IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER&
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

1. ITA No. 2598/Mum/2025
(Assessment Year: 2009-10)

2. ITA No. 2604/Mum/2025
(Assessment Year: 2012-13)

Mumbai Port Authority Shoorji Vallabhdas Marg, Ballard Estate Port Bhavan, Ballarad Estate Mumbai-400 001	Vs.	**ACIT (Exem) Circle 2(1), Mumbai** Cumballa Hill Pedder Road, 6th Floor, Mumbai.
PAN/GIR No. AAATM5001D		
(Applicant)		(Respondent)

3. ITA No. 2834/Mum/2025
(Assessment Year: 2009-10)

4. ITA No. 2835/Mum/2025
(Assessment Year: 2012-13)

ACIT (Exem) Circle 2(1), Mumbai Cumballa Hill Pedder Road, 6th Floor, Mumbai.	Vs.	**Mumbai Port Authority** Shoorji Vallabhdas Marg, Ballard Estate Port Bhavan, Ballarad Estate Mumbai-400 001
PAN/GIR No. AAATM5001D		
(Applicant)		(Respondent)

Assessee by	Shri Madhur Agarwal & Shri Mani Jain Ld ARs
Revenue by	Shri R. A. Dhyani & Shri V. S. Mahajani, Ld. DRs

Date of Hearing	12.05.2026
Date of Pronouncement	15.06.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

These cross appeals, comprising two appeals filed by the assessee and two appeals filed by the Revenue, are directed against separate orders passed by the learned Commissioner of Income Tax (Appeals)-51, Mumbai [hereinafter referred to as "the CIT(A)"] both dated 24.02.2025 under section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"], arising out of the assessment orders passed by the Assistant Commissioner of Income Tax (Exemption)-2(1), Mumbai[hereinafter referred to as "Assessing Officer"]. Since common facts are involved and certain issues arise out of the assessments framed in the case of the same assessee, namely Mumbai Port Authority (formerly known as Mumbai Port Trust), these appeals were heard together and are being disposed of by this consolidated order for the sake of convenience and brevity. The assessee is a statutory body engaged in rendering port services to port users for loading, unloading and storage of cargo passing through the port by sea.

Assessment Year 2009-10.

2. The assessee filed its return of income on 29.09.2009 declaring a loss of Rs.17,73,08,737/-. The return was accompanied by the Income and Expenditure Account, Balance Sheet and Audit Report in Form No.3CD. The return was selected for scrutiny and an assessment under section 143(3) of the Act was originally completed on 20.12.2011.Subsequently, a TDS survey was conducted at the premises of the assessee. Thereafter, the Assessing Officer issued notice under section 148 of the Act on 19.03.2014 seeking to reopen the assessment. The reasons recorded for reopening were furnished to the assessee on 20.01.2015. In response, the assessee requested that the original return filed be treated as the return in response to the notice issued under section 148 of the Act.

3. During the reassessment proceedings, notices under sections 143(2) and 142(1) of the Act were issued. The assessee appeared through its authorised representative and furnished details called for by the Assessing Officer. After considering the material available on record, the Assessing Officer completed the reassessment under section 143(3) read with section 147 of the Act vide order dated 23.03.2015 determining the total income at Rs.205,42,61,380/- as against the returned loss.

4. While framing the reassessment, the Assessing Officer made, inter alia, the following additions/disallowances:

Sr. No.	**Particulars**	**Amount (Rs.)**
1	Addition on account of contribution to Leave Encashment Fund	80,00,00,000/-
2	Addition on account of unrecovered Estate Rentals	104,90,00,000/-
3	Disallowance of depreciation	8,54,56,643/-
4	Disallowance of Donation and Contribution expenses	2,84,00,000/-
5	Addition on account of Amnesty Scheme receipts	4,15,00,000/-
6	Disallowance of capital expenditure	1,70,97,860/-
7	Disallowance under section 40(a)(ia)	21,01,15,610/-
Total	**Aggregate Additions/Disallowances**	**223,15,70,113/-**

5. Aggrieved by the reassessment order, the assessee carried the matter in appeal before the learned CIT(A). During the appellate proceedings, the assessee filed detailed written submissions and also sought admission of additional evidences under Rule 46A of the Income Tax Rules, 1962. The assessee contended that adequate opportunity had not been afforded during the reassessment proceedings, particularly in respect of issues involving Estate Rentals, Donation and Contribution and Amnesty Scheme receipts. The learned CIT(A) called for a remand report from the Assessing Officer. After considering the remand report and rejoinder filed by the assessee, the learned CIT(A) admitted certain additional evidences under Rule 46A.

6. The assessee also challenged the validity of reopening under sections 147/148 of the Act. The learned CIT(A), after examining

the reasons recorded and the material available on record, upheld the validity of reassessment proceedings.

7. Thereafter, the learned CIT(A) adjudicated the various additions/disallowances made by the Assessing Officer. Being aggrieved by the relief granted by the learned CIT(A) on certain issues and the confirmation of additions on certain other issues, both the assessee and the Revenue are in appeal before us.

8. The assessee has raised the following grounds of appeal:

1. *On the facts and circumstances of the appellant's case in law the Ld. CIT(A) erred in confirming the action of Ld. AO in reopening the assessment u/s 147 by issue of notice dated 19.03.2014 u/s 148, which is merely due to change in opinion and therefore reopening is bad in law.*

2. *On the facts and circumstances of the appellant's case in law the Ld. CIT(A) erred in confirming the action of Ld. AO in reopening the assessment u/s 147 by issue of notice dated 19.03.2014 u/s 148, which is barred by limitation in view of first proviso to section 147 of the Act.*

3. *On the facts and circumstances of the appellant's case in law the Ld. CIT(A) erred in confirming the action of ld. AO in making disallowance of Rs. 80,00,00,000/- on account of contribution to leave encashment fund by invoking provisions of section 43B of the Income Tax Act, 1961.*

4. *The appellant craves leaves to alter, amend, withdraw or substitute any ground or grounds of appeal on or before the hearing.*

9. The Revenue has raised the following grounds of appeal:

1. *Whether, on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in allowing the appeal of the assessee ignoring the fact that the assessee follows mercantile system of*

accounting and hence was duty bound to offer Rs.104,90,00,000/- on account of Estate rentals in the Profit and Loss Account, irrespective of its recoverability?

2. *Whether, on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in allowing the appeal of the assessee ignoring the fact that docks, sea walls and piers and rail ways & rolling stock / locomotive falls under the category of Buildings and hence depreciation at 10% is applicable and not 15% as claimed by the assessee?*

3. *Whether, on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in allowing the appeal of the assessee ignoring the fact that the assessee failed to justify the payments made to Bipartite Wage Negotiation Committee Meetings and Toda of Labour Federations for attending meetings, Indian Port Association, Maharashtra Labour Welfare Fund, MBPT Reynolds Institute, Mumbai Port Sports Council, Mumbai Port Trust Sports Club and Port Officer Recreation Club was clubbed under the head 'donation and contribution' in its books of account?*

4. *Whether, on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in allowing the appeal of the assessee ignoring the fact that the assessee defaulted in deducting correct tax on amount of Rs.21,01,15,610/- as per the provisions of the Act?*

Assessment Year 2012-13

10. For Assessment Year 2012-13, the assessee filed its return of income on 20.09.2012 declaring a loss of Rs.84,72,22,478/- along with the Income and Expenditure Account, Balance Sheet and Audit Report in Form No.3CD.The return was selected for scrutiny and notices under sections 143(2) and 142(1) of the Act were issued. The assessee appeared through its authorised representative and furnished details called for during the course of assessment proceedings. The Assessing Officer completed the

assessment under section 143(3) of the Act vide order dated 30.03.2015 determining the total income at Rs.45,06,62,210/-. While framing the assessment, the Assessing Officer made the following additions/disallowances:

Sr. No.	**Particulars**	**Amount (Rs.)**
1	Addition on account of Estate Rentals	117,76,00,000/-
2	Disallowance of depreciation	1,27,52,783/-
3	Addition on account of Amnesty Scheme income	14,00,000/-
4	Addition on account of Interest on Inter Port Loan	4,07,00,000/-
5	Disallowance of Corporate Social Responsibility expenditure	5,01,00,000/-
6	Disallowance under section 40(a)(ia)	1,53,31,905/-
Total	**Aggregate Additions/Disallowances**	**129,78,84,688/-**

11. Aggrieved, the assessee preferred an appeal before the learned CIT(A). During the appellate proceedings, the assessee sought admission of additional evidences under Rule 46A contending that adequate opportunity had not been granted by the Assessing Officer in respect of various issues including Estate Rentals, depreciation, Amnesty Scheme income, interest on inter-port loan and CSR expenditure. The learned CIT(A) obtained a remand report from the Assessing Officer and thereafter admitted certain additional evidences after considering the explanation offered by the assessee.

12. The learned CIT(A) thereafter adjudicated the additions made by the Assessing Officer. Being aggrieved by the findings of

the learned CIT(A), both the assessee and the Revenue are in further appeal before us.

13. The assessee has raised the following grounds of appeal:

1. *On the facts and circumstances of the appellant's case in law the Ld. CIT(A) erred in confirming the action of Ld. AO in disallowing a sum to the extent of Rs.8,70,625/- on account of alleged excess claim of depreciation.*

2. *On the facts and circumstances of the appellant's case in law the Ld. CIT(A) erred in confirming the action of Ld. AO in adding a sum of Rs.4,07,00,000/- on account of interest on Inter Port Loan.*

3. *On the facts and circumstances of the appellant's case in law the Ld. CIT(A) erred in confirming the action of Ld. AO in disallowing a sum of Rs.5,01,00,000/- on account of expenses towards corporate social responsibility.*

4. *The appellant craves leaves to alter, amend, withdraw or substitute any ground or grounds of appeal on or before the hearing.*

13. The Revenue has raised the following grounds of appeal:

1. *Whether, on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in allowing the appeal of the assessee ignoring the fact that the assessee follows mercantile system of accounting and hence was duty bound to offer Rs.117,76,00,000/- on account of Estate rentals in the Profit and Loss Account, irrespective of its recoverability?*

2. *Whether, on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in allowing the appeal of the assessee ignoring the fact that railways & rolling stock/ locomotive falls under the category of Buildings and hence depreciation at 10% is applicable and not 15% as claimed by the assessee?*

3. *Whether, on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in allowing the appeal of the assessee*

ignoring the fact that the assessee defaulted in deducting correct tax on amount of Rs.1,53,31,905/- as per the provisions of the Act?

14. First, we take-up assessee's appeals.

A.Y. 2009-10 (ITA No. 2598/Mum/2025)

15. Ground Nos. 1 and 2 for A.Y. 2009-10 relate to the validity of reassessment proceedings initiated under sections 147/148 of the Act. At the time of hearing, neither any submissions were advanced nor any arguments were addressed on behalf of the assessee in support of the aforesaid grounds. Accordingly, Ground Nos. 1 and 2 are treated as not pressed. Since the said grounds have not been argued before us, the issue is left open.

