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

BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI P. MAHARISHI, ACCOUNTANT MEMBER

ITA No. 4710/Del/2010 (A.Y. 1995-96)

AND

ITA No. 2199/DEL/2005 (A.Y. 2001-02)

Continental Construction Ltd, 28, Nehru Place, New Delhi – 110019. (PAN: AAACC 2309 R) **(APPELLANT)**	Vs	ACIT, Circle – 3(1), Room No.390, C.R. Building, Indraprastha Estate, New Delhi **(RESPONDENT)**

AND

ITA No. 2200/DEL/2005 (A.Y. 2001-02)

ACIT, Circle – 3(1), Room No.390, C.R. Building, Indraprastha Estate, New Delhi **(APPELLANT)**	Vs	Continental Construction Ltd, 28, Nehru Place, New Delhi – 110019. (PAN: AAACC 2309 R) **(RESPONDENT)**

Appellant by	**Shri Subodh Gupta, FCA**
Respondent by	**Ms. Nidhi Srivastava, CIT-D.R.**

Date of Hearing	**14.08.2020**
Date of Pronouncement	**23.09.2020**

ORDER

PER SUCHITRA KAMBLE, JM

These three appeals are filed by the assessee and revenue against the orders dated 23.08.2010 and 14.02.2005 passed by the CIT(A)-IV, New Delhi for Assessment Years 1995-96 and 2001-02 respectively.

2. The Grounds of appeal are as under :-

ITA No. 4710/Del/2010 (A.Y. 1995-96) (Assessee's appeal)

Compensation by way of Bonds: Rs 297.47 crores.

1. *"On facts and circumstances of the case and in law, the lower authorities have erred and were not justified in treating the compensation of Rs. 297.47 crores as 'Income', by way of Bonds directly issued by RBI to the lending banks of the company, on behalf of the Government of India / ECGC, in discharge of appellant's loan liability.*

2. *On facts and circumstances of the case and in law, the lower authorities have erred and were not justified in rejecting the claim of appellant that the compensation of Rs. 297.47 crores was a Capital Receipt, not eligible to tax, being a voluntary & gratuitous action on behalf of Government of India, meant only to discharge the loan liability, which inter alia is capital in nature and thus such discharge of loan shall have same colour and nature as a loan liability.*

3. *On facts & circumstances of the case, the lower authorities have erred and were not justified in rejecting the claim of appellant that the aforesaid compensation of Rs 297.47 crores by way of RBI bonds directly issued by RBI to Banks towards discharge of loan liability of the appellant, as Capital receipt, if at all considered as Income, to be being against 'Sterlised assets' and does not form part of business income.*

4. *On facts & circumstances of the case, the lower authorities have erred and were not justified in rejecting the alternative claim of the aforesaid compensation of Rs 297.47 crores by way of RBI bonds directly issued by RBI to Banks towards discharge of loan liability of the appellant, if at all considered as 'Income', to be chargeable under the head 'Capital Gains'.*

Prior Period Expenses: Rs 8,90,796/-

5. *On facts and circumstances of the case and in law, the lower authorities have erred on disallowing the certain expenses, classified as prior period expenses in the tax Audit Report amounting to Rs8,90,796/- without appreciating the fact that the company's liability accrued in the year under assessment on the basis of 'Sanction & Acceptance' and these have been accounted by appellant consistently over the years in the same manner.*

Interest income: Income From Other sources or Business Income:

6. *On the facts and circumstances of the case and in law, lower authorities have erred in treating the interest income of Rs.7,29,95,567/- as income from Other Sources instead of Business Income.*

7. *Lower authorities have failed and erred to apply the decision of hon'ble ITAT in AY 1998-99 in ITA no., where under the same facts & circumstances of the case, interest income was held to be Business Income.*

Guest House Expenses: Rs 183,894/-

8. *On facts & circumstances of the case and in law, lower authorities have erred in disallowing the transit and mess expenses merely on the basis of its accounting head as 'Guest House Expenses' on the basis of Tax Audit Report, in total disregard to the submissions of the assessee.*

General:

9. *The lower authorities have acted arbitrarily in haste and has failed to fully appreciate the facts, circumstances and written submissions of the appellant on record and were not justified by not sharing their opinions or points of contentions so that the same could have been properly met by the appellant.*

10. *The above grounds of appeal are independent without prejudice to each other.*

11. *The appellant craves to add, modify any ground of appeal or to adduce new evidence during the course of hearing of appeal, as may be necessary for discharge of due justice."*

ITA No. 2199/Del/2005 (A.Y. 2001-02) Assessee's appeal

Compensation from UN:

1. *On facts & circumstances of the case, the lower authorities have erred and were not justified in treating the entire amount of the compensation received from UN, towards loss sustained/ incurred during the UN lead war against Iraq in 1991, as accruing during the relevant previous year, where a sum of Rs 52.86 crores was actually received during the subsequent year and thus the same cannot be said to have accrued during the relevant previous year in accordance with the appellant's accounting policy & the generally accepted accounting practices.*

2. *On facts & circumstances of the case, the lower authorities have erred and were not justified in treating a part of compensation for loss, towards Retention Money of Karkh project and Ashter'89 Project in Iraq, amounting in aggregate to Rs19,98,66,841/- as business income instead of Capital Receipt, not eligible to tax, as per provisions of the Income Tax Act, 1961*

3. *On facts & circumstances of the case, the lower authorities have erred and were not justified in rejecting the alternative claim in respect of part of compensation received towards Retention Money of Karkh project and Ashter'89 Project in Iraq, if at all considered as 'Income', to be chargeable under the head 'Capital Gains'.*

Relief 220(7):

4. *The lower authorities have erred and were not justified in refusing the benefit of section 220(7) of the Act on the interest of Rs 8,21,49,466/- included in the total income, but which is prohibited for remittance by virtue of UN embargo, which was made along with the return as well as during the assessment proceedings, ignoring the findings in earlier years.*

5. *On facts & circumstances of the case, the lower authorities have erred and were not justified in rejecting the alternative claim made during the assessment proceedings, that such interest on receivables, under deferred payment agreements between Govt of Iraq & Govt of India, has not actually accrued to the assessee to be taxed on the basis of real income concept and the fact that no DPA has been renewed since 1991 between the two sovereign states.*

6. *On facts & circumstances of the case, the Lower Authorities have erred and were not justified in concluding that for the purpose of appropriate relief u/s 220(7) of the IT Act, the pre-requisite of the existing tax default is necessary, meaning thereby that interest chargeable u/s 220(2) shall be leviable. If such is the interpretation of the law, it would amount to deliberate denial of justice which has been exclusively provided in the Act.*

PF Dues u/s 43B:

7. *On the facts & circumstances of the case, the lower authorities have erred in making the disallowance of Rs 32,88,338/-, in so far as the said sum relate to Employees Contribution to Provident Fund Scheme, as per provisions Act. The 'due date' for the purpose of the Act,*

has to be reckoned with the date of actual payment of salary instead of the last date of the relevant month.

7. *The above grounds of appeal are independent without prejudice to each other.*

8. *The appellant craves to add, modify any ground of appeal or to adduce new evidence during the course of hearing of appeal, as may be considered necessary for discharge of due justice to the appellant."*

ITA No. 2200/Del/2005 (A.Y. 2001-02) Revenue's appeal

"1. On the facts and circumstances of the case as well as in law Ld. C.I.T. (A) has erred in deleting the addition of Rs. 39,14,14,418/- made on account of compensation received from UN on account of loss property and equipment.
2. On the facts and circumstances of the case as well as in law Ld. C.I.T.(A) has erred in deleting the addition of Rs. 42,56,979/- made on account of remission of liabilities"
3. On the facts and circumstances of the case as well as in law Ld. C.I.T. (A) has erred in deleting the addition of Rs.36,17,430/- made on account of Employees Contribution to PF U/s 36(1)(va) to Rs. 32,88,638/-."
4. On the facts and circumstances of the case as well as in law Ld. C.I.T. (A) has erred in deleting the addition of Rs. 24,33,055/- made on account of Employees Contribution to PF U/s 43 B".
5. On the facts and circumstances of the case as well as in law Ld. C.I.T. (A) has erred in deleting the addition of Rs. 27,52,297/- made on account of prior period expenses".
6. On the facts and circumstances of the case as well as in law Ld. C.I.T. (A) has erred in deleting the addition of Rs. 21,000/- made on account of contribution to political party".

The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

3. Firstly we are taking up facts of A.Y. 1995-96:

A.Y.1995-96

3.1 The assessee company is engaged in the business of civil engineering construction. During the year under consideration, the assessee company filed return of income on 30.11.1995 declaring a loss of Rs.117,31,50,063/-.

