

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C': NEW DELHI**

**BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.7104/DEL/2018  
(Assessment Year : 2012-13)**

**ITA No.7105/DEL/2018  
(Assessment Year : 2013-14)**

Kyocera Document Solutions India Pvt. Ltd., Second Floor, Tower C, Centrum Plaza, Golf Course Road, Sector 53, Gurgaon – 122 002 (Haryana).	vs.	DCIT, Circle 14(2), New Delhi.
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**(PAN : AADCK3138R)**

(ASSESSEE)

(RESPONDENT)

ASSESSEE BY : Shri S.K. Aggarwal, CA  
REVENUE BY : Shri Om Parkash, Sr. DR

Date of Hearing :	23.10.2024
Date of Order :	10.01.2025

**ORDER**

**PER S.RIFAUR RAHMAN,AM:**

1. These appeals have been filed by the assessee against the separate orders of Ld. Commissioner of Income Tax (Appeals)-36, New Delhi [“Ld. CIT(A)”, for short] both dated 29.08.2018 for Assessment Years 2012-13 and 2013-14.

2. Since the issues are common and appeals are inter-connected in these appeals, the same are being disposed of by this common order. We are taking ITA No.7104/Del/2018 for Assessment Year 2012-13 as lead case.
3. Brief facts of the case are, assessee filed its original return of income declaring loss of Rs.4,34,97,209/- on 29.11.2012. The revised return was filed on 09.05.2013 declaring loss of Rs.1,36,06,125/- by disallowing the amounts of provision for gratuity under section 40A(7) of the Income-tax Act, 1961 (for short 'the Act') amounting to Rs.23,00,702/- and other disallowance as per computation of income. The case was selected for scrutiny under CASS and notices u/s 143(2) and 142(1) along with questionnaire were issued and served on the assessee. In response, ld. AR of the assessee attended the proceedings from time to time and filed the relevant information as called for.
4. The assessee is engaged in business of trading, distribution and leasing of documentation devices i.e. multi function peripherals consisting of printer, facsimiles, copies including their related consumables, option equipment and service parts. Based on the information submitted by the assessee, assessee has filed Form No.3CEB and accordingly reference was made to Transfer Pricing Officer for determination of Arm's Length Price u/s 92CA (3). No adverse inference was drawn by the TPO. The assessment was completed after making test check. During assessment

proceedings, Assessing Officer observed that assessee has claimed expenses on account of warranty, advertisement expenses, sales promotion expenses, insurance, professional charges and claimed interest on delayed payments and after considering the submissions of the assessee, the Assessing Officer made disallowance of above said expenditure to the extent of Rs.46,08,120/-

5. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT(A) and Id. CIT (A) considered the submissions and gave part relief to the assessee by allowing the relief on warranty, sustained the addition for provision for sales promotion, insurance expenses, professional charges and interest payment on outstanding.
6. Aggrieved with the above order, assessee is in appeal before us raising following concise grounds of appeal :-

*“1. General*

*That on the facts & circumstances of the case and in law, order passed by Ld. CIT(A) under section 250(6) of the Act is bad, both in law and on the facts of the case.*

*2. Sales Promotion expenses*

*1. That the Ld. CIT(A) on the facts and circumstances, has erred in disallowing the provision for sales promotion expenses of INR 2,42,789/- without appreciating that the ‘Provision for sales promotion’ is not in the nature of contingent or unascertained liability but the liability incurred during the year allowable as deduction in computing the income.*

*2. Without prejudice to the above ground, the Ld. CIT(A) has failed to appreciate that the excess provision for sales and promotion expenses of INR 2,42,789 was reversed and included in the income of AY 2013-14 and the disallowance of the same has resulted in double taxation.*

3. *Insurance Expenses*

1. *That the Ld. CIT(A) on the facts and circumstances, erred in disallowing the insurance expenses of INR 3,20,000/-, being the amount of transit insurance premium payable to National Insurance Company Limited and which has been subsequently paid in AY 2013-14.*

4. *Interest on delay in payment made to Kilburn Office Automation Ltd. ("Kilburn")*

1. *That the Ld. CIT(A), on the facts and circumstances, has erred in disallowing the interest of INR 26,91,378/- on delay in payment made to Kilburn by treating the same as capital expenditure without appreciating the fact that the business of Kilburn was purchased as slump sale on "as-is" basis and the assets acquired therein were 'put to use from the date of transfer (i.e. 31 August 2011). Therefore, the deduction for interest paid is allowable as revenue expenditure as per Explanation 8 to Section 43 of the Act.*

*The above grounds of appeal are without prejudice and notwithstanding each other."*

7. Ground No.1 is general in nature, hence does not require any specific adjudication.
8. With regard to Ground No.2 i.e. disallowance of sales promotion expenses, the relevant facts are, during assessment proceedings, the Assessing Officer observed that assessee has claimed an amount of Rs.457,01,356/- as sales promotion under the head 'business promotion expenses'. The assessee was asked to file copy of accounts with justification of the expenses with documentary evidences. Assessee filed letter dated 14.03.2016 along with annexures. On perusal of the details submitted by the assessee, Assessing Officer observed that an amount of Rs.2,42,789/- remained payable giving therewith no names or address of any person. In the narration, it was mentioned that it was reversed in next

year. He observed that this purely give the status of the amount that it is fictitious liability created by the assessee for which no payment could have been made. With the above observation, Assessing Officer disallowed the same.