Ground No. 3 - Disallowance of Rs.80,00,00,000/- on account of contribution to Leave Encashment Fund.

16. During the course of reassessment proceedings, the Assessing Officer noticed that the assessee had claimed deduction of Rs.80,00,00,000/- towards contribution to Leave Encashment Fund. In response to the show-cause notice, the assessee submitted that the said amount had been actually paid to SBI Life Insurance Co. Ltd. towards leave encashment liability and, therefore, constituted an allowable deduction under section 43B of the Act. The Assessing Officer, however, did not accept the explanation of the assessee. According to him, section 43B(f) envisaged deduction only in respect of leave encashment liability actually paid and the payment made to SBI Life Insurance Co.

Ltd. towards funding of leave encashment liability did not satisfy the requirement of the said provision. The Assessing Officer further observed that while the Act contains specific provisions recognising contributions to recognised provident fund and gratuity fund, no similar provision exists in respect of contribution to a leave encashment fund. He also observed that the liability sought to be funded represented a future liability and partook the character of a contingent liability. Accordingly, he held that the assessee was not entitled to deduction of Rs.80,00,00,000/- and added the same to the total income.

17. The learned CIT(A) considered the findings of the Assessing Officer and the submissions of the assessee. He observed that though the contribution made to the Leave Encashment Fund maintained with SBI Life Insurance Co. Ltd. was towards meeting the leave encashment obligations of employees and could otherwise be regarded as expenditure incurred for business purposes, leave encashment liability is specifically governed by section 43B(f) of the Act. The learned CIT(A) noted that section 43B starts with a non obstante clause and consequently overrides the general provisions governing allowability of expenditure under the Act. He, therefore, held that the assessee's claim was required to be tested strictly in accordance with section 43B(f), which specifically governs deduction in respect of leave encashment liability. The learned CIT(A) further noted that the constitutional validity of section 43B(f) had been upheld by the Hon'ble Supreme Court in the case of *Exide Industries Ltd.*

Holding that deduction in respect of leave encashment is allowable only in accordance with the specific provisions of section 43B(f), the learned CIT(A) concurred with the view taken by the Assessing Officer and upheld the disallowance of Rs.80,00,00,000/- made on account of contribution to Leave Encashment Fund.

18. The learned Authorised Representative (AR) submitted that the authorities below erred in treating the contribution of Rs.80,00,00,000/- made to SBI Life Insurance Co. Ltd. towards Leave Encashment Fund as a mere provision for future liability. He submitted that the amount represented an actual payment made during the relevant previous year and was irrevocably transferred to SBI Life Insurance Co. Ltd. under a scheme framed for meeting the leave encashment obligations of the employees. Therefore, the claim could not be equated with a contingent liability or a provision retained by the assessee in its books of account. The learned AR contended that the Assessing Officer proceeded on an erroneous premise that deduction could be allowed only when the amount was directly paid to employees. According to him, once the liability was funded through an insurance mechanism and the amount stood actually paid to the insurer, the assessee ceased to have any control over the funds and the payment assumed the character of an expenditure incurred wholly and exclusively for the purposes of business.

19. The learned AR further submitted that the contribution made by the assessee was akin to premium paid under a group leave encashment scheme and, therefore, constituted a revenue expenditure allowable under section 37(1) of the Act. Reliance was placed upon the judgment of the Hon'ble Kerala High Court in ***CIT v. Hindustan Latex Ltd.[2012] 22 taxmann.com 332*** wherein it was held that where an assessee insures itself against leave encashment liability and pays premium towards such policy, the liability thereafter stands transferred to the insurer and the premium paid for maintaining the policy constitutes business expenditure wholly and exclusively incurred for the purposes of business. The Hon'ble High Court held that such payment is not a provision for future liability but an actual expenditure incurred by the assessee and is allowable as deduction under section 37(1).

20. Referring to the observations of the Hon'ble Kerala High Court, the learned AR submitted that section 43B was introduced to deny deduction in respect of liabilities which had not actually been discharged and which continued to remain as provisions in the books of account. However, in a case where the assessee has taken an insurance policy to cover leave encashment liability and has actually paid the premium to the insurer, the payment does not represent a provision for future liability. The liability thereafter becomes that of the insurer and the assessee itself does not incur any further liability towards leave encashment except through the insurance arrangement. The learned AR

submitted that the ratio of the aforesaid judgment squarely applies to the facts of the present case.

21. It was, therefore, submitted that the contribution of Rs.80,00,00,000/- made to SBI Life Insurance Co. Ltd. towards Leave Encashment Fund represented an actual expenditure incurred by the assessee for meeting employee benefit obligations and was allowable as deduction. The learned AR accordingly prayed that the disallowance sustained by the learned CIT(A) be deleted.

22. Per contra, the learned Departmental Representative (DR) strongly relied upon the assessment order and the order of the learned CIT(A).

23. We have considered the rival submissions and perused the material available on record. We have also carefully examined the assessment order, the order of the learned CIT(A) and the judicial precedents cited before us.

24. The short controversy before us is whether the contribution of Rs.80,00,00,000/- made by the assessee to SBI Life Insurance Co. Ltd. towards Leave Encashment Fund is allowable as deduction or whether the same is hit by the provisions of section 43B(f) of the Act.

25. In our considered opinion, the approach adopted by the lower authorities overlooks the true nature of the transaction and

the distinction between a mere provision and an actual expenditure incurred through an insurance mechanism.

26. It is an undisputed position that the assessee has not claimed deduction on the basis of a provision created in its books of account. The amount of Rs.80,00,00,000/- stands actually paid to SBI Life Insurance Co. Ltd. (Receipt of which is place at page No. 60 of paper book) under a leave encashment scheme formulated for meeting employee benefit obligations. The payment has resulted in actual outflow of funds and the assessee has ceased to have control or dominion over the amount so contributed.

27. The Hon'ble Kerala High Court in the case of ***CIT v. Hindustan Latex Ltd.*****(supra)** had occasion to consider an identical issue where premium paid to LIC under a Group Leave Encashment Scheme was sought to be disallowed by invoking section 43B(f). After considering the scheme of section 43B and the nature of the payment made to the insurer, the Hon'ble High Court held as under:

> *"In the instant case it was not a provision for future liability which was claimed as a deduction. The assessee, a Government Company had insured itself against the liabilities that may arise on account of the claims made by the employees towards leave encashment. The assessee being covered by a valid insurance policy and premium being regularly paid, incurs no liability towards leave encashment. The liability being covered by a valid insurance policy, is solely that of the insurer."(para 6)*

28. The Hon'ble High Court further held:

> *"However, it cannot be doubted for a moment that the premium paid towards the renewal and continued validity of the insurance policy necessarily becomes business expenditure wholly and exclusively incurred for the business purpose and allowable as a deduction under section 37."(para 6)*

29. Again, while affirming the allowability of the claim, the Hon'ble High Court observed:

> *"Further it was not a provision which was disallowed, but an actual liability towards premium paid on insurance policy and the liability was allowable as a deduction under Section 37 being an expenditure incurred for the purpose of the business." (para 7)*

30. The ratio emerging from the aforesaid judgment is that where the assessee merely creates a provision for future leave encashment liability, the provisions of section 43B(f) may become relevant. However, where the assessee has actually paid the amount to an insurer under a leave encashment scheme and the liability thereafter stands assumed by the insurer, the payment constitutes actual business expenditure and cannot be equated with a mere provision.

31. The Revenue placed considerable reliance upon the provisions of section 43B(f) and the decision of the Hon'ble Supreme Court in ***Exide Industries Ltd.*** to contend that deduction in respect of leave encashment liability is governed exclusively by section 43B(f) and can be allowed only upon actual payment. We have carefully considered the aforesaid contention. However, we find that the very decision relied upon by the assessee before us, namely ***CIT v. Hindustan Latex Ltd.***, has

specifically considered the impact of ***Exide Industries Ltd.*** while adjudicating an identical controversy involving payment made to an insurer under a Group Leave Encashment Scheme. The Hon'ble Kerala High Court noticed that section 43B(f) was introduced with the object of denying deduction in respect of liabilities not actually incurred and to exclude mere provisions created towards future liabilities. The Hon'ble High Court thereafter examined the decision of the Calcutta High Court in *Exide Industries Ltd.*, wherein clause (f) of section 43B had been struck down as unconstitutional, and observed that even assuming section 43B(f) continued to remain on the statute book, the assessee's claim before it stood on a fundamentally different footing.

32. The Hon'ble High Court specifically observed as under:

> *"In any event what was intended by introduction of clause (f) was to deny the deduction of liabilities not actually incurred or in other words to exclude the provisions being made as against future liabilities, from being granted a deduction. In the instant case it was not a provision for future liability which was claimed as a deduction." (para 6)*

33. After noticing that the assessee had insured itself against leave encashment liability and had actually paid premium to the insurer, the Hon'ble High Court further held:

> *"Even if Section 43B(f) stands, in the case of the assessee, where the liability is borne by the insurer, there can be no situation wherein assessee could make a valid claim for deduction under Section 43B(f) since the actual liability is not incurred in any of the years. However, it cannot be doubted for a moment that the premium paid towards the renewal and continued validity of the insurance policy necessarily*

becomes business expenditure wholly and exclusively incurred for the business purpose and allowable as a deduction under Section 37." (para 6)

34. Thus, the Hon'ble Kerala High Court did not merely proceed on the basis of the Calcutta High Court decision in ***Exide Industries Ltd.*** Rather, the Hon'ble High Court expressly held that even if section 43B(f) were assumed to be valid and operative, the contribution made to an insurer under a leave encashment scheme would still be distinguishable from a mere provision for leave encashment liability and would constitute an independent item of business expenditure allowable under section 37 of the Act. The ratio of the decision, therefore, is not founded solely upon the constitutional challenge considered in ***Exide Industries Ltd.***, but on the substantive distinction between a provision for future liability and an actual payment made to an insurer for assuming such liability.

35. In the present case also, the assessee has not claimed deduction on the basis of a provision created in its books. The claim relates to an actual contribution of Rs.80,00,00,000/- made to SBI Life Insurance Co. Ltd. towards a leave encashment scheme. Therefore, applying the ratio laid down by the Hon'ble Kerala High Court, we are unable to accept the contention of the Revenue that the claim is liable to be disallowed merely by invoking section 43B(f) of the Act.

36. We also find merit in the contention of the assessee that once the amount stands irrevocably paid to the insurer, the

assessee cannot thereafter claim deduction when payments are ultimately made by the insurer to employees. Consequently, the interpretation adopted by the learned CIT(A), namely that deduction would be available only when the insurer makes payment to employees, would result in a situation where the assessee would never become entitled to deduction despite having incurred actual expenditure. Such an interpretation defeats commercial reality and does not accord with the ratio laid down by the Hon'ble Kerala High Court.