The assessee-company was entitled to certain dues from the Government of Iraq on account of contracts executed which were deferred from payment under Deferred payment Agreement (DPA) between the Governments of Iraq and India from 01.01.1983 as well as interest due on the deferred dues of contracts executed and retention money retained from contract receipts. The Government of Iraq was not in a position to pay such deferred dues till the year 1995-96 and the chances had further receded with the trade sanctions placed on Iraq by the United Nations, following the war between Iraq and Kuwait in August, 1990. The Government of India had extended foreign exchange loans to the assessee through Exim Bank and SBI to enable it to make off with contracts in Iraq following the deferment of its contracts under DPA. The assessee-company and other similarly placed Indian contractors approached the Government of India to help them out to this situation. The Government of India granted settlement of such dues from Iraq Government by issuance of bond on assignment of their dues from the Government of Iraq to Government of India. The bonds issued were handed over to the Exim Bank and SBI for being adjusted towards the foreign exchange loans due to them from the Indian Contractors working in Iraq. The assessee company received the following sums from the Government of India under such settlement:

a)	Retention of money default account (being the amount credited to income in the relevant years) of deduction by the Government of Iraq and has been shown in accounts as on 31.03.1994 – i.e. last year	-	Rs.3,69,31,762/-
b)	Interest receivable account (being amount credited to income in relevant years and has been shown in accounts as on 31.03.1994)	-	Rs. 45,08,99,259/-
c)	Credited to the profit and loss account of current year entitle on 31.03.1995 relevant to A.Y. 1995-96 under the head compensation from Government of India/ECGC	-	Rs.297,46,41,205/-
	TOTAL		-Rs. 346,24,72,226/-

Thus the total amount was Rs.346,24,72,226/-. The Assessing Officer observed that there is no problem regarding the retention money of Rs.3.69 crore and interest receivable of Rs.45.09 crores as both these amounts already stand accounted for and taxed as income in the relevant years. The Assessing Officer further observed that the assessee-company claimed the sum of Rs.297.46 crores received in settlement by the Government of India/ECGC against default receivable from Government of Iraq as exempt from tax. The reason given by the assessee for such exemption is that it is not a business receipts from execution of contracts from Government of Iraq, but is only a financial assistance from the Government of India and is capital receipt. The Assessing Officer observed that the assessee has been paid the said sum of Rs.297.46 crores on account of deferred contract receipt which are pure business receipts. The Assessing Officer further noted that the Government of India has through CBDT issued Circular No.711 dated 24.07.1995 whereby the value of the bonds received as a deemed receipt of convertible of foreign exchange for the purpose of taxable income and grant of deduction is in respect to foreign projects u/s 80HHB of the Act. Apparently the Government of India has the intention of treating the value of receipts from execution of foreign projects. Accordingly, the receipt of Rs.297.46 crores was treated as business receipts from execution of foreign projects by the Assessing Officer. The expenditure related to the foreign projects of the assessee were allowed as expenditure in the earlier years under the changed method of accounting adopted by the assessee from A.Y. 1984-85 onwards. Thus, the whole receipt of Rs.297.46 crores was taxed as profits from execution of foreign project by the Assessing Officer. The Assessing Officer further held that the assessee will be eligible to deduction of 50% of such income i.e. Rs.148.73 crores as deduction u/s 80HHB in accordance to the CBDT Circular No.711 dated 24.07.1995. The Assessing Officer further observed that the assessee has created foreign project reserves of Rs.85.00 crores during this year as required by Section 80HHB of the Act. Hence, the deduction was limited to Rs.85 crores only being lower than the eligible amount by the Assessing Officer. Therefore, the assessee was granted a deduction of Rs.85.00 crores u/s 80HHB, limited to

the extent of reserve created u/s 80HHB and the taxable income before the Chapter-VIA deduction.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the only matter of dispute is the sum of Rs. 297,46,41,205/- credited to the profit and loss account of the year ending 31.03.1995 under the head 'Compensation from Government of India/ECGC'. This was treated as exempted from tax by the assessee for the reason that it was not a business receipt from execution of contracts from Government of Iraq, but only a financial assistance from the Government of India and thus a capital receipt. When the assessee was show caused on this amount, an alternative plea was taken contending that the amount was received on assignment of money which should be treated as a transfer of asset and since the dues were more than 36 months old, they constituted long term capital gain. The Assessing Officer did not take into account the contentions of the assessee. The Assessing Officer was of the view that since the assessee paid the sum of Rs. 297.46 crores on account of deferred contract receipts, the same should be treated as pure business receipts. The Assessing Officer referred to CBDT Circular No. 711 dated 24.07.1995 whereby the value of bonds received as a deemed receipt of convertible foreign exchange for the purposes of taxable income and grant of deduction pertaining to Section 80HHB. This makes it more apparent as per the Assessment Order wherein the Assessing Officer treated the value of receipts as business income.

5. The Ld. AR submitted that the Assessing Officer proceeded to tax the receipt of Rs. 297,46,41,205/- as the business income of the assessee. The Ld. AR submitted that the CIT(A) held that a debt has been created in favour of the assessee. This is enforceable right of the assessee and therefore, he has right to receive the income. The assessee also follows the mercantile system of accounting. For more than 15 years, the said facility provided to assessee has not been returned to the Government of India. Plus the

assessee laid a claim of deduction u/s 80HHB. The CIT(A) further held that CBDT has given deep thinking to the entire matter and has even allowed the benefit of Section 80HHB to those project exporters. In other words, the CBDT also construes the same as income eligible for taxation and the consequent deduction under Section 80HHB. Thus, the CIT(A) finally held that the contention of assessee as to the receipt of bonds was not an income and therefore, not taxable is based on an incorrect appreciation of facts and law. Thus, the CIT(A) held that the receipt cannot even be taxed as capital in nature. The Ld. AR relied upon the following decisions:

i) Universal Radiators vs. CIT 201 ITR 800

ii) CIT vs. Xylon Holdings Pvt. Ltd. (Bom HC)

iii) UCO Bank vs. CIT (SC)

iv) ACIT vs. Arvind Construction Co. Pvt. Ltd. (Del. Tri.)

6. The Ld. DR submitted that the main issue that needs to be decided in respect of A.Y. 1995-96 is whether compensation of Rs. 297.47 crores received by the assessee by way of bonds issued by RBI on behalf of the Government of India is to be treated as income liable to tax or whether it was capital receipt as claimed by the assessee. The assessee has disputed the order of the Assessing Officer and the CIT(A) in Grounds of Appeal being Ground Nos. 1 to 4 stating therein that the revenue was not justified in treating the compensation of Rs. 297.47 crores as income, received by way of bonds directly issued by RBI to the lending banks of the company, on behalf of the Government of India/ECGC, in discharge of the assessee's loan liability. The assessee has claimed the amount as a capital receipt not exigible to tax.

6.1 The Ld. DR submitted that the grounds raised by the assessee are based on an incorrect understanding of the facts at hand and interpretation of the provisions of the Act and law as laid down by various courts. The Ld.

DR submits that the orders of the Assessing Officer and the CIT(A) are well within the ambit of law and as per the provisions of the Income Tax Act and passed after a thorough examination of the issue arising from the Deferred Payment Agreement (DPA) between the Govt. of Iraq and Government of India. The assessee company had undertaken various contracts as per agreements signed with the Government of Iraq. As per the said agreements, the Govt. of Iraq was required to pay the assessee company for work done under the contract in local currency as well as convertible foreign currency. The Govt. of Iraq began to default on the said payments in the wake of the prolonged Iran-Iraq war. The Govt. of India signed a Deferred Payment Agreement (DPA) with Iraq whereby the foreign currency dues of the Indian contractors were deferred to be paid in installments. The situation worsened when the UN Trade sanctions came into play. The working group of India's financial delegation extended need-based bridging finance loans to the assessee company for the fulfillment of the contractual obligations. Also it was agreed by the Government that the amounts due to the Indian contractors from the Govt. of Iraq under the DPAs, be settled by the Export Credit Guarantee Corporation of India Ltd. (ECGC)/Govt. of India by way of cash payments and issuance of bonds for value dated 01.04.1994. Thus, the Assessee company's dues receivable from Iraq under the DPA amounting to USD 110,269,316/- equivalent to Rs. 346,24,78,123/- were settled by Govt. of India during the A.Y. 1995-96. This amount was credited in the books of account of the assessee company and included an amount of Rs. 297,46,41,205/- which was credited to the P&L account for the year ending 31.03.1995 as income of the Company under the head 'compensation from the Government of India/ECGC in settlement of deferral dues from Iraq'. However, in his computation for purpose of 'computation of taxable income', the assessee company reduced the amount from its taxable income. By this act, the assessee company wrongly did not treat the deferred dues received from Iraq as taxable income. This claim of exemption has been wrongly made and does not fall within the ambit of any provision of the Income Tax Act. The issue has been discussed at length by the Assessing Officer.

6.2 The Ld. DR submitted that the Assessing Officer observed that the assessee has been paid the said sum of Rs. 297.46 cr on account of deferred contract receipts which are pure business receipts. As per CBDT circular No 711 dated 24.07.1995, the value of the bonds received are to be treated as a deemed receipt of the convertible foreign exchange for purpose of taxable income and grant of deduction u/s 80HHB. The expenditure related to foreign projects of the assessee has already been allowed as expenditure in the earlier years. No separate addition is required as the sum already stands credited to the P & L account by the Assessee Company in his books of account. The department has been allowing deferred contract expenses in the year it has been incurred. The sum of Rs. 211.06 crore on account of variation in foreign loans has been claimed by the assessee in his P & L Account and has been allowed by the department. This issue has been discussed by the CIT(A) and observed that a debt has been created in favour of the assessee. This is an enforceable right of the assessee. He has the right to receive income. The assessee also follows the mercantile system of accounting. For more than 15 years the said facility (Bridge loan to fulfill contractual obligations & settlement of dues by Govt. of India) provided to the assessee has not been returned to the Govt. of India. Plus the assessee has claimed deduction under Section 80HHB. CBDT has also construed the same as income eligible for taxation and consequent deduction under Section 80HHB. The contention of the assessee that receipt of bonds was not an income and therefore is not taxable is based on an incorrect appreciation of facts and law. A perusal of the P&L Account of the assessee for A.Y. 1995-96 shows that the assessee company has credited an amount of Rs. 297.46 cr. As compensation from Govt. of India/ECGC in settlement of deferred dues from Iraq. The assessee company has thus rightly treated this amount as a revenue receipt in its books. As per notification of Ministry of Finance dated 24.03.1995, the object is that with a view to resolving the liquidity related problems of Indian project exporters and lending banks arising out of the stoppage of payments against the project receivables from Iraq under DPA compensation bonds will be issued in favour of lending banks and Indian Project exporters. The compensation bonds will bear

interest at the rate of 12.08% per annum. The value of the investment in the compensation bonds and the interest thereon will be governed by the provisions of tax laws as applicable from time to time. The investment in the compensation bonds would not be considered as an eligible investment by the lending banks and the project exporters eligible to receive the compensation. As per letter of DS Govt. of India dated 11.03.1994, to enable ECGC to settle the claims they would issue bond for the amount of the claims under Deferred Payment Agreement. The bond will be guaranteed by the Govt. of India and redeemed over a period of time and will carry on-going interest of 12% per annum. RBI would also issue bonds as an agent of Govt. of India in favour of banks for the unadjusted loan amount in EXIM bank's book payable over a period the RBI would also issue similar bonds to exporters who have no loans to repay. Government would also settle the claims under guarantees issued to banks. As regards to letter of SBI dated 15.05.1995, settlement of Iraqi outstanding dues was through ECGC/RBI. As regards to letter of ECGC dated 16.03.1995, in terms of covers issued by the corporation and the MOU dated 20.10.1993 following claims are payable to the assessee's company:

* As the Govt. of India have finalized these issues only now, the Corporation has commenced the process of settling the dues from March 1994. It has been decided to settle the claims payable upto March 31, 1995 in cash

* In terms of decision taken by the Govt. of India the claim payments from corporation in cash and bonds would be made to the project exporters/banks/EXIM Bank of India in the proportion as outlined in the datasheets forwarded by the EXIM bank

6.3 The Ld. DR submitted that from the perusal of the relevant extracts of the various documents, it becomes clear that the receipts of Rs. 297.47 crore received by the Assessee company is in the nature of deferred contract receipts which is clearly taxable as income as held by the Assessing Officer and the CIT(A). The CBDT passed Circular No. 711 of 1995. In this circular

issued after consultation with Department of Economic Affairs, it is clearly mentioned that the RBI/ECGC bonds are in place of unrealized funds of projects exporters in Iraq. In para 4 of the said circular it is clearly stated that the payments received in the shape of bonds are in lieu of foreign exchange realization form the project exports and are to be considered for the purposes of Section 80HHB. Therefore, it is clear that these proceeds are realization of proceeds of executed projects in Iraq and therefore bear the character of income. The assessee's claim that the circular is restricted to the proceeds in convertible foreign exchange is misplaced and does not carry any merit as the moot point as held by CBDT and DEA is that the unrealized proceeds from projects executed in Iraq and realizable from Iraq, and covered by RBI/ECGC bonds by way of settlement of claims, are in the nature of business income. It is pertinent to note here that the very basis of the compensation that has been received by the assessee is the fact that it had carried out certain projects for the Govt. of Iraq and it was the dues to the assessee on account of its business carried out in Iraq that were to be paid to it. Therefore, the only reason that the Govt. of India stepped in and issued bonds to the assessee company was to compensate for the business losses incurred by the assessee due to war in Iraq. By no stretch of imagination can this receipt be treated as capital receipt.

6.4 The Ld. DR submitted that the following benefits were pursued by the assessee company:

i) Deferred Dues received from Govt. of India amounting to USD 110,269,316/- equivalent to Rs. 346,24,78,123/-

ii) The dues so received treated as receipt in foreign exchange for the purpose of Section 80HHB and claim allowed by Revenue

iii) Bridge loans given for fulfillment of contracts by Govt. of India to assessee company yet to be repaid. The CIT(A) concluded that this facility given for more than 15 years.

iv) Bonds in the nature of interest bearing bonds carrying interest of 12.08% issued to Assessee Company against outstanding dues.

v) Variation in foreign exchange value of Rs. 211.06 crore claimed by assessee company and allowed.

The assessee company has thus claimed and been given all benefits by the Govt. of India and benefits allowable under the Income Tax Act but when it comes to payment of taxes, the assessee company claims the contract receipts are not exigible to tax. The assessee company has received deferred dues for contract work done in Iraq during the A.Y. 1995-96 in the form of cash and interest bearing bonds. These receipts are in the form of taxable receipts as they have been received in lieu of contract work done in Iraq in the form of cash and bonds. The assessee concern has changed its method of accounting to cash receipts to take cognizance of such receipts in his books of account. The assessee company has treated this receipt as income in books of account. Bridge loan has apparently not been adjusted against such dues as submitted before CIT (A) despite assessee's claim that such amount was issued for discharge of loan liability of the assessee company. The claim of the assessee that it may be treated as capital receipt or alternatively as LTCG has no locus standi based on the factual matrix of the case. Therefore, the Ld. DR submitted that the appeal of the assessee company be dismissed and the order of the CIT(A) be upheld.

6.5. The Ld. DR submitted that the assessee company has received deferred dues for contract work done in Iraq during the A.Y. 1995-96 in the form of cash and interest bearing bonds. These receipts are in the form of taxable receipts as they have been received in lieu of contract work done in Iraq in the form of cash and bonds. The claim of the assessee that the issue of the compensation bond from the Govt. of India was unilateral and gratuitous, is misplaced since these bonds were issued only on account of the fact that it had carried out business contracts in Iraq and the Govt. of Iraq was not in opposition to pay its dues due to war. The assessee has not refunded any part of this so called "Loan" till date. The money received has been treated has its own money. The Ld. DR relied upon the decision of the Hon'ble Supreme Court in the case of Sundaram Iyengar dated 11.09.1996. Thus, the amount received by the assessee even after passage of time of 15

years has remained as the assessee's and therefore is liable to be taxed as its income. The assessee itself has included this amount has income for the year, expenses have been claimed and deduction u/s 80HHB has also been claimed. The decision of the Hon'ble Gujarat High Court in the case of Gujtron Electronics Ltd. (Tax Appeal No. 462 of 2017 dated 12.07.2017) is also applicable to this case since it has been categorically held that once the assessee has treated the amount as its own money the same would be its income. The decision of the Tribunal, Delhi in case of MCM Services Pvt. Ltd. vs. DCIT in ITA No. 3485/Del/2011 and 1911/Del/2012 dated 17.07.2012 relied upon by the assessee cannot be applied to this case since the same pertains to retention money, the nature of which is totally different from the nature of compensation received by the assessee. Retention money is an amount held back from a payment made under a construction contract. It is generally held to ensure that a contractor performs all of its obligations under the contract, and is then released subsequently on practical completion of the contract. On the other hand, the amount received by the assessee is its business dues which the Govt. of Iraq unable to pay and were consequently arranged to be paid by the Govt. of India through issue of bonds. Circular 711 of 1995 also clearly indicates the intent of the legislature in respect of the treatment of proceeds of projects executed in Iraq, and covered by RBI/ECGC bonds.

7. We have heard both the parties and perused all the relevant material available on record. The Government of India granted settlement of such dues from Iraq Government by issuance of bond on assignment of their dues from the Government of Iraq to Government of India. The bonds issued were handed over to the Exim Bank and SBI for being adjusted towards the foreign exchange loans due to them from the Indian Contractors working in Iraq. The bonds were issued directly to the banks and not to the assessee in respect of the loan taken from the banks. The submission of the Ld. AR/Assessee that even if assuming the bonds were issued on behalf of the assessee company, the same is not taxable as the issue of bonds is amounting to repayment of loan and loan is always a capital receipt. In the

present case, the assessee received Rs. 297,46,41,205 as compensation from Government of India/ECGC. This amount was a settlement against default receivable from Government of Iraq. The contention of the assessee was that it is not a business receipt from execution of contracts from Government of Iraq, but is only a financial assistance from the Government of India. Thus, it is capital receipt as per the assessee. In order to decide whether the receipt is capital or income/revenue receipt, the receipt has to be examined from a commercial point of view and also has to be examined what character of the receipt is in the hands of the receiver. One test for ascertaining as to whether what was received was a capital receipt or a revenue receipt is to find out whether the assessee suddenly changed the link of income/receipt with the profit making apparatus, that was transferred. The taxability of an amount would depend upon the nature and character of the receipt at the initial stage. If the amounts are initially not taxable, they cannot be taxed despite the magnitude of the accumulation and despite its appropriation by the assessee to his own credit subsequently. In present case, the settlement amount is not received from Government of Iraq with whom the contract was entered into by the assessee. The issuance of bond on assignment of assessee's due from Government of India as settlement in lieu of foreign exchange loans extended to assessee through Exim Bank and SBI by Government of India to enable assessee to make off with contracts in Iraq following the deferment of its contract under Deferred Payment Agreement (DPA). Whether this settlement-cum-compensation can be termed as profit of business activity? As per our opinion, certainly it is not called as profit/loss from business activity as it is a settlement for loan given on foreign exchange by Exim Bank and SBI on behalf of the Government of India. As per the decision of Universal Radiators vs. CIT (1993) 201 ITR 800 (SC), the Hon'ble Apex Court held that the compensation paid to the assessee was not for any trading or business activity, but just equivalent in money of the goods lost by the assessee which it was prevented from using. The excess arose on such payment in respect of goods in which the assessee did not carry on any business, due to fortuitous circumstances of devaluation of currency, but

not due to any business or trading activity, the amount could not be brought to tax. Thus, the Hon'ble Apex Court answered the question whether the excess amount paid to the assessee due to fluctuation in exchange rate was taxable either because the payment being related to trading activity it could not be excluded under Section 10(3) of the Act, even if it was casual and non-recurring in nature or it was stock-in-trade and therefore, taxable as revenue receipt or in any case the compensation for the loss of goods could not be deemed anything but profit. This question was answered in affirmative i.e. in favour of the assessee. The Hon'ble Delhi High Court decision in case of CIT vs. M/s Arvind Cosnruction Co. Ltd. (ITA No. 1388/2006 order dated 04.12.2007), there were two questions of law:

i) Whether interest earned by the assessee on RBI Bonds is the income derived by it from the business of industrial undertaking so as to be eligible for deduction under Section 80HHB of Income Tax Act, 1961

ii) Whether the Tribunal was correct in law in allowing deduction under Section 80IA of the Act to the assessee on receipts from transportation of sleepers.