9. The assessee filed an appeal before the Id. CIT (A) and filed detailed submissions before him. After considering the detailed submissions, Id. CIT (A) sustained the addition based on the findings of the Assessing Officer that it is a fictitious liability created by the assessee.
10. Aggrieved assessee is in appeal before us.
11. At the time of hearing, Id. AR for the assessee submitted as under :-

***“2.3.1. Basis of creation of provision for sales promotion expenses***

*The details and basis of creating the aforesaid amount of provision for sales promotion expenses are as follows:*

**(a) Sales incentive trip to Singapore organized by the Appellant for its employees with respect to targets achieved during the period 1 April 2011 to 31 March 2012**

*As mentioned above, the Appellant is engaged in the business of providing copier, MFP and printer machines on sale/ lease basis. The Appellant submits, that it operates in a highly competitive industry and in order to boost the sales, it offers various incentive schemes to motivate its employees to perform better and achieve their sales targets*

*During the AY 2012-13, the Appellant announced an incentive scheme called “Kyocera Super Star Awards 2011”, whereby, the employees who achieved their sales targets during the AY 2012-13 were provided a trip to Singapore in June 2012, various other awards etc. Further, the said incentive was based on the sales target/ orders invoiced during the period 1 April 2011 to 31 March 2012. (Please refer to page 163 to 168 of the paper book [‘PB’] for copy of the said incentive scheme announced during AY 2012-13)*

*Further, the Appellant follows mercantile system of accounting, it is required to provide for all known liabilities. This is in tune with*

accounting standards notified by the Central Board of Direct Taxes, wherein it is mentioned that the provision is to be made for all known liabilities and losses. Accordingly, the Appellant, on scientific basis made provision of INR 2,724,940 in respect of expenditure towards the above mentioned incentive scheme, keeping in view the cost estimate of air travel ticket, accommodation etc. of the employees visiting Singapore and winning the awards.

**Further, the estimate of the cost was made on the basis of employees qualifying under the scheme depending on sale orders invoiced during the period 1 April 2011 to 31 March 2012. (Please refer to page 169 of the PB for the said cost estimate under the Scheme).** The said cost estimate was prepared considering the following:

- List of employees who achieved their sales target during AY 2012-13 and were eligible for Singapore trip under the Scheme
- Air ticket fare till Singapore was estimated for the identified employees. Your Honour would appreciate that, this fare was on the basis of prevailing rates in the market
- Cost of appreciation certificates to be issued to the employees for achieving the sales target
- Other estimate included cost of trophies, standees, T-shirts, caps creatives etc. for the trip
- All the above-mentioned estimates were on the basis of prevailing market rates and can easily be checked from vendors/ service providers in the market

The Appellant would also like to bring to your kind attention the following party wise details of actual expenditure incurred on the above-mentioned Scheme and trip to Singapore against the provision of INR 2,724,940 created in AY 2012-13 for the said purpose:

S. No.	Name of the Parties	Amount of actual expenditure incurred against the said provision (in INR)	Purpose and Documentary evidence
1	International Travel House Limited	2,701,995	Hotel booking, air tickets, meals charges etc. for the Singapore Trip  Bills were submitted to the Ld. AO at the time of assessment (Please refer to Page 170 of the PB for the copy of bills)

3	Activate	91,543	Charges for Standees, trophies, T-shirt etc. to be given to the employees under the Scheme in Singapore  Actual bills were submitted to the Ld. AO at the time of assessment (Please refer to Page 171 of the PB for the said bills)
4	Travelling allowance to employees	100,440	This was provided to the employees during their stay in Singapore
6	4 Genius Minds	88,000	Purchase of gifts to be given to the employees under the Scheme  Actual bill was submitted to the Ld. AO at the time of assessment (Please refer to Page 172 of the PB for the copy of the said bill)
<b>Total actual expenditure incurred against the provision of INR 2,724,940 created in the books of account for the AY 2012-13</b>		<b>2,981,978</b>	
From the above table, your Honour would appreciate that expenditure incurred is more than the provision amount created by the Appellant. Therefore, this itself demonstrates that the said provision is reasonable and cannot be alleged to be excessive or unreasonable.			

**(b) Internal strategy meet of the Appellant organized in Thailand**

- In order to conduct its business effectively and efficiently, the Appellant organizes an internal strategy meet after the end of every year. The purpose of conducting the strategy meet is analysis of past year's performance, direction for the year, improvement areas etc. The said strategy meet is generally attended by Managing Director, Functional heads from head quarter, branches and regional heads of service and Finance, etc. of the Appellant.
- For the purpose of review of AY 2012-13 performance and improvement areas etc., the said strategy meet was organized in Thailand in April 2012.
- The cost of the event organized was estimated at INR 1,750,000. Further, the Appellant follows mercantile system of accounting, it is required to provide for all known liabilities.
- This is in tune with accounting standards notified by the Central Board of Direct Taxes, wherein it is mentioned that the provision is to be made for all known liabilities and losses.