37. The learned CIT(A) has further observed that the assessee did not produce a certificate from the fund regarding actual payment to employees. In our view, such requirement is not contemplated by the statute. The relevant event for claiming deduction is the actual contribution made by the assessee to the insurer under the leave encashment scheme. Once such payment is established, the allowability of the expenditure cannot be postponed till the insurer subsequently settles claims of individual employees.

38. Respectfully following the judgment of the Hon'ble Kerala High Court in ***CIT v. Hindustan Latex Ltd. (supra)***, which directly deals with contribution made to an insurer under a leave encashment scheme, we hold that the contribution of Rs.80,00,00,000/- made by the assessee to SBI Life Insurance Co. Ltd. represents actual business expenditure incurred for

meeting employee leave encashment obligations and is allowable as deduction.

39. We, therefore, set aside the order of the learned CIT(A) on this issue and direct the Assessing Officer to delete the disallowance of Rs.80,00,00,000/-. Accordingly, Ground No. 3 raised by the assessee is allowed.

A.Y. 2012-13 (ITA No. 2604/Mum/2025)

Ground No. 1: Disallowance of depreciation of Rs.8,70,625/-.

40. We shall first take up Ground No. 1 of the assessee's appeal relating to disallowance of depreciation of Rs.8,70,625/-. The relevant facts, in brief, are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee had disclosed capital receipts aggregating to Rs.87,06,250/-. Upon being called upon to explain the nature of the said receipts, the assessee submitted that the amount represented sale proceeds realised from demolition of buildings and sheds belonging to Mumbai Port Trust. It was further explained that such receipts were required to be reduced from the relevant block of assets comprising buildings and that in certain cases, where complete details were not readily available, the amounts had been credited under the head liabilities. The Assessing Officer, however, observed that the assessee had failed to reduce the aforesaid capital receipts from the block of assets while computing depreciation. According to him, the non-reduction of the sale

proceeds from the block of assets had resulted in excess claim of depreciation. Accordingly, the Assessing Officer recomputed the depreciation after reducing Rs.87,06,250/- from the block of assets and determined the admissible depreciation at Rs.1,09,72,844/- as against depreciation of Rs.1,18,43,469/- claimed by the assessee. The resultant excess depreciation of Rs.8,70,625/- was, therefore, disallowed and added back to the income of the assessee.

41. The learned CIT(A)observed that once demolition orders had been issued and demolition activity had commenced, the assets ceased to be available for use and could no longer qualify for depreciation. The learned CIT(A) further held that the assessee, following the mercantile system of accounting, was required to account for the consequences arising from demolition of the assets and that the plea regarding pending procedural formalities could not justify retention of such assets in the block for the purpose of claiming depreciation. Holding that depreciation is allowable only on assets which are owned and used during the relevant previous year, the learned CIT(A) concurred with the Assessing Officer that depreciation had been wrongly claimed on assets which were no longer available for use. He, therefore, confirmed the disallowance of depreciation amounting to Rs.8,70,625/-.

42. Before us, the learned AR submitted that the authorities below erred in disallowing depreciation of Rs.8,70,625/-. He

submitted that the amount of Rs.87,06,250/- represented consideration received on account of demolition of certain buildings and sheds. However, due to pending procedural and accounting formalities, the said amount could not be adjusted against the written down value of the relevant block of assets during the year under consideration. The learned AR further submitted that there was no dispute regarding the obligation of the assessee to reduce the said amount from the block of assets. He pointed out that the amount was duly adjusted against the written down value of the relevant block in the immediately succeeding assessment year upon completion of the requisite formalities. According to him, the omission to reduce the amount during the year under consideration was only a timing issue and did not result in any permanent benefit to the assessee.

43. The learned AR submitted that the disallowance has arisen merely because the reduction from the block of assets was effected in the subsequent year instead of the year under consideration. He contended that once the corresponding adjustment has been carried out in the succeeding year, the same amount cannot be subjected to adverse tax consequences by way of denial of depreciation in one year and reduction of written down value in the subsequent year. He, therefore, submitted that the disallowance sustained by the learned CIT(A) deserves to be deleted.

44. We have considered the rival submissions and perused the material available on record. The limited controversy before us is whether the assessee was justified in claiming depreciation without reducing the amount of Rs.87,06,250/- received on account of demolition of certain buildings and sheds from the written down value of the relevant block of assets.

45. There is no dispute with regard to the legal position that the monies received on account of demolition/disposal of assets forming part of a block are required to be reduced from the written down value of the block in accordance with the provisions of the Act. The assessee has also not disputed the said proposition. The consistent stand of the assessee is that owing to pending procedural formalities, the amount of Rs.87,06,250/- could not be adjusted against the block of assets during the year under consideration and that the requisite adjustment was carried out in the immediately succeeding year.

46. In our considered view, if the amount of Rs.87,06,250/- has in fact been reduced from the written down value of the relevant block of assets in the subsequent assessment year, the issue would essentially be one of timing and not of allowability. In such circumstances, sustaining the impugned disallowance in the year under consideration, while simultaneously giving effect to the reduction in the succeeding year, may result in unintended double adjustment.

47. Since the claim of the assessee that the amount has been duly reduced from the written down value of the block in the subsequent year requires factual verification from the records, we deem it appropriate to restore this limited issue to the file of the Assessing Officer. The Assessing Officer shall verify whether the amount of Rs.87,06,250/- received on account of demolition of assets has been reduced from the written down value of the relevant block of assets in the immediately succeeding assessment year. In case the assessee's claim is found to be correct, the disallowance of depreciation amounting to Rs.8,70,625/- shall stand deleted. The assessee shall be afforded reasonable opportunity of being heard and shall furnish the necessary details in support of its claim.

48. Accordingly, Ground No.1 of the assessee's appeal is allowed for statistical purposes.

Ground No. 2 relating to addition of Rs.4,07,00,000/- on account of Interest on Inter Port Loan

49. During the course of assessment proceedings, the Assessing Officer noticed from Note No. XIII forming part of the financial statements that during the financial year 2011-12, Cochin Port Trust had remitted only 50% of the accrued interest on the Inter Port Loan amounting to Rs.4.07 crore, whereas the balance 50% of the accrued interest amounting to Rs.4.07 crore had been capitalized. Consequently, the outstanding loan balance stood increased to Rs.54.07 crore at the end of the year. The Assessing

Officer observed that the notes to accounts disclosed that the assessee had capitalised interest of Rs.4.07 crore receivable from Cochin Port Trust and had not offered the same to tax. According to the Assessing Officer, the assessee was following the mercantile system of accounting and, therefore, was required to recognize the entire accrued interest as income. He was of the view that a person following the mercantile system of accounting could not recognize a part of the accrued income through the Profit and Loss Account while treating the balance accrued income differently. Relying upon the decision of the Hon'ble Supreme Court in ***Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT [(1997) 227 ITR 172 (SC)]***, the Assessing Officer held that the entire accrued interest was liable to be brought to tax. Accordingly, an addition of Rs.4,07,00,000/- was made to the total income of the assessee.

50. Before the learned CIT(A), it was submitted that the assessee had advanced a loan of Rs.100 crore to Cochin Port Trust on 28.07.2010. The assessee contended that interest on the said loan was being offered to tax on receipt basis and that during the year under consideration only 50% of the interest due had actually been received. It was further submitted that the balance 50% of the accrued interest had been capitalised and added to the principal outstanding, on which further interest was receivable from the borrower. Accordingly, the assessee offered only the interest actually received for taxation.

51. The learned CIT(A), however, did not accept the contention of the assessee. He observed that the loan advanced to Cochin Port Trust could not be regarded as a sticky loan or a non-performing asset so as to justify departure from the mercantile system of accounting consistently followed by the assessee. The learned CIT(A) further noted that the entire accounting system of the assessee was maintained on mercantile basis and, as per the terms governing the loan, annual interest was payable by the borrower. According to him, there was no justification for recognising only a part of the accrued interest on receipt basis while following the mercantile system for all other transactions. He, therefore, held that the entire accrued interest was liable to be brought to tax and accordingly confirmed the addition of Rs.4,07,00,000/- made by the Assessing Officer on account of accrued interest capitalised by the assessee. The ground raised by the assessee was, therefore, dismissed.

52. The learned AR assailed the orders of the lower authorities and submitted that the addition of Rs.4,07,00,000/- has been made on an erroneous appreciation of both facts and accounting treatment adopted by the assessee. He submitted that the assessee had advanced an Inter Port Loan of Rs.100 crore to Cochin Port Trust on 28.07.2010 and the terms governing the said loan specifically provided for capitalization of 50% of the interest accruing thereon. Thus, capitalization of interest was not a consequence of default on the part of the borrower nor was it a case where the assessee had treated the loan as sticky or

irrecoverable. The capitalization was an integral feature of the loan arrangement itself. Inviting our attention to the detailed computation of interest appearing at page 190 of the paper book, the learned AR submitted that the position emerging from the records was as under:

Particulars	**Amount (Rs.)**
Principal outstanding as on 28.07.2011	50,00,00,000/-
Add: Interest due up to 27.07.2011	8,14,83,562/-
Less: Interest paid by Cochin Port Trust (50%)	4,07,41,781/-
Balance interest capitalised and added to loan account	4,07,41,781/-
Principal outstanding after capitalization	54,07,41,781/-

53. Referring to the aforesaid working, the learned AR submitted that out of the total interest due of Rs.8,14,83,562/-, Cochin Port Trust remitted Rs.4,07,41,781/- on 28.07.2011 and the balance amount of Rs.4,07,41,781/- was capitalized and added to the principal outstanding in accordance with the terms and conditions governing the Inter Port Loan. Consequently, the outstanding principal increased from Rs.50 crore to Rs.54.07 crore.

54. The learned AR thereafter invited our attention to the journal voucher appearing at page 191 of the paper book wherein the assessee specifically recorded as under:

> *"Interest due from Cochin Port Trust on loan given to them was Rs.8,14,83,562/-. The 50% out of that Rs.4,07,41,781/- was paid by them on 28.07.2011. The balance 50% (i.e. Rs.4,07,41,781/-) interest*

booked as accrued is now being capitalised as per terms and conditions."

55. He submitted that the aforesaid contemporaneous entry conclusively demonstrates that capitalization was effected pursuant to the contractual terms of the loan and not because the interest had not accrued or had become irrecoverable.