Both these questions were answered against revenue by observing that no substantial question of law arose in this regard and dismissed the appeal of the revenue by the Hon'ble High Court.

The Hon'ble Supreme Court in case of CIT vs. M/s Excel Industries Ltd. held that income accrues when there arises a corresponding liability of the other party from whom the income becomes due to pay that amount. Income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then can it be said that for the purposes of taxability that the income is not hypothetical and it has really accrued to the assessee. In the present case, the income has not accrued to the assessee, therefore, it cannot be termed as the business income. From the perusal of these case laws and from the submissions of the assessee, it is clear that the settlement received from the Government of India is not coming under the purview of the business

income as there was no business during the period. Besides, the contracts between the assessee and the Government of Iraq was not completed due to war situation and UN Sanctions. There was no hope for the assessee to conduct any business, but foreign exchange loans extended to assessee through Exim Bank and SBI by Government of India was a liability to the assessee. Thus, the settlement received in lieu of this will not form the revenue receipt. Thus, the contentions of the assessee that the receipt are not revenue in nature is sustained and Ground Nos. 1 to 4 of assessee's appeal are allowed.

8. As regards to Ground No. 5 relating to prior period expenses, the CIT(A) held that the assessee has not given any evidence as to expenditure was booked in present assessment year. There is no evidence that expenses have been crystallized during the year, even though they pertained to earlier years. Thus, in absence of evidence, the CIT(A) confirmed this addition. After hearing both the parties it can be seen that the CIT(A) rightly confirmed this addition as there was no evidence shown by the assessee at the time of the assessment proceedings as well as at the time of the Appellate proceedings. Before us as well the assessee could not demonstrate the same as to how the expenditure was booked in present assessment year. Therefore, Ground No. 5 of the assessee's appeal is dismissed.

9. As regards to Ground Nos. 6 & 7, the CIT(A) relied upon the decision of the Hon'ble Delhi High Court in case of CIT vs. Shri Ram Honda Power Equip (2007) 289 ITR 475 (Del), held that the interest on fixed deposits with the bank is Income from other sources instead of Business income. After hearing both the parties, it can be seen that the interest was received on the fixed deposits with the bank and thus it cannot be termed as business income. Ground No. 6 and 7 of the assessee's appeal is allowed.

10. As regards to Ground No. 8, the CIT(A) held that no evidence was produced to suggest that the expenses pertain to transit accommodation and mess located in remote areas where the benefit of hotel was unavailable. Thus, the CIT(A) followed the Apex Court decision in case of Britannia India

Ltd. vs. CIT (2005) 278 ITR 546 (SC) and upheld the addition. After hearing both the parties it can be seen that the CIT(A) was rightly confirmed this addition as there was no evidence shown by the assessee at the time of the assessment proceedings as well as at the time of the Appellate proceedings. Before us as well the assessee could not demonstrate the same. Therefore, Ground No. 8 of the assessee's appeal is dismissed.

11. In result, appeal being ITA No. 4710/Del/2010 filed by the assessee is partly allowed.

12. Now we are taking up the appeals for A.Y. 2001-02 filed by the assessee as well as by the Revenue. Firstly we are taking up assessee's appeal.

A.Y. 2001-02

13. The assessee is a public limited company engaged in engineering and construction of major infrastructure projects acting as a contractor for an on behalf of Govt. Departments/ undertakings. In earlier years it had various overseas projects in Iraq & Libya. The assessee filed its return of income on 30.10.2001 at a loss of Rs. 16,40,61,764/- and assessed at a total income of Rs. 51,94,31,415/-. During the course of the assessment, the assessee submitted all the required details with all supporting documents/evidences as and when desired by the Assessing Officer. The major subject matter of the present appeal relate to compensation received by the assessee company from United Nations Compensation Commission (UNCC) for loss of assets suffered by it due to UN led war against Iraq after the Iraq's invasion & occupation of Kuwait in the year 1990, by virtue of which assessee company was forced to abandon its assets and leave Iraq to save its human assets. Since the matter had been pending for almost ten years, considering the uncertainties attached to the receipt of any such compensation, assessee company, as per its accounting policy, accounted for such sum on receipt basis, a part of which amounting to Rs. 23.23 crores was received during the relevant year. Balance of Rs. 52.86 crores was received in the subsequent year. However, the Assessing Officer has treated the whole

amount as accruing in the relevant previous year and has taxed accordingly. The assessee company paid legal fees for representation before UNCC, amounting to Rs. 5.28 crores, pertaining to that part of compensation that is accounted for in subsequent year on receipt basis, which has not been allowed by the Assessing Officer as expense on treating the entire amount of compensation as taxable in the relevant previous year under consideration. The assessee company treated the said sum as capital receipt, accounted on receipt basis, not exigible to tax, being in the nature of compensation of capital nature and against forced abandoned capital assets due to war. The assessee also submitted as alternative plea that though there was no transfer of assets and thus there cannot be any capital gains tax, but if at all the same is considered to be taxable, the income should be computed as long term capital gains u/s 50B. The Assessing Officer treated a part of the said receipt as business income and a part as short term capital gains u/s 50 of the Act. Further, the returned total income included a sum of Rs. 8,21,49,466/- on account of interest accrued on sums receivables from Iraq in terms of deferred payment agreement between Govt. of Iraq & Govt. of India. In the return of income, assessee claimed benefit of Section 220(7) of the Act and requested for deferment of the payment of tax, till the said sum is actually realized. Since the said sum is not repatriable by virtue of an agreement between the Govt. of India and Govt. of Iraq in 1983, as well as UN Trade Embargo in 1991, the case is fully covered under Section 220(7). This stand of the assessee has already been accepted by the department in the preceding years. The Assessing Officer has not allowed the relief u/s 220(7) and has deferred for consideration as separate proceedings.

14. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

15. The Ld. AR submitted that the assessee company is engaged in the business of civil engineering construction as in earlier years. During the year under consideration, the assessee filed return of income declaring loss of Rs. 16,40,61,764/-(business loss of Rs. 1,68,73,394/- and long term capital loss at Rs. 14,71,88,370/-). The return was processed u/s 143(1) of

the Income Tax Act, 1961 on 26.02.2002. The case was selected for scrutiny. During the year under consideration, the assessee company has shown to have received Rs. 23,32,22,502/- as compensation from Iraq on recommendation of United Nations Compensation Commission (UNCC). The assessee company treated the commission received by it as non-taxable receipt. The assessee company in the computation of income justified its claim regarding the taxability of the compensation amounting to Rs. 5,99,58,523/-received by it. It is a fact on record that the company had project-export business in Iraq since 1975. On 2nd August, 1990, Kuwait was occupied by Iraq. Consequently, in January, 1991, there was an US led Allies action called "Gulf-war" under the auspices of United Nations (UN) leading to imposition of the UN Trade sanctions on Iraq which are still continuing. This UN war led to the Iraqi Government taking over/confiscating all assessee's assets etc. held in Iraq without any consideration/compensation. This fact is also on record. The company lodged a claim before United Nations Compensation Commission (UNCC) for indemnity/compensation for the losses suffered by the company as a result of its action against Iraq, i.e., the Gulf-war. The UN has, during the year under consideration, paid an amount of US $ 5 million equivalent to Rs. 23,32,22,502/- as part of the indemnity or compensation against the losses suffered by the company on account of its action on Iraq. The company has incurred legal action and professional fees of Rs. 2,33,22,900/- for pursuing the claim before the UN. Thus, it has received a net sum of Rs. 20,98,99,602/-. The assessee has written off the following assets lying in its books, as no longer recoverable:

1.	Retention money recoverable in Iraq Accounted as income in the past	Rs. 8,34,23,525/-	
2.	Contract dues recoverable in Iraq also accounted as income in the past	Rs.1,33,81,216/-	Rs.9,68,04,741/-
3.	Current assets in Iraq	Rs.3,19,67,866/-	
4.	Fixed assets (Inventories) in Iraq with a		

wdv of Rs. under Company's Act. The		
company has not been claiming depreciation		
on these Assets since 1991-92 onwards.	Rs.2,11,68,472/-	Rs.5,31,36,338/-
The WDV under IT Act is much higher		Rs.14,99,41,079/-

The net sum of Rs. 5,99,58,523/- (Rs.20,98,99,602/- less Rs.14,99,41,079/-) has been credited to the Profit & Loss account. Since, the sum of Rs.20,98,99,602/- (net of the legal fees) received by the company from UN is not connected with any business done by it with UN, it is not a business receipt. The amounts of contract dues and retention money aggregating to Rs. 9,68,04,741/- accounted as income in the past/earlier years, which has been written off are allowable as bad debts. However, the Fixed Assets & Current Assets amounting to Rs. 5,31,34,338/-written off are not allowable as expenses. The Ld. AR submitted in the alternate, while not admitting it, that since the assets have been held prior to 1990, against which the compensation has been received, it will be a long term Capital Gain after setting off the indexed cost of the assets lost in Iraq against which the compensation may be deemed to have been received. The tentative long term Capital Gain (subject to detailed workings) will be as under:

A.	Gross amount of the Compensation received from UNCC-	Rs.23,32,22,502/-
B.	Less: Legal & Professional fees paid	Rs. 2,33,22,900/-
C.	Net amount of compensation received	Rs.20,98,99,602/-
D.	Value of Assets – Rs.14,99,41,079/- (As of 1990-91)	
E.	Indexed Value (Rs.14,99,41,079/- X 406/182)	Rs.33,44,83,945/-
F.	Long term Capital Loss (E – C)	Rs.12,45,84,343/-

Thus, in the alternate also, if the Compensation is exigible to Capital Gains, the Company will not be liable for any tax as per the claim of the assessee.