- **Accordingly, the Appellant, on scientific basis made provision of INR 1,750,000 in respect of strategy meet to be held in Thailand, keeping in view the cost estimate for the purpose of air travel ticket, accommodation etc. of the employees attending the said strategy meet.** The said cost estimate was prepared considering the following:
  - First the number of employees who would attend the meet in Thailand were identified during AY 2012-13
  - The below cost items were included in the estimate:

<b>Particulars</b>	<b>Number of employees</b>	<b>Rate per person on the basis of prevailing market price</b>	<b>Total amount</b>
Travel from residence to airport and back for the employees	35	600	21,000
Air Travel from upcountry (i.e. from their place of residence in India to the place from the flight for Thailand was to be boarded	8	9,000	72,000
Conference cost in Bangkok, Thailand including air fare	35	45,000	15,75,000
Travelling allowances to the employees	35	1,600	56,000
Fund for T-shirt printing and customized notepad printing, etc.)	NA	NA	25,000
<b>Total provision created</b>			<b>17,50,000</b>
<b>Total actual expenditure incurred against the above. The Appellant</b>			<b>13,95,173</b>

- Actual bills were submitted to the Ld. AO at the time of assessment (Please refer to Page 173 to 174 of the PB for the copy of the said bill)
- All the above-mentioned estimates were on the basis of prevailing market rates and can easily be checked from vendors/ service providers in the market.
- From the above table, your Honour would appreciate that approximately 80% of the provision amount has been utilised. Further, the remaining 20% was reversed by the Appellant in AY 2013-14 and included in the income of AY 2013-14 on which applicable tax was paid Therefore, this itself demonstrates that the said provision is reasonable and cannot be alleged to be excessive or unreasonable.

**(c) Dealer's meet in Ludhiana**



- *The Appellant highlights that the provision created in AY 2012-13, for the said dealer's meet organised by the Appellant in Ludhiana was INR 81,416, which is equal to the amount of actual expenses/ claim received in the subsequent assessment year*

<i>Name of the Parties</i>	<i>Amount of actual expenditure incurred against the said provision (in INR)</i>	<i>Purpose and Documentary evidence</i>
<i>Star Business System</i>	<i>81,416</i>	<i>Expenses incurred on dealers meet in Ludhiana.  Credit Note raised by Star Business System was submitted to the Ld. AO at the time of assessment (Please refer to Page 175 of the PB for the said credit note)</i>
<i>Total actual expenditure incurred against the provision of INR 81,416 created in the books of account for the AY 2012-13</i>	<i>81,416</i>	
<i>From the above table, your Honour would appreciate that the actual expenditure incurred was equal to provision created by the Appellant in AY 2012-13. Therefore, this itself demonstrates that the said provision is reasonable and cannot be alleged to be excessive or unreasonable.</i>		

**(d) Diwali Dhamaka and Christmas carnival contest**

- *During the AY 2012-13, the Appellant launched the following schemes/ contest to boost sales of its particular products:*
  - *DC Diwali Dhamaka – Under this Scheme, the employees were eligible for certain gifts for sales target of certain products achieved during the AY 2012-13 (Please refer to Page 176 of the PB for the copy of the contest); and*
  - *Christmas Carnival contest - Under this Scheme, the employees were eligible for certain gifts for sales target of certain products achieved during the period AY 2012-13 (Please refer to Page 177 of the PB for the copy of the contest)*

- *The gifts offered in the above-mentioned schemes were iphone/ ipad, gift vouchers worth INR 8000/ 20,000 etc. The Appellant created a provision of INR 145,000 in its books of account under the above-mentioned schemes, based on the market price of the said gifts to be distributed*
- *However, as no claims were received from the employees, the said provision was reversed by the Appellant in AY 2013-14 and applicable tax was also paid there on in AY 2013-14*

**2.3.2. Accounting treatment followed by the Appellant for creation of sales promotion expenses and subsequent shortfall/ reversal**

- *The provisions of Accounting Standard 29 as well as Income Computation and Disclosure Standards (ICDS)- X provides that a provision is required to be made if the following conditions are satisfied:*
  - *An enterprise has a present obligation as a result of past event;*
  - *It is probable that an outflow of resources embodying economic benefits will be required to settle the obligation*
  - *A reliable estimate can be made of the amount of obligation.*

*The appellant follows mercantile basis of accounting and following accrual concept and matching principle of accounting, it is required to provide for all known liabilities. The same is also in tune with the accounting standards notified by Central Board of Direct taxes ("CBDT"). Accordingly, the Appellant made the provision for sales promotion on scientific basis and in tune with the accounting standards and ICDS.*