56. The learned AR further invited our attention to the accounting entries appearing at pages 187 and 192 of the paper book. Referring to page 187, he submitted that accrued interest on account of the Inter Port Loan granted to Cochin Port Trust amounting to Rs.6,50,13,699/- was duly recognized in the books of account by debiting "Accrued Interest on Investments" (GL Code 0852) and crediting "Interest on Investments of Reserves" (GL Code 0361). Likewise, referring to page 192, he pointed out that further adjustment entries of Rs.20,78,083/-and Rs.1,85,47,946/- were passed and corresponding credits were made to the account "Interest on Investments of Reserves". The details of the entries are summarized below:

Particulars	**Amount (Rs.)**
Interest accrued and credited on 31.03.2011 (Page 187) for the period from 28.07.2010 to 31.03.2011	6,50,13,699/-
Less: Adjustment of excess interest booked for F.Y. 2010-11 (Page 192)	(20,78,083/-)
Add: Interest booked for the period 01.04.2011 to 27.07.2011 (Page 192)	1,85,47,946/-
Net Interest Credited to Interest on Investments Account	**8,14,83,562/-**

57. The learned AR submitted that the aforesaid entries clearly establish that the interest arising on the Inter Port Loan was duly accounted for and credited in the books of account of the assessee. He further invited our attention to the schedule titled "Finance & Miscellaneous Income as on 31.03.2012" appearing at page 191 of the paper book, wherein an amount of Rs.390,15,22,471.40 was credited under the head "Interest on Investments". According to him, the interest pertaining to the Inter Port Loan formed part of the said income credited to the Profit & Loss Account.

58. The learned AR submitted that the Assessing Officer proceeded on the erroneous assumption that the assessee had not offered the capitalised portion of interest to tax. On the contrary, the accounting records demonstrate that the interest was first recognized and credited to income in accordance with the mercantile system of accounting and thereafter, in terms of the agreed arrangement between the parties, 50% thereof was converted into loan principal by capitalisation. Thus, the capitalisation represented merely a balance sheet adjustment and not suppression or omission of income.

59. The learned AR further submitted that both the Assessing Officer and the learned CIT(A) have incorrectly proceeded on the footing that the issue involves recognition of income on cash basis as against mercantile basis. According to him, the real issue is entirely different. The assessee has consistently followed

the mercantile system of accounting and has recognized the interest income in its books. The dispute relates only to the subsequent capitalization of a portion of such interest in terms of the contractual arrangement governing the Inter Port Loan.

60. It was accordingly submitted that the amount of Rs.4,07,41,781/- represented interest validly capitalised and merged with the principal outstanding in accordance with the terms of the Inter Port Loan and could not be separately treated as undisclosed or unoffered interest income. The addition sustained by the learned CIT(A) was therefore liable to be deleted.

61. Per contra, the learned Departmental Representative (DR) relied upon the orders of the lower authorities. The learned DR submitted that the reconciliation needs factual verification and therefore matter may be set aside to the Assessing Officer for limited verification.

62. Upon careful examination of the material placed before us, we find that both the lower authorities have proceeded on a fundamentally incorrect factual premise. The issue before us is not whether the assessee could recognize interest income on receipt basis despite following the mercantile system of accounting. Nor is the issue whether the loan advanced to Cochin Port Trust had become sticky or irrecoverable. In fact, the material placed before us clearly demonstrates that the assessee has consistently followed the mercantile system of accounting

and has duly recognized the entire interest accruing on the Inter Port Loan in its books of account.

63. The detailed computation of interest placed at page 190 of the paper book shows that against the principal outstanding of Rs.50,00,00,000/-, interest aggregating to Rs.8,14,83,562/- became due up to 27.07.2011. Out of the said amount, Cochin Port Trust remitted Rs.4,07,41,781/- and the balance amount of Rs.4,07,41,781/- was capitalized and added to the loan account in accordance with the terms and conditions governing the Inter Port Loan. Consequently, the principal outstanding stood enhanced to Rs.54,07,41,781/-. Thus, the capitalisation was not a consequence of any default by the borrower but was itself an integral feature of the loan arrangement.

64. More importantly, the contemporaneous accounting records completely negate the assumption of the Assessing Officer that the capitalised portion of interest was not offered to tax. At page 187 of the paper book, the assessee has placed on record the journal voucher dated 31.03.2011 whereby accrued interest of Rs.6,50,13,699/- on the Inter Port Loan was recognized by debiting "Accrued Interest on Investments" and crediting "Interest on Investments of Reserves". Further, page 192 of the paper book evidences adjustment entries whereby excess interest of Rs.20,78,083/- booked in the preceding year was reversed and interest of Rs.1,85,47,946/- for the subsequent period was recognised. Thus, the entire interest accruing on the Inter Port

Loan stood recognized and credited in the books of account of the assessee.

65. The schedule titled "Finance & Miscellaneous Income as on 31.03.2012" further reveals that an amount of Rs.390,15,22,471.40 was credited under the head "Interest on Investments". The accounting entries placed on record establish that the interest arising from the Inter Port Loan formed part of the said income. Therefore, the factual foundation adopted by the Assessing Officer that the assessee had not offered the capitalised interest to tax is contrary to the documentary evidence available on record.

66. We also find merit in the contention of the learned AR that the learned CIT(A) misdirected himself by examining whether the loan was a sticky loan or a non-performing asset. The capitalization of interest in the present case was admittedly not on account of uncertainty of recovery. It was a conscious commercial and management decision embodied in the terms governing the Inter Port Loan. Therefore, whether the loan was a sticky loan or a performing asset is wholly irrelevant for deciding the controversy before us.

67. The reliance placed by the Assessing Officer on the decision of the Hon'ble Supreme Court in Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT (supra) is also misplaced. The said decision lays down the well-settled proposition that income which accrues is taxable in accordance with law. There can be no dispute with

this principle. However, in the present case, the assessee has not disputed accrual of interest. On the contrary, the assessee has recognised the entire interest income of Rs.8,14,83,562/- in its books of account and the same forms part of its taxable income. The dispute is not regarding accrual of income but regarding the subsequent capitalisation of 50% of such interest in terms of the contractual arrangement between the parties. Therefore, the ratio of Tuticorin Alkali Chemicals & Fertilizers Ltd. does not advance the case of the Revenue.

68. In our considered view, the material placed before us prima facie supports the contention of the assessee that the entire interest income of Rs.8,14,83,562/- was recognised and credited in its books of account and that the amount of Rs.4,07,41,781/- represented only the portion of such interest which was subsequently capitalized and added to the outstanding loan balance in accordance with the terms governing the Inter Port Loan. However, during the course of hearing, the learned DR submitted that the reconciliation furnished by the assessee with reference to the accounting entries appearing at pages 187, 190, 191 and 192 of the paper book requires factual verification from the books of account and the relevant schedules forming part of the financial statements.

69. Having regard to the aforesaid submission and considering that the reconciliation placed before us goes to the root of the controversy, we deem it appropriate, in the interest of justice, to

restore this issue to the file of the Assessing Officer for the limited purpose of verifying the assessee's claim that the entire interest of Rs.8,14,83,562/- stood recognised and credited to income and that the impugned amount of Rs.4,07,41,781/- merely represented capitalisation of a portion of such interest already accounted for in the books. In case, upon such verification, the Assessing Officer finds the reconciliation furnished by the assessee to be correct and finds that the impugned amount forms part of the interest income already credited and offered to tax, no separate addition shall survive on this account and the same shall be deleted. The Assessing Officer shall afford adequate opportunity of being heard to the assessee and shall decide the issue in accordance with law.Accordingly, Ground No. 2 is allowed for statistical purposes.

Ground No. 3 relating to disallowance of CSR expenditure of Rs.5,01,00,000/-

70. During the course of assessment proceedings, the Assessing Officer noticed from Note No. IX forming part of the financial statements that pursuant to the guidelines issued by the Ministry of Shipping, Government of India, regarding Corporate Social Responsibility (CSR) activities for Major Ports, the Board of Trustees of the assessee, vide Resolution No.163 dated 28.02.2012, had approved allocation of 3% of net profit, subject to a minimum of Rs.3 crore, towards a newly created Corporate Social Responsibility Fund. The Board had also constituted a

CSR Committee for monitoring and overseeing CSR activities and projects. Accordingly, the assessee created a CSR Fund, contributed an amount of Rs.5,01,00,000/- thereto and opened a separate bank account with State Bank of India for the said purpose. It was further noted that the fund was to be utilised in accordance with the guidelines of the Ministry of Shipping under the supervision of the CSR Committee constituted by the Board.

71. The Assessing Officer, however, was of the view that the contribution made to the CSR Fund did not qualify for deduction under the provisions of the Income-tax Act. According to him, merely because the contribution was made in compliance with the guidelines issued by the Ministry of Shipping or in discharge of obligations arising under another statute, the expenditure would not automatically become allowable while computing taxable income. He observed that allowability of an expenditure has to be tested strictly in accordance with the provisions of the Income-tax Act and that compliance with requirements of any other enactment cannot by itself confer entitlement to deduction unless specifically provided under the Act.

72. Proceeding on the aforesaid reasoning, the Assessing Officer held that the assessee was not entitled to deduction of the contribution of Rs.5,01,00,000/- made towards the Corporate Social Responsibility Fund and accordingly disallowed the same and added it back to the total income of the assessee.

73. Aggrieved by the disallowance, the assessee carried the matter in appeal before the learned CIT(A). It was submitted that Explanation 2 to section 37(1), which specifically provides for disallowance of Corporate Social Responsibility expenditure, was inserted by the Finance (No.2) Act, 2014 with effect from 01.04.2015 and was applicable only from Assessment Year 2015-16 onwards. It was further contended that the provisions relating to Corporate Social Responsibility contained in section 135 of the Companies Act were applicable to companies and not to a statutory trust such as the assessee. Accordingly, it was submitted that the disallowance made by the Assessing Officer was unsustainable.

74. The learned CIT(A) considered the submissions of the assessee and examined the scope of section 37(1) of the Act. He observed that deduction under section 37(1) is allowable only in respect of expenditure incurred wholly and exclusively for the purposes of business or profession and further subject to the conditions that the expenditure should not be capital or personal in nature and should not fall within the ambit of sections 30 to 36 of the Act.

75. The learned CIT(A) held that irrespective of the assessee's legal contentions regarding the prospective applicability of Explanation 2 to section 37(1) and the applicability of section 135 of the Companies Act, the primary requirement for allowability under section 37(1) remained that the expenditure should have

been incurred wholly and exclusively for business purposes. According to the learned CIT(A), the assessee had failed to establish any business nexus between the contribution made to the Corporate Social Responsibility Fund and its business activities. He, therefore, concluded that the expenditure did not satisfy the conditions prescribed under section 37(1) of the Act and accordingly upheld the disallowance of Rs.5,01,00,000/- made by the Assessing Officer. The ground of appeal was, therefore, dismissed.

76. The learned Authorised Representative reiterated the submissions advanced before the lower authorities and invited our attention to pages 194 to 196 of the paper book containing the "Guidelines on Corporate Social Responsibility (CSR) for Major Ports" issued by the Ministry of Shipping, Government of India. He submitted that the contribution of Rs.5,01,00,000/- to the CSR Fund was made pursuant to these binding guidelines and the Resolution No.163 dated 28.02.2012 passed by the Board of Trustees of the assessee.

