenue. We further observe that Hon'ble Delhi High Court had recorded a finding of fact that expenditure was incurred on M S Office and not on customized software and had therefore, confirmed the ITAT order. In the present case, the A.O. had noted in the assessment order that expenditure was incurred on application software and, therefore, assessee cannot be said to have incurred expenditure on customized software. In the case law of CIT (A) Vs Asahi India Safety Glass Ltd. 203 Taxman 277 relied upon by Ld. A.R. the Hon'ble Court has held that expenditure incurred on application software is a revenue expenditure. In the present case as noted by A.O. the expenditure was incurred on application software. Therefore, respectfully following the Hon'ble Delhi High Court, we hold the

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expenditure incurred on application software to be revenue in nature and therefore, we allow Ground No.2.

ii) Bad Debts: Ld. A.R. submitted that bad debts had been written off by assessee in its books of accounts and, therefore, its case was squarely covered by the order of Hon'ble Supreme Court in the case of TRF Ltd. Vs CIT 323 ITR 397 placed at paper book 39 of compilation of judgements. Ld. A.R. further relied upon the case law of Auto Meters Ltd. 292 ITR 345 decided by Hon'ble Delhi High Court placed a paper book pages 42-43. Inviting our attention to A.O.'s objection in disallowing the write off of bad debts, Ld. A.R. submitted that the A.O. had disallowed the claim holding that loan given by assessee has not fully become irrecoverable as the loanee was not declared BIFR Company and the case was pending with BIFR. Ld. A.R. submitted that the A.O. had held that till the final conclusion was pending before BIFR there was chance that assessee could get a part of amount and therefore, loan cannot be said to have become irrecoverable. In this respect, Ld. A.R. submitted that Hon'ble Supreme Court in the case law of TRF Ltd. has clearly held that the bad debt claim is available to an assessee when he writes off in its books of accounts therefore, as the assessee had written off the claim in its books of account, the claim of deduction is in accordance with law.

Ld. D.R. on the other hand submitted that the A.O. has passed a detailed order in this respect and Ld. CIT(A) has also upheld the same holding that the loan of assessee was a secured loan and there was a chance of recovery of at least partial amount and therefore, loss on account of bad debts was not ascertained. In view of the fact that debt had not become bad, therefore, he highly placed reliance on the orders of authorities below.

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We have heard rival parties and have gone through the material placed on record. From the facts of the case, we observe that the assessee is a NBFC and advancing loans is one of the main objects of the company and the assessee had advanced loan to one of its customers namely Grapco Industries in ordinary course of money lending business and it is also a fact that the amount recoverable form the loanee has been written off in the books of accounts of assessee. It is also observed that the assessee had classified the loan recoverable from Grapco Ltd. as a non performing asset as per RBI norms as noted at para 5.3 of A.O.'s order. The A.O. and Ld. CIT(A) has not allowed the claim of assessee holding that deduction is allowed in respect of bad debts which is written off as irrecoverable in the accounts and not in respect of any debt which may be written off in its accounts. Both the authorities below has held that primary condition for allowing the bad debt is that it should have become bad and only then it can be written off as irrecoverable. Ld. CIT(A) has held that only when proceedings in BIFR are concluded in the case of Grapco and after recovering whatever is recovered , the dues of assessee can be ascertained. However from the order of Hon'ble Supreme Court in the case of TRF Ltd. VSs CIT 323 ITR 397 placed at paper book page 38-40, we find that Hon'ble Apex Court has held that for a claim of bad debt, the assessee has to only establish that debt has been written off and it was not necessary to establish that debt has become irrecoverable. Admittedly, the debt has been written off as noted in the assessment order itself and the loan was given in ordinary course of regular business activities of the assessee. Therefore, as per the Hon'ble Supreme Court decision, the action of writing off of debt was sufficient to claim the loss. In the judgements relied upon by Ld. A.R.,

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the Hon'ble Supreme Court had remitted back the claim of bad debt to A.O. as in that case, the facts of writing off of debt was not examined by A.O. However, in the present case, the debt has actually been written off therefore, relying upon the ratio of judgement of Hon'ble Supreme Court, we hold that the claim of assessee in respect of bad debt written off is allowable and in view of the same, we allow ground No.3 of appeal.

