आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री वी दुर्गा राव,न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.: 868 & 869/CHNY/2018**

निर्धारण वर्ष / Assessment Years: 2013-14 & 2014-15

M/s. NLC India Ltd., (Formerly known as Neyveli Lignite Corporation Ltd.), Block-1, Corporate Office, Neyveli Township, Cuddalore District, Neyveli – 607 801. **PAN: AAACN1121C**	v.	The DCIT, Company Circle VI(4), Chennai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./**ITA Nos.: 952 & 953/CHNY/2018**

निर्धारण वर्ष / Assessment Years: 2013-14 & 2014-15

The DCIT, Company Circle VI(4), Chennai.	v.	**M/s. NLC India Ltd.,** (Formerly known as Neyveli Lignite Corporation Ltd.), Block-1, Corporate Office, Neyveli Township, Cuddalore District, Neyveli – 607 801. **PAN: AAACN1121C**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारितीकी ओर से/Assessee by : Shri Raghavan Ramabadran, CA

राजस्वकीओरसे /Revenue by : Shri G. Srinivasa Rao, CIT

सुनवाई की तारीख/Date of Hearing : 07.01.2021

घोषणा की तारीख/Date of Pronouncement : 08.02.2021

आदेश /O R D E R

Per G. MANJUNATHA, AM:

These cross appeals filed by the assessee, as well as the Revenue are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-5, Chennai both dated 27.12.2017 and pertain to assessment years 2013-14 & 2014-15. Since, facts are identical and issues are common, for the sake of convenience these appeals are heard together and are being disposed of by this consolidated order.

2. The assessee as well as the Revenue have raised common grounds of appeal for both assessment years and therefore for the sake of brevity, following grounds of appeal filed by the assessee and the Revenue for assessment year 2013-14 are reproduced as under:-

Assessee's Appeal

Disallowance of 'other income' under Section 80IA
The Learned AO and CIT(A) erred in disallowing amount to the tune of Rs. 27,80,384 under Section 80IA the following income classified as 'other income' without appreciating the fact that there is first degree nexus with the business of the assessee

II. The Learned AO and CIT(A) failed to appreciate the fact that the decision of Hon'ble Apex Court in the case of M/s Liberty India (317 ITR 218) is not applicable to the facts of the present case.
III. Without prejudice to the above, the Learned CIT(A) erred in estimating only 10% of 'other income' as expenses incurred in relation to earning of the 'other income' and 90% thereof as profit element therein not eligible for deduction without any nexus to any material or evidence.

Disallowance of expenses under Section 14A
IV. The Learned AO and CIT(A) erred in remanding the issue of applicability of Section 14A for fresh consideration by the Learned AO without appreciating that during the Assessment year 2004-05, the power bills due and surcharge dues from EB's has been converted into 8.5% Tax free SLR Power bonds issued by the State Government.
V. The Learned AO and CIT(A)failed to appreciate that no expenditure was incurred by the Assessee for earning the exempt income and the Bonds are kept in dematerialized form.
VI. The Learned AO and CIT(A) has included even investments in equity shares of the subsidiary of the Appellant without appreciating the fact that no income tax free dividends were received in the relevant year.
VII. The Learned AO and Learned CIT(A) has failed to appreciate that the investment made in equity shares of the subsidiary company was strategic in nature and was not merely for the purpose of earning exempt income in the form of dividends and hence, the Learned AO has erred in making disallowance under section 14A read with Rule 8D.
VIII. The Learned AO and CIT (A) failed to appreciate that no expenditure was incurred by the Appellant for earning the exempt income, if any, from the investment made in equity shares of the subsidiary.

Disallowance of surcharge recoverable from EBs
IX. The Learned CIT(A) erred in holding that the surcharge recoverable from electricity boards is taxable in the year under

appeal ignoring the fact that there was no accrual owing to uncertainty in realization of the sum involved.

X. The Learned CIT(A)failed to appreciate that the said accounting treatment of postponing the recognition of income is as per Accounting Standard-9 issued by the Institute of Chartered Accountants of India.

XI. The Learned CIT(A) has also failed to appreciate that the facts of the Appellant's case are squarely covered by the decision of the Hon'ble Apex Court in Godhra Electric Co Ltd
[(1997) 255 ITR 746] (SC)].

XII. The Learned CIT(A) has erred in following its earlier order in ITA No. 2161, 2162, 2163/Mds2016 & ITA No. 2199 & 2200/Mds/2016 wherein the Hon'ble Bench of the ITAT held that the recovery is assured by the tripartite agreement ignoring the fact that the Appellant is not a party to the agreement and therefore in view of the well-established principle of 'privity of contract' could not have enforced the same. The finding on assurance of recovery is therefore based on irrelevant evidence. The Hon'ble ITAT has thus erred in not considering the fact that even when the tripartite agreement was in place, there remained uncertainty with respect to realization.

XIII The Learned CIT(A) ought to have appreciated that the Appellant is entitled to deduction on account of any debt written off as irrecoverable in the books of account as can be inferred from the decision of Hon'ble Apex Court in the case of TRF Ltd. v CIT [(2010) 323 ITR 397 (SC)] and the accounting and tax treatment of the Appellant in not recognizing the revenue is equivalent to the accounting and tax treatment of recognizing the revenue and simultaneously writing off the same as bad debt. Thus, in view of the settled law [CIT v. Sarkar Builders (2015) 375 hR 392 (SC)] that an assessee should not be prejudiced by the differences in accounting treatment adopted by him, the Hon'ble ITAT ought to have accepted the plea of the Appellant.

XIV The Appellant craves leave to alter, modify, add any additional grounds of appeal during the course of the proceedings.

Revenues Appeal

1. The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.
2. The learned CIT(A) has erred in deleting the disallowance made u/s 801A in respect of TPS-l expansion unit by placing reliance on its ITAT order in the assessee's own case for the AY 2001-02 and 2008-09 to 2010-li.
3. The learned CIT(A) has erred in allowing the depreciation @ 60% on UPS holding it as part of computer as against 15% allowed by the Assessing officer holding it as part of plant and machinery.
4. The learned CIT(A) has erred in treating the drainage and water supply system as plant instead of building for the purpose of depreciation claim.
5. The learned CIT(A) has erred in allowing the claim of expenses towards the insurance spares holding it as a revenue in nature instead of capital expenditure.
6. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing officer be restored.

Assessee's Appeal in ITA Nos.868 & 869/CHNY/2018

3.0 The first issue that came up for consideration from assessee appeal for both assessment years is disallowance of other income for computation of deduction u/s.80IA of the Income Tax Act, 1961 (hereinafter the 'Act'). The facts with regard to the impugned dispute are that while computing deduction u/s.80IA of the Act, the assessee has included other income being miscellaneous receipts consisting of tender from sales, hospital receipts, notice pay, hire charges of car recovery

from employees, insurance claims, forfeiture deposits, etc., and also interest from others. Besides, the assessee has also included surcharge received from Electricity Boards as per the proviso to Regulation 5(3) of Central Electricity Regulatory Commission [Terms and Conditions of Tariff Regulation 2009]. The ld.AO excluded other income for the purpose of computing deduction claimed u/s.80IA of the Act, on the ground that said other income is not derived from the business in order to be eligible for claiming deduction. The AO was further of the opinion that unless income is having first degree nexus with the main business activity, the income is not eligible for claiming the benefit of deduction provided under the Act. On appeal, the ld.CIT(A) upheld the findings of the AO by following the ITAT order in assessee's own case for assessment year 2007-08 to 2010-11, where the Tribunal has upheld re-computation of income eligible for deduction u/s.80IA of the Act.

3.1 The ld.AR for the assessee, at the time of hearing submitted that this issue is covered against the assessee by the decision of ITAT, Chennai Bench in the assessee's own case for assessment years 2007-08 to 2010-11 in ITA No.1983/Mds/2011 and 2077/Mds/2013. But, the issue of surcharge received from

Electricity Board has come up for consideration for the first time and hence it cannot be said that the issue if fully covered against the assessee. The AR further submitted that interest from EB's represents interest for delayed payment of receivables which is having a first degree nexus with main business activity of the assessee. Therefore, it forms part of income from operations eligible for deduction under the Act. The ld.AR further submitted that one more item of income came up for the first time for consideration is interest from contractors pertains to amount received from contractors for non-compliance with terms of agreement. The agreement between the parties is with regard to generation of electricity which is the main business activity carried out by the assessee for the impugned assessment years and hence forms a direct nexus to the main business activity of the assessee i.e., generation and distribution of power. Therefore the AO as well as the ld.CIT(A) were erred in excluding other income, more particularly surcharge received from Electricity Boards and interest from others while computing deduction u/s.80IA of the Act.

3.2 The ld.AR has also made an alternative argument that without prejudice to the first argument with respect to interest

received from contractors submitted that consequent to an Arbitral award, the assessee have to pay back a sum of Rs.3,26,86,729/- to M/s. Fenner India Limited and hence if at all interest received from others is required to be excluded for the purpose of computation of deduction, then only net amount be considered in computing deduction u/s.80IA of the Act. In this regard, he relied upon the following judicial precedents:-

i. CIT vs. Translam Limited [2014] 231 taxmann 901(All)
ii. CIT vs Phatela Cotgin Industries P Ltd [2008] 303 ITR 411 (P&H)
iii. Avalon Technologies P Ltd vs. ACIT [2015] 36 ITR(T) 567 (Chennai Tri)
iv. CIT vs. Prakash Oils Limited [2011] 58 DTR 279 (Tri-Indore)

3.3 The ld.DR, on the other hand submitted that the issue is squarely covered against the assessee by the decision of ITAT, Chennai Bench for earlier assessment years, where the Tribunal after considering the decision of Hon'ble Supreme Court in the case of M/s. Liberty India Ltd. vs. CIT (317 ITR 218), upheld re-computation of amount eligible for deduction u/s.80IA of the Act after excluding other income being miscellaneous income,

interest income, recovery from staff, etc. The facts for the impugned year are identical to the facts considered by the Tribunal for earlier years and hence, there is no reason to take a different view unless there is change in facts for the current financial year.

3.4 We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. On perusal of the assessment order and also the order of the Co-ordinate Bench of this Tribunal in assessee's own case for earlier assessment years, it clearly shows that the issue in regard to exclusion of other income being handling charges, interest received from employees and miscellaneous income has been held to be not linked with industrial activity of power generation and therefore, in view of the decision of the Hon'ble Supreme Court in the case of M/s. Liberty India Ltd., vs. CIT, referred to supra, same did not have a direct link with the business of power generation, and hence, while computing deduction u/s.80IA of the Act, the other income has been excluded. The facts for the year under consideration are similar to the facts considered by the Tribunal for earlier years except to the extent of two new items of income being surcharge from

electricity boards and interest from others [interest received from Fenner India Limited as per terms of agreement]. Therefore, we are of the considered view that the assessee is not entitled for deduction towards eligible profit u/s.80IA of the Act in respect of other income because said income does not have first degree nexus with the main business activity of the assessee. In so far as surcharge from Electricity Boards, the issue has came up for discussion for the first time in the impugned assessment year and hence, needs to be considered in light of arguments advanced by the assessee that it has first degree nexus with business of generation and distribution of power. We have examined the claim of the assessee in light of proviso to Regulation 5(3) of Central Electricity Regulatory [terms and conditions of tariff] Regulations 2009 and find that although the assessee claims that it has received surcharge from Electricity Boards for delayed payment of receivables in respect of supply of electricity, but in principle said payment represents interest for delay in payment of dues to the assessee. Therefore, we are of the considered view that interest earned by the assessee for delay in payment of receivables cannot be characterized as income earned from business operations merely for the reason that said receipt is received from supplier. The

character of any receipt would not change for the simple reason that the said receipt is received from the first degree supplier who is related to main business activity of the assessee. Hence, we are of the considered view that there is no merit in arguments of the assessee that surcharge received from Electricity Board form part of income from operations, which is eligible for deduction u/s.80IA of the Act. As regards various case laws relied upon by the assessee including the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Phatela Cotgin Industries P Ltd., 303 ITR 411 and others, we find that all those cases are rendered under different set of facts and has no application to facts of present case, more particularly when the assessee is failed to establish the fact that other income including surcharge received from Electricity Board is having first degree nexus with the main business of the assessee. Hence, the case laws relied upon by the assessee are not considered. As regards interest from others, we find that the assessee has received interest from M/s. Fenner India Limited as per terms of contract and said interest has been recognized as other income. Although, the assessee claims it had direct nexus with the business operation of the assessee, but on perusal of details, we find that it is simpliciter interest received from the

party for delay in payment as per terms of contract. Therefore, the same cannot be considered as income generated from business operations which is eligible for deduction u/s.80IA of the Act.

3.5 In so far as alternative plea of the assessee that in terms of arbitral award, it had paid back Fenner India Limited, a sum of Rs.3,26,86,729/- and the same may be reduced from interest received from the party while computing deduction u/s.80IA of the Act, we find that compensation paid in terms of arbitral award is not linked to interest earned by the assessee from the party and hence, the same cannot be set-off against interest earned by the assessee. Therefore, alternative plea of the assessee is rejected. We further note that a similar issue has been considered by the Co-ordinate Bench of the Tribunal in assessee's own case for assessment year 2012-13 in ITA No.2200/Mds/2016, where under identical set of facts the Tribunal has upheld re-computation of eligible deduction u/s.80IA of the Act, however accepted the plea of the assessee for deduction of 10% expenses towards other income while computing the deduction. The relevant findings of the order of the Tribunal are as under:-

"6.3 We have considered the rival submissions. On perusal of the Assessment Order and also the order of the Co-ordinate Bench of this Tribunal in the assessee's own case referred to supra clearly shows that the issues in regard to the handling charges, interest received from employees and miscellaneous income has been held to be not interlinked with industrial activity of power generation and therefore in view of the decision of the Hon'ble Supreme Court in the case of M/s.Liberty India Ltd. Vs. CIT referred to supra, as the same did not have a direct link with the business of power generation, the deduction u/s.80IA of the Act on the said incomes were excluded. However, in Para No.10 of the Order the Coordinate Bench has held that 10% of the said other income could be estimated as the expenses relatable to the earning of the said income and directed the AO to exclude 10% of the other income as expenses while computing the deduction u/s.80IA of the Act. In the year under appeal, the other income includes interest on arrears from Electricity Board and interest from others. Applying the ratio of the decision of the Co-ordinate Bench of this Tribunal in the assessee's own case for the AYs 2007-08, 2008-09, 2009-10 & 2010-11 referred to supra, the disallowance as made by the AO and as confirmed by the Ld.CIT(A) stands sustained. However, considering the alternate prayer of the assessee and also following decision of the Co-ordinate Bench of this Tribunal, the expenses in relation to the earning of the other income is estimated at 10% and the AO is directed to exclude 10% of the other income as expenses while computing the deduction u/s.80IA of the Act. In the result, Ground Nos.1 & 2 are partly allowed."

3.6 In this view of matter and consistent with view taken by the Co-ordinate Bench, we are of the considered view that the assessee is not entitled for deduction u/s.80IA of the Act in respect of other income and consequently confirm the additions made by the AO towards disallowance of excess deduction claimed, however allow the alternate plea of the assessee

towards deduction of expenses in relation to earning of other income and direct the AO to allow 10% deduction towards expenses and re-compute deduction u/s.80IA of the Act.

4.0 The next issue that came up for our consideration from assessee's appeal for both assessment years is disallowance of expenditure u/s.14A of the Act. At the time of hearing, the ld.counsels for the assessee as well as the Revenue have fairly agreed that this issue is covered by the decision of the Co-ordinate Bench of this Tribunal in assessee's own case for assessment years 2007-08 to 2010-11, where under identical set of facts, the issue has been remitted back to the AO to recompute disallowance of expenses in relation to exempt income.

4.1 Having heard both sides and considered material on record, we find that disallowance of expenditure in relation to exempt income u/s.14A of the Act is recurring issue and is a subject matter of deliberation of the Tribunal in the assessee's own case for assessment years 2007-08 to 2012-13. Further, the Tribunal after considering relevant facts and also following its earlier order has set aside the issue to the file of the AO and directed

him to re-adjudicate the issue in accordance with law. The relevant findings of the Tribunal are as under:-

6.5 We have considered the rival submissions. As the issue is squarely covered by the decision of the Co-ordinate Bench of this Tribunal for the AYs 2007-08, 2008-09, 2009-10 & 2010-11 referred to supra wherein the Co-ordinate Bench of this Tribunal following the decision in the assessee's own case in ITA Nos.712 & 713/Mds/2010 dated 11.04.2013 wherein it has been held as follows:

> 13. We have perused the orders and heard the rival submissions. Insofar as ground of the Revenue that ld. CIT(Appeals) had not considered the decision of Special Bench of this Tribunal in the case of Daga Capital Management (P) Ltd. (supra), we find that this decision, insofar as it relates to applicability of Rule 8D for years prior to assessment year 2008-09, stands reversed by Hon'ble Bombay High Court in the case of Godrej and Boyce Mfg. Co. Ltd vs. Dy. CIT (328 ITR 81). Hon'ble Bombay High Court clearly held in the said decision that Rule 8D which came with effect from 24 th March, 2008, will be applicable only after the period 2008-09. Nevertheless, their Lordship has clearly noted that even prior to that year, A.O. was duty bound to compute disallowance under Section 14A by applying a reasonable method having regard to the facts and circumstances of the case. Therefore, despite the argument of learned A.R. that 12 I.T.A. Nos.711, 712 & 713/Mds/10 electricity bonds were taken under compulsion and there was no expenses incurred for earning the interest income, we are inclined to remit the issue back to the file of A.O. for consideration afresh. We, therefore, set aside the orders of the authorities below and remit on this aspect back to A.O. for consideration afresh in accordance with law. Assessee can bring to the notice of the A.O. any case law relevant to the issue and A.O. shall proceed in accordance with law.

6.6 Respectfully following the said decision on identical directions, the issue is restored to the file of the AO for re-adjudication"

4.2 In this view of the matter and consistent with view taken by the Co-ordinate Bench, the ground raised by the assessee for both assessment years is allowed for statistical purposes.

5.0 The next common issue that came up for our consideration from assessee's appeal for both assessment years is addition towards surcharge recoverable from Electricity Boards.

5.1 The facts with regard to impugned dispute are that during the course of assessment proceedings, the AO has found from the Annual Report that surcharge received from belated settlement of power bills has not been reckoned as income since there is an uncertainty in realization and the same would be accounted as and when the amount is received by the assessee. The AO was of the opinion that when the assessee is following mercantile system of accounting, all income accrued during the relevant assessment year required to be taxed when the assessee is able to estimate the income with certain degree of estimation. The AO further was of the opinion that there is no merit in the argument taken by the assessee that there is uncertainty in the realization of surcharge from the Electricity Boards and unless there is an uncertainty in realization, the same cannot be considered as accrued for the year for the purpose of taxation. The assessee has taken support from AS9 issued by the Institute of Chartered Accountants of India and argued that where the ability to assess the ultimate collection

with reasonable certainty is lagging at the time of raising any claim, revenue recognition is postponed to the extent of uncertainty. Since there is no certainty of realization of surcharge from Electricity Boards, the assessee has postponed recognition of income even though said surcharge has been accounted in the books of accounts of the assessee on accrual basis. The assessee has taken support from the decision of Hon'ble Supreme Court in the case of Godhra Electricity Co. Ltd., vs. CIT, 225 ITR 746 and argued that in the event of uncertainty of realization of income, the same even though accrued in the accounts, deserves to be excluded for the purpose of computation of taxable income. The assessee has taken support from the decision of the Hon'ble Supreme Court in the case of CIT vs. Excel Industries Limited, (2013) 39 taxmann.com 100 (SC) in support of its arguments. However, fairly admitted that the issue is covered against the assessee by the decision of ITAT in assessee's own case for assessment year 2008-09 to 2010-11 in ITA Nos.1983/Mds/2011 and 2140/Mds/2013.

5.2 The ld.DR on the other hand strongly supporting order of the CIT(A) submitted that the issue is squarely covered against the assessee by the decision of ITAT for earlier assessment

years, where under identical set of facts the Tribunal held that surcharge recovered from Electricity Boards is taxable on accrual basis as and when the assessee has accounted in the books of account.

5.3 We have heard the rival submissions of both sides and perused the materials available on record. On perusal of details filed by the assessee, we find that there is a provision of levy of surcharge for delayed payment by the Electricity Boards and such provision is supported by Tri-party Agreement between Government of India, RBI and the assessee. The assessee has accounted surcharge receivable from Electricity Boards on accrual basis in the books of accounts, but for the purpose of taxation, the same has been offered to tax as and when the amount is received from Electricity Boards. The AO as well as the ld.CIT(A) were of the opinion that when there is no uncertainty in realization of surcharge from Electricity Boards, the question of postponement of income for taxation on receipt basis does not arise, when the assessee is following mercantile system of accounting. The view taken by the AO as well as the ld.CIT(A) has been upheld by the Tribunal in assessee's own case for earlier years, where the Tribunal by considering various

clauses of tri-party agreement between the assessee and Government of India observed that, when payment is outstanding for more than 90 days from the date of billing, the same is required to be recovered through adjustment of surcharge and the same can be adjusted out of plan assistance of respective State Governments and hence there was an assurance created through the tri-party agreement and the Government of India for recovery of surcharge from Electricity Boards. Hence, the assessee's contention that there was no certainty in recovery of dues is ill-founded and the quantum of interest is also fixed in the tri-party agreement entered between the parties. Therefore, there is no doubt regarding the payment of dues when there is binding tri-party agreement. Accordingly, held that surcharge recoverable from Electricity Boards is taxable on accrual basis, but not on receipt basis. The relevant findings of the Tribunal are as under:

4.3 We heard the rival submissions and perused the material placed before us. In this case there is provision for levy of surcharge in delayed payments and the assessee has not reckoned the surcharge as income. The assessing officer has assessed the surcharge on the basis of the accounting system followed by the assessee. The tariff in respect of NLC which is central generating station is governed by the Central Electricity Regulation Commission (in short 'CERC') which is generally notifies once in three years. Accordingly, CERC has notified tariff regulations 2001 for the period 2001-04, Tariff regulations-2004 for the period 2004-09 and tariff regulations 2009 for the period of 2009-14 and presently tariff regulations

2014 is valid till 31.03.2019. In all the above notification CERC has provided late payment surcharge and the assessee has levied surcharge, but could not recover from the Electricity Boards. According to the tariff regulations of the CERC, the powers are conferred u/s.178 of Electricity Act, 2003 r.w.s.61. The CERC has to fix the tariff accordingly and the CERC notified the regulations as under:

In exercise of powers conferred under section 178 of the Electricity Act

• 2003 read with section 61 thereof CERC notifies (Terms and conditions of Tariff) Regulations.

• These regulations apply in cases where tariff for a generating station or a unit thereof is required to be determined by the Commission under Section 62 of the Act read with section 179 thereof. The relevant extracts attached.

c) How tariff for supply to electricity board is fixed:

Steps involved:

• Plant specific Tariff petition / application is prepared based on the capital cost of the plant and norms of Operation of the applicable CERC (Terms & Conditions of the Tariff Regulations) and is filed before CERC as per the stipulated procedures.

• Copies of the petitions filed are sent to the Respondent beneficiaries.

• Any additional information sought by CERC is filed with a copy to the Respondents.

• CERC issues Record of proceedings and directs respondents to file their replies and petitioner to file rejoinder if any.

• Thereafter CERC will schedule hearing for hearing the arguments of both parties (petitioner and respondents) and issue tariff order.

• If parties are aggrieved over the tariff order parties can file for review of order before CERC or challenge the impugned order before APTEL/Supreme Court.

d) Whether surcharge is levied under the statute as it is only broad guideline:

• CERC Tariff Regulations which is notified in exercise of the power given under the Electricity Act 2003 stipulate levy of late payment surcharge.

From the above, it is seen that CERC is empowered to fix the tariff as per the Electricity Act and the regulations of the CERC has provided for late payment surcharge beyond the period of 60 days from the date of billing @ 1.5% per month. The regulations of the Central Electricity Regulatory Commission are binding on the Electricity Boards as well as the assessee's company. Accordingly, the assessee has raised the bills for surcharge but not accounted/offered for the purpose of income on the plea that the past experience shows the non-payment of electricity bills which is untenable. The assessee is following mercantile system of accounting and as per the system of accounting followed by the assessee, the income is accrued. Now the question is whether the recovery of surcharge levied or leviable by the assessee is uncertain or certain? Is there any uncertainty in accrual or collecting the surcharge? In this connection, the AO brought out the list of conditions, stipulations and strict guidelines to the Electricity Boards in Para No.8.3 to 8.6 from the tripartite agreement in the Assessment Order which is extracted as under:

8.3 However, the tripartite agreement also stipulates strict guidelines to the Electricity Boards for making payment of current dues, i.e., dues payable on or after 1st October 2001. For ready reference, list of such conditions and guidelines given in the tripartite agreement dated 17.04.2002 are given below.

• "12. All CPSUs (viz., assessee company and other power suppliers) will continue to raise and collect their current bills against the SEBs or their successor entities in accordance with the existing practice or such other arrangement as may be mutually determined. Notwithstanding any mutual arrangement, payment of such bills shall be made no later than 60 days from the date of billing, or within 45 days of their receipt, whichever is later.

• 13.1 SEBs or their successor entities shall open and maintain irrevocable Letter of Credits (L.Cs) that are equal to 105 percent of their average monthly billing for the preceding 12 months. The amount shall be revised once in six months, based on the said average.

• 13.2 The requisite L.Cs shall be opened no later than 30.09.2002 and failure to do so shall attract reduction in supplies from all CPSUs equal to 2.5 percent of the average daily supply for the preceding 90 days, in addition to the suspension of APDRP as mentioned in paragraph 16 below. These penal provisions shall also apply if the L.Cs are not maintained in future.

• 14. Payments made after the period specified in paragraph 12 above, shall attract interest at the rate of 15 percent per annum, compounded quarterly.
• 15.1 In the event that payments are not made within the period specified in paragraph 13 above, the supply of electricity shall be reduced forthwith by 5 percent (inclusive of the reduction, if any, under the provisions of paragraph 13 above) as compared to the average daily supply for the preceding 90 days. The reduction in supply shall be increased to 10 percent and 15 per cent after 75 and 90 days of billing respectively. Supplies of coal, lignite, etc., shall also be reduced in a similar manner.
• 15.2 In case supplies are made by a CPSU without making the aforesaid reductions, payments in respect of the supplies that are equivalent to the specified reduction shall be computed separately, and shall not qualify for the measures stipulated in this scheme. Such payments would have to be recovered by the respective CPSUs entirely on their account and no intervention either from the Central Government or from the respective State Governments shall be sought for this purpose.
• 16. Suspension of APDRP: Defaults in making current payments shall attract suspension of Accelerated Power Development & Reforms Programme (APDRP). As such, any CPSU facing a payment default beyond 90 days from the date of billing shall request the Ministry of Power to suspend APDRP disbursements to the defaulting State, whereupon the Central Government shall withhold any further releases until the default is cured.
• Recovery of overdues from the State Governments: Payments that remain outstanding after 90 days from the date of billing shall be recovered on behalf of the CPSUs by the Ministry of Finance through adjustment against releases due to the respective State Government on account of plan assistance. States share of Central taxes and any other grant or loan."

8.4 From the above guidelines and conditions as given in the tripartite agreement, particularly in Para 14 (highlighted) it is amply clear that interest (or surcharge) becomes payable from Electricity Boards if payments due to the assessee company are not made within 60 days from the date of billing or within 45 days of receipt of bill, whichever is later. It is also provided in Para 17 of the agreement that payments that

remain outstanding after 90 days from the date of billing shall be recovered, on behalf of the assessee company, by the Ministry of Finance through adjustment against releases due to the respective State Government on account of plan assistance, States' share of Central taxes and any other grant or loan. This tripartite agreement would be in force till 31.10.2006 and hence, the year under consideration is covered by this agreement.

8.5 In view of the above, it cannot be said that there is uncertainty in recovery of surcharge. Even assuming that the Electricity Boards defaults in making payments due to the assessee company, the tripartite agreement provides for recovery of the same through adjustment by Ministry of finance. Thus, there is no reason for the assessee company in not recognizing the surcharge on accrual basis. After recognizing the surcharge on accrual basis, if for some genuine reason the same could not be realized, then the assessee can write off the same as bad debt. But even for making such a claim, sec.36(2) stipulates a condition that the corresponding income should have been offered to tax.

8.6 In view of the above discussion, the surcharge recoverable by the assessee company from Electricity Boards during the relevant year on the belated settlement of the power bill, amounting to Rs.118 crores, is treated as income accrued to the assessee and added to the total income.

From the discussion of the AO, as per Clause-16 of the guidelines of the tri-partite agreements payments remained outstanding after 90 days from the date of billing require to be recovered through adjustment the from the plan assistance of respective state governments, hence, there was an assurance created through the tri-partite agreement and the Government of India has to recover the amount by adjustment and remit the same to the CPSUs. Hence, the assessee's contention that there was no certainty in recovery of the dues is ill-founded and the quantum of interest is also fixed in Para No.14 in tri-partite agreement entered into between the Government of India and RBI and state governments on behalf of the Electricity Boards. Therefore, there is no doubt regarding the payment of dues when there is binding tri-partite agreement. Some sanctity and credence has to be given to the tripartite agreement. Therefore, we are unable to accept the contention of the assessee that there is no certainty in accrual of surcharge to the assessee company. The assessee has not demonstrated with the facts that recovery through Ministry of Finance is unenforceable. The assessee relied on the judgment of the Hon'ble Apex Court in the case of Godhra

Electricity Co. Ltd. Vs. CIT 225 ITR 0746 cited supra. The facts of the case are clearly distinguished by the AO in his Assessment Order. In the cited case law as stated in the Assessment Order, the consumers have gone to the court and the Hon'ble Court has decreed in favour of the consumers against the increase of Electricity Charges on account of Electricity dues. The tariff could not be realized either by Court orders or Government Orders, since there was a decree granted by the Trial Court which was affirmed by the Appellate Court and there was an uncertainty in releasing the dues in the case of Godhra Electricity Co. Ltd. There was no tri-partite agreement, as if, in the case of the assessee to ensure recovery by Ministry of Finance through adjustment in the case of Godhra Electricity Co. Ltd.. Therefore, the case law relied upon by the assessee cannot come to help of the assessee. The tripartite agreement entered in to with the Government of India, Reserve Bank of India and the state Governments has to be given due credence and simply cannot be brushed aside. Considering all the facts and merits of the case we hold that there was no uncertainty in realizing the tariff or surcharge by the assessee company and accordingly we hold that the income is accrued and the assessing officer has rightly brought to tax. Therefore we set-aside the orders of the Ld.CIT(A) and restore the Assessment Order.

4.4 In the result, the ground of appeal raised by the Revenue on the issue of surcharge recovery from Electricity Boards is allowed for the AYs 2007-08 to 2010-11."

5.4 In this view of the matter and consistent view taken by the Tribunal in assessee's own case for earlier years, we are of the considered view that surcharge recovered from Electricity Board is taxable on accrual basis as and when the assessee has been accounted in the books of accounts. However, if assessee has already offered said amount to tax on receipt basis, due credit must be given to the assessee for the year in which such income

is offered to tax. Accordingly, the ground raised by the assessee for both assessment years are dismissed.

6. In the result, appeals filed by the assessee for assessment years 2013-14 and 2014-15 are treated as partly allowed for statistical purposes.

Revenue's Appeal in ITA Nos.952 & 953/CHNY/2018.

7.0 The first issue that came up for our consideration from ground No.1 of Revenue appeal is eligibility of deduction u/s.80IA of the Act. The AO has denied claim u/s.80IA of the Act in respect of income derived from unit TPS I expansion. According to the AO, unit TPS I was expansion of an existing unit and hence not eligible for deduction u/s.80IA of the Act. On appeal, the ld.CIT(A) has allowed deduction towards income derived from TPS-I by following the decision of the Tribunal in assessee's own case for earlier years.

7.1 The ld.AR for the assessee, at the time of hearing submitted that this issue is squarely covered in favour of the assessee by the decision of Tribunal in assessee's own case for assessment years 2008-09 to 2010-11, where under identical set

of facts the Tribunal has allowed deduction towards income derived from unit TPS-I on the ground that it is a new industrial undertaking / unit and income generated from generation and distribution of power is eligible for deduction u/s.80IA of the Act.

7.2 The ld.DR on the other hand fairly accepted that the issue is covered in favour of the assessee by the decision of ITAT for earlier years, however he strongly supported the order of the AO.

7.3 We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The issue regarding deduction claim u/s.80IA of the Act, in respect of income derived from unit TPS-I expansion is squarely covered in favour of the assessee by series of decisions of Co-ordinate Bench of ITAT, Chennai in assessee's own case for assessment years 2008-09 to 2010-11. The Tribunal under identical set of facts has allowed deduction towards income generated from new industrial undertaking by following its earlier order for assessment year 2001-02 in ITA No.2315/Mds/2003. The relevant findings of the Tribunal are as under:-

"5.0 For the AYs 2008-09, 2009-10 and 2010-11, the Revenue raised the grounds relating to the issue of deduction u/s.80IA. During the assessment proceedings the AO found that the assessee has claimed the deduction u/s 80IA pertaining to the Unit TPS-I expansion. AO was of the view that the Unit TPS-I was an expansion of the existing unit and hence not eligible for deduction u/s80IA.The AO disallowed the deduction holding that the expansion cannot be considered as a new unit. The disallowance made by the AO u/s.80IA for the AYs 2008-09, 2009-10 & 2010-11 is as under:

Assessment year	*Amount in Rs.*
2008-09	*147,36,91,926*
2009-10	*209,94,46,495*
2010-11	*246,92,76,304*

5.1 For the sake of convenience, the reasoning given by the AO is extracted from the Assessment order made available in Page No.5 of the A.Y.2008-09 as under:

In the instant case also, the assessee has claimed deduction u/s 80-IA of the Income-tax Act on the profit of power generated in the TPS-l Expansion Unit by treating the same as separate unit / undertaking, even though the final product manufactured is same i.e. Power. Further, there is interconnection of management, financial, administrative and production aspects. Therefore, the above decision of the Honourable High Court is squarely applicable in the instant case. Accordingly, the TPS-l Expansion Unit cannot be considered as new/separate unit for the purpose of provision of section 80-lA of the Income-tax Act.

ii) It has been observed that, deduction u/s 80-IA of the IT Act to the tune of Rs.147.36 crores has been claimed for the Unit TPS-I Expansion. Hence, it is clear that, the assessee company itself has stated that the above unit is nothing but the expansion of the already existing TPS-I Unit. Therefore, the Unit TPS-l Expansion cannot be considered as separate undertaking for the purpose of claim of deduction u/s.801A of the Income-tax Act.

In the instant case also, the assessee's TPS-I Expansion Unit cannot be considered as separate undertaking based on the reasons cited in the

paragraph (i) & (ii) above. Accordingly, the deduction claimed by the assessee u/s.80-IA of the Income-tax Act cannot be accepted.

iv) The decision of the Supreme Court in the case of Textile Machinery Corporation Ltd Vs CIT (107 ITR 195) cannot be accepted in the assessee's case due to the fact that the above said decision of the Honorable Supreme Court was purely related to the restructuring of the business. Hence, the facts of the said case are not applicable in the instant case.

Therefore, it is clear that the provisions of section 80-IA shall be applicable only to the assessees who have started new business of generation of power and accordingly, the said provisions of section 80IA of the Act is not applicable to the assessees who are expanding their business by way of establishing new Plant & machineries and also by way of introducing new techniques for enhancing its already existing productivity.

5.2 Aggrieved by the order of the AO, the assessee went on appeal before the Ld.CIT(A) and the Ld.CIT(A) deleted the addition as under:

4.2 I have carefully considered the facts of the case and the submissions of the Ld.AR. I have also gone through the decisions relied on by the Ld.AR and the AO. The main objection of the AO is that the new unit started cannot be considered as separate undertaking because it is using the same manufacturing technology and the finished goods are also the same, i.e., power. The new unit, i.e., unit TPS-I Expansion is nothing but the expansion of the already existing TPS-l unit. He further stated that benefit of sec 80-lA shall be applicable only to the assessee who have started "new business" of generation of power and not to those expanding their business by establishing new plant and machinery and also by introducing new technology for enhancing existing productivity. But reading of the section, in my opinion, does not lead to the interpretation as expounded by the AO. Relief u/s 80-lA(1) is in respect of profits and gains derived by an undertaking from business referred to in subsection (4) of sec 80-lA. In the present case, as per clause(iv) of sub-sec (4), deduction in respect of an undertaking which is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during

the period beginning on the 1st day of April, 1993 and ending on 31st day of March, 2011 shall be 100% of the profit for a period of ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking or the enterprise generates power or commences transmission or distribution of the power. Therefore, deduction is clearly for the profits of an undertaking and not for an undertaking engaged in a new business. Similar expressions as found in sec 80-IA are found in sections 80HH, 80I and 80J. For example, in section 80J, deduction is in respect of new undertaking and the section also has similar proviso referred to by the AO. The Supreme Court while interpreting the Section 80J in the case of Textile Machinery Corporation Ltd v. CIT, 107 ITR 195 (SC) has held that expansion of the existing business will also be entitled to relief under section 80J. In the case of CIT v. Ganga Sugar Corporation Ltd, 92 ITR 173 (Del.), it was pointed out that the concept of reconstruction of business is not attracted when a company which is already running one industrial unit sets up another industrial unit. The industrial unit, it was pointed out, would not lose its separate and independent identity even though it has been set up by a company which is already running an industrial unit. It was further pointed out that the object of the section was to provide an incentive for selling up of new industries so as to accelerate the process of industrialization and that it does not appear or to have been the intention of the legislature that the benefit of the section would be confined only to parties who had not already set up such industrial undertakings and not to parties who had past experience of running similar industrial undertaking. This principle has since been approved by the Supreme Court in the case of Textile Machinery Corporation Ltd(supra). Applying the principles of the above decision of the Hon'ble Supreme Court, it has been held that mere fact that the second unit manufactured some of the items which were manufactured by the first, did not make it an integral part of the first unit as it could survive independently of the first unit. Reference may be made to (the decision in CIT v. Indian Aluminium Co Ltd, 108 ITR 367(SC), CIT v. Gedore Tools (India) P. Ltd, 126 ITR 673, CIT v. Ambur Cooperative Sugar Mills Ltd, 127 ITR 495(Mad.), CIT v. Hutti Gold Mines Co.Ltd, 128 ITR 476(Kar). In the case of the appellant, the main section grants relief in respect of profits and gains of an undertaking. Explanation 2 under subsection (3) of sec 80-IA cannot govern or restrict the relief available under the main section. It is not correct to interpret the relief that can be

granted u/s.80-IA on the basis of a wording in an Explanation to a sub-section concerned only with regard to transfer of machinery previously used for any other purpose to a new business. Various Hon'ble Courts including the Hon'ble Supreme Court, on issues relating to deductions u/s. 80HH, 80I and 80J, have consistently held that expansion in production of the existing product in a geographically separate and independent undertaking will be entitled to relief under those sections. In fact, the heading of these section as well as 80-lA is "Deduction in respect of profits and gains from industrial undertakings or enterprise engaged in infrastructure development, etc.." and not "profits and gains from certain new business". In these circumstances, I am of the considered opinion that the appellant is entitled to relief under section 80-lA in respect of TPS-l Expansion. The requirement regarding investment in the plant and machinery and other conditions for availing benefit of deduction u/s.80-IA have also been satisfied and the AO has not raised any other objection regarding these conditions. In view of the above factual position and authoritative precedents, the deduction claimed by the appellant us 80-IA is allowed. Accordingly, the ground is allowed.

5.3 The issue is squarely covered by this Tribunal order in the assessee's own case for the AY 2001-02 in ITA No.2315/Mds/2003 dated 18.08.2004. Respectfully following the decision of Co-ordinate Bench, we dismiss the appeal of the Revenue for the AYs 2008-09, 2009-10 and 2010-11.

7.4 In this view of the matter and consistent view taken by the Co-ordinate Bench, we are inclined to uphold the findings of the CIT(A) and reject ground taken by the Revenue for both assessment years.

8.0 The next issue that came up for our consideration from Ground No.3 for assessment year 2013-14 is disallowance of

excess depreciation on UPS. The AO has disallowed excess depreciation claimed on UPS at the rate of 60% on the ground that UPS is not a part of computer system which is eligible for higher depreciation. Accordingly allowed depreciation at the rate of 15% applicable to normal plant and machinery and disallowed excess depreciation claimed by the assessee. The assessee carried the matter in appeal before the first appellate authority and the ld.CIT(A) by following the decision of ITAT, in assessee's own case for assessment year 2012-13 in ITA No.2163/Mds/2016 has deleted disallowance made by the AO towards excess depreciation.

8.1 At the time of hearing, the ld.counsel for the assessee and the ld.DR fairly accepted that this issue is covered in favor of the assessee by the decision of ITAT, Chennai Bench in assessee's own case for assessment year 2012-13, where under identical set of facts the Tribunal by following its earlier order and also by the decision of Hon'ble Supreme Court in the case of CIT vs. BSES Rajdhani Power Ltd., in SLP No.1266/2010, held that UPS is an integral part of computer system eligible for higher depreciation at the rate of 60%.

8.2 Having heard rival contentions and perused materials available on record, we find that this issue is squarely covered in favour of the assessee by the decision of the ITAT, Chennai Benches in assessee's own case for assessment year 2012-13 in ITA No.2163/Mds/2016, where under identical set of facts the Tribunal has allowed depreciation at the rate of 60% on UPS on the ground that UPS is an integral part of computer system eligible for higher depreciation. The relevant findings are as under:-

7.7 In regard to Ground No.5, it was submitted by the Ld.DR that the issue was against the action of the Ld.CIT(A) in allowing the depreciation on UPS at 60% as against 15% allowed by the AO. It was submitted that the Ld.CIT(A) had allowed the same following decision of the Hon'ble Supreme Court in the case of CIT vs. BSES Rajdhani Power Ltd. in SLP No.1266/2010. The Ld.DR vehemently supported the order of the AO.

7.8 In reply, Ld.AR vehemently supported the order of the AO.

7.9 We have considered the rival submissions. UPS being the integral part of the computer system, admittedly, is eligible for higher rate of depreciation at 60%. It is noticed that the Ld.CIT(A) had decided the issue by following the decision of the Hon'ble Supreme Court in the case of CIT vs. BSES Rajdhani Power Ltd. referred to supra. This being so, we find no reason to interfere in the findings of the Ld.CIT(A) on this issue. Consequently, Ground No.5 of the Revenue's appeal stands dismissed.

8.3 In this view of matter and consistent view taken by the Co-ordinate Bench, we are of the considered view that the ld.CIT(A) was right in deleting additions made by the AO towards disallowance of excess depreciation on UPS and hence, we are inclined to uphold the findings of CIT(A) and reject the ground taken by the Revenue for both the assessment years.

9.0 The next common issue that came up for our consideration from Revenue's appeals for both assessment years is depreciation on civil structures, water supply and drainage systems. The assessee has claimed depreciation at the rate of 15% on civil structures qua water supply and drainage system, on the ground that it is part of plant and machinery eligible for depreciation at the rate of 15%. The AO has allowed depreciation at the rate of 10% applicable to buildings and has disallowed excess depreciation claimed over and above 10% on the ground that civil structures qua water supply and drainage system cannot be considered as part of plant and machinery.

9.1 The ld.AR for the assessee submitted that this issue is squarely covered in favor of the assessee by the decision of ITAT, Chennai Bench in assessee's own case for assessment year

2012-13 in ITA No.2163/Mds/2016, where under identical set of facts, the Tribunal by following its earlier order for assessment years 2007-08 to 2010-11 held that civil structures qua water supply and drainage system is part of plant and machinery eligible for depreciation at the rate of 15% applicable to plant and machinery. The ld.DR on the other hand fairly accepted that this issue is covered in favor of the assessee by the decision of ITAT for earlier assessment years, but he strongly supported the order of the AO.

9.2 We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. We find that the issue of depreciation on civil structures qua water supply and drainage system is a recurring issue which is a subject matter of deliberations by the Co-ordinate Bench of the Tribunal in the assessee's own case right from assessment years 2007-08 to 2012-13. The Tribunal under identical set of facts has held that civil structures qua water supply and drainage systems is part of plant and machinery and eligible for depreciation at 15% applicable to plant and machinery. The relevant findings of the Tribunal are as under:-

7.10 In regard to Ground Nos.6.1 & 6.2, it was submitted by the Ld.DR that the issue was against the action of the Ld.CIT(A) in allowing the assessee's claim of depreciation at 15% in respect of the civil structures. It was a submission that the AO had restricted the depreciation to 10%. It was a submission that the Ld.CIT(A) had allowed the claim of the assessee by following his predecessors orders. It was fairly agreed by both the sides that this issue is squarely covered by the decision of the Co-ordinate Bench of this Tribunal in the assessee's own case for the AYs 2007-08, 2008-09, 2009-10 & 2010-11 referred to supra wherein Para No.2.4, the Co-ordinate Bench of this Tribunal has held that the civil structures made for drainage and water supply in the mines are to be treated as plant and entitled for higher rate of depreciation. In these circumstances, respectfully following the decision of the Co-ordinate Bench of this Tribunal in the assessee's own case, findings of the Ld.CIT(A) stands confirmed. In the result, Ground Nos.6.1 & 6.2 of the Revenue's appeal stands dismissed.

9.3 In this view of the matter and consistent view taken by the Co-ordinate Bench, we are of the considered view that there is no error in the findings recorded by the ld.CIT(A) in allowing relief to the assessee and hence we are inclined to uphold the findings of the ld.CIT(A) and reject the ground taken by the Revenue for both the assessment years.

10.0 The next common issue that came up for our consideration from Revenue appeals for both assessment years is deduction towards insurance spares. The assessee has claimed deduction towards insurance spares consumption as revenue expenditure

although the same has been treated as capital in nature in books of accounts. The AO has disallowed deduction claimed towards insurance spares consumption on the ground that insurance spares are exclusive to the particular fixed asset and are unique in nature. The AO further held that as per the Explanation to Section 31 of the Act, amount paid on account of current repair to be allowed shall not include any expenditure in the nature of capital expenditure. Therefore, he opined that deduction claimed towards insurance spare consumption is capital in nature which cannot be allowed as deduction u/s.31 of the Act. The AO has taken support from the books of account of the assessee, where the assessee itself has treated said expenditure as capital in nature. On appeal, the ld.CIT(A) has deleted the additions made by the AO towards insurance spares consumption by following the decision of ITAT in assessee's own case for assessment year 2012-13.

10.1 The ld.AR for the assessee submitted that this issue is also covered in favour of the assessee by the decision of ITAT, Chennai Bench in assessee's own case for assessment year 2012-13 in ITA No.2163/Mds/2016, where the Tribunal by following its earlier order for assessment year 1993-94 to 1999-

2000 has held that insurance spare consumption is revenue in nature which is deductible u/s.31 of the Act. The Tribunal has also taken support from the decision of Jurisdiction High Court of Madras in assessee's own case for assessment years 1993-94 to 1999-2000 reported in (2016) 69 taxman.com 174. The ld.DR on the other hand fairly agreed that this issue is also covered in favour of the assessee by the decision of the Tribunal in assessee's own case for earlier assessment years, however he supported the order of the ld.AO.

10.2 We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. We find that the Tribunal has considered an identical issue for assessment year 2012-13 in ITA No.2163/Mds/2016, where by following the decision of Jurisdictional High Court in assessee's own case for assessment years 1993-94 to 1999-2000 held that insurance spare consumption to be treated as revenue in nature. The relevant findings of the Tribunal are as under:-

"7.13 In regard to Ground No.8, it was submitted that the issue was against action of the Ld.CIT(A) in allowing the assessee's claim of treating the spares valued at more than Rs.50.00 lakhs as Revenue

expenditure instead of a capital. It was fairly agreed by both the sides that the issue was squarely covered by the decision of the Hon'ble jurisdictional High Court of Madras in the assessee's own case for the AYs 1993-94 to 1999- 2000 in [2016] 69 taxmann.com 174 Madras wherein it has been held that the said spares were to be treated as the Revenue expenditure.

7.14 We have considered the rival submissions. As it is noticed that the Ld.CIT(A) has followed the decision of the Co-ordinate Bench of this Tribunal in the assessee's own case, which has been upheld by the Hon'ble jurisdictional High Court, we find no reason to interfere in the findings of the Ld.CIT(A) on this issue, consequently, the findings of the Ld.CIT(A) on this issue stands confirmed. In the result, Ground No.8 of the Revenue's appeal stands dismissed."

10.3 In this view of the matter and consistent view taken by the Co-ordinate Bench, we are of the considered view that there is no error in the findings recorded by the CIT(A), while deleting the additions made by the AO towards disallowance of insurance spare consumption and hence, we are inclined to uphold the findings of CIT(A) and reject the ground taken by the Revenue for both the assessment years.

11. In the result, the appeals filed by the Revenue for both assessment years are dismissed.

12. As a result, appeals filed by the assessee for both assessment years are partly allowed for statistical purposes and appeals filed by the Revenue for both assessment years are dismissed.

Order pronounced on 8th February, 2021 at Chennai.

Sd/-	Sd/-
(वी दुर्गा राव)	(जी. मंजुनाथ)
(V. Durga Rao)	**(G. Manjunatha)**
न्यायिक सदस्य/Judicial Member	लेखा सदस्य /Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 8th February, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती/Assessee **2.** राजस्व/Revenue **3.** आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT **5.** विभागीय प्रतिनिधि/DR **6.** गार्ड फाईल/GF