77. The learned AR submitted that the guidelines required every Major Port to create a CSR budget, identify CSR projects in a systematic manner, integrate such activities with its business plan and social responsibilities, and undertake projects in areas connected with the functioning of the Port. He further submitted that the guidelines specifically envisaged creation of a dedicated CSR Fund and monitoring of CSR activities through a CSR

Committee constituted by the Board of Trustees. Accordingly, the assessee created the CSR Fund and contributed the impugned amount in compliance with the directions issued by the Ministry of Shipping.

78. The learned AR further contended that the expenditure was incurred in accordance with the policy framework governing Major Ports and had a direct nexus with the functioning and social obligations of the assessee. He also submitted that Explanation 2 to section 37(1), which specifically excludes CSR expenditure from deduction, was inserted only with effect from Assessment Year 2015-16 and therefore had no application to the year under consideration.

79. The learned AR further placed reliance upon the decision of the Hon'ble Delhi High Court in ***Pr. CIT v. Steel Authority of India Ltd. [(2023) 148 taxmann.com 132 (Delhi)]*** and submitted that the controversy involved in the present appeal is squarely covered in favour of the assessee.

80. Referring to the said decision, the learned AR submitted that the Hon'ble Delhi High Court has categorically held that Explanation 2 to section 37(1), inserted by the Finance Act, 2014 with effect from 01.04.2015, is prospective in operation and, therefore, CSR expenditure incurred prior to Assessment Year 2015-16 is allowable as deduction under section 37(1) of the Act. The learned AR particularly relied upon the observations of the Hon'ble High Court that prior to insertion of Explanation 2, there

was no statutory prohibition against allowance of CSR expenditure and that such expenditure could not be disallowed merely because it was incurred in discharge of obligations cast upon the assessee by Government policy or statutory directions.

81. The learned AR further drew our attention to the observations of the Hon'ble High Court that an expenditure incurred by an assessee in discharge of an obligation mandated by law cannot be regarded as unconnected with its business and that the Assessing Officer cannot deny deduction merely on the basis of a general assumption that CSR expenditure results in enduring benefits to society. The Hon'ble High Court further observed that deductibility under section 37(1) cannot depend upon how the recipient ultimately utilises the funds and that CSR expenditure incurred before insertion of Explanation 2 was allowable as business expenditure.

82. The learned AR also pointed out that the aforesaid judgment of the Hon'ble Delhi High Court has attained finality inasmuch as the Special Leave Petition preferred by the Revenue against the said judgment was dismissed by the Hon'ble Supreme Court in ***Pr. CIT v. Steel Authority of India Ltd. [(2024) 166 taxmann.com 264 (SC)]***. He submitted that the Hon'ble Supreme Court declined to interfere with the judgment of the Hon'ble Delhi High Court and consequently the legal position that CSR expenditure incurred prior to Assessment Year 2015-16 is allowable under section 37(1) stands affirmed.

83. Relying upon the aforesaid decisions, the learned AR submitted that the year under consideration being Assessment Year 2012-13, much prior to insertion of Explanation 2 to section 37(1), the contribution of Rs.5,01,00,000/- made by the assessee to the CSR Fund pursuant to the guidelines issued by the Ministry of Shipping could not be disallowed and was liable to be allowed as a deduction.

84. Per contra, the learned Departmental Representative strongly relied upon the orders of the Assessing Officer and the learned CIT(A). He submitted that the contribution of Rs.5,01,00,000/- made by the assessee to the CSR Fund could not be regarded as expenditure incurred wholly and exclusively for the purposes of the business of the assessee. According to him, the expenditure was incurred for social welfare activities and community development and had no direct nexus with the income earning operations of the Port Trust.The learned DR also supported the reasoning adopted by the learned CIT(A) that the assessee had failed to demonstrate how the contribution to the CSR Fund was incurred wholly and exclusively for the purposes of its business. It was, therefore, submitted that the disallowance of Rs.5,01,00,000/- had been rightly sustained by the learned CIT(A) and the same deserved to be upheld.

85. At the outset, we find that the disallowance has been sustained by the learned CIT(A) primarily on the ground that the assessee failed to establish that the expenditure was incurred

wholly and exclusively for the purposes of its business. The learned CIT(A) has also observed that irrespective of the applicability of Explanation 2 to section 37(1), the expenditure lacked the requisite business nexus. We are unable to persuade ourselves to concur with the aforesaid reasoning.

86. The material placed before us clearly demonstrates that the contribution was not made voluntarily or as an act of charity disconnected from the business activities of the assessee. Pages 194 to 196 of the paper book contain the "Guidelines on Corporate Social Responsibility (CSR) for Major Ports" issued by the Ministry of Shipping, Government of India. The said guidelines required every Major Port to formulate a CSR policy, earmark a specified percentage of profits towards CSR activities, create a dedicated CSR budget and CSR Fund, constitute a CSR Committee and undertake projects connected with the functioning of the Port and the communities in which the Port carries on its activities. The Board of Trustees of the assessee, acting pursuant to the aforesaid governmental directions, passed Resolution No.163 dated 28.02.2012 approving allocation of funds towards CSR activities and creation of a dedicated CSR Fund. Thus, the expenditure was incurred in the course of carrying on the statutory and administrative obligations governing the functioning of the assessee as a Major Port.

87. We further find that the authorities below have approached the issue as if the expenditure represented a mere social donation

or philanthropic contribution. The guidelines themselves demonstrate that CSR activities were required to be integrated with the business plan of the Port, environmental concerns arising from Port operations, community development in the vicinity of the Port and activities having direct linkage with the functioning of the Port. Therefore, the expenditure cannot be viewed in isolation from the business and operational framework within which the assessee functions.

88. More importantly, the controversy is no longer res integra. The Hon'ble Delhi High Court in the case of ***Pr. CIT v. Steel Authority of India Ltd.[(2023) 148 taxmann.com 132(Delhi)]*** has categorically held that Explanation 2 to section 37(1), which specifically excludes CSR expenditure from deduction, is prospective in nature and applies only from Assessment Year 2015-16 onwards. The Hon'ble High Court further held that prior to insertion of the said Explanation there was no statutory embargo on allowance of CSR expenditure and that such expenditure could not be disallowed merely because it was incurred pursuant to governmental directives or statutory obligations. The judgment of the Hon'ble Delhi High Court has attained finality as the Special Leave Petition preferred by the Revenue has been dismissed by the Hon'ble Supreme Court in ***Pr. CIT v. Steel Authority of India Ltd. [(2024) 166 taxmann.com 264 (SC)].***

89. The year under consideration before us is Assessment Year 2012-13, which is admittedly prior to Assessment Year 2015-16 from which Explanation 2 to section 37(1) has been brought into force. In the absence of any statutory prohibition applicable to the year under consideration, the allowability of the expenditure has to be examined under the ordinary principles governing section 37(1). As discussed hereinabove, the expenditure was incurred pursuant to binding governmental guidelines regulating the functioning of Major Ports and possessed a direct nexus with the operational and statutory framework within which the assessee carried on its activities. The same, therefore, cannot be regarded as an application of income unrelated to business purposes.

90. We also find that the reasoning adopted by the learned CIT(A) that the assessee failed to establish business nexus overlooks the very nature of the guidelines issued by the Ministry of Shipping. The guidelines specifically required integration of CSR activities with the business plan and functioning of the Port and contemplated expenditure in areas connected with Port operations and surrounding communities. Consequently, the finding that the expenditure was unconnected with the business of the assessee is not borne out from the material available on record.

91. In view of the aforesaid discussion, and respectfully following the ratio laid down by the Hon'ble Delhi High Court in

Steel Authority of India Ltd. **(supra)**, which stands affirmed by the Hon'ble Supreme Court, we hold that the contribution of Rs.5,01,00,000/- made by the assessee to the CSR Fund during the year under consideration is an allowable deduction. The disallowance sustained by the learned CIT(A) is accordingly deleted and the ground raised by the assessee is allowed.

92. We shall now take up the appeals preferred by the Revenue for Assessment Years 2009-10 and 2012-13.

Common Ground in Revenue's Appeals for A.Ys. 2009-10 and 2012-13

Addition on account of Estate Rentals of Rs.104,90,00,000/- (A.Y. 2009-10) and Rs.117,76,00,000/- (A.Y. 2012-13).

93. During the course of assessment proceedings for both the assessment years under consideration, the Assessing Officer observed from the Notes to Accounts relating to Estate Rentals that pursuant to the judgment of the Hon'ble Supreme Court dated 13.01.2004, the assessee had raised rent/compensation bills upon its lessees and tenants at the revised rates. The Assessing Officer noticed that though rent bills aggregating to Rs.165.26 crore were raised during A.Y. 2009-10, only actual rent receipts of Rs.60.33 crore were credited as income and the balance amount of Rs.104.90 crore was credited to "Provision for Unrecovered Estate Rentals". Similarly, for A.Y. 2012-13, the assessee credited only the rent actually realised and the

differential amount of Rs.117.76 crore representing rent billed but not recovered was transferred to the provision for unrecovered estate rentals.

94. The Assessing Officer was of the view that the assessee was admittedly following the mercantile system of accounting and, therefore, was required to recognize the entire amount of rent billed as income. According to him, under the mercantile system, the gross amount of rent accrued by virtue of bills raised ought to have been credited to the Profit & Loss Account and the unrecovered portion, if any, ought to have been reflected as receivables. He held that the assessee could not selectively recognize only the amount actually recovered while simultaneously claiming to follow the mercantile system of accounting. The Assessing Officer further observed that the assessee could either follow the cash system or the mercantile system of accounting, but could not adopt a dual method of accounting. Accordingly, he treated the differential amount of Rs.104.90 crore for A.Y. 2009-10 and Rs.117.76 crore for A.Y. 2012-13 as income that had accrued to the assessee and added the same to its total income.

95. The learned CIT(A) noted that the controversy pertained to the taxability of estate rentals raised by the assessee on its lessees and tenants at revised rates, where a substantial portion of such demands remained under dispute and was the subject matter of prolonged litigation. He observed that while the

Assessing Officer proceeded on the footing that the assessee, being governed by the mercantile system of accounting, was obliged to recognize the entire amount of rent billed as income, the material on record demonstrated that the enhanced rentals were under serious challenge before various judicial forums and adjudicatory authorities and that the uncertainty regarding their ultimate realization continued to persist.

96. The learned CIT(A) further observed that the concept of income under the Act is founded on the doctrine of real income and that mere raising of bills does not automatically result in accrual of taxable income where the right to receive or the certainty of collection remains seriously disputed. He also took note of the principles embodied in Accounting Standard-9 relating to revenue recognition, which recognize that where substantial uncertainty exists regarding ultimate collection, recognition of revenue may legitimately be postponed until such uncertainty is resolved.

97. Referring to the continuing disputes regarding revised estate rentals, the learned CIT(A) held that the assessee's decision to recognize income only to the extent of actual realization was consistent with the principles of prudence and revenue recognition. He further relied upon the decisions of the Hon'ble Supreme Court in ***CIT v. ShoorjiVallabhdas& Co.*** **(46 ITR 144) and** ***Godhra Electricity Co. Ltd. v. CIT*** **(225 ITR 746)**, wherein it was held that only real income can be subjected to tax and that

hypothetical or illusory income cannot be brought to tax merely on the basis of accrual entries.