16. The assessee company credited the P & L account by an amount of Rs. 5,99,58,523/- as net compensation received by it after deducting the value of work bills, retention money and fixed assets taken over by the Government of Iraq and the legal charges incurred by it in getting its claims sanctioned by the UNCC. However, in the computation of income the assessee company has reduced Rs.11,30,92,870/-. When the Assessing Officer asked the assessee company as to how the assessee company reduce an amount from the total income in excess of what has been credited in the P&L account in the same head?, the assessee company explained that the assessee committed wrong by reducing higher amount and further stated that the assessee company should have reduced only Rs.5,99,58,523/- the net compensation credited in the P&L account as non taxable income.

17. As per the resolution of United Nations, a commission was constituted to evaluate and recommend compensation allowable to the affected parties of unlawful invasion of Kuwait by Iraq. It is clear from the resolution that the responsibility of meeting the obligation and to compensate the losses is that of Iraq. In its report and recommendation, United Nations Compensation Commission Governing Council interpreted the various clauses in the resolution govern their applicability to various claims filed by the affected parties. The Council decided that the debts and obligations of Iraq arising to 2nd August, 1990 are to be excluded from the jurisdiction of the Commission and such dues are to be addressed through normal mechanism. In the case of the assessee company, Commission recommended following compensation:

S.No.	Particulars	Amount awarded by UNCC
1	Retention Money of Karkh Project	US $ 3841142
2	Ashtar – 89 Project Work Completed	US $ 592271
3	Loss of Property and Equipment	US $ 11583862.91
	Total	US $ 16017275.91

Amounts received by the assessee company as follows:

1st Installment	US $ 25,000.00	Rs. 10,89,500/-	F.Y. 2000-01
2nd Installment	US $ 49,75,000.00	Rs. 23,21,33,002/-	F.Y. 2000-01
3rd Installment	US $ 1,10,17,275.91	Rs. 52,86,08,899/-	F.Y. 2001-02
Total	US $ 1,60,17,275.91	Rs. 76,18,31,401/-	

The UNCC recommended compensation amounting to US $ 16017275.91 in case of the assessee company in its report for covering three types of claims as mentioned above. The first installment was received by the assessee company on 10.04.2000. The 2nd and 3rd installment were received by the assessee company on 8.1.2001 and on 27.12.2001. The assessee company accounted for the compensation received in the first two installments in the year under consideration received in the first two installments in the year under consideration and the third installment in the subsequent year. The recommendations of UNCC have been accepted in to-to and the assessee company was paid full compensation recommended. The first installment was received on 10.04.2000. The total compensation recommended by the UNCC amounting to US $ 16017275.91 becomes taxable in the year under consideration as the income of the assessee company on this account has got ascertained on the acceptance of the recommendation of the UNCC and release of first installment honouring the same.

18. While accepting the claim of the assessee company for compensation of the retention monies pertaining to Karkh Project, retained by the clients, UNCC in para 195 of the report stated that with respect to Karkh Project the underlying conditions of the project produced by the claimant established that the retention monies were to be repaid upon both the issuance of final certificate and the lapse of maintenance period of the project. Accordingly, it held the claim of the assessee company in respect of the above project is acceptable. The compensation received by the assessee company in respect to the retention money pertaining to Karkh Project is part of the contract receipt. Vide order sheet entry dated 19.01.2004 the counsel of the assessee

was asked to furnish the detail of the claim of the assessee company put before UNCC for the compensation in respect of retention money, the year to which retention money pertain to and to show cause why compensation pertaining to retention money shall not be taxed as business income for the year under consideration.

19. Vide letter dated 28.01.2004, the assessee company submitted that the compensation awarded by UNCC on account of retention money amounting to Rs. US $ 3841142 (equivalent to INR 18,26,96,656/- on avg.) is in respect of Karkh Water Supply project at Iraq. As part of all major civil construction projects, clients withheld a part of the bills as retention money as security for performance and which is payable on successful conclusion of the contract. This retention money is part of revenue receipt accounted by the assessee company on accrual basis and the amount of retention money which is withheld by the client is shown as receivables in the balance sheet. Therefore, the aforesaid amount of US $ 3.84 mn. Equivalent to INR 83.42 mn. At exchange rate prevalent in the year of accrual, is already accounted for as income by the assessee. The surplus of Rs. 8,82,73,132/- (INR 182696656 – INR 83423524), broadly represent exchange difference on retention money shown as receivables. The retention money represent contract receipt as per discussion on UNCC in para 193. Retention money was already accounted for as contract receipt in the year of accrual. Further such retention money was to be released by the client on issuance of final certificate and the lapse of the maintenance period. Since consequent to war, these conditions could not be fulfilled, UNCC considered such retention money to be compensable. UNCC has considered retention money as compensable and as directly relatable to Iraq's illegal invasion of Kuwait, because the conditions attached to release of the same by client could not be fulfilled consequent to such Iraq's illegal action. The retention money as appearing in its balance sheets were its capital asset as held in R C Cooper's case. However, as the assessee is concerned said amount was already shown as income by the assessee in the year of accrual and there cannot be double taxation, once on accrual and other on receipt. It should also be

noticed that said amount was paid by UNCC, an international political organ, as part of peach restoration process in the world, without any contractual obligation on its part. Nor the same was paid as an agent of Iraq. The report and recommendation of UNCC, as already perused by your goodself, speak, loud and clear that impugned receipt was compensation due to Iraq's unlawful invasion & occupation of Kuwait. According to Section 28, there are specified categories of compensation, which have been brought to tax by the legislature. The impugned receipt is outside the scope of the said provision. Therefore, any adverse inference is not justified. Similarly, the impugned receipt does not fall under Section 45(1A) as the UNCC is not an insurer of the assessee nor there is any transfer of 'assets'. No such compensation was payable/paid by UNCC, which were not directly related to the Iraq's invasion & occupation of Kuwait, in other words, which cannot be directly related to such illegal action of Iraq. Therefore, such broad distinction amply makes it unambiguously clear that impugned receipt was compensation and therefore it should be given its normal natural meaning and 'compensation' is distinct from 'Income' and therefore, is not taxable.

20. The assessee company received US $ 5,92,271 equivalent to INR 2,81,70,185 in respect of work performed by it on the Ashtar – 89 Project. While accepting the claim of the assessee company for the performance of work on this project the UNCC held that as regards Ashtar-89 project the evidence establishes that the claimants work began in June 90; as such amounts owed by Iraq for the work performed by the claimant is properly compensable by this commission. In response to the query regarding the taxability of this receipt the assessee company stated that out of the said amount it had already accounted for Rs.1,33,81,216 as income, the difference of Rs.1,47,88,969 represents foreign exchange fluctuation and thus is a capital receipt. It further stated that as UNCC was not under any contractual obligation to pay the said amount and therefore, it does not fall under Section 28 of the Income Tax Act and hence is not taxable.

21. The Assessing Officer observed that there is no doubt about the source of the receipt which is the business of the assessee company. The

source is linked to the performance of work on Ashtar-89 project in Iraq and the payment of retention money withheld by the clients in Iraq as per the contract agreement. Both represented the contract receipts taxable in the hands of the assessee company. Further, even if there is an element of foreign exchange fluctuation in the proceeds received by the assessee company on account of its business, the same is taxable as revenue receipt. The claim of the assessee that the receipt is not taxable as the recommending body, i.e., UNCC was not under any obligation to do so, and hence the amount so recommended and paid is not taxable is not tenable. Here the payments were made out of the funds created vide UN resolution No. 687 for compensating the various parties affected by the invasion of Kuwait by Iraq. From the reports of the UNCC, it is clear that the Committee received the claims of all the affected parties of war with all the documentary evidence and arguments. The UNCC also called for the arguments and comments of Iraqi authorities on the claims made by the parties. After considering the arguments and counter arguments of both the parties, the UNCC recommended the compensation payable to fulfill the obligation of Iraqi authorities. The obligation was of Iraq which was determined by the UNCC in view of the extraordinary circumstances and the payments were made out of the Funds created for the purpose. The compensation is received by the assessee company on account of the amount due to the assessee company on performance of the project in Iraq and the retention money withheld in Iraq for non completion of the contractual obligation. The obligation of payment was of Iraqi Authorities which were met through UNCC. Even if, the compensation is paid by UNCC itself the same becomes taxable as it is in the course of the business of the assessee company and represents the contract receipts payable to the assessee company. The compensation received by the assessee company is in the course of its business in Iraq, the same is taxable as revenue receipt. The contract receipt relating to Ashtar-89 Project amounting to Rs.1,33,81,216/- and retention money amounting to Rs. 8,34,23,524/- which has already been offered by the assessee company on accrual basis in the relevant assessment years are being reduced from the total compensation received by the assessee

company in these heads. Surplus amount of Rs. 10,30,62,101/- is being taxed as business income during the year under consideration.