iii) Disallowance u/s 14A: Ground No.4 relates to upholding of a part of disallowance u/s 14A of the Act. The A.O. had disallowed an amount of Rs.12,27,50,000/- on account of expenditure of interest relatable to earning of dividend and further had disallowed an amount of Rs.15 lacs relating to administrative expense for earning of dividend income. Ld. CIT(A) has however, deleted the additions on account of interest expenses. In respect of expenses, he has partly allowed relief by holding 5% of gross dividend income as reasonable expenses for earning the income. The assessee is now in appeal for upholding of amount of Rs.2,92,500/- which Ld. CIT(A) has upheld for expenses and revenue is in appeal for deletion of addition of Rs.12,27,50,000/- on account of expenditure of interest Ld. A.R. submitted that the assessee had received an amount of dividend as Rs.58,40,028/- which was received from group companies namely Maruti Countrywide Auto Finance Services Ltd. and GE India Ltd. and investment in these companies were made way back in 1995-96 and 1996-97. Ld. A.R. submitted that the assessee was a cash rich company and investment was made out of internal accruals and the issue of disallowance of interest has already been considered in earlier Assessment Year 1998-99 by the Tribunal in I.T.A. No. 1523/ Del./2003 and our attention was invited to paper book page 35. Ld. A.R. further submitted that the assessee has not incurred any

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interest expenses in order to make investments in these investments as the assessee had invested out of cash accruals and that too in earlier years. He further argued that no notional deduction in terms of administrative expenses can be made in the absence of any finding of actual incurring of expenditure; the Ld. A.R. relied upon the following case laws:

a) CIT Vs Hero Cycles Ltd. 323 ITR 518
b) CIT Vs Taikisha Engineering India Ltd 370 ITR 338
c) CIT Vs Maxopp Investment Ltd. 203 Taxman 364
d) CIT Vs UTI Bank Ltd. 32 Taxman.com 370

10. In view of above facts, Ld. A.R. submitted that Ld. CIT(A) has passed reasonable and speaking order as far as interest expenditure is concerned and moreover, the issue of interest expenses is already covered in favour of assessee by the order of Tribunal in Assessment Year 1998-99. It was argued that as regards administrative expense, the issue is covered in favour of assessee by various judgements.

11. Ld. D.R. on the other hand submitted that for earning exempt income, expenditure has to be incurred and provisions of Rule 14A are mandatory in nature and, therefore, the A.O. has rightly disallowed the same u/s 14A of the Act.

12. We have heard rival parties and have gone through the material placed on record. We find that in the year under consideration, there is no investment in the shares and it is also undisputed fact that dividend was earned from two companies which are group companies of assessee and the assessee had made investments in these companies as strategic investment and dividend amount of R.58,40,028/- comes to 0.15% of total income of assessee which fact is apparent from the order of Ld. CIT(A) at page 11.

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Moreover, Ld. CIT(A) has clearly held that investment in shares was made out of internal accruals and own funds and no borrowed funds were used. Ld. CIT(A) has held that out of internal accruals of s.248 crores for the year ended 31.03.1996, and Rs.253 crores in the year ended 31.03.1997, the assessee had made investment of Rs.34.99 crores and Rs.46.93 crores in these two years, which means that the figures of internal accruals for two years was six times more than the figure of investments in these two years. Therefore, relying upon the decision of ACIT Vs Eicher Ltd. in 101 TTJ 369, Ld. CIT(A) has rightly held that disallowance on account of interest was not applicable to the assessee.

13. Ld. D.R. was not able to controvert any of the findings of Ld. CIT(A). In view of the above ground No.1 of Revenue's appeal is dismissed.

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

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as contemplated u/s 14A is the actual expenditure in relation to earning of exempt income and, therefore, had held that if no expenditure is incurred in relation to exempt income no disallowance can be made u/s 14A of the Act. However, we find that the provisions of Section 14A are mandatory in nature and sub-section (3) of Section 14A applies to the cases where assessee claims that no expenditure has been incurred in relation to income which does not form part of total income under the said act. In other words, sub-section (2) deals with cases where the assessee specifies incurrence of some expenditure in relation to income which does not form part of total income whereas sub-section (3) applies to cases where the assessee asserts that no expenditure had been incurred in relation to exempt income. In both the cases, the A.O. should be satisfied with the contents of the claim of assessee in respect of which, expenditure or no expenditure as the case may be and without this satisfaction he cannot embark upon to determine the amount of expenditure in accordance with any prescribed method as mentioned in sub-section (2) to section 14A of the Act. It is only if the A.O. is not satisfied with the correctness of claim of assessee in both the cases that A.O. gets jurisdiction to determine the amount of expenditure incurred in relation to such income which does not form part of total income under the Act in accordance with the prescribed method. While rejecting the claim of assessee with regard to expenditure or no expenditure as the case may be, in respect of exempt income, the A.O. would have to indicate cogent reasons for the same which has not been done in the present case. Therefore, relying upon the ratio of Hero Cycles Ltd. 323 ITR 518, we hold that without recording of finding of fact as to the incurring of some expenditure, disallowance made by A.O. and partly confirmed by Ld. CIT(A) is not

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justified. Moreover, we find hat dividends were received from the group companies wherein the investment was made as a strategic investment and not for the purpose of earning dividend and since these are strategic investments there is no chance of incurring of any expenditure on day to day basis. In view of above facts and circumstances, ground No. 4 of assessee's appeal is allowed, whereas ground No.2 of Revenue's appeal is dismissed.

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

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232 of compilation of judgements. Ld. A.R. submitted that the issue was further covered in favour of assessee by the following judgements:

i) Taparia Tools Ltd. Vs JCIT in civil appeal NO.6946-6948 of 2004 (S.C.).

ii) CIT Vs Citi Financial Consumer Finance Ltd. 335 ITYR 29

iii) CIT Vs Panacia Biotech Ltd. in I.T.A. No. 22 & 24/2012 (Del. H.C.)

16. Inviting our attention to Section 37 of the Act, Ld. A.R. submitted that as per Section 37, the expenses of capital and personal expenses has to be disallowed while calculating the business income of the assessee. Ld. A.R. submitted that the expenses incurred were not of personal nature neither they were of capital nature and there is no class of deferred revenue expenditure in the income tax Act. He submitted that Ld. A.O had relied upon the decision in case of Madras Indl. 225 ITR 802 (S.C.) whereas in the case of Madras Indl. the Hon'ble Court had decided the issue in favour of revenue as in that case, the assessee had claimed only a part of expense against taxable income and Hon'ble High Court had held that where the assessee itself claimed expenses proportionately keeping in view of the nature of expenses, the assessee was permitted to do so. Whereas in the present case, the assessee has not availed such option and has claimed the amount partly in P & L account and partly in computation of income.

17. We have heard rival parties and have gone through the material placed on record. We find that as per Section 37, all expenditure incurred wholly and exclusively for the purpose of business are allowed in the computation of income unless they are of capital nature or of personal nature. There is no mention of deferred revenue expenditure in the income tax Act. In the case

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of Mad. Industrial as relied upon by Ld. CIT(A), the issue was decided in favour of revenue on account of the fact that assessee itself had claimed proportionate amount in the P & L account and the Hon'ble Court had held that in such a scenario proportionate claim was admissible. We further find that Seciton 35D is also not applicable in the case of assessee as the assessee is a NBFC and in the year under consideration, Section 35D was applicable only for industrial units. We further find that similar issue was considered by the Tribunal in the case of group companies of assessee and copy of order is placed at paper book pages 189-222. The findings of Tribunal as contained in para 19.1 -19.3 are reproduced as under:

> *"19.1 We have considered the rival submissions and have perused the record of the case. We find that there is no concept of deferred revenue expenditure under the Income Tax Act except under certain specific, provisions like section 35D. Therefore, unless statutory provision is there to defer the revenue expenditure over a period, the entire amount is to be allowed in the year in which it is incurred for running the business as per section 37 of the Income Tax Act. Ld. CIT(A) has relied on the decision of Hon'ble Supreme Court in the case of Woodward Governor (supra), wherein ITA Nos. 2808/0111, 1293/0112,1047/0112,3977/0/10 & 2470/0111 18 the issue was regarding claim for foreign exchange loss and there was no issue regarding deferred revenue expenditure. The said decision is not applicable to the facts of the present case. The Hon'ble Supreme Court considered the applicability of accounting standard XI in that context only.*
> *As far as the present issue is concerned, we find that this issue is no more Res-integra in view of following decisions:*
>
> 1. *335 ITR 29 in the case of CIT vs. Casio India Ltd., wherein the Hon'ble Delhi High Court held that direct selling expenses, stamping fee and commission paid to the selling agents in the case of assessee who was financing the higher purchase of vehicles and homes and*

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*the period of such financing were ranging from less than 1 year upto 5 years was allowable in the year in which the expenditure was incurred and not over 5 years;*

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

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

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

*4. "The question of deferred revenue expenditure and the Judgment of the Supreme Court in the case of Madras industrial Investment Corporation Ltd. vs. CIT, MANUISCI049311997 : (1997)225 1TR 802 (SC) was examined and distinguished in CIT vs. Industrial Corporation of India MANUIDEl252112009 (2009) 185 Taxman 296 (Delhi) and it was held:*

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

*5. In CIT vs. Citi Financial Consumer Fin. Ltd. (20ll) 335 ITR 29 (Del.), a Division Bench referred to Industrial Finance Corp. of India (supra) and then quote a passage from the decision of the Supreme Court in CIT Vs. Empire Jute Co. Ltd. vs. CIT (1980) 124 ITR 1 (SC):*

*1 3. At this stage, it would be of advantage to discuss the judgment of Supreme Court 111 Empire Jute (1980) 124 ITR 1 (SC) which repelled the theory of expenditure of enduring nature, in a great measure. In that case, the SC noted that by decided cases, the courts evolved various tests for distinguishing " between the capital and revenue expenditure but the test is paramount or conclusive. Every case has to be decided on its facts keeping in mind the broad picture of whole operation in respect of which the expenditure has been*

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*incurred. At the same time, a few tests formulated by the courts were taken note of One such test which was specifically spelled out and may be relevant for our purpose was "when an expenditure is made not only once and for all, but with a view to bringing into existence of an advantage for which enduring benefit of a trade, the expenditure can be treated as capital in nature and not attributable to revenue". However, cautioned the court, it would be misleading to suppose that in all cases securing a benefit for business expenditure would be capital expenditure. The court added the caution in the following words:*

*There may be cases where expenditure, even if incurred for obtaining advantage of enduring benefit, may, none the less, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably white leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The lest of enduring belle fit is, therefore, not a certain or conclusive rest and it cannot be applied blindly and mechanically without regard LO the particular facts and circumstances of a given case.*
*ITA Nos. 28081D1l1, 12931D112, 10471D112, 3977IDIlO & 24701D1l1 22*

*6. It was held that the claim of the Revenue that the revenue expense should be deferred in the absence of a statutory' provision or spread over some years cannot be accepted. In the case of Commissioner of Income" Tax vs. Casio India Ltd. MANUIDE12405120II : (2011) 335 ITR 196 (Del.), reference was made to the decision in the case of Citi Financial*

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*Consumer Fin. Ltd. (supra). It was held that the expenditure incurred on investment and sale promotion was business expenditure U/S 37( 1) of the Act and the concept of deferred revenue expenditure should not be accepted at the behest of the Revenue. "*

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

*1. 335 ITR 29, CIT vs. Citi Financial Consumer Finance Ltd., wherein it was observed as under:*
*"We may also add here that in the Income-tax law, there is no concept of deferred revenue expenditure. Once the assessee claims the deduction for the whole amount of such expenditure, even in the year in which it is incurred, and the expenditure fulfils the test laid down u/s 37 of the Act, it has to be allowed. Only in exceptional cases, the nature mentioned in Madras Industrial Investment Corporation Ltd. [1997J 225 ITR 802 (SC), the expenditure can be allowed to be spread over, that too, when the assessee chooses to do so. "*

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

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

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

*8.4 "This leads us with the only question as to whether it is permissible for the assessee to claim the entire expenditure as revenue expenditure while filing its return of income, while on the other, under the Companies Act, adopted a method of*

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*accounting wherein only part of the expenditure in question was debited to the profit and loss account. The issue, in our considered opinion, is covered in favour of the assessee and against the revenue by a number of decisions which were cited before us by the learned counsel for the assessee. In the Hyderabad Bench in the case of Amar Raja Batteries vs. Asstt. CIT [2004} 91 ITD 280which is squarely applicable to the facts of this case, it was held that-*

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

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

*It is well settled that the entries in the books of account cannot be the basis whether a receipt is taxable or not or whether expenses are allowable as a deduction or 110t. Courts are*

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*compelled to go by the true nature of receipts and not to go by the entries made in the books of account.*

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

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

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

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

19. Now, we take up the appeal filed by revenue. The first ground of appeal is regarding grievance of Revenue with the action of Ld. CIT(A) by which he had deleted Rs.12,27,50,000/- u/s 14A of the Act. This ground has already been adjudicated while deciding the ground No.4 of appeal of

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assessee. In view of above, grounds No.1 & 2 of Revenue's appeal are dismissed.

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

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

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the order of Hon'ble Supreme Court in the case of Woodward Governor India (P) Ltd. wherein the Hon'ble Supreme Court has held as under:

> *"13. As stated above, one of the main arguments advanced by the learned Additional Solicitor General on behalf of the Department before us was that the word "expenditure" in section 37(1) connotes "what is paid out" and that which has gone irretrievably. In this connection, heavy reliance was placed on the judgment of this court in the case of Indian Molasses Company P. Ltd. (1959] 37 ITR 66. Relying on the said judgment, it was sought to be argued that the increase in liability at any point of time prior to the date of payment cannot be said to have gone irretrievably as it can always come back. According to the learned counsel, in the case of increase in liability due to foreign exchange fluctuations, if there is a revaluation of the rupee vis-a-vis foreign exchange at or prior to the point of payment, then there would be no question of money having gone irretrievably and consequently, the requirement of "expenditure" is not met. Consequently, the additional liability arising on account of fluctuation in the rate of foreign exchange was merely a contingent/notional liability which does not crystallize till payment. In that case, the Supreme Court was considering the meaning of the expression "expenditure incurred" while dealing with the question as to whether there was a distinction between the actual liability in presenti and a liability de futuro. The word" expenditure" is not defined in the 1961 Act. The word "expenditure" is, therefore, required to be understood in the context in which it is used. Section 37 enjoins that any expenditure not being expenditure of the nature described in sections 30 to 36 laid out or expended wholly and exclusively for the purposes of the business should be allowed in computing the income chargeable under the head "Profits and gains of business". In sections 30 to 36, the expressions "expenses incurred" as well as "allowances and depreciation" have also been used. For example, depreciation and allowances are dealt with in section 32. Therefore, Parliament has used the expression ' "any expenditure" in section 37 to cover both. Therefore, the expression "expenditure" as used in section 37 may, in the circumstances of a particular case, cover an amount which is really a "loss" even though the said amount has not gone out from the pocket of the assessee.*

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*14. In the case of M. P. Financial Corporation v. err reported in [1987) 165 14 ITR 765 the Madhya Pradesh High Court has held that the expression "expenditure" as used in section 37 may, in the circumstances of a particular case, cover an amount which is a "loss" even though the said amount has not gone out from the pocket' of the assessee. This view of the Madhya Pradesh High Court has been approved by this court in the case of Madras Industrial Investment Corporation Ltd. v. CIT reported in [1997] 225 ITR 802 . According to the Law and Practice of Income Tax by Kanga and Paikhiuala, section 37(1) is a residuary section extending the allowance to items of business expenditure not covered by sections 30 to 36. This section, according to the learned author, covers cases of business expenditure only, and not of business losses which are, however, deductible on ordinary principles of commercial accounting. (see page 617 of the eighth edition). It is this principle which attracts the provisions of section 145. That section recognizes the rights of a trader to adopt either the cash -system or the mercantile system of accounting. The quantum of allowances permitted to be deducted under diverse heads under sections 30 to 43C from the income profits and gains of a business would differ according to the system adopted. This 'is made clear by defining the word "paid" in section 43(2), which is used in several sections 30-to 43C, as meaning actually paid or incurred according to the method of accounting upon the basis on which profits or gains are computed under section 28/29. That is why in deciding the question as to whether the word "expenditure" in section. 37(1) includes the word "loss" one has to read section 37(1) with section 28, section 29 and section 145(1). One more principle needs to be kept in mind. Accounts regularly maintained in the course of business are to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. One more aspect needs to be highlighted. Under section 28(i), one needs to decide the profits and gains of any business which is carried on by the assessee during the previous year. Therefore, one has to take into account stock-in-trade for determination of profits. The 1961 Act makes no provision with regard to valuation of stock. But the ordinary principle of commercial accounting requires that in the profit and loss account the value of the stock-in-trade at the beginning and at the end of the year should be*

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

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

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

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

23. In view of the above, we do not see any infirmity in the order of Ld. CIT(A) and, therefore, ground No.3 of Revenue's appeal is dismissed.

24. In nutshell, appeal filed by assessee is allowed whereas appeal filed by Revenue is dismissed.

25. Order pronounced in the open court on 10th June, 2015.

Sd./- Sd./-

( G. C. GUPTA) (T.S. KAPOOR)
VICE PRESIDENT ACCOUNTANT MEMBER
Date:10.06.2015

Sp

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order

(ITAT, New Delhi).

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| S.No. | Details | Date | Initials | Designation |
|---|---|---|---|---|
| 1 | Draft dictated on | 1/6 | | Sr. PS/PS |
| 2 | Draft placed before author | 1,8,9,9 | | Sr. PS/PS |
| 3 | Draft proposed & placed before the Second Member | | | JM/AM |
| 4 | Draft discussed/approved by Second Member | | | AM/AM |
| 5 | Approved Draft comes to the Sr. PS/PS | 10/6/15 | | Sr. PS/PS |
| 6 | Kept for pronouncement | 10/6 | | Sr. PS/PS |
| 7 | File sent to Bench Clerk | 10/6 | | Sr. PS/PS |
| 8 | Date on which the file goes to Head Clerk | | | |
| 9 | Date on which file goes to A.R. | | | |
| 10 | Date of Dispatch of order | | | |