98. Accordingly, the learned CIT(A) concluded that in view of the substantial uncertainty surrounding recovery of the disputed rentals, the differential amount representing unrealized estate rentals could not be treated as accrued income of the assessee. He therefore deleted the addition of Rs.104.90 crore made for A.Y. 2009-10. Since the facts and issue involved in A.Y. 2012-13 were identical, he followed his decision for A.Y. 2009-10 and, on the same reasoning, deleted the addition of Rs.117.76 crore made by the Assessing Officer for A.Y. 2012-13.

99. The learned DR strongly relied upon the assessment orders passed for both the assessment years.

100. The learned AR relied upon the order of the learned CIT(A) and submitted that the issue is squarely covered in favour of the assessee by the doctrine of real income. He contended that the enhanced estate rentals were the subject matter of prolonged litigation and disputes with a large number of lessees and tenants. Though rent bills were raised pursuant to the directions of the Hon'ble Supreme Court, the ultimate entitlement of the assessee to recover the disputed amounts had not attained finality and substantial uncertainty existed regarding realisation of the same.

101. The learned AR submitted that in such circumstances no real income could be said to have accrued to the assessee in respect of the disputed and unrealized estate rentals. He further contended that mere raising of bills does not result in accrual of income where the right to receive the amount itself remains under dispute and recovery is uncertain.

102. In support of the aforesaid proposition, the learned AR placed reliance upon the following judicial precedents:

(i) T.V. Patel (P.) Ltd. v. DCIT [(2023) 157 taxmann.com 108 (Bom.)], wherein the Hon'ble Bombay High Court held that where entitlement to lease rent is the subject matter of pending civil disputes, no income can be said to have accrued till adjudication of such disputes and the doctrine of real income would apply.

(ii) CIT v. Pioneer Engineering Syndicate [(1998) 234 ITR 503 (Mad.)], wherein it was held that amounts representing disputed claims, the entitlement to which had not been accepted by the opposite party and were pending adjudication, could not be regarded as income accrued to the assessee.

(iii) *CIT v. Sharda Sugar Industries Ltd.* [(1999) 239 ITR 393 (Bom.)], wherein the Hon'ble Bombay High Court held that where the right to receive an amount is itself under dispute, no income accrues until the dispute is finally resolved and the right becomes vested and enforceable.

103. Relying upon the aforesaid decisions, the learned AR submitted that the learned CIT(A) had correctly appreciated the factual and legal position and rightly deleted the additions made by the Assessing Officer on account of unrecovered estate rentals. He therefore prayed that the orders of the learned CIT(A) for both the assessment years be upheld and the grounds raised by the Revenue be dismissed.

104. We have carefully considered the rival submissions and perused the material available on record. The Assessing Officer treated the entire amount of enhanced estate rentals billed by the assessee as income accrued on mercantile basis, whereas the learned CIT(A) deleted the addition by applying the doctrine of real income. The Revenue has not brought any material before us to demonstrate that the conclusions reached by the learned CIT(A) are contrary to the settled legal position.

105. The controversy before us is no longer res integra. The Hon'ble Supreme Court in ***CIT v. ShoorjiVallabhdas& Co. [46 ITR 144 (SC)]*** laid down the foundational principle governing accrual of income. The Hon'ble Supreme Court held:

> *"Income-tax is a levy on income. No doubt, the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a "hypothetical income", which does not materialise. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may*

> *be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account."*

106. Thus, the Hon'ble Supreme Court categorically recognised that entries in the books maintained under the mercantile system cannot by themselves create taxable income unless there is a corresponding real accrual.

107. The aforesaid principle was subsequently reiterated and elaborated by the Hon'ble Supreme Court in ***Godhra Electricity Co. Ltd. v. CIT [225 ITR 746 (SC)].*** In para 10 of the judgment, after referring to ***ShoorjiVallabhdas& Co. (supra)***, the Hon'ble Supreme Court observed that even under the mercantile system what is relevant is the real accrual of income and not a hypothetical accrual.

108. Thereafter, in para 11, the Hon'ble Supreme Court held that despite maintenance of accounts on mercantile basis and entries having been passed in the books, no real income accrued because realization of the enhanced charges remained embroiled in litigation and uncertainty.

109. Most significantly, in para 14, the Hon'ble Supreme Court held as under:

> *"The question whether there was real accrual of income... has to be considered by taking the probability or improbability of realisation in a realistic manner."*

110. The Hon'ble Court ultimately concluded that the enhanced charges represented only hypothetical income and did not constitute income which had really accrued to the assessee.

111. We also find that the judicial precedents relied upon by the learned AR lend substantial support to the view taken by the learned CIT(A). In ***T.V. Patel (P.) Ltd. v. DCIT(supra)***, the Hon'ble Bombay High Court reiterated the principle that where the very entitlement to lease rentals is embroiled in pending disputes and litigation, no real income can be said to accrue merely because a claim has been raised. The Hon'ble Court applied the doctrine of real income and held that accrual cannot be assumed in the absence of an enforceable and undisputed right to receive the amount. Likewise, in ***CIT v. Pioneer Engineering Syndicate(supra)***, the Hon'ble Madras High Court held that amounts representing disputed claims, the entitlement to which had not been accepted by the opposite party and were pending adjudication, could not be regarded as income accrued to the assessee. Similarly, in ***CIT v. Sharda Sugar Industries Ltd.(supra)***, the Hon'ble Bombay High Court held that where the very right to receive an amount remains under dispute, no accrual of income takes place until the dispute is finally resolved and the right becomes vested and enforceable. The ratio emerging from all these decisions is that taxation under the mercantile system proceeds on real accrual and not on hypothetical or disputed claims.

112. Applying the aforesaid principles to the facts before us, we find that the estate rentals in question arose out of a long-standing dispute regarding revision of rentals payable by various lessees and tenants of the assessee-Port Trust. The material on record demonstrates that the issue of revised rentals remained the subject matter of prolonged litigation and adjudicatory proceedings. The assessee had raised bills in accordance with the revised rates but substantial recovery remained uncertain owing to continuing disputes with tenants and lessees. The very basis of the assessee's accounting treatment was that the ultimate realization of the enhanced rentals had not attained finality.

113. In such circumstances, merely because the assessee follows the mercantile system of accounting and has raised bills for enhanced rentals, it cannot automatically be concluded that corresponding income had accrued in real terms. The test laid down by the Hon'ble Supreme Court is not whether a claim has been raised, but whether there existed a real and enforceable accrual capable of realistic realization. Where recovery itself remains clouded by serious disputes and uncertainty, taxation of such amounts would amount to bringing to tax hypothetical income, which is impermissible in law.

114. We also find merit in the accounting treatment adopted by the assessee having regard to the principles embodied in Accounting Standard-9 (AS-9) relating to Revenue Recognition. AS-9 recognizes that revenue from rendering of services or use of

enterprise resources should be recognized only when there is reasonable certainty regarding its ultimate collection. The Standard specifically contemplates that where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising the claim, recognition of revenue is postponed to the extent of such uncertainty. In the present case, the enhanced estate rentals were the subject matter of protracted disputes and litigation with a large number of lessees and tenants. The material on record demonstrates that the quantification as well as recoverability of the enhanced rentals had not attained finality and remained uncertain owing to continuing legal proceedings and adjudicatory mechanisms. Therefore, the assessee's action in recognizing only the amount actually realized and not treating the disputed and unrecovered portion as accrued income was in consonance with the principles of revenue recognition embodied in AS-9.

115. Significantly, the Hon'ble Supreme Court in ***Godhra Electricity Co. Ltd. v. CIT (supra)*** while applying the doctrine of real income also took note of the uncertainty surrounding realization of the enhanced charges and held that the probability or improbability of realization has to be considered in a realistic manner while determining whether income has truly accrued. The ratio of the said decision, therefore, accords with the principles underlying AS-9 that revenue cannot be said to accrue merely because a claim is raised when its ultimate realization remains uncertain.

116. The learned CIT(A), while deleting the addition, has applied the settled principles governing real income and accrual of income. We find ourselves in agreement with the conclusion reached by the learned CIT(A). The Revenue has not pointed out any distinguishing feature either on facts or in law warranting interference with the impugned order.

117. Accordingly, we uphold the order of the learned CIT(A) deleting the addition made on account of unrecovered estate rentals. The common grounds raised by the Revenue for the relevant assessment years are dismissed.

Common Ground No. 2 in Revenue's Appeals for A.Ys. 2009-10 and 2012-13 - Depreciation on Docks, Sea Walls & Piers and Railways & Rolling Stock/Locomotives

118. For A.Y. 2009-10, the Assessing Officer made a total disallowance of depreciation amounting to Rs.8,54,56,643/-. The said disallowance comprised two components, namely, (i) disallowance of Rs.7,70,68,213/- arising from restriction of depreciation on docks, sea walls, piers and railways & rolling stock/locomotives from 15% to 10%, and (ii) disallowance of Rs.83,88,430/- on account of depreciation claimed on assets whose cost had already been treated as application of income in earlier years. According to the Assessing Officer, docks, sea walls, piers and railways & rolling stock were in the nature of buildings and therefore entitled to depreciation only at the rate applicable to buildings. The Assessing Officer further held that depreciation

could not be allowed on assets whose acquisition cost had already been claimed as application of income.

119. In appeal, the learned CIT(A), while adjudicating Ground No.4 of the assessee's appeal, held that docks, sea walls, piers and similar port infrastructure constituted integral operational assets of a port and were eligible for depreciation at the rate applicable to plant and machinery. The learned CIT(A) further held that depreciation on assets whose cost had been treated as application of income was also allowable in view of the legal position prevailing during the year under consideration. Accordingly, the learned CIT(A) deleted the entire disallowance of Rs.8,54,56,643/-.

120. Similarly, for A.Y. 2012-13, the Assessing Officer made an aggregate disallowance of depreciation amounting to Rs.1,27,52,783/-, comprising (i) Rs.70,75,538/- on account of depreciation claimed on assets whose cost had been treated as application of income, (ii) Rs.48,06,620/- on account of depreciation claimed at 15% on railways & rolling stock/locomotives as against 10% allowed by the Assessing Officer, and (iii) Rs.8,70,625/- relating to depreciation claimed on demolished assets.

121. The learned CIT(A), while deciding Ground No.2 of the assessee's appeal for A.Y. 2012-13, followed his findings recorded for A.Y. 2009-10 and deleted the disallowance of Rs.70,75,538/- relating to depreciation on assets whose cost had been treated as

application of income as well as the disallowance of Rs.48,06,620/- relating to depreciation on railways & rolling stock/locomotives. However, the learned CIT(A) upheld the disallowance of Rs.8,70,625/- pertaining to demolished assets. Consequently, relief aggregating to Rs.1,18,82,158/- (Rs.70,75,538/- + Rs.48,06,620/-) was granted by the learned CIT(A).

