INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SMT BEENA A PILLAI, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2452, 3657/Del/2013 & 1997/Del/2014
(Assessment Year: 2004-05, 2009-10 and 2010-11)

TV Today Network Ltd, F-26, Connaught Circus, New Delhi PAN: AABCT0424B	Vs.	ACIT, Circle-16(1), New Delhi
(Appellant)		(Respondent)

ITA No. 6080/Del/2012 & 4097/Del/2013
(Assessment Year: 2008-09 & 2009-10)

ACIT, Circle-16(1), New Delhi	Vs.	TV Today Network Ltd, F-26, Connaught Circus, New Delhi PAN: AABCT0424B
(Appellant)		(Respondent)

Revenue by :	Smt Naina Soil Kapil, Sr DR
Assessee by:	Shri Salil Aggarwal, Adv Shri Shailesh Gupta, CA
Date of Hearing	29/01/2019
Date of pronouncement	28/03/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is a the bunch of five appeals of same assessee, which are hard together and disposed of by this common order.
2. ITA No. 2452/Del/2013 for assessment year 2004–05 is filed by the assessee against the order of the learned Commissioner of Income Tax Appeals, X, New Delhi dated 1/3/2013.
3. The assessee has raised the following grounds of appeal in ITA No. 2452/Del/2013 for the Assessment Year 2004-05:-

"1. That the order of the Learned Commissioner of Income Tax (Appeals) is bad in Law on the facts and in the circumstances of the case;

2. *(a) That the Learned Commissioner of Income Tax (Appeals) has gone wrong in upholding the disallowance of Rs.2,05,69,764/- on account of Accrued Incentive as this amount does not represent the expenses claimed by the company but is appearing in the liability side of the Balance Sheet as at 31.03.2004;*

(b) That the Learned Commissioner of Income Tax (Appeals) has gone wrong in ignoring the fact that out of total amount of Rs. 2,05,69,769/- only a sum of Rs. 1,57,37,329/- pertains to current Assessment year i.e. 2004-05;

(c) That the Learned Commissioner of Income Tax (Appeals) has gone wrong in stating that the assessee has not provided any documents or details on the basis of which incentive amount was justified whereas employee wise list / detailed working of calculation of incentive paid to the employees has been filed by the assessee company during the course of appellate proceedings;

(d) That the Learned Commissioner of Income Tax (Appeals) has further gone wrong in ignoring the facts that exactly the similar issue has been decided in favour of the assessee by Ld CIT(A) for the Assessment Year 2008 - 09;

(e) That the Learned Commissioner of Income Tax (Appeals) has also gone wrong in upholding that the incentive accrued but not due to the employees has neither been ascertained nor incurred during the current assessment year i.e. A.Y. - 2004-05;

(f) That the Learned Commissioner of Income Tax (Appeals) has gone wrong in upholding that the assessee has failed to establish that the expenses have been incurred wholly and exclusively for the purpose of the business;

3. *(a) That the Learned Commissioner of Income Tax (Appeals) has gone wrong in not allowing depreciation of Rs. 1,55,26,521/- on OB Vans which had been purchased and used by the Assessee for business purposes during the current Assessment Year i.e. A Y 2004 - 05;*

(b) That the Learned Commissioner of Income Tax (Appeals) has gone wrong in stating that the assessee has not provided any documents to establish that OB vans had actually been used during the year;

(c) That the Learned Commissioner of Income Tax (Appeals) has gone wrong in ignoring the detail of complete shoot out time / MIS report generated by these OB vans filed during the course of assessment as well as appellate proceedings;

(d) That the Learned Commissioner of Income Tax (Appeals) has gone wrong in ignoring the facts that "the assessee company has also filed during the course of appellate proceedings the copy of invoices raised by vender i.e. HFCL Satellite Communication Ltd along with Goods Receipt Notes for the purpose of receiving back these vehicle from HFCL after being equipped with special telecasting equipments;

4. The appellant reserves the right to add, alter, amend, delete and modify any/all grounds of appeal before or at the time of hearing of the appeal."

4. The brief facts suggest that assessee is a company who filed its return of income on 1/11/2004 declaring income of RS. 470297890/–. During the course of assessment proceedings the income of the assessee was determined by the learned assessing Officer at Rs. 513851330/– by passing an order u/s 143 (3) of the income tax act on 26/12/2006. In the assessment order the learned assessing officer made the following additions/disallowances.

   a. Disallowance of RS. 2 0569764/– on account of accrued incentive
   b. disallowance of depreciation on the decoders of Rs. 6879919/–
   c. disallowance of unverifiable expenditure of Rs. 577238/–
   d. disallowance of depreciation on 12 vans amounting to Rs. 15526521/–

5. The assessee challenged the order of the learned AO before the learned CIT – A. He partly allowed the appeal of the assessee and therefore the assessee is now in appeal before us.

6. The 1st disallowance contested by the assessee is with respect to the disallowance of Rs. 20569764/- on account of accrued incentive. The assessee explained that these expenses have been incurred in respect of the payments to be made to the employees for encouraging them to promote business of the assessee. Assessee also submitted that the incentive is meant for the employees which is pertaining to the financial year 2003 – 04. It is based on the performance of the employees and it has become due and payable to them based on certain criteria such a collection of sales, determination of profits after audit of annual account etc. The learned assessing officer noted that assessee has failed to discharge the onus cast upon him to prove that these expenses which have been claimed under section 37 of the Income Tax Act by furnishing relevant specific details as well as the name of employees. He also noted that assessee has failed to prove that these expenses were incurred wholly and exclusively relief for the purposes of business. The learned AO further noted that assessee also could not prove that the alleged payees have included respective amount into their corresponding income in addition to the salary. The learned

Assessing Officer therefore noted that these expenses are neither ascertained during the previous year and not incurred during the financial year. Therefore, he disallowed the above sum.

7. The assessee challenged the same before the learned CIT – A who confirmed the disallowance for the reason that the assessee could not prove before him that the provision has been made on scientific basis.

8. Therefore the same has been challenged before us by the learned authorised representative. He submitted that above sum is incentive meant for employees which is pertaining for the financial year 2003 – 04. He further stated that incentives which are based on the performance of the employees become due and payable to them based on certain criteria such as collection on sales, determination of profits after audit of the annual account. He further stated that the tax could have been deducted at source only at the time of payment as the above amount is chargeable to tax under the head salaries in the hands of the employees. He therefore submitted that above amount of expenditure is ascertained and accrued during the year therefore same should have been allowed.

9. The learned departmental representative vehemently supported the order of the lower authorities and submitted that when assessee could not furnish details of the expenditure before the lower authorities and also could not show that how above expenditure has been incurred by assessee during the year, therefore same has been correctly disallowed.

10. We have carefully considered the rival contention and find that the assessee has made a provision for the performance based incentive of the employees. The assessee has given a complete detail of these expenditure of the provisions made for the year. The assessee has also stated that no tax is required to be deducted u/s 192 of the income tax act unless the salaries are paid to those employees. The assessee has also stated that the performance is with respect to the sales, collection of sales etc. On perusal of page Nos. 1 to 7 of the details furnished by assessee before the learned CIT(A) which shows that the assessee has submitted the complete detail of the employee wise accrued incentive as well as the closing balance as on 31-3-2004, amount debited during the year and actual payment made by the assessee in the subsequent year. The above provision has been made by

the assessee on year-to-year basis on the basis of the performance of the employees. The excess provision is always written back to the profit and loss account in the subsequent year, if it is found to be short, further provision is made. This accounting practice is carried on by the assessee consistently. As the expenditure has been incurred for the incentive of the employees of the company raised on their performance for the same year for which the actual services have been rendered by the employees, above expenditure has been incurred by the assessee during the year only and exclusively for the purposes of the business. As the above expenditure has been made