- ***Aforesaid transaction is revenue neutral***

*The Appellant invites the Hon'ble CIT(A)'s attention to the method of accounting followed by the Appellant in respect of sales promotion expense provision. An appropriate amount based on a scientific basis (i.e., cost estimate which is prepared on prevailing market price) was taken by the Appellant by debiting the profit and loss account and by crediting the provision for sales promotion in the balance sheet during the AY 2012-13. This is in the first year (AY 2012-13) of creation of the said provision. In the second year (AY 2013-14), when there was an outflow of resources on account of sales promotion expense or reversal, the required amount was debited from the provision account and not from the profit and loss account of that year. The same exercise is repeated by the Appellant for any balance amount in the provision account. Therefore, the Appellant submits that there is no escapement of income from assessment and the entire exercise is revenue neutral*

*The accounting passed on the reversal of such provision was:*

Provision for expense A/c Dr. 242,789  
 To Expenses 242,789  
 (Being provision reversed)

### 2.3.3. Judicial precedents relied upon

The appellant placed reliance on the following judicial precedents in support of its contentions:

Case law	Brief principles of the judgement	Applicability in the appellant's case
<p><i>Rotork Controls India (P.) Ltd. [2009] 314 ITR 62 (SC)</i></p> <p>(Kindly refer to Page 178 to 188 of the PB for a copy of the judgement)</p>	<p>The principles laid down by Hon'ble Court for recognition of provision of expenses are as follows:</p> <ul style="list-style-type: none"> <li>• Present obligation as a result of past event</li> <li>• Outflow of resources required to settle the obligation</li> <li>• Reliable estimate can be made</li> </ul>	<ul style="list-style-type: none"> <li>• The sale promotion strategy were offered prior to 31<sup>st</sup> March 2012 and thus present obligation as a result of past event</li> <li>• The appellant made payments after 31<sup>st</sup> March 2012, thereby leading to outflow of resources</li> <li>• The provision was made based on cost estimate and scientific basis, and thus a reliable estimate could be made</li> </ul>
<p><i>CIT V/s Hero Management Services Ltd. [2014] 360 ITR 68 (Delhi)</i></p> <p>(Kindly refer to Page 189 to 191 of the PB for a copy of the judgement)</p>	<p>The Court allowed certain business expenses incurred during the year and payments were made in subsequent year. It is a settled law that the liability is in present though it will be discharged at a future date even if such date is not certain.</p>	<p>The provisions created by appellant related to the expenses incurred during the year but paid/reversed in the subsequent years.</p>
<p><i>Bharat Earth Movers V/s CIT [2000] 112 Taxman 61 (SC)</i></p> <p>(Kindly refer to Page 192 to 195 of the PB for a copy of the judgement)</p>	<p>Deduction of liability can be claimed in the year in which it arises, irrespective of its quantification and date of discharge in future.</p>	<p>The liability to make payment of claims to vendors arose during AY 2012-13. However, the liability was quantified and discharged in the subsequent year.</p>

### 2.3.4. Conclusion

- The liability to incur sales promotion expenses have arisen in AY 2012-13. It is well settled law that the same shall be allowed as deduction in the

*same year irrespective of the fact that the quantification and discharge of the same may be in subsequent year.*

- *It is well settled law that provisions created on reasonable and scientific basis shall be allowed as deduction. The provision for sale promotion expenses have been created on scientific basis keeping in view the cost estimate of air travel ticket, accommodation etc. of employees visiting Singapore etc.*
- *The appellant had also submitted the total provision and utilization from AY 2011-12 to AY 2013-14 which clearly indicates that average utilization of provision is up to 88%. Please refer page 256 of the PB for utilization schedule for provisions.*
- *Further, section 37 of the Act provides that the expenses, not being the personal or capital expenditure, not covered specifically under any other section and incurred wholly and exclusively for the purpose of business or profession shall be deductible as business expenditure.*
- *Alternatively, the appellant claimed that the amount disallowed of INR 242,789 pertains to that portion of provision which was not actually spent and was reversed in AY 2013-14. The Appellant appropriately offered such reversal or provision to tax in the tax return of AY 2013-14 and paid taxes thereon.*
- ***In view of the above, it is submitted that the provision for sales promotion expenses has been created on scientific basis in line with the mercantile system of accounting. The same has been incurred wholly and exclusively in the course of appellant's business and the portion not actually incurred have been reversed in AY 2013-14 and taxes have been paid thereon."***

12. Ld. DR for the Revenue relied upon the orders of the Assessing Officer and ld. CIT (A).
13. Considered the rival submissions and material placed on record. We observed that assessee declares certain incentives to its own employees and based on that, employees who achieved the targets were awarded as per the promotional policy promoted by the assessee. Based on that, assessee determines the total liability on such sales promotion expenses.

Based on that, assessee records the expenditure on gross basis and settles the vendors on actual basis based on the actual utilisation. Since assessee has to pick the relevant expenditure based on the concept of matching principle and accordingly we observed that assessee has settled about 88% of the gross provision created for this purpose. As per the method of accounting adopted by the assessee, the assessee reverses the unutilized or unsettled portion of the provisions during the next assessment year. This is being followed consistently by the assessee. Further we observed that whether the expenditure is booked in this year or reversed in the subsequent year, it has effect revenue neutral considering the fact that tax rates are similar for both the years under consideration. Therefore, the assessee has brought on record complete details of creation of provisions as well as actual reversal of provisions and to the portion of unutilized provisions are being reversed in the subsequent assessment year and this is the regularly followed method of accounting, therefore, we do not see any reason to sustain the additions made by the Assessing Officer. Accordingly, the abovesaid sales promotion expenses claimed by the assessee are allowed on the basis of matching the relevant expenses with the revenue recorded during the year.

14. With regard to ground no.3, relevant facts are, Assessing Officer observed that assessee claimed insurance expenditure of Rs.3,20,000/-.

The assessee was asked to file the relevant evidence and for what purpose. Assessee in its reply dated 14.03.2016 filed an annexure along with a letter. After considering the same, the Assessing Officer observed that the assessee has made the payment of Rs.3,20,000/- to National Insurance Company Limited and for what purpose, they could not explain. Since the liability could not be ascertained during the year under consideration, he disallowed the same.

15. Aggrieved assessee preferred an appeal before the Id. CIT (A) and filed the additional evidences. The same was remanded back to Assessing Officer. In the remand report, the Assessing Officer has observed that as per the bank statement produced, total amount of Rs.3,65,170/- was debited to National Insurance Company Ltd. on 12.04.2012. The receipt of the insurance policy is dated 13.07.2011 i.e. pertaining to AY 2012-13. Therefore, from the perusal of the above, it is not clear if the bank payment responds to the receipts issued during 2012-13. Based on the findings of the Assessing Officer in the remand report, Id. CIT (A) sustained the same.
16. At the time of hearing, Id. AR submitted that assessee is a trading concern and owing to the nature of its product, the assessee has taken a transit insurance from National Insurance Company Ltd. against any loss due to damage caused during transportation. He submitted that the insurance

policy document indemnifies against risk occurring during transit during AY 2013-14. The policy is an open policy and indemnifies a provision for insurance expenses amounting to Rs.3,20,000/- during AY 2012-13 and the actual payment of Rs.3,65,170/- was made against such provision during AY 2013-14. In this regard, he brought to our notice page 198 of the paper book which is the policy receipt declaring the details of open policy taken by the assessee w.e.f. 09.04.2012 and he submitted that from the above receipt, it clearly shows that the assessee has made payment of Rs.3,65,170/- and the assessee has created provisions of Rs.3,20,000/- during the year which pertains to the abovesaid policy. He also filed an affidavit with regard to above and he prayed that it is an allowable expenditure.

17. On the other hand, ld. DR for the Revenue relied upon the orders of the authorities below.
18. Considered the rival submissions and material placed on record. We observed that the Assessing Officer has disallowed provisions for insurance premium created during the year. However before us, assessee has filed a receipt containing the details of open policy created for the purposes of transportation of its products to customers and dealers. The open policy submitted before us shows that the insurance of the continuous policy was effective from 09.04.2012 for FY 2012-13 and as

per the record submitted before us, it shows that it is an open policy renewed ever year based on the premium paid by the assessee for the relevant assessment year. From the receipt, it shows that the assessee has enhanced the sum of insurance during the current year and the insurance amounts for such enhancement were effective from 09.04.2012. The assessee has already made the premium payments of Rs.6,45,256/- and fresh insurance renewal was taken for the FY 2012-13. Since the assessee has taken an open policy for transportation of goods, the assessee has created a provision as well as claimed expenditure of Rs.3,20,000/- which is part of the premium policy already paid by the assessee of Rs.6,45,256/-. Since the payment was made to National Insurance Company Ltd., a part of the policies taken for transportation and the existing policy is being renewed ever year based on the premium it pays. Therefore, the assessee also filed affidavit indicating the above shows that the genuineness of the transaction since the provisions of Rs.3,20,000/- is part of the actual payment made by the assessee of Rs.6,45,256/-, therefore, it is an allowable expenditure. Accordingly, the same is allowed.

19. With regard to grant of interest on delayed payment, the relevant facts are, during assessment proceedings, the Assessing Officer observed that assessee has claimed expenses of Rs.34.87 lakhs under the head 'finance



cost'. Assessee has claimed interest on late payment to Kilburn Office Automation Ltd. (Kilburn) of Rs.26,91,378/- as interest on late payment. When the assessee was asked to explain it was submitted that the assessee made the payment on account of Business Transfer Agreement entered into with Kilburn. As per the Business Transfer Agreement, the assessee was allowed to hold back a sum of Rs.4,15,60,000/- and it shall be paid to Kilburn in 12 months instalments after the closing. In addition to such payment, the assessee shall pay interest from the closing date, on adjusted balance due for the hold back account @ 12% simple interest per annum. The assessee also filed a business transfer agreement before the Assessing Officer. After considering the submissions of the assessee, the payment of interest is treated as part of the business assets and by treating it as capital in nature. Accordingly, the same was disallowed.

20. Aggrieved, assessee preferred an appeal before the Id. CIT (A) and made the following submissions :-

*"The Appellant entered into a Business Transfer Agreement ("BTA") to acquire the Copier Division of Kilburn Office Automation Ltd. ("Kilburn"), on slump sale basis effective as of the Closing date, i.e. 31 August 2011. Further, as per the BTA, the Appellant was entitled to holdback an amount of INR 4,15,60,000 and the amount was to be paid to Kilburn 12 months after the closing (i.e. 12 months after 31 August 2011). In addition to the holdback amount, the Appellant was liable to pay simple interest at the rate of 12% on such sum. The copy of the BTA was submitted before the Id. AO vide submission dated 2.1 January 2016. (Kindly refer to page 239-269 of the paper book)*

*The purpose of holding back the above amount by the Appellant was that, if any contingent liabilities or breaches of the Agreement by Kilburn are found after the closing date, such liabilities shall be deducted from the*

*Holdback amount by the Appellant. The said purpose is also clearly mentioned in Clause 5.3 (d)(ii) of the BTA (Kindly refer to Page No. 249 of the Paper for the said Clause in the BTA)*

*The Appellant humbly submits that the 'interest of INR 2,691,378 paid on the above holdback amount is in the nature of revenue expenditure and shall be allowed as deduction while computing the total income of the Appellant. It is in the nature of compensation for the amount of sales consideration held back as indemnity by the Appellant.*

*The contention of the Ld. AO that, interest paid by the Appellant forms part of the assets acquired under the BTA from Kilburn and therefore treating it as capital expenditure is not tenable in law. Further, finding of the Ld. AO that depreciation on the said interest paid to Kilburn can be claimed by the Appellant as per the prevailing rate on the assets acquired is also legally not justifiable.*

*Before reaching on the aforesaid conclusion, the Ld. AO ought to have appreciated that the business of Kilburn was purchased by the Appellant on 'as-is' basis, that is to say that the business of Kilburn was functioning when the Appellant entered into and acquired the same. It can be safely said that the assets acquired by way of the BTA, were already 'put to use' on the date of transfer (i.e. on 31 August 2011) and any interest paid after the asset is put to use shall be allowed as deduction to the Appellant (instead of adding it to the cost of the asset for the purpose of claiming depreciation as falsely held by the Ld. AO). In this regard, the Appellant would like to bring to your Honour's kind attention the following provisions of the Act:*

*Explanation 8 of section 43 states that "for the removal of doubts, it is hereby declared that where any amount is paid or is payable as interest in connection with the acquisition of an asset, so much of such amount as is relatable to any period after such asset is first put to use shall not be included, and shall be deemed never to have been included, in the actual cost of such asset.*

*Further the proviso to section 36(l)(iii) which deals with deduction of interest expenditure states that "Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset (whether capitalized in the books of account or not), for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which asset was put to use, shall not be allowed as deduction"*

*On a conjoint reading of the above provisions, it is clear that any interest paid after the capital asset is put to use would not form part of the cost of the asset and would be allowed as deduction, being revenue in nature. The above contention of the Appellant is also squarely covered in the judgement of the Hon'ble. Supreme Court in the case CIT v Sandvik Chokshi Ltd. 65 taxmann.com 66 (SC) (Kindly refer to Annexure 3 for a*

*copy of the judgement). The facts of the case and the judgment -of the Hon'ble Supreme Court are as follows:*

- *In this case, the Hon'ble Supreme Court dismissed the SLP filed by the Income Tax Department against the Gujarat High Court's ruling. The Hon'ble Gujarat High Court ruling in favor of the assessee held that, in view of introduction of Explanation 8 to section 43(1)), interest which was paid after slump sale was effected and once factory assets were operational could not be capitalized and therefore, such interest expenses would be revenue in nature.*
- *Detailed summary of the above mentioned judgement of the Hon'ble Gujarat High Court in the case of Commissioner of Income-tax- IV v. Sandvik Chokshi Ltd. - [2015] 55 taxmahn.com 451 (Gujarat) (Kindly refer to Page No. 400-405 of the Paper Book for a copy of the judgement)*

*Facts of the case are as follows:*

- *The assessee, a joint venture company, acquired the undertaking of one of venturers as a going concern on 'as is where is basis' at a slump price which included fixed assets, current assets, raw materials, advances, cash and bank balance, liabilities, etc.*
- *The Assessing Officer found that amount of interest claimed by the assessee was towards the delay in payment of sale consideration to joint venturer and therefore, he concluded that interest was a part of total consideration paid by the assessee for acquiring the undertaking. Therefore, such interest amount was not a revenue expenditure relatable to the cost of acquisition*
- *Both the Hon'ble Tribunal and CIT(A) concluded in favor of the assessee by applying explanation 8 to section 43 of the Act and allowing the interest paid on unpaid purchase consideration on slump sale as revenue expenditure. Aggrieved by the order of the Hon'ble Tribunal, the Income Tax Department preferred an appeal before the Hon'ble Gujarat High Court*

*Based on the above facts of the case, the question of law before the Hon'ble Gujarat High Court was as follows:*

*"Whether the Tribunal is right in law and on facts to delete the disallowance of Rs. 1,57,63,526/- on account of interest expenditure on unpaid purchase consideration?"*

*Judgement of the Hon'ble Gujarat High Court*

*Explanation 8 to Section 43 (1) of the Act requires reproduction at this stage —*

*"Explanation 8 - For the removal of doubts, it is hereby declared that where any amount is paid or is payable as interest in connection with the acquisition of asset, so much of such amount as is relatable to any period*

*after such asset is first put to use shall not be included, and shall be deemed never to have been included, in the actual cost of such asset."*

*It can be noticed that such explanation is brought on the statute book by the Finance Act, 1986, w.e.f 1st April 1974, which explains that where an amount is paid or is payable as interest in connection with acquisition of asset, so much of such amount which is relatable to any period after such asset is first put to use shall not be included and shall be deemed to have been included in the actual cost of such asset.*

*The Bombay High Court in case of CIT v. Rajaram Bandekar [1993] 202 ITR 514 was considering Explanation 8 to Section 143 (1) of the Act wherein, it is held that the said explanation was added with an object of removing doubts with regard to the includibility of interest relatable to any period after the asset has first been put to use, in the computation of its actual cost. By this Explanation, it has been declared by Parliament that, 'where any amount is paid or is payable as interest' in connection with the acquisition of an asset, "so much of such amount as is relatable to any period after such asset is first put to use shall not be included, and shall be deemed never to have been included in the actual cost of such assets. Parliament, in the above Explanation, has taken full care to couch the Explanation in the widest possible terms to avoid any further controversy in regard to the very issue on the basis of the manner of payment of interest or time of payment thereof. This has been done by the use of expression "where any amount is paid or is payable as interest.*

*In the matter on hand, CIT [A] as well as the Tribunal have noticed that in view of introduction of Explanation 8 to Section 43-(i) of the Act which was held retrospective in nature, the interest cannot be capitalized which was paid after the slump sale was effected and the factory was in operation, and therefore, such expenses were revenue in nature. The directions given to the Assessing Officer to allow the amount of interest of Rs 1.57 Crores[rounded off] is in accordance with the provision of law.*

*No question of law much less substantial question of law arises. The present Tax Appeal resultantly fails and the same is dismissed in limine."*

- *Applicable of the above mentioned judgement in the case of the Appellant*

*In the instant case and as mentioned above, the business of Kilburn was purchased by the Appellant on 'as-is' basis, that is to say that the business of Kilburn was functioning when the Appellant entered into and acquired the same. It can be safely said that the assets acquired by way of the BTA, were already 'put to use' on the date of transfer. Accordingly the interest of INR 26,91,378 paid by the Appellant to Kilburn on the amount held back and after the asset is put to use shall be allowed as deduction to the Appellant (instead of adding it to the cost of the asset for the purpose of claiming depreciation as falsely "held by the Id. AO).*

*Interest of INR 26,91,378 paid by the appellant to Kilburn, being compensatory in nature should be allowed as deduction.*

- *The appellant humbly submits that, the law is well settled that if any expenditure incurred as interest expense is compensatory in nature, deduction has to be allowed under section 37(1) of the Act in respect thereof. If the expenditure is found to be penal in character, no deduction can be allowed in respect thereof. The general idea for payment of interest on delayed payments is that creditors are entitled to compensation for the deprivation. It is this compensation,, which is allowable as a deduction under section 37(1)*

*In this regard, the Appellant would like to place reliance on the following judicial precedents*

- *CIT v New Alpine Forests [2000] 113 TAXMAN 316 (J. & K.)*

*It was held by the Hon'ble High Court of Jammu and Kashmir as .under:*

*"Law is well-settled that if any expenditure incurred by the assessee is compensatory in nature, deduction has to be allowed under section 37(1) in respect thereof. If the expenditure is found to be penal in character, no deduction can be allowed in respect thereof"*

*It is clear from the decisions of the Supreme Court in the case of Mahalakshmi Sugar Mills Co. v. CIT /1980/123 ITR 429 and in the case of Prakash Cotton Mills (P.) Ltd. v. CIT 1993]201 JR 684 that when an amount paid by an assessee as interest or damages or penalty could be regarded as compensatory in character, the authority has to allow deduction under section 37(1) if it has been laid out wholly and exclusively for the purpose of the business*

*"Interest', as understood in the commercial world, is the return or compensation for the retention by one person of a sum of money belonging to or owed to another. The essence of interest is that it is a payment that becomes due because the creditor has not had his money at the due date, It may be regarded either as representing the profit he might have made if he had the use of money or, conversely the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation. It is this compensation which is allowable as a deduction under section 37(1). In the instant case, the liability to pay interest was not statutory. It was contractual It was by virtue of the provision in clause 7 of the lease deed that the assessee was liable to pay interest at the rate of 9 per cent per annum for the period of delay in the payment of royalty. It was the arrear of royalty that carried interest. The liability to pay interest was as certain as the liability to pay royalty"*

*"If royalty was not paid within the stipulated period, a larger sum was payable as royalty. Interest payable under clause 7 of the lease deed was, thus, nothing but compensation paid to the Forest Department for delay in the payment of royalty. By no stretch of imagination, would it be regarded as penalty. It was obvious from the above discussion that the interest payable under clause 7 of the lease deed to the Forest Department for delayed payment of royalty was compensatory in nature. As there was no dispute in the instant case that the payment of interest represented expenditure laid out wholly and exclusively for the purpose of the business, it was allowable as a deduction under section 37(1)".*

- *CIT v. Hindustan Conductors (P.) Ltd. [2000] 108 TAXMAN 258 (BOM.)*

*In the case it was held that:*

*"Interest' is the return or compensation for the retention by one person of a sum of money belonging to or owed to another. As the essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date it may be regarded either as representing the profit he might have made if he had use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation"*

### *Conclusion*

*The Appellant respectfully submits that, based on the above mentioned provisions of the Act and judicial precedents, there is no doubt that, interest on delay in payment made to Kilburn of INR 26,91,378 is a contractual obligation arising out of the agreement entered into with Kilburn. Further, such interest is a revenue business expenditure which should be allowed as deduction in the AY 2012-13. Also, in view of Explanation 8 to Section 43 (1) of the Act, the contention of the Ld, AO that, interest paid by the Appellant forms part of the assets acquired under the BTA from Kilburn and therefore treating it as capital expenditure is not tenable in law."*

21. After considering the above submissions, Id. CIT (A) dismissed the ground with the following observations :-

*“4.7.3.2. The Appellant has submitted that the interest of Rs.2,691,378/- paid on the above holdback amount is in the nature of revenue expenditure and is to be allowed as deduction while computing the total income of the appellant, as it is in the nature of compensation for the amount of sales consideration held back as indemnity by the Appellant. The AR of the appellant has contended that the business of Kilburn was purchased by the Appellant on 'as-is' basis, and the assets acquired by way of the BTA, were already 'put to use' on the date of transfer (i.e. on 31 August 2011) and any interest paid after the asset is put to use shall be allowed as deduction to the Appellant. The appellant has stated that the same is allowable according to the provisions of Explanation 8 of section 43 and the proviso to section 36(1)(iii) which deals with deduction of interest expenditure. The appellant has stated that on a conjoint reading of the above provisions, it is clear that any interest paid after the capital asset is put to use would not form part of the cost of the asset and would be allowed as deduction, being revenue in nature.*

*4.7.3.3. The submissions filed by the appellant have been considered and not found to be tenable. The case laws cited are distinguishable in facts. The AO has rightly held that: since this amount is related to acquiring the business assets, the amount of Rs. 26,91,378/- is to be treated as part of the business assets and is capital in nature. I do not find any reason to interfere with the AO's, order on this issue.”*

22. Aggrieved, assessee is in appeal before us and at the time of hearing, Id. AR of the assessee made the similar submissions before us which were submitted before the first appellate authority and submitted that the assessee has an obligation to pay the interest on the amount withheld by the assessee and to be settled to Kilburn in 12 monthly installments and

submitted that the interest payment on such settlement is allowable expenditure as revenue expenditure.

23. Considered the rival submissions and material placed on record. We observed that based on the business transfer agreement as an obligation, assessee has remitted the amount of Rs.4,15,60,000/- and based on the above agreement, assessee was allowed to settle the amount in 12 installments and whatever the amount withheld by the assessee based on the agreement, it is to be paid @ 12% interest per annum alongwith the instalment. Based on the above, assessee has settled the liability amount of Rs.4,15,60,000/- along with interest. The payment of interest is in the interest of assessee to safeguard its own interest. During the period of withholding of the principal amount, the assessee was enjoying the amount and also settled as per the convenient settlement basis and safeguarded its own interests. We observed that the Assessing Officer has treated the same as part of the capital expenditure. Based on the agreement and factual matrix, we observed that the assessee has utilized the funds and also it is for the assessee's convenience to settle the abovesaid amount in 12 installments. Therefore, it is not part of the principal amount and the payment of interest is in the interest of the assessee, therefore, it can only be an obligation on the assessee. Therefore, it is not connected to the acquisition of any capital asset, it is



only a convenient method of settlement and the connected cost of retaining the funds or withholding the amount. Therefore, it is in the nature of revenue. Accordingly, it is an allowable financial charges. Hence ground no.4 raised by the assessee is allowed.

24. In the result, the appeal filed by the assessee for AY 2012-13 is allowed.
25. With regard to appeal for AY 2013-14, since the facts are exactly similar to AY 2012-13 our above findings in AY 2012-13 are applicable *mutatis mutandis* in AY 2013-14. Accordingly, the appeal being ITA No.7105/Del/2018 for AY 2013-14 filed by the assessee is allowed.
26. To sum up : both the appeals filed by the assessee are allowed.

**Order pronounced in the open court on this 10<sup>TH</sup> day of January, 2025.**

**SD/-  
(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

**SD/-  
(S.RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**Dated : 10.01.2025  
TS**

**Copy forwarded to:**

1. Assessee
2. Respondent
3. CIT
4. CIT(Appeals)/NFAC, Delhi.
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**