122. The learned DR strongly relied upon the assessment orders for both the assessment years. He submitted that the Assessing Officer had correctly held that docks, sea walls, piers and railways & rolling stock/locomotives were more appropriately classifiable under the block of buildings and, therefore, depreciation was admissible only at the rate prescribed for buildings. According to the learned DR, the learned CIT(A) was not justified in directing allowance of depreciation at the higher rate claimed by the assessee.

123. The learned AR strongly relied upon the orders of the learned CIT(A) for both the assessment years and submitted that the issue is squarely covered in favour of the assessee by binding judicial precedents. He submitted that the Assessing Officer erred in treating docks, sea walls, piers, wharves, railway sidings and rolling stock as mere buildings, ignoring their functional role in carrying on the business of a port.

124. The learned AR invited our attention to the decision of the Co-ordinate Bench in ***Kandla Port Trust v. ACIT [(2007) 104***

ITD 1 (Rajkot)], wherein an identical controversy concerning a Port Trust was considered. Referring particularly to paras 18 to 21 of the decision, the learned AR submitted that the Bench, applying the functional test laid down by the Hon'ble Supreme Court, held that wharves, pavements, docks, drains, jetties, railway sidings, rolling stock and similar port infrastructure constitute the principal apparatus through which a port carries on its operations and, therefore, qualify as "plant" and not as "building". The Bench observed that without such infrastructure a port cannot perform its functions or generate revenue and consequently held that depreciation applicable to plant and machinery was allowable.

125. The learned AR further relied upon the judgment of the Hon'ble Bombay High Court in ***CIT v. Mazgaon Dock Ltd. [(1991) 191 ITR 460 (Bom.)]***. Drawing attention to the principles summarized by the Hon'ble High Court, he submitted that a structure would qualify as a plant if it constitutes the means of carrying on the business rather than merely the location where business is carried on. The Hon'ble High Court held that where the structure forms an integral and indispensable part of the operational apparatus and the equipment cannot function without such structure, the same satisfies the functional test and is entitled to be treated as plant. The learned AR submitted that the Hon'ble Bombay High Court specifically upheld depreciation on the entire wet dock structure by holding that the dock constituted a plant and not a mere building.

126. We have heard the rival submissions and perused the material available on record. The issue arising for our consideration is whether docks, sea walls, piers, wharves, railways, railway sidings and rolling stock owned by the assessee-Port are to be regarded as "plant and machinery" eligible for depreciation at the higher rate claimed by the assessee or whether they are to be treated as "buildings" as contended by the Revenue. The second limb of the dispute relates to the allowability of depreciation on assets whose cost had been treated as application of income in earlier years.

127. Upon careful consideration of the rival contentions, we find that both the issues are squarely covered in favour of the assessee by judicial precedents.

128. Insofar as the classification of port infrastructure is concerned, we find that the issue directly came up for consideration before the Rajkot Bench in ***Kandla Port Trust v. ACIT***. The Tribunal, after examining the nature and functions of port assets such as wharves, pavements, docks, drains, jetties, railway sidings and rolling stock, observed in para 20 as under:

> *"In view of the above discussions, we are of the considered view that if assets used in the business are tools or apparatus of assessee by means of which it carries on his business then it can be classified as plant. wharves, pavements, docks, including dry docks, drains, jetties, railway wagons and slidings rolling stock and various platforms are principal apparatus of port with which it carries on its business and they are so equip to take care of heavy machinery and that is the reason all the above assets are classified under Block VI as Plant and*

Machinery and depreciation applicable to plant and machinery is to be allowed."

129. Thereafter, in para 21, the Bench concluded as under:

"Thus, applying the functional tests to each and every item described hereinabove, we are persuaded to agree with the learned A.R. that docks, wharves, pavements, jetties, are not building but plant of the port, on which the assessee is entitled to claim depreciation at the higher rates which are applicable on the plant and machinery."

130. We find that the aforesaid observations are directly applicable to the facts of the present case. The assets under consideration are not passive structures merely providing a location for carrying on business. They constitute the very operational apparatus through which the assessee-Port performs its statutory functions of receiving vessels, berthing ships, loading and unloading cargo and facilitating port operations. Applying the functional test consistently recognised by judicial authorities, such assets clearly answer the description of plant and machinery.

131. The aforesaid view also finds support from the judgment of the Hon'ble jurisdictional High Court in ***CIT v. Mazgaon Dock Ltd.*** After reviewing the authorities on the subject, the Hon'ble Bombay High Court approved the functional test and reproduced the governing principles in para 7 of the judgment as under:

"The true test is whether it is the means of 'carrying on the business' or the location for so doing."

132. The Hon'ble High Court further held:

"In order for a building or concrete structure to qualify for inclusion in the term 'plant', it must be established that it is impossible for the equipment to function without the particular type of structure."

133. Applying the aforesaid principles, the Hon'ble Bombay High Court upheld the finding that the wet dock constituted a plant and not a mere building. The Court observed that the dock structure formed an integral part of the operational apparatus and was indispensable for carrying on the business activities.

134. In our considered view, the ratio of the aforesaid decision applies with greater force to a Port Authority whose very business is dependent upon docks, sea walls, piers, wharves, railway infrastructure and rolling stock. Without such facilities the assessee would be incapable of carrying on its port operations or generating revenue therefrom. Consequently, these assets cannot be regarded merely as buildings.

135. We further note that the learned CIT(A) has followed the aforesaid judicial precedents while granting relief to the assessee. The Revenue has not brought to our notice any contrary decision of any higher judicial forum taking a different view in respect of similar port infrastructure.

136. Having regard to the totality of facts and circumstances and respectfully following the decisions in Kandla Port Trust v. ACIT (supra) and CIT v. Mazgaon Dock Ltd. (supra), we uphold the orders of the learned CIT(A) deleting the disallowance of depreciation. Accordingly, Ground No.2 raised by the Revenue for

A.Y. 2009-10 and Ground No.2 raised by the Revenue for A.Y. 2012-13 are dismissed.

Common Ground No. 4 in Revenue's Appeal for A.Y. 2009-10 and Ground No. 3 in Revenue's Appeal for A.Y. 2012-13

137. The next issue arising for our consideration relates to the disallowance made under section 40(a)(ia) of the Act on account of alleged short deduction of tax at source.

138. During the course of assessment proceedings for A.Y. 2009-10, the Assessing Officer received information from the DCIT (TDS)-2(1) that a survey action had been conducted in the case of the assessee and proceedings under sections 201(1) and 201(1A) of the Act had been initiated. Pursuant thereto, the assessee was required to furnish the order passed under sections 201(1)/201(1A). The assessee accordingly produced the order dated 18.03.2013 passed under sections 201(1) and 201(1A) of the Act. On examination of the said order, the Assessing Officer observed that the assessee had been treated as an assessee in default for short deduction/non-deduction of tax at source and the aggregate amount of payments in respect of which such default had been alleged worked out to Rs.21,01,15,610/-. The Assessing Officer further noted that in the order passed under sections 201(1)/201(1A), the TDS Officer had recorded defaults in respect of payments aggregating to Rs.13,46,65,452/- and Rs.7,54,50,158/- under different heads, aggregating in all to Rs.21,01,15,610/-. Proceeding on the premise that the assessee

had failed to deduct tax at source in accordance with the provisions of Chapter XVII-B of the Act, the Assessing Officer invoked section 40(a)(ia) and disallowed the entire amount of Rs.21,01,15,610/- while computing the income of the assessee.

139. Similarly, for A.Y. 2012-13, the Assessing Officer received information from the DCIT (TDS)-2(1) regarding survey proceedings conducted in the case of the assessee and called upon the assessee to furnish the order passed under sections 201(1)/201(1A). In compliance, the assessee produced the order dated 28.03.2014 passed under sections 201(1) and 201(1A) of the Act. From the said order, the Assessing Officer observed that the assessee had allegedly defaulted in deducting tax at source in respect of certain payments and the amount involved in such default was quantified at Rs.1,53,31,905/-. Referring to paragraph 5 of the order passed under sections 201(1)/201(1A), the Assessing Officer concluded that the assessee had failed to deduct tax in accordance with law and, therefore, the corresponding expenditure of Rs.1,53,31,905/- was liable to be disallowed under section 40(a)(ia) of the Act. Accordingly, an addition of Rs.1,53,31,905/- was made to the total income of the assessee.

140. Thus, the common basis adopted by the Assessing Officer in both the assessment years was that since the assessee had been held to be in default under sections 201(1)/201(1A) on account of short deduction or non-deduction of tax at source, the

corresponding payments were liable to be disallowed under section 40(a)(ia) of the Act, resulting in additions of Rs.21,01,15,610/- for A.Y. 2009-10 and Rs.1,53,31,905/- for A.Y. 2012-13 respectively.

141. For both the assessment years, the learned CIT(A) deleted the impugned additions on the ground that the orders passed under sections 201(1)/201(1A), which constituted the sole basis for invoking section 40(a)(ia), had already been set aside in appellate proceedings and, therefore, the consequential disallowances could not survive.

142. During the course of hearing, the learned DR relied upon the assessment orders.

143. The learned AR relied upon the orders of the learned CIT(A) and further submitted that the very basis of the impugned disallowances under section 40(a)(ia), namely the orders passed under sections 201(1)/201(1A), had already been set aside in appellate proceedings. He further placed reliance upon the decision of the Co-ordinate Benchin the assessee's own case in ***ITA Nos. 3166 to 3168/Mum/2014, ITA No. 463/Mum/2015 and ITA No. 3930/Mum/2015 dated 11.10.2017***, wherein, while adjudicating the appeals arising from the proceedings under sections 201(1) and 201(1A), the Bench upheld the finding that the payments in question were liable for deduction of tax under section 194C and not under sections 194J or 194-I as alleged by the Revenue. The learned AR invited our attention to

paragraphs 5.1 to 5.3 and paragraph 7 of the said order, wherein the Bench, after considering the nature of contracts and the applicable statutory provisions, dismissed the Revenue's appeals for all the relevant assessment years and upheld the assessee's stand regarding deduction of tax at source.

144. The learned AR submitted that once the orders passed under sections 201(1)/201(1A) themselves stood deleted and the Tribunal had affirmed that no default in deduction of tax existed, the consequential disallowances made under section 40(a)(ia), solely on the basis of such orders, could not survive. He therefore contended that the learned CIT(A) was fully justified in deleting the additions of Rs.21,01,15,610/- for A.Y. 2009-10 and Rs.1,53,31,905/- for A.Y. 2012-13 and prayed that the orders of the learned CIT(A) be upheld.

145. We have heard the rival submissions and perused the material available on record. Before us, the learned AR has also placed reliance upon the decision of the Co-ordinate Bench in the assessee's own case rendered in proceedings arising out of the orders passed under sections 201(1) and 201(1A) in ***ITA Nos. 3166 to 3168/Mum/2014, ITA No.463/Mum/2015 and ITA No.3930/Mum/2015 dated 11.10.2017***. We find that while adjudicating the identical controversy, the Bench, after considering the nature of contracts and the distinction between sections 194C, 194J and 194-I, relied upon the judgment of the Hon'ble Punjab & Haryana High Court in ***Bharat Heavy***

Electricals Ltd. v. ITO (TDS) [(2017) 390 ITR 322] and observed in paragraph 5.1 as under:

> *"....the contract entered into between the assessee and each of the contractors did not involve supply of professional or technical services at least within the meaning of section 194J of the Income-tax Act, 1961. Therefore, the considerations paid under the contracts were not for professional or technical services rendered by the contractors to the assessee and section 194J was not applicable. The technical personnel were deployed not for and on behalf of the customer, but for and on behalf of the contractor itself with a view to ensuring that the contractor supplied the equipment in accordance with the contractual specifications. The nature of human intervention was reflected in the terms and conditions of the agreement itself. ... Section 194J of the Income-tax Act, 1961 is not a residuary clause. In other words, it is not that if a contract does not fall within the ambit of section 194C, it must be deemed to fall within the ambit of section 194J. Sections 194C and 194J are independent provisions."*

146. Thereafter, in paragraph 5.2, the Bench further held as under:

> *"In our opinion, all the contracts were work contracts and there was no live link between the payment and use of technical services. So, in our opinion order of FAA does not suffer from any legal infirmity."*

147. The Bench also examined the applicability of section 194-I and, in paragraph 5.3, held:

> *"Similarly, we find that assessee had not hired any vehicles. The services of contractors were hired for ferrying the members of staff. In our opinion, the FAA had rightly held that provisions of section 194-I were not applicable for the payments made by the assessee to various parties, as discussed in the earlier part of the order."*

148. Thus, the very TDS demands which formed the basis of the impugned disallowances under section 40(a)(ia) stood deleted by

the Co-ordinate Bench in assessee's own case. Once the orders passed under sections 201(1)/201(1A) do not survive, the consequential disallowances made under section 40(a)(ia) solely on the strength of such orders cannot be sustained independently.

149. In view of the aforesaid binding decision of the Co-ordinate Bench rendered in assessee's own case on identical facts and issues, we find no infirmity in the orders of the learned CIT(A) deleting the additions of Rs.21,01,15,610/- for Assessment Year 2009-10 and Rs.1,53,31,905/- for Assessment Year 2012-13. Accordingly, the grounds raised by the Revenue are dismissed.

150. Now the only surviving ground in Revenue's appeal for A.Y. 2009-10 is:

Ground No. 3: Disallowance of Donation and Contribution Expenses

151. During the course of assessment proceedings, the Assessing Officer observed that the assessee had debited an amount of Rs.2,84,00,000/- to its Profit & Loss Account under the head "Donations and Contributions". The Assessing Officer was of the prima facie view that the said expenditure was not incurred for the purposes of the business carried on by the assessee and, therefore, was not allowable as a deduction under the provisions of the Act. Accordingly, the assessee was called upon to substantiate the claim and justify the allowability of the

expenditure. The Assessing Officer recorded that the assessee failed to furnish any plausible explanation in support of the claim. According to him, charitable payments or contributions made at the cost of revenue could neither be regarded as business expenditure nor allowed as deduction while computing taxable income. Proceeding on the aforesaid reasoning, the Assessing Officer disallowed the entire expenditure of Rs.2,84,00,000/- and added the same to the total income of the assessee. He further observed that the assessee had furnished inaccurate particulars of income and initiated penalty proceedings under section 271(1)(c) of the Act.

152. In appeal, the learned CIT(A) called for a remand report from the Assessing Officer. In the remand proceedings, the assessee furnished ledger accounts and details of the impugned expenditure. The Assessing Officer, however, reiterated that the assessee had failed to establish through documentary evidence that the payments were incurred wholly and exclusively for business purposes. According to the Assessing Officer, the expenditure comprised payments made towards Bipartite Wage Negotiation Committee Meetings, TODA of Labour Federations, Indian Port Association, Maharashtra Labour Welfare Fund, MbPT Reynolds Institute, Mumbai Port Sports Council, Mumbai Port Trust Sports Club and Port Officers Recreation Club, which had been grouped under the head "Donations and Contributions". The Assessing Officer, therefore, maintained that the disallowance was justified.

153. Before the learned CIT(A), the assessee submitted that the nomenclature adopted in the ledger was not determinative of the true nature of the expenditure. It was contended that the impugned payments represented expenditure incurred towards employee welfare activities, labour welfare measures, sports and recreational facilities for employees and participation in professional and industry bodies such as the Indian Port Association. The assessee further submitted that the ledger accounts and party-wise details clearly established the nature and purpose of the expenditure and demonstrated that the same had been incurred wholly and exclusively for the purposes of its business.

154. After considering the submissions of the assessee and the remand report of the Assessing Officer, the learned CIT(A) held that the genuineness of the expenditure had not been doubted by the Department and the only issue requiring adjudication was whether the expenditure was allowable under the provisions of the Act. The learned CIT(A) observed that the payments were essentially in the nature of staff welfare and employee-related expenditure and not donations in the real sense. He further held that merely because the assessee had classified the expenditure under the ledger head "Donations and Contributions", the true character of the expenditure could not be altered. Holding that the expenditure was business related and allowable under section 37(1) of the Act, the learned CIT(A) deleted the addition of Rs.2,84,00,000/- made by the Assessing Officer.

155. The learned DR relied upon the assessment order and the observations made in the remand report.

156. The learned AR, on the other hand, strongly supported the order of the learned CIT(A). He submitted that the Assessing Officer had proceeded merely on the nomenclature adopted in the books of account and failed to appreciate the true nature of the expenditure. Inviting our attention to the ledger accounts and details placed on record, the learned AR submitted that the impugned payments were made towards employee welfare and staff-related activities such as contributions to Bipartite Wage Negotiation Committee meetings, labour welfare organisations, Indian Port Association, Maharashtra Labour Welfare Fund, Mumbai Port Sports Council, Mumbai Port Trust Sports Club, Port Officers Recreation Club and other similar bodies connected with the functioning and welfare of the employees of the assessee. It was contended that the expenditure was incurred wholly and exclusively for the purposes of the assessee's business and was therefore allowable under section 37(1) of the Act.

157. In support of the aforesaid proposition, the learned AR placed reliance upon the judgment of the Hon'ble Bombay High Court in ***CIT v. B.G. Shirke & Co. [(2003) 264 ITR 83 (Bom.)]***, wherein it was held that expenditure incurred by way of contribution to employee welfare trusts, aimed at maintaining industrial peace and cordial employer-employee relations, constituted allowable business expenditure under section 37(1) of

the Act. The learned AR particularly relied upon the observations of the Hon'ble High Court that voluntary payments made by an employer for the welfare and benefit of employees on grounds of commercial expediency have a direct nexus with the conduct of business and are deductible as revenue expenditure. The learned AR submitted that the learned CIT(A) had correctly appreciated the real nature of the expenditure and rightly held that the impugned payments were in the nature of staff welfare and business expenditure and not donations. He, therefore, prayed that the order of the learned CIT(A) deleting the addition of Rs.2,84,00,000/- be upheld and the ground raised by the Revenue be dismissed.

158. We have heard the rival submissions and perused the material available on record. The solitary issue arising in the present ground relates to the deletion by the learned CIT(A) of the disallowance of Rs.2,84,00,000/- made by the Assessing Officer under the head "Donations and Contributions".

159. The Assessing Officer disallowed the expenditure primarily on the premise that the amount debited under the head "donations and contributions" did not appear to be related to the business of the assessee and that the assessee had failed to furnish a satisfactory explanation during the assessment proceedings. However, during the appellate proceedings, complete ledger extracts and item-wise details of the expenditure were furnished and examined. The learned CIT(A) recorded a

categorical finding that the genuineness of the expenditure was never doubted by the Assessing Officer and that the payments represented expenditure incurred towards employee welfare and staff-related activities, including contributions to Bipartite Wage Negotiation Committee Meetings, Labour Federations, Indian Port Association, Maharashtra Labour Welfare Fund, Mumbai Port Sports Council, Mumbai Port Trust Sports Club, Port Officers Recreation Club and similar organisations connected with the functioning and welfare of employees.

160. We find ourselves in agreement with the aforesaid conclusion of the learned CIT(A). Merely because the expenditure was grouped under the accounting head "donations and contributions" would not be decisive of its true character. It is a settled principle that the allowability of an expenditure is to be determined having regard to its real nature and purpose and not merely on the basis of the nomenclature adopted in the books of account.

161. In this regard, useful reference may be made to the judgment of the Hon'ble Bombay High Court in ***CIT v. B.G. Shirke & Co. [(2003) 264 ITR 83 (Bom.)]***, wherein the Court, while considering contributions made by the employer towards welfare trusts created for employees, observed as under:

> *"Voluntary payments made by an employer for the general welfare and benefit of the employees on grounds of commercial expediency are revenue expenditure, deductible under section 37 of the Income Tax Act. Such expenditure have nexus with the conduct of business and the*

expenditure incurred for maintaining industrial peace and cordial relations with the employers is an expenditure for the carrying on of a business." (para 8)

162. The Hon'ble High Court further held that expenditure incurred for strengthening employer-employee relations and for the welfare of employees constitutes expenditure incurred on grounds of commercial expediency and is allowable under section 37(1) of the Act.

163. Applying the aforesaid principles to the facts of the present case, we find that the impugned payments were intrinsically connected with labour welfare, employee relations, staff recreational activities and industry-related organisations. Such expenditure has a direct nexus with maintaining harmonious industrial relations and ensuring efficient functioning of the assessee's undertaking. The Revenue has not brought any material on record to demonstrate that the expenditure was non-genuine, personal in nature, capital in character or incurred for purposes unconnected with the business of the assessee.

164. In these circumstances, we find no infirmity in the conclusion reached by the learned CIT(A) that the impugned expenditure was in the nature of staff welfare and business expenditure allowable under section 37(1) of the Act. Accordingly, the order of the learned CIT(A) deleting the addition of Rs.2,84,00,000/- is upheld and the ground raised by the Revenue is dismissed.

165. In the result, the appeals filed by the assessee in ITA No. 2604/Mum/2025 for A.Y. 2012-13 and ITA No. 2598/Mum/2025 for A.Y. 2009-10 are partly allowed for statistical purposes in terms indicated hereinabove.

166. The appeals filed by the Revenue in ITA No.2834 &2835/Mum/2025 for A.Ys. 2009-10 and 2012-13 are dismissed.

Order pronounced in the open court on 15.06.2026.

Sd/-	**Sd/-**
(ANIKESH BANERJEE)	**(MAKARAND VASANT MAHADEOKAR)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated 15/06/2026
Dhananjay,PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai