

Sd/-
(JM)

Sd/-
(AM)

ITA Nos.- 716/Del/2016 and three others appeals.
M/s Delhi Tourism Transportation Corporation Ltd.

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'B': NEW DELHI)**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 716/Del/2016
(Assessment Year: 2012-13)**

DCIT, Circle- 7(1), New Delhi.	Vs.	M/s Delhi Tourism Transportation Corporation Ltd., 18-A, DDA SCO Complex, Defence Colony, New Delhi- 110024.
PAN No: AAACD0169J		
APPELLANT		RESPONDENT

**ITA No:- 2489/Del/2015
(Assessment Year: 2010-11)**

M/s Delhi Tourism Transportation Corporation Ltd., 18-A, DDA SCO Complex, Defence Colony, New Delhi- 110024.	Vs.	DCIT, Circle- 10(1), and Commissioner (A)-III New Delhi.
PAN No: AAACD0169J		
APPELLANT		RESPONDENT

**ITA No:- 570/Del/2016
(Assessment Year: 2012-13)**

M/s Delhi Tourism Transportation Corporation Ltd., 18-A, DDA SCO Complex,	Vs.	Assistant Commissioner of Income Tax, Circle- 3(1),
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Defence Colony, New Delhi-110024.		New Delhi.
PAN No: AAACD0169J		
APPELLANT		RESPONDENT

ITA Nos:- 2792/Del/2015
(Assessment Year: 2010-11)

DCIT, Circle- 7(1), New Delhi.	Vs.	M/s Delhi Tourism Transportation Corporation Ltd., 18-A, DDA SCO Complex, Defence Colony, New Delhi- 110024.
PAN No: AAACD0169J		
APPELLANT		RESPONDENT

Revenue by : Ms. Ashima Neb, Sr. DR
Assessee by : Shri H.P. Agrawal, FCA and
Shri Pancham Sethi, FCA

ORDER

PER ANADEE NATH MISSHRA, AM

These four appeals, are directed against different order dated 26.02.2015 and 13.11.2015 of Commissioner of Income Tax (Appeals)-3, Laxmi Nagar, Delhi-110092 pertaining to different Assessment Years i.e. 2010-11 and 2012-13. For the sake of convenience and brevity these four appeals, two each filed by Revenue and Assessee, are being disposed off by way of this consolidated order. The grounds of appeals are as under:

ITA No.- 716/Del/2016

- "1. Ld. CIT(A) erred in law and on facts of the case in directing the AO to allow the assessee deduction of Rs. 5,20,17,982/- which was disallowed by the AO u/s 43B of the I.T. Act on account of advance excise duty.*
- 2. Ld. CIT(A) erred in law and on facts of the case in directing the AO to allow the assessee deduction of Rs. 1,43,34,019/- which was disallowed by the AO on account of provision for leave encashment.*
- 3. Ld. CIT(A) erred in law and on facts of the case in directing the AO to allow the assessee loss of Rs. 44,65,663/- pertaining to DITTM.*
- 4. The appellant craves leave, modify, add or forego and ground(s) of appeal at any time before or during the hearing of this appeal.*

ITA No.- 2489/Del/2015

- "1. Ld. CIT(A) erred both in law and on facts of case by failing to treat the assessment order passed by Ld. AO to be infructuous and void being based on original return when revised return is duly filed.*
- 2. Ld. CIT(A) erred both in law and on facts of case by:*
 - 2.1 directing the Ld. AO to consider the revised return*
 - 2.2. allowing another opportunity to the Ld. AO for adjudicating upon the revised return through remand report when time period allowed by section 153(1) for concluding the assessment u/s 143(3) had already lapsed.*
 - 2.3 failing to appreciate that the remand report issued by the Ld. AO on the directions of Ld. CIT(A) continues to suffer from the same legal infirmity as original order passed u/s 143(3) which was passed without considering the duly filed revised return.*
- 3. Ld. CIT(A) erred both in law and on facts of case by:*
 - 3.1 observing that additional claims in the revised return are based on adhoc estimates.*
 - 3.2 failing to appreciate that the return is revised in pursuance to the order of Hon'ble Delhi High Court in AY 1990-91, 1991-92, 1992-93, 1994-95 and 1996-97 holding that*
 - 3.2.1 the expenditure incurred on construction of flyovers, etc. was revenue expense, and*

- 3.2.2 amount standing to credit of TIUF account was to be included in taxable income*
- 3.3 failing to allow the claim of brought forward losses amounting to Rs. 5,61,25,314/- in the revised return.*
- 4. Ld. CIT(A) erred in law and on facts of the case by confirming the rejection of claim of*
- 4.1 Provision for Doubtful Debts amounting to Rs. 6,11,675/-.*
- 4.2 Provision for Doubtful Loans amounting to Rs. 1,14,901/-.*
- 5. Ld. CIT(A) erred in confirming the action of the AO in*
- 5.1 making a net addition of Rs. 1,01,03,121/- to the income on account of income from "Dilli Haat".*
- 5.2 treating a part of income from "Dilli Haat" as rental income as against the claim of the assessee to treat the same as income from business.*
- 5.3 restricting the claim of expenses to 30% of receipts from "Dilli Haat".*
- 6. Without prejudice to Ground No. 4, Ld. CIT(A) erred in confirming the arbitrary disallowance of expenditure by the Ld. AO, while determining the income from Dilli Haat, as;*
- 6.1 proportionately attributable expenses w.r.t. rental income amounting to Rs. 65,88,427/-.*
- 6.2 50% of other remaining expenses on account of NDMC share amounting to Rs. 1,00,39,192/-*
- 7. Ld. CIT(A) erred in law and on facts of the case by confirming the addition of Rs. 61,81,344/- to income on account of under-statement of bank interest."*

ITA No. – 570/Del/2016

- 1. On the facts and circumstances of the case and in law Ld. CIT(A) has erred in confirming the addition of Rs. 1,43,04,472/- made to the income of the assessee u/s 143(3) by Ld. AO.*
- 2. Ld. CIT(A) erred in confirming the action of the AO in*
 - 2.1 making a net addition of Rs. 1,38,88,879/- to the income on account of income from "Dilli Haat".*
 - 2.2 Treating a part of income from "Dilli Haat" as rental income as against the claim of the assessee to treat the same as income from business.*
 - 2.3 Restricting the claim of expenses to 30% of receipts from "Dilli Haat".*

3. *Without prejudice to Ground No. 2, Ld. CIT(A) erred in confirming the arbitrary disallowance of expenditure by the Ld. AO, while determining the income from Dilli Haat, as:*
 - 3.1 *proportionately attributable expenses w.r.t. rental income amounting to Rs. 1,15,41,687/-*
 - 3.2 *50% of other remaining expenses on account of NDMC share amounting to Rs. 1,15,33,415/-*
4. *Ld. CIT(A) erred in law and on facts of the case by confirming the rejection of claim of*
 - 4.1 *Provision for Doubtful Debts amounting to Rs. 4,15,593/-.*
 - 4.2 *Deduction of Rs. 32,59,477/- being revenue booked under damage charges not representing real income of assessee."*

ITA No. 2792/Del/2015

- "1. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in deleting addition on account of deduction claimed u/s 43B of Rs. 7,50,48,000/- being advance excise duty payment / deposit?*
- 2. Whether the CIT(A) was correct in allowing deduction of advance excise duty paid u/s 43B of the Act. Even though the liability to pay the sum had not crystallized during the year and the claim was also not debited to P & L account of this year?*
- 3. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in deleting disallowance of the provisions for the Leave Encashment of Rs. 1,80,75,136/-?*
- 4. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in deleting the disallowance of the payment to CRRRI u/s 35(I)(iia) of Rs. 11,03,000/- as made by the AO.?*
- 5. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in deleting the disallowance of the net loss claim of the unit of Rs. 32,79,998/- related to the Delhi Institute of Tourism and Travel Management (DITTM) as made by the AO?*
- 6. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in deleting the disallowance of sum of Rs. 33,74,567/- being 50% of the expenses claimed towards "Tourism Promotion Expenses" and "Hiring of Tent & Purpose thereof" as made by the AO.?*
- 7. The appellant craves to leave, to add, alter or amend any ground of appeal raised above at the time of hearing."*

(1.1) During the appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short) the assessee filed separate Synopses for each of the aforesaid four appeals. The assessee also filed separate Paper Books for A.Y. 2010-11 and A.Y. 2012-13, containing the following particulars:

1. Re. Ground no. 1: Revise Income tax return and its acknowledgment of filing for A.Y. 2010-11.
2. Re. Ground No. 2: Remand report for considering revised return
3. Re. Ground No. 2: Assessee's submission in respect to remand report of AO
4. Re. Ground no. 3: Order of Hon'ble Delhi High Court in AY 1990-91, 1991-92, 1992-93, 1994-95 and AY 1996-97.
5. Re. Ground No. 3: Order of Hon'ble ITAT in assessee's case for AY 2004-05 to AY 2009-10
6. Re. Ground No. 5: Profit & Loss A/c of Dilli Haat for FY 2009-10
7. Re. Ground No. 5: Income from Dilli Haat as per alternate contention
8. Re. Ground No. 7: Rectification application filed u/s 154 before Ld. AO
9. Re. Ground Noj. 7: Screenshot on the income tax portal stating the effect of TDS calimed in application u/s 154
10. Re. Ground no. 1 & 2 (Deptt): Order of Hon'ble ITAT in assessee's case in AY 2008-09 and AY 2009-10.
11. Re. Ground No. 1 & 2 (Deptt): order of Hon'ble Delhi High Court in assessee's case in AY 2008-09 and AY 2009-10.
12. Re. Ground No. 3(Deptt): Order of Ld. AO in assessee's case for AY 2005-06.
13. Re. Ground No. 4(Deptt). Notification no. 53/2011, dt. 30.09.2011 in relation to section 35(1)(ii) and names of institutes covered under CSIR.

14. Re. Ground No. 4 (Deptt): Confirmation by CRRRI for receipts of payment from DTTDC
15. Re. Ground No. 4 (Deptt): order of DCIT (Exemption) New Delhi u/s 10(23C)(iv) regarding exemption to CSIR.
16. Re. Ground No. 5 (Deptt): Order of Ld. CIT(S) dt. 30.01.2019 in assessee's case in AY 2013-14.
17. Re. Ground No. 5 (Deptt): MOU issued in 1993 by Ministry of Tourism, GOI and renewal letter dt. 08.09.2005.
18. Re. Ground No. 5 (Deptt) : Abstract of DOD minutes held in Sept. 2007 related to taken over of DITTM by DTTDC.
19. Re. Ground No. 6(Deptt): Invoices for tourism promotion expenses
20. Re. General Ground: submission to Ld. CIT(A) Dt. 20.06.2014
21. Re. Ground 1 & 2: Original and revised computation
22. Re. Ground NO. 2 & 3 : Copy of memorandum of association and licence deed.
23. Re. Ground No. 2 & 3 : Balance sheet and profit & loss a/c of Dilli Haat for FY 2011-12
24. Re. Ground NO. 2 & 3: Incoem from Dilli Haat as per alternate contention
25. Re. Ground No. 4: Copy of ledgers relating to provision for bad & doubtful debt
26. Re. Ground No. 4: Ledger of ITE India Pvt. Ltd. along with note on reversal of recovery relating to damage charges.
27. Re. General ground: Submission to Ld. CIT(A)"

(1.2) We have considered all materials on record, including the aforesaid Synopses and Paper Books, and order of the lower authorities, namely the Ld. Commissioner of Income

Tax (Appeals) and the Assessee. At the time of hearing before us, we have heard both sides patiently and have taken the oral submissions made by the two sides into consideration.

(2) We first take up Assessee's appeals in ITA No.2489/Del/2015 for Assessment Year 2010-11 ("A.Y.", for short) and ITA No.570/Del/2016 for A. Y. 2012-13. The Grounds 1, 2, 3, and 4 in assessee's appeal for A. Y. 2010-11 were not pressed. Hence, these grounds are dismissed, being not pressed. Ground No.1 in Assessee's appeal for A. Y. 2012-13 is general in nature and does not required specific adjudication.

(2.1) Grounds 5 and 6 in Assessee's appeal for A. Y. 2010-11 and Grounds 2 and 3 in assessee's appeal for A. Y. 2012-13 pertain to additions made by the Assessing Officer ("AO", for short) on account of income from "Dilli Haat", treating part of income from "Dilli Haat" as rental income and restricting the claim of expenses to 30% of the receipts. The additions made by the AO on this account are Rs.1,01,03,121/- for A. Y. 2010-11 and Rs.1,38,88,879/- for A. Y. 2012-13. At the time of hearing before us, the Ld. Authorized Representative ("AR", for short) of the Assessee submitted that the issue is covered by order of Co-ordinate Bench of ITAT ("Income Tax Appellate Tribunal", for short) Delhi in assessee's own case for A. Y. 2004-05 to A.Y. 2009-10 vide order dated 28.03.2018 in ITA Nos. 3457/Del/21007, 1505/Del/2009, 4877/Del/2009, 1903/Del/2011, 1634/Del/2011, 2687/Del/2012 and 4910/Del/2012. Directions of ITAT in aforesaid order dated 28.03.2018 are contained in paragraphs 19 and 22 of the order which are reproduced below for ready reference:-

"19 Further, the nature of the business activity of the assessee unmistakably deciphers that it cannot be carried out without letting out stalls on regular frequency to different craftsmen. In the above hue, we have absolutely no doubt in our mind that income of Rs. 1.82 crore earned by the assessee from use of craft stalls on 15 days basis is 'Business income' and has been considered by the authorities below as 'Income from house property'.

The impugned order is pro tanto vacated.

22. Turning to the remaining amount of Rs.54.00 lac, we find that the same consists of Rs.41.00 lac, being, income from space rented on regular basis and Rs.12.99 lac, being, licence fee for allowing activities of food court, souvenir shops, bank and PCO. This amount of Rs.54 lac has been earned by the assessee from the letting out of its permanent structures. The same cannot be equated with income of Rs.1.82 crore discussed above, being, licence fee for use of craft stalls on 15 day basis. The Id. AR was fair enough not to contest the taxability of Rs.54.00 lac as income held by the lower authorities to be falling under the head 'Income from house property.'"

The AR of the Assessee submitted that same view may be taken for A.Y. 2010-11 and A.Y. 2012-13 also.

(2.2) The Ld. Departmental Representative ("DR", for short) fairly conceded that the issues in dispute are covered by the aforesaid order dated 28.03.2018 of Co-ordinate Bench of ITAT, Delhi in Assessee's own case for A. Y. 2004-05 to 2009-10 on identical facts and circumstances. However, she relied on the orders of the AO. Thus, both sides agree that the issue in dispute are covered by aforesaid order dated 28.03.2018 of Co-ordinate Bench of ITAT, Delhi in assessee's own case.

(2.3) The Assessee Company was incorporated by the Government of Delhi with the main object to develop tourism. Main objects of the assessee, as contained in Memorandum of Association states:

"1. *To DEVELOP TOURISM AND TO :*

....

(d) Provide entertainment to tourists by way of cultural shows, tourist complexes, entertainment and amusement parks, dances, music concerts, ballets , films, shows, sports and games, son-et-luminiere spectacles and others.

.....

(f) provide shopping facilities to tourist, establish and manage shops including duty free shops, bazaars, emporia and other places for selling travel requisites and other articles of tourist interest"

With the object to promote tourism, the idea of 'DILLI HAAT was conceptualized in 1994 by the Ministry of Tourism, Government of India and land measuring about 6 acres was leased to the assessee from New Delhi Municipal Council (NDMC) initially for 10 years and renewed from time to time.

On the leased land, the assessee constructed shops, stalls, space for banks, food courts, green plaza, etc. and walkways, amphitheater and open theater for entertainment, fashion shows, and cultural programmes.

The stalls were allotted to craftsmen, hawkers, etc. at a nominal payment for a period of 15 Days by the Ministry of Textiles, Government of India. These craftsmen, hawkers and artisans come from all corners of India and are allotted open spaces having temporary construction on rotational basis at Rs.200 per day for 15 Days.

Dilli Haat was conceptualized on the land leased by NDMC and as a consideration for lease of land, assessee was required to pay a sum of Rs. 1,50,000/- per annum as license fee plus 50% of the sales of the entry tickets of Dilli Haat per annum."

(2.3.1) During the A.Y. 2010-11 Assessee earned total gross receipts amounting to Rs.5,98,17,388/- from "Dilli Haat", break up of which is as follows :-

S. No	Particulars	Amount
a	Stall Festival Income	12,92,802
b	License fees allowing activities of food court, souvenir shops,	3,38,54,654
	Bank and PCO	
Total (A)		3,51,47,456
c.	Other receipts (brand exhibition stage)	78,82,381
d	Entry Ticket Charges	1,60,16,025
e	Misc. Receipts	7,71,526
Total (B)		2,46,69,932
Total Gross receipts (C)		5,98,17,388

As against the total receipts at "Dilli Haat" amounting to aforesaid Rs.5,98,17,388/- the total expenses incurred by the assessee at "Dilli Haat" was Rs.3,03,00,709/-; and the net income of Rs. 2,95,16,679/- has been shown by the assessee as business income from "Dilli Haat". The Ld. AO at **Page No. 10** of his order held that out of the total receipts of Rs.5,98,17,388/- from "Dilli Haat", Rs.3,38,54,653/- has been earned on account of rental income being the aggregate of following:

Income from space rented on regular basis	98,87,917/-
Craft stall	<u>2,39,66,739/-</u>
Total	<u>3,38,54,653/-</u>

While computing Income under the head House Property, the Ld. AO allowed expenses @ 30 % of the rental income, i.e. he allowed only Rs. 1,01,56,396/- as expenses against rental income of Rs.3,38,54,653/-; and disallowed the balance expenses of Rs. 1,01,03,121 (i.e. Rs.2,02,59,517 -1,01,56,396) claimed against the aforesaid receipts totaling Rs. 3,38,54,653/-.

(2.3.2) During the A.Y. 2012-13 Assessee earned total gross receipts amounting to Rs.7,94,29,047/- from "Dilli Haat", break up of which is as follows :-

S . No.	Particulars	Amount
1	Entry tickets	3,03,42,030/-
2	Income from fair festival & special exhibition	17,51,303
3	Other receipts (Brand Promotion, Meeting Hall, etc.)	43,95,208
4	Rent / Store charges	4,11,39,371
5	Other receipts	3,70,800
6	Misc. Income (sale of tender form, etc.)	91,391
7	Interest on FDR	13,38,944
	Total Gross Receipts (C)	7,94,29,047

The total receipt at "Dilli Haat" was Rs.7,94,29,047/- and the total expense incurred by the assessee at "Dilli Haat" is Rs. 4,25,52,448 thereby the net income of Rs.3,68,76,599/- has been shown by the assessee as business income from "Dilli Haat".

The AO at **Page No.** 6 of his order held that out of the total receipts of Rs.7,94,29,047/- from "Dilli Haat", Rs. 4,76,56,682/- has been earned on account of rental income being the aggregate of following:

Income from space rented on regular basis	1,98,51,494/-
Craft stall	<u>2,78,05,188/-</u>
Total	<u>4,76,56,682/-</u>

While computing Income under the head House Property, the AO allowed expenses @ 30 % of the rental income, i.e. he allowed only Rs. 1,42,97,005/- as expenses against rental income of Rs.4,76,56,682/, disallowed the balance expenses of Rs. 1,38,88,879 (i.e. Rs. 5,07,65,477 - 3,68,76,599) claimed against the aforesaid receipts totaling Rs. 4,76,56,682/-.

(2.4) In paragraph no. 6.2 of the order of Ld. CI(A) for A.Y. 2012-13; and in paragraph no. 15.1 of the order of Ld. CIT(A) for A.Y. 2010-11; the Ld. CIT(A) has observed that facts in the years under consideration are identical the facts of A.Y. 2009-10. During appellate proceedings in ITAT; neither side has brought any distinguishing facts for this year to our attention as compared to facts for A.Y. 2004-05 to A.Y. 2009-10. Therefore, respectfully following the order of the Co-ordinate Bench of ITAT, Delhi for A.Y. 2004-05 to A. Y. 2009-10 vide aforesaid order dated 28.03.2018 in Assessee's own case, we direct the AO to assess the amount of Rs. 2,39,66,739/- received by assessee for use of the

craft stalls in A. Y. 2010-11 and Rs. 2,78,05,181/- for A. Y. 2012-13 as Assessee's income under the head "Profits and Gains of Business or Profession" and the balance amount of Rs. 98,87,914/- for A.Y. 2010-11 and Rs. 1,98,51,494/- for A.Y. 2012-13 is to be assessed as "Income from House Property". Again, respectfully following aforesaid order dated 28.03.2018 of Co-ordinate Bench of ITAT, Delhi in Assessee's own case, for A.Y. 2004-05 to A.Y. 2009-10, we also direct the AO to allow necessary deductions against these incomes as per law, after allowing opportunity of being heard to the assessee. Grounds 5 and 6 in Assessee's appeal for A. Y. 2010-11 and Grounds 2 and 3 in Assessee's appeal for A. Y. 2012-13 are accordingly disposed off with the aforesaid directions.

(3) Ground 7 in Assessee's appeal for A.Y. 2010-11 pertains to the addition of Rs. 61,81,344/- to the income of the assessee on account of understatement of bank interest. The AO had initially made addition of Rs. 6,79,78,189/- in the original Assessment Order, but later revised the same to Rs. 61,81,344/-. The addition was made by the AO on the ground that although the assessee had claimed credit for Tax Deducted at Source ("TDS", for short) on the interest income from the bank, corresponding interest income was not offered to tax by the assessee during the year. The Ld. CIT(A) confirmed this addition on the ground that the assessee had failed to file any evidence to reconcile the amount of Rs.61,81,344/-. At the time of hearing before us, the Ld. AR of the Assessee submitted that this amount refers to interest accruing to the assessee during the year on fixed deposits in the bank. He further stated that although this interest income has not been offered to tax during the year by the assessee, credit for

TDS made by the bank was claimed by the assessee because the assessee was facing liquidity crunch. He further submitted that the assessee being a public sector undertaking, lenient view may be taken specially because of the liquidity crunch faced by the Assessee. He further also submitted that claim for TDS may be disallowed to the extent it pertains to corresponding income not offered to tax by the assessee during the year; but the addition to income may be deleted. Further, in this regard, he also submitted that the AO failed to appreciate that interest income due on the fixed deposits kept with the banks accrued to the customers on 31st March each year although the same had not become due for payment; but the TDS entries are booked on the closing date of the Financial Year i.e. on 31st March each year on provisional basis to comply with the provisions of the Accounting Standards. He also submitted that the interest income on Fixed Deposits was offered to tax in subsequent year(s), following cash system of accounting; in the year in which the was towards actually received by the Assessee. He relied on order of Co-ordinate Bench of ITAT, Delhi in the case of DCIT vs. Lloyd Insulation (India) Ltd. in ITA No. 2400/Del/2011 for the preposition that: "Income of a taxpayer is not required to be computed merely with reference to the TDS certificate, but assessment of an income is altogether an independent exercise." However, the Ld. AR of the Assessee fairly conceded that the regular method of accounting being followed by the assessee is the mercantile system of accounting.

(3.1) The Ld. DR appearing for Revenue submitted that the addition should be confirmed in view of the fact that the assessee has already claimed credit for tax deducted at source in respect of the aforesaid amount of Rs.61,81,344/-. She also

relied on the orders of the AO and Ld. CIT(A).

(3.2) We agree respectfully with the proposition that income of a taxpayer is not required to be computed merely with reference to the TDS Certificate, but assessment of an income is an altogether independent exercise. We wish to add that **income of an Assessee under the head "Profits and Gains of Business or Profession" and "Income from other sources" is to be determined regardless of whether tax was deducted at source in respect of amounts received or accrued to the assessee. What is relevant is the system of accounting regularly employed by the assessee - whether it is cash system or mercantile system. The assessee is not permitted to use mixed or hybrid system of accounting under which some items of income / expenditure are accounted for under cash system and the remaining items of income / expenditure are accounted for under mercantile.** In this context, it is useful to refer to statutory provisions regarding method of accounting contained in Section 145 of Income Tax Act, ("I.T. Act", for short); relevant portion of which is reproduced below:-

"145 (1) *Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.*

(2)

(3)"

It is obvious from the perusal of the aforesaid Provisions U/s 145(1) of I.T. Act that it is not open for the Assessee to follow cash system of accounting for some of the items and mercantile system of accounting for the remaining items. Mixed or hybrid system

of accounting has lost statutory mandate w.e.f. 01.04.1997, pursuant to amendment of Section 145 of I.T. Act by the Finance Act, 1995. Income of an Assessee under the head of "Profits and Gains of Business or Profession" and under the head of "Income from Other Sources" is to be computed in accordance either with cash system of accounting regularly employed by the assessee or with mercantile system of accounting regularly employed by the assessee. Undisputedly, the regular system of accounting employed by the assessee is Mercantile System. **Under Mercantile System of accounting items of income and expenditure are accounted for on accrual basis; and the actual dates of payments / receipts for various items of income and expenditure, are irrelevant. On the other hand, under cash system of accounting, various items of income and expenditure are accounted for on the basis of actual dates of receipts and payments; and whether the same actually accrued during the year is irrelevant.** Once the assessee has opted to follow Mercantile System as its regular system of accounting, it is not open for the assessee to account for certain income (Interest Income from Fixed Deposits in the Bank, as in this case) under cash system of accounting. It is not the case of the assessee that interest income of the assessee from Fixed Deposits in Bank is exempt and thus, undisputedly the income is taxable. Undisputedly again, the regular system of accounting followed by the assessee is mercantile system of accounting. Undisputedly also, Interest Income from Fixed Deposits in Bank has accrued to the assessee during the year but was not offered as income on accrual basis under mercantile system of accounting. As income from Fixed Deposits in Bank has

accrued to the assessee in accordance with system of accounting regularly employed (mercantile system, in this case), the income has to be assessed during the year. **It is irrelevant whether the assessee is a public sector undertaking. Unless specifically provided under law or intended by necessary implication under specific provisions of law, or held in binding judicial precedents; a public sector undertaking cannot legitimately claim a preferential treatment in determination of its tax liabilities.** Therefore, we hold that the facts that assessee is a public sector undertaking is irrelevant. **It is also immaterial whether the assessee was facing liquidity crunch. When the income has to be assessed during the year and when tax is to be paid in accordance with law on such income, the assessee cannot postpone the year in which the income will be offered to tax merely because the assessee has a liquidity crunch. Requirement of liquid funds by an assessee, howsoever genuine the requirement may be, cannot be accepted as a legitimate justification for postponement of the year in which income will be offered by the assessee.** Therefore, in the facts of the case before us, the exercise of determining assessee's income lead us to the conclusion that the aforesaid income amounting to Rs. 61,81,344/- by way of interest on Fixed Deposits in Bank is to be assessed during the year. Accordingly, we confirm the addition of aforesaid amount of Rs. 61,81,344/-; and dismiss Ground no. 7 in assessee's appeal for A.Y. 2010-11.

(4) Grounds 4.1 and 4.2 in assessee's appeal for A.Y. 2012-13 were not pressed by the assessee; therefore, these grounds are dismissed being not pressed.

(5) Now we come to the appeals filed by Revenue vide ITA No. 2792/Del/2015 for A.Y. 2010-11 and ITA No. 716/Del/2016 for A.Y. 2012-13. Grounds 1 and 2 in Revenue's appeal for A.Y. 2010-11 and Ground 1 in Revenue's appeal for A.Y. 2012-13 pertain to disallowance made by the Assessing Officer U/s 43B of I.T. Act in respect of payments made by the Assessee on account of advance excise duty. The disallowances were made by the AO on the ground that payment of advance excise duty pertains to the next year's expenses and are not allowable in the year(s) in which it has been claimed. According to the assessee, as per the excise rules & regulations specifically regulating the liquor industry, the assessee is bound to pay the excise duty in advance in order to secure the release of transport permit for supply of liquor at various liquor shops for immediate ensuing period. It was submitted, that as the assessee is engaged in the retail business of Indian Made Foreign Liquor, the assessee is required to pay / deposit the excise duty in advance to the State Excise Department. At the time of hearing before us, the Ld. AR of the assessee submitted at the outset, that the issue is covered in favour of the assessee by order dated 30.09.2013 of Co-ordinate Bench of ITAT, Delhi for A.Y. 2008-09 and A.Y. 2009-10 in ITA Nos. 2814/Del/2012 and 4756/Del/2012. The Ld. AR of the assessee further submitted that the issue has also been decided in favour of the assessee vide order dated 09.07.2014 of Hon'ble Delhi High Court in assessee's own case in ITA Nos. 267/2014 and 268/14. The Ld. DR appearing for Revenue agree that this issue is covered in favour of the assessee vide aforesaid orders of Hon'ble Delhi High Court and Co-ordinate Bench of ITAT, Delhi in assessee's own case for A.Y. 2008-09 and A.Y. 2009-10. Respectfully

following these judicial precedents, we also decide this issue in favour of the assessee and direct the AO to delete additions of Rs. 7,50,48,000/- for A.Y. 2010-11 and Rs. 5,20,17,982/- for A.Y. 2012-13 made by the Assessing Officer U/s 43B of I.T. Act on account of advance excise duty.

(6) Ground 3 in Revenue's appeal for A.Y. 2010-11 and Ground 2 in Revenue's appeal for A.Y. 2012-13 pertain to disallowance of the provision for the Leave Encashment. The AO invoked Section 43B(f) of I.T. Act and made additions amounting to Rs. 1,80,75,136/- for A.Y. 2010-11 and Rs. 1,43,34,019/- for A.Y. 2012-13; on the ground that these amounts were not actually paid by the assessee till the due dates of filing of return. At the time of hearing before us, the Ld. DR submitted that this issue is covered in favour of Revenue by aforesaid order dated 28.03.2018 of Co-ordinate Bench of ITAT, Delhi in assessee's own case for A.Y. 2004-05 to A.Y. 2009-10. The Ld. AR of the assessee agreed that this issue is covered against the assessee vide aforesaid order dated 28.03.2018 of Co-ordinate Bench of ITAT, Delhi in assessee's own case. Respectfully following the aforesaid decision of Co-ordinate Bench of ITAT, Delhi vide order dated 28.03.2018; we also decide this issue in favour of Revenue and against the assessee. Accordingly, the aforesaid additions amounting to Rs. 1,80,75,136/- for A.Y. 2010-11 and Rs. 1,43,34,019/- for A.Y. 2012-13 are confirmed.

(7) Ground 4 in Revenue's appeal for A.Y. 2010-11 pertains to disallowance of the payment made by the assessee to Central Road Research Institute ("CRRI", for short) for undertaking research regarding the concrete strength in bridges and had claimed

weighted deduction @ 125% of the sum so paid U/s 35(1)(iia) of I.T. Act. The AO disallowed this claim on the ground that the documentary evidence did not contain the name of the assessee. The Ld. CIT(A) allowed the claim of the assessee observing as under:

"Having gone through the submission and the order of assessment, it emerges that the Central Road Research institute is a unit of Council for scientific and industrial Research and the income of which is exempt u/s 10(23C) (vi) if the Act. The Assessing Officer is directed to allow the deduction of Rs. 8,82,40/- with the weighted deduction rebate u/s 35(1)(iia) of the Act. The disallowance of Rs. 11,03,000/- made by the assessing officer is therefore, deleted."

(7.1) At the time of hearing before us, the Ld. DR relied on the order of the AO. The Ld. AR of the assessee relied on the order of the Ld. CIT(A). The Ld. AR further submitted that CSIR has been approved, through Notification No. 53/2011 [F.No. 203/73/2010/ITA-II], Dated 30.09.2011, for the purpose of Section 35(1)(ii), read with rules 5C and 5E of the Income-tax Rules, 1962, in the category of 'Other Institution'. He also submitted that the payment of Rs. 8,82,400/- to CRRRI was made vide Cheque No. 651127 dated 12.06.2009. He furthermore submitted that the Director General of Income Tax (Exemption), New Delhi vide Order No. – F.No. DGIT(E)/10(23C)(iv)/2010-11/1508 dated 22nd February 2011 passed under the provisions of section 10(23C)(iv) has exempted CSIR from payment of taxes for the AY 2010-11. The Ld. AR also filed relevant evidences in this regard as part of the Paper Books. After considering the order of the Ld. CIT(A) and on perusal of the evidences filed by the Ld. AR of the assessee and after taking into account the submissions made by the Ld. AR of the assessee, we are of the view that the claim made by the assessee is proper and

sustainable. The order passed by Ld. CIT(A) on this issue is sound, proper and in accordance with law in the facts and circumstances of the case. The Ld. DR failed to make any case for us to warrant interference with the decision of Ld. CIT(A) on this issue. Therefore, the order of the Ld. CIT(A) on this issue is confirmed and Ground 4 of Revenue's appeal for A.Y. 2010-11 is accordingly dismissed.

(8) Ground 5 of Revenue's appeal for A.Y. 2010-11 and Ground 3 of Revenue's appeal for A.Y. 2012-13 pertain to the disallowances of loss claimed by the assessee, amounting to Rs. 32,79,998/- for A.Y. 2010-11 and Rs. 44,65,663/- for A.Y. 2012-13, On the running of Delhi Institute of Tourism and Travel Management ("DITTM", for short). In A.Y. 2010-11 the disallowance was made by the AO, stating as under:

"The assessee had claimed a loss of Rs. 32,79,998/- in respect of Delhi Institute of Tourism and Travel Management. The assessee was asked to submit the details in respect of above said loss. The assessee in its reply stated that "For these please refer to Profit & Loss Accounts of DITTM filed in the Annual report. The Net loss as appearing in P/L A/c and certified by the auditors have been claimed" and filed annual accounts for the year 2010-11 along with Note No. 1 Notes to accounts forming part of Annual accounts states that "The Management of Delhi chapter of the Institute of Tourism and Travel Management was given to the corporation of 1st January, 1993 initially for a period of 5 years. As per the decision of Ministry of Tourism, Govt. of India in the meeting held on 4th November, 1992 its stand renewed for another 5 years upto 2004, and thereafter upto 2009. Since the owing the propriety of the institute is still not yet decided, the accounts have been prepared and annexed as per practice consistently followed since its setup on 1993.

On the basis of above loss claimed in respect to Delhi Institute of Tourism and Travel Management stands added back to the income of the assessee."

In A.Y. 2012-13, the disallowance was made by AO, holding as under:

"6.10 It has also been noticed that in the AY 2007-08 where net profit of the same institute was added by AO, the assessee has claimed that the ownership of institute belongs to IITM- Gwalior and not to DTTDC. Whereas in the previous year under assessment, the net loss has been claimed in returned income as net business loss. This results to the contrary stand of the assessee without any reasonable cause & explanation for these two situations on record.

On the basis of above facts, net loss claimed in respect of unit titled as Delhi Institute of Tourism & Travel Management Stands added back to the income of assessee corporation."

For both the years, the Ld. CIT(A) allowed assessee's claim, holding that the assessee has been exclusively managing, administrating this institute without any interference of the concerned Ministry; and that the AO had not disputed that the institute was run by the assessee and had sustained the losses claimed by the assessee. At the time of hearing before us, the Ld. DR drew our attention to the facts that the issue was remanded back to the AO by the order dated 28.03.2018 Of Co-ordinate Bench of ITAT, Delhi in assessee's own case for A.Y. 2009-10. The Ld. DR submitted that for A.Y. 2010-11 and 2012-13 also this issue may be remanded back to the AO for fresh order after necessary verification of the claim. The Ld. AR of the assessee agreed that the issue may be remanded back to the AO for fresh order. In view of the foregoing, we remand this issue for A.Y. 2010-11 and A.Y. 2012-13 back to the file of the AO for fresh order on this issue, after necessary verification of assessee's claim.

(9) Ground 6 of Revenue's appeal for A.Y. 2010-11 pertains to disallowance of Rs. 33,74,567/- being 50% of the expenses claimed by assessee towards "Tourism promotion expense" and "Hiring of tent & purpose thereof". The Ld. CIT(A) deleted this addition on the ground that no finding of fact was recorded by the AO, that any

particular expenditure was not genuine or not expended for the business. At the time of hearing before us, the Ld. DR relied on the order of the AO. The Ld. AR of the assessee relied on the order of the Ld. CIT(A). He also submitted that the AO had not provided opportunity to produce the relevant details and documentary evidences in support of these expenses. He submitted that the assessee is willing to produce the same. Ld. AR of the Assessee submitted that the issue may be remanded back to the file of the AO for verification and fresh order on this issue. In reply, the Ld. DR did not express any objection to remanding of the issue back to the file of the AO for verification and fresh order. In the fitness of things, and as both sides agree, we remand this issue to the file of the AO for necessary verification and fresh order. The AO is directed, before he passes fresh order, to provide opportunity to the assessee to produce / submit relevant details and documentary evidences.

(10) In the combined result, all the four appeals are partly allowed for statistical purpose.

Order pronounced in the Open Court on 20th day of March, 2019.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 20.03.2019
(Pooja)

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	19/3/19
Date on which the typed draft is placed before the dictating Member	20/3/19
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	