22. In respect of compensation for the loss of property and assets, the Assessing Officer observed that the assessee company received US $ 1,15,83,862 equivalent to Indian rupees 55,09,63,271/- as compensation on account of loss of property, physical assets and lost profits. The assessee company has claimed the compensation received as non taxable on the similar arguments as already discussed above in the case of compensation for retention money in Ashtar – 89 project. The assessee company was asked to substantiate its claim and to produce evidentiary proof of the value of the assets lost/confiscated. On the basis of details filed by the assessee company and the earlier years records available in this office, it has been seen that the total value of block of assets relinquished/taken over by the Iraqi authorities during the war was at Rs. 1,23,60,483/- instead at Rs. 2,11,68,472/- claimed by the assessee company as on 31.03.1992. From the assessment records of A.Y. 93-94. It has been found that the assessee company has claimed depreciation on the block of assets taken over by the Iraqi authorities upto 31.03.1992. In the A.Y. 93-94, the assessee company has reduced the value of block of assets pertaining to the projects taken over by the Iraqi authorities. The block of assets of these projects has been taken at nil thereafter and no depreciation was claimed by the assessee company. Any consideration, compensation or claims received by the assessee in excess of the w.d.v. of the block of assets against sale, extinguishment, relinquishment or acquisition of the block of assets is to be treated as short term capital gain in the hands of the assessee as per the provisions of Sec. 50 & 50A of Income Tax Act, 1961. As the total block of assets of the project has been reduced to Nil, in view of relinquishment/extinguishment of the assets, the compensation received in excess of w.d.v. of the block of assets, i.e., (Rs.1,23,60,483/-) is being treated as short term capital gain in the hands of the assessee company for the year under consideration. Short term capital gain is being worked out as under:

Compensation received by the assessee company Rs.55,09,63,271/-

Against the assets

Less: w.d.v. of block of assets Rs. 1,23,60,483/-

Rs.53,86,02,788/-

23. The assessee company had originally shown to have sold 50 lakh shares of face value 10 each of its subsidiary company Continental Shipping Corporation Ltd. for consideration of Rs 20 lakhs to M/s Nauvika Investment and Commercial Enterprises Ltd. During the assessment proceeding the counsel of the assessee company submitted a letter stating that the assessee company sold the above mentioned shares in gross consideration of Rs. 62,56,979/- which will include liquidating of the outstanding liabilities of Rs. 42,56,979/- and net payment of Rs.. 20 lakhs. However, the assessee company did not write off the liability of Rs. 42,56,979/- in its books. In response to summon u/s 131 issued to M/s Nauvika Investment and Commercial Enterprises Ltd., the transferee company stated that the above transaction was for the consideration of Rs 20 lakhs only. However as the assessee company admitted the remission of liability of Rs. 42,56,979/-, the same is being treated as income in the hands of the assessee and is being added in the total income.

24. As regards Ground No. 7 relating to employee's contribution to P.F., on perusal of Tax Audit Report enclosed with the return of income it has been found that the assessee company has deposited sums received from employees towards contribution to provident fund after the due date including grace period of 5 days. The deposits made by the assessee company in various months after the due date as mentioned in the respective statute is as follows:

S.No.	Month	Amount of Contribution	Actual date of deposit
1	April, 2000	345,308	30.05.2000
2	June, 2000	334,989	02.09.2000
3	July, 2000	329,356	02.09.2000

4	August, 2000	305,421	13.10.2000
5	October, 2000	318,726	24.11.2000
6	November, 2000	355,085	22.03.2001
7	December, 2000	332,431	22.03.2001
8	January, 2001	350,613	22.03.2001
9	February, 2001	330,792	22.03.2001
10	March, 2001	610,024	11.07.2001
11		6,385	08.06.2001
	Total	3,619,130	

The assessee company deposited the sums received from the employees towards contribution to the P.F. covered in the Section 2(24)(x) has been paid after the due date and therefore, no expense on account of these sums amounting to Rs. 36,19,430/- is not allowable as per the provisions of Section 36(1)(va).

25. As regards to employer's contribution to the P.F., from perusal of the Tax Audit Report and Annexure – 12 annexed with it, it has been found that the assessee company has deposited employer's contribution to the P.F. after the due date mentioned in schedule amounting to Rs.24,33,055/-. Month-wise detail with the date of deposit of the contribution is as under:

S.No.	Month	Amount of Contribution	Actual date of deposit
1	April, 2000	261,885	30.05.2000
2	June, 2000	260,556	02.09.2000
3	July, 2000	248,707	02.09.2000
4	August, 2000	233,030	13.10.2000
5	October, 2000	237,139	24.11.2000
6	November, 2000	251,536	22.03.2001
7	December, 2000	237,943	22.03.2001
8	January, 2001	252,747	22.03.2001

10	March, 2001	444,916	11.07.2001
11		4,596	08.06.2001
	Total	2,433,055	

Expense claimed by the assessee company for the employer's contribution to the P.F. is not allowable as per the provisions of Sec 43B if the same is deposited after the due date mentioned in the respective statute.

26. Auditor in the Tax Audit Report pointed out that the assessee company has claimed deduction of expenditure pertaining to prior period in the P&L account amounting to Rs. 27,52,297/-. On perusal of Annexure – 13 of the Tax Audit Report containing the detail of the prior period expenses, it has been seen that the expenses pertain to the payment of road tax, goods tax, fitness fee etc., to the RTO. Vide order sheet entry dtd 09.02.2004, the counsel of the assessee company was asked to produce copies of orders from RTO to ascertain the year in which the liability has actually occurred. The counsel of the assessee company did not furnish the copies of orders, however, has stated that the prior period expenses amounting to Rs. 27,54,279/- includes Rs. 4,73,404/- towards fine and penalties. The balance amount is paid towards Road Tax which is allowable u/s 43B on payment basis. Therefore, no addition is justified in relation to prior period expenses. The statement of the counsel has been found contrary to the findings of Auditor mentioned in the Tax Audit Report. The Auditor mentioned that Rs. 4,73,404/- in the nature of fine and penalty was the liability of the assessee company during the year and is the part of total expenses claimed by the assessee company for payment of road tax, etc. amounting to Rs. 48,49,728/- which is given in detail in Annexure-VI(a) of the Tax Audit Report. The contention of the assessee was not accepted by the Assessing Officer. The Assessing Officer further observed that the copies of the orders were not produced to enable him to find out the year in which the liability was ascertained. In view of these facts, the prior period expenses pointed out by the Auditor in the Tax Audit Report amounting to Rs.

27,52,297/- is being disallowed and is being added back to the total income of the assessee company.

27. In the Tax Audit Report, the Auditor has pointed out in Clause 17(c) of the Report that the assessee company has contributed Rs. 21,000/- to a political party. This expense is not allowable as per the provisions of Section 37(2B) of Income Tax Act, 1961 and therefore disallowed.

28. During the assessment proceedings, the assessee company stated that it has credited Rs. 8,21,49,466/- in the P&L accounts as interest receivable from Iraq has not received by it due to prohibition on the remittance from Iraq. It stated that the tax payable on interest receivable amounting to Rs.8,21,49,466/- shall be kept in abeyance under Section 220(7) of the Income Tax Act, 1961. The Assessing Officer observed that the proceeding u/s 220(7) are different from the assessment proceeding to decide the matter in view of the provisions laid down in the Income Tax Act. Thus, the total income was assessed at Rs. 51,94,31,415/- by the Assessing Officer vide order dated 19.03.2004.

29. The Ld. AR further submitted that the issues concerning the assessee's appeal in relation to the chargeability of compensation are summarized as follows:

a. The Assessing Officer has treated the sum of Rs. 52.86 crores received on 27.12.2001 (in addition to Rs. 23.32 crores physically received during the relevant previous year) as income accruing to the assessee during the previous year relevant to AY 2001-02, as against the accounting policy of the company to account for such contingent & uncertain revenues on cash system of accounting and which was actually & physically received in the subsequent year.

b. The entire amount of compensation, irrespective of components comprised in the aggregate sum, of Rs. 76.18 crores (including Rs. 23.32 crores on receipt basis during the relevant year) is a capital receipt, not exigible to tax under the Act.

c. Amount of compensation on account of retention money & contract receipts (net of debts outstanding) or in other words, the net gain on devaluation is not taxable as it does not result in profits of business and were just fortuitous windfall due to devaluation.

d. Amount of compensation as is attributable to assets abandoned in Iraq, is not liable for short term capital gains u/s 50, as there is no 'transfer' and even if it is assumed that abandonment results in transfer then it becomes taxable in AY 1991-92, when abandonment actually took place.

e. The interest receivable amounting to Rs. 8,21,49,466/- under unilateral deferred Payment Agreement between two sovereign governments does not result in any enforceable right to receive nor it has resulted in any real income and thus income does not accrue and should be excluded.

f. The CIT(A) is not correct to hold that Section 220(7) becomes operative only when a demand is created subsequent to assessment order, because 220(7) is an exception to 220(1) and 220(1), 156 and 143(3) are to be read together.

Alternative to c & d:

g. Without prejudice to above, the amount of compensation being a capital receipt may at most be liable for Long Term Capital Gains Tax. However, to compute capital gains there has to be a Transfer of capital asset. Solitary forced abandonment of capital asset, due to bombing by UN on Iraq, does not amount to Transfer.

29.1 The Ld. AR submitted that the assessee is engaged in the business of heavy civil construction works like Dams, Canals, Water Supply systems, tunnels etc. Assessee had undertaken various projects at Iraq since 1975, including Karkh Water Supply & Diwnaniyah Sewerage Scheme. Subsequently it also received new contract called Ashter'89 which was commenced by the assessee in June, 1990. As per terms of these contracts,

Iraq was to make payment against the contract dues in Local Currency and US $. However, the clients (Govt. of Iraq) started defaulting in payments form 1992 consequent to severe financial crises due to long continued war by Iraq. Assessee had obtained a comprehensive insurance policy called 'Construction Works Policy' (CWP) insuring all risks & payments due under the contract. Such policy was issued by Export Credit Guarantee Corporation Ltd. (ECGC), a body set up by Govt. of India under Ministry of Commerce. As per terms of CWP, delay in payment by more than 120 days of contractual dues by Iraq, the same shall be made good by ECGC. Therefore, upon default by Iraq, assessee as well other contractors working in Iraq approached ECGC for settlement of their claim. Considering the enormity of the claims and quantum of amount due from Govt. of Iraq, ECGC was finding itself not in a position to honor its policy due to inadequate financial resources. After deliberations and recommendations of special task force, a Deferred payment agreement was entered unilaterally between Govt. of India & Govt. of Iraq, whereby foreign currency dues were deferred to be payable in installments w.e.f. 1.1.1983, against the supply of crude oil to the Govt. of India, as against the initial cash contract of the assessee. In view of such DPAs, entered with a validity of one year, FC (Foreign Currency i.e. US $) dues were deferred and LC (Local Currency i.e. Iraqi Dinars) dues were continued to be paid by Govt. of Iraq. As per terms of the DPA, assessee was entitled to interest on its receivables at LIBOR rate and the said DPA's were made on year to year basis till 1990. There was no DPA agreement or renewal thereafter till date due to UN embargo. However, assessee continued to account for interest at LIBOR rate in anticipation of renewal of such DPA in future. Subsequently, consequent to Iraq's invasion and occupation of Kuwait, the UN led war commenced in August' 1990 against Iraq with the purpose of freeing Kuwait, disarm Iraq of nuclear weapons and restore world peace. At the onset of the heavy bombing of Baghdad in late January 1991, on the verbal orders of the Iraqi Authorities, the assessee's work force abandoned the Karkh Project leave its equipments behind and departed Iraq via overland desert route to Jordan. Subsequently, UN passed a resolution no 687 on 8th April, 1991 to compensate the victims

of the UN led war due to Iraq's illegal invasion & occupation of Kuwait for the damage & injury caused. For the purpose of verifying the claims and evaluation of losses thereof a commission (UNCC) was constituted by the UN. The authority & scope of UNCC is defined:

"The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-judicial function may be involved."

UNCC recommended the claim of the assessee at US $ 16,017,275.91 vide report dated 9th May, 1998 as against claims lodged by the assessee for US $ 472,833,095.00. Subsequently UN Security Council (UNSC) accepted the recommendations vide its sanction dated 3rd July 1998, and thus the amount of compensation was released in the following manner:

Sl. No	Particulars	Amount Awarded by UNCC
1	Retention Money of Karkh Unit	US$ 38,41,142.00
2	Ashtar'89 – Project Works Completed	US$ 5,92,271.00
3	Loss of Property and equipment	US$ 1,15,83,862.91
	TOTAL	US$ 1,60,17,275.91

1st Installment	US$ 25,000.00	Rs. 10,89,500/-	10.04.2000
2nd Installment	US$ 49,75,000.00	Rs. 23,21,33,002/-	08.01.2001
3rd Installment	US$1,10,17,275.91	Rs. 52,86,08,899/-	27.12.2001
TOTAL	US$1,60,17,275.91	Rs. 76,18,31,401/-	

29.2 The concept of accrual is an accounting fiction on the principle of Going Concern concept and to match the revenues earned with the costs incurred, on the basis of stage of completion of performance, whether or not the same is actually realized. On the other hand the concept of cash system

envisages accounting of revenue, when the same is actually/physically or constructively realized. It is also settled principle of accountancy to recognize revenues adopting prudence & conservative approach. It was the policy of the company, as disclosed in the note 2(iv) of schedule L to the audited balance sheet. Same was the policy accepted by the Tribunal in 1984-85. UNCC in its recommendation of compensation has taken the date of loss to be the basis of exchange rate for granting compensation. And such date of loss was taken as 31 January 1991. The compensation from UNCC is honorary, compassionate & gratuitous without any contractual obligation or agreement or insurance by UN with the assessee. The meaning of accrual envisages 'arising of an enforceable right in consideration of the performance.' Since the compensation from UN is gratuitous, the same cannot be deemed to have accrued unless realized, inspite of a resolution being passed by it, (which itself is an internal affair & its constituents member countries) and is always be subjected to review under the ever changing world socio-political scenario. For arguments, even if accrual system is to be adopted, the same can be deemed to have accrued on different dates and non of them falling during the relevant previous year. It is also a matter of great concern i.e. if accrual concept is to be applied, then what is the actual date of accrual? i.e.:

-the date when the war was waged by the UN against Iraq 9.8.1990

-the date when the CCL abandoned its assets in Iraq January 1991

-the date when the UN passed resolution 687 for compensation 8.4.1991

-the date when the UNCC sanctioned the claim 3.7.1998

-the date when the president of India sanctioned for payment 5.12.2001

From the above lists of probable dates of accrual of income (though disputed as income under the Act), it is apparent that best case to determine the date of accrual is the day, when the UN passed the resolution for compensation to war-affected persons i.e. 8.4.1991 and thus is outside the preview of tax,

being time barred. This is also a date when the assessee's right to claim compensation had arisen. However, if during 1991, it was not considered to have accrued, on the basis that same shall be on cash system, the Assessing Officer cannot now proceed to assume that entire amount has accrued during AY 2001-02, merely because a part of compensation was received during the relevant previous year. This view is also supported by the fact that Section 45(1A), inserted w.e.f. 1.4.2000 stipulates compensations from Insurers for loss/ destruction of assets is to be brought to tax in the year of actual receipt. Though said section is not equally applicable in case of the assessee but a reasonable parallel can easily be drawn on same facts & circumstances. Similarly according to provisions of sub-section (1) of section 45, capital gains is chargeable to tax in the previous year in which transfer took place.

29.3 The Ld. AR submitted that impugned receipt of compensation is a capital receipt not exigible to tax under the provisions of the Act. Compensation is gratuitous on compassionate ground for loss sustained by the assessee due to UN led war against Iraq. As the name suggest it is against the loss suffered and therefore cannot partake the character of income. Income denotes a source of a regular nature, though it may not actually result in regularly. Compensation for loss caused by UN war against Iraq, conceptually does not have any element of income. The Ld. AR relied upon the decision of the Hon'ble Apex Court in case of Universal Radiators vs. CIT (1993) 68 Taxman 45/201 (SC) wherein it is held that devaluation of rupee giving rise to gain is only fortuitous windfall which is not taxable. Compensation against an asset, even if stock in trade, which was sterilized does not result in profit from business. The Ld. AR further submitted that compensation is only meant to re-pool up for the losses/ damages suffered and injury caused, incidental expenses incurred or to be suffered or sustained. The Hon'ble Supreme Court and Hon'ble High Courts unanimously held that any compensation for loss or destruction of a capital asset or an amount received on loss of source of profit is a capital receipt, outside the preview of the taxation.

a) compensation is a well known expression in law and therefore the word compensation must be given its normal and natural meaning – SRY Sivaram Prasad Bahadur vs. CIT (1971) 82 ITR 527 (SC); Raja Shri VVRK Yachendra Kumaraja vs. ITO (1971) 82 ITR 527 (SC)

b) Compensation received for sterilization, destruction or loss, total or partial, of a capital asset would be a capital receipt. – CIT vs. Bombay Burmah Trading Corp. (1986) 161 ITR 386 (SC)

c) If payment received is towards compensation for extinction or sterilization partly or fully of profit earning source (capital asset) such receipt not being in ordinary course of business, it must be construed as capital receipt. – CIT vs. Barium Chemical Ltd. (1987) 168 ITR 164 (AP)

d) The court held that all inclusive definition of term 'Capital Asset' in Section 2(14) brings in its ambit property of any kind held by the assessee. Tribunal observed that what was acquired in such a case was undertaking as a composite unit and therefore merely because it included stock in trade or goodwill it could not be held that it was not a capital asset. – PNB Finance Ltd. vs. CIT (2001) 252 ITR 491 Delhi

29.4 Award of compensation has an inclusive process of evaluation of loss suffered or costs incurred. Compensation for damages suffered or injury caused can at only best be measured in monetary terms may involve reference to various items, which normally also include some which may be terms as revenue nature. In order to draw a parallel between the circumstances under consideration as well as other already decided cases pronounced by various High Courts/Supreme Court, we are giving below few examples where even if compensation is quantified in relation to revenue income, the same are not considered as taxable:

i) Mesne profit is compensation towards rental value of property for the period a tenant occupies the property during eviction proceedings.

ii) Compensation for accidental injury/ death, where compensation is awarded in relation to earning capacity/ salary of the injured/ dead.

iii) Compensation, as consideration of a divorce, to a divorcee in relation to his/her earning capacity or social status.

iv) Compensation determined in relation to loss of interest/ profit, in a case where there is a delay in execution of part of obligation of one party.

a) The fact that compensation is based on assessee's profit is not decisive of the nature of receipt. – Associated Oil Mills Ltd. vs. CIT (1960) 40 ITR 118 (Mad.)
b) Compensation for dissolution of profit making apparatus is capital receipt. – CIT vs. South India Flour Mills (P) Ltd. (1970) 75 ITR 147 (Mad.)

29.5 Section 45 provides that any profit & gains from transfer of a capital asset effected in the previous year shall, save as otherwise provided in the Act be chargeable to income tax under the head Capital Gains and shall be deemed to be the income of the previous year in which the transfer took place. As mentioned earlier that at the onset of Bombing of Baghdad in January' 1991, Iraqi authorities ordered CCL to abandon the projects, leave its equipments behind and depart from Iraq via an overland route to Jordan. As a result company left its equipments & property in Iraq, which are not under the possession of Iraq authorities. In such situation, due to circumstances beyond the control of the assessee, forced abandonment resulting from war does not amount to Transfer.

a) There can be no 'transfer' effected when asset stands destroyed either by fire or by sinking in the sea as in the present case. – C. Leo Machode vs. CIT (1988) 172 ITR 744 (Mad.)

b) approved in Vania Silk Mills (P) Ltd. vs. CIT (1991) 191 ITR 647 (SC);

c) CIT vs. Hade Navigation (P) Ltd. (1999) 239 ITR 726 (Bom);

d) Merybong & Kyel Industries Ltd. vs. CIT (1997) 224 ITR 589 (SC)

e) For the transaction to amount to transfer within the meaning of Section 2(47) minimum requirements are that there has to be agreement

between parties, signed by parties, it should be in writing, it should pertain to transfer of property; transferee should have taken possession of property etc. – Zuari Estate Development & Investment Co. Pvt. Ltd. vs. J. R. Kanekar, Dy CIT (2004) 139 Taxman 209 (Bom)

Further, according to the section, even if it is presumed for the sake of arguments but without admission, capital gains is chargeable to tax, then it is in the year in which the transfer took place. The assessee had abandoned the assets due to war in January, 1991 and thus if it becomes chargeable, if at all, it is in the assessment year 1991-92. During the relevant previous year, there was not transfer, it was only the amount of compensation, which was realized.

29.6 Further, Points of Ld. AR in respect of claiming compensation to be a capital receipt not exigible to tax:

i) The word compensation should be given its natural meaning and this word does not postulate any element of income or profit motive at the first instance. Legislature was well aware of the two words 'compensation' and 'income' and have been so distinctly used in the Act.

ii) Compensation by UN was unilateral, gratuitous and compassionate rather than any right arising out of any law, contractual obligations or commercial contract.

iii) Resolution sanctioning Compensation was subsequent to abandonment and thus there was no profit motive at the time of triggering event giving rise to make claim for the compensation and thus gain is not arising out of any activity of trading nature.

iv) Compensation was granted by UN only for Direct Loss and for not any other obligations which the assessee was otherwise entitled to.

v) Compensation was granted by UN, an independent political organization, rather than by Iraq authorities. UN did not acted as an agent of Iraq or an insurer.

vi) It is a receipt against assets sterilized, freezed and rendered useless due to war and thus such receipts are not from trading assets. These debts were not trading assets as the same could not longer be churned for business activity.

vii) It is a receipt for the damage & injury and was a direct loss of UN action, demolishing the whole of structure of the assessee company in Iraq which comprised of huge manpower, equipments and establishments, and many ongoing contracts. Thus compensation is attributable to profit making apparatus of the assessee in Iraq, being a capital asset and not a trading asset.

viii) Compensation was granted for loss, damage & injury caused and not for loss of profit. The compensation in relation to retention money and Ashter 89 project were already accounted for as income on accrual basis.

ix) The gain is only fortuitous windfall due to devaluation which does not involve any trading activity.

30. The Ld. DR submitted that the compensation received by the assessee in this year is from the United Nations Compensation Commission (UNCC). However, the nature of the compensation essentially is the same as that received in A.Y. 1995-96 from Govt. of India and therefore the same arguments as given in the paras for 1995-96 would apply. As regards to the other grounds, the Ld. DR relied upon the Assessment Order and the order of the CIT(A).

31. We have heard both the parties and perused all the relevant material available on record. The Assessing Officer observed that the compensation is received by the assessee company on account of the amount due to the assessee company on performance of the project in Iraq and the retention money withheld in Iraq for non completion of the contractual obligation. The obligation of payment was of Iraqi Authorities which were met through UNCC. Even if, the compensation is paid by UNCC itself the same becomes taxable as it is in the course of the business of the assessee company and represents the contract receipts payable to the assessee company. But this

is factually incorrect as the assessee could not conduct its business after the Iraq's invasion and occupation of Kuwait in the year 1990. Thus, the compensation received by the assessee company is in the course of its loss incurred in Iraq, the same is does not amount to revenue receipt. The contract receipt relating to Ashtar-89 Project amounting to Rs.1,33,81,216/- and retention money amounting to Rs. 8,34,23,524/- which has already been offered by the assessee company on accrual basis in the relevant assessment years are being reduced from the total compensation received by the assessee company in these heads. Surplus amount of Rs. 10,30,62,101/- is being taxed as business income during the year under consideration. These observations of the Assessing Officer cannot be sustainable as the compensation was received by the Assessee in 2001. However, if during 1991, it was not considered to have accrued, on the basis that same shall be on cash system, the Assessing Officer cannot now proceed to assume that entire amount has accrued during AY 2001-02, merely because a part of compensation was received during the relevant previous year. This view is also supported by the fact that Section 45(1A), inserted w.e.f. 1.4.2000 stipulates compensations from Insurers for loss/ destruction of assets is to be brought to tax in the year of actual receipt. Though said section is not equally applicable in case of the assessee but a reasonable parallel can easily be drawn on same facts & circumstances. Similarly according to provisions of sub-section (1) of section 45, capital gains is chargeable to tax in the previous year in which transfer took place. Thus, the Revenue authorities at one point accepted the stand of the assessee in part and on the contrary to its own stand took a different stand that of treating a part of the said receipt as business income and a part as short term capital gains u/s 50 of the Act. As held in the A.Y. 1995-96 by us, the same analogy will apply herein as well. The compensation is in respect of the loss incurred by the assessee in respect of the contracts which were unable to be completed since the invasion of Iraq in Kuwait in year 1990. The assessee company treated the said sum as capital receipt, accounted on receipt basis, not exigible to tax, being in the nature of compensation of capital nature and against forced abandoned capital assets

due to war. The returned total income included a sum of Rs. 8,21,49,466/- on account of interest accrued on sums receivables from Iraq in terms of deferred payment agreement between Govt. of Iraq & Govt. of India. Thus, the treatment given by the assessee company is just and proper. From the point of view of the commercial aspect of the receipt it can be seen that the assessee received the amount from the United Nations Compensation Commission and not from the Government of Iraq. From the perusal of the records it can be seen that the compensation is not coming under the purview of the business income as there was no business during the period. Thus, compensation received in lieu of the losses of the contract which was supposed to be executed in the year 1991 will not form the receipt of revenue in nature, but capital in nature. Therefore, Ground No. 1 to 3 of the assessee's appeal are allowed.

32. As regards Ground No. 4 to 6, relating to benefit of Section 220(7) of the Act, the same will become redundant in light of the observations and findings given by us in respect of Ground No. 1 to 3. Therefore, Ground No. 4 to 6 are dismissed.

33. As regards to Ground No. 7 is concerned, the assessee company has deposited employer's contribution to the P.F. after the due date mentioned in schedule amounting to Rs.24,33,055/-, but deposited before the due date of filing of return of income. Thus, the Assessing Officer was not right in disallowing these expenses claimed by the assessee company for the employer's contribution to the P.F. as per the provisions of Sec 43B if the same is deposited prior to the due date mentioned in the respective statute as held by the Hon'ble Apex Court in case of CIT v. Vinay Cement Ltd. [2007] 213 CTR 268 (SC) and CIT v. Alom Extrusions Ltd. [2009] 319 ITR 306 (SC). Ground No. 7 of the Assessee's appeal is allowed.

34. In result, appeal being ITA No. 2199/Del/2005 for A.Y. 2001-02 filed by the assessee is partly allowed.

35. As regards to ITA No. 2200/Del/2005 filed by the Revenue for A.Y. 2001-02 is concerned, Ground No. 1 is already decided in assessee's own

appeal in respect of Ground Nos. 1 to 3. Hence, Ground No. 1 of Revenue's appeal is dismissed. As regards to Ground No. 2 of the Revenue's appeal regarding the remission of liabilities, the CIT(A) has rightly deleted the same with the proper reasoning. Hence, there is no need to interfere with the same. Ground No. 2 of the Revenue's appeal is dismissed. As regards to Ground No. 3 relating to addition on account of employees' contribution to PF u/s 36(1)(va) of the Act, the CIT(A) has given proper reasoning and detailed findings, therefore, there is no need to interfere with the same. Ground No. 3 of the Revenue's appeal is dismissed. As regards to Ground No. 4, the same is discussed in assessee's appeal in Ground No. 7, therefore, Ground No. 4 is allowed. As regards to Ground No. 5 relating to prior period expenses, the CIT(A) has given a detailed findings, therefore, there is no need to interfere with the same. Ground No. 5 of the Revenue's appeal is dismissed. As regards to Ground No. 6 relating to contribution to the political party, the same is rightly disallowed by the Assessing Officer and the CIT(A) has not given any concurrent findings. Therefore, Ground No. 6 of the Revenue's appeal is allowed. In result, appeal being ITA No. 2200/Del/2005 filed by the Revenue for A.Y. 2001-02 is partly allowed.

36. In result, two appeals being ITA Nos. 4710/Del/2010 and ITA No. 2199/Del/2005 for A.Y. 1995-96 and 2001-02 respectively filed by the assessee and one appeal being ITA No. 2200/Del/2005 for A.Y. 2001-02 filed by the Revenue are partly allowed.

Order pronounced in the Open Court on the 23rd day of September, 2020.

Sd/-	**Sd/-**
(PRASHANT MAHARISHI)	**(SUCHITRA KAMBLE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 23/09/2020
Priti Yadav, Sr. PS *

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	23.09.2020
Date on which the typed draft is placed before the dictating Member	23.09.2020
Date on which the typed draft is placed before the Other Member	23.09.2020
Date on which the approved draft comes to the Sr. PS/PS	23.09.2020
Date on which the fair order is placed before the Dictating Member for pronouncement	23.09.2020
Date on which the fair order comes back to the Sr. PS/PS	23.09.2020
Date on which the final order is uploaded on the website of ITAT	23.09.2020
Date on which the file goes to the Bench Clerk	23.09.2020
Date on which the file goes to the Head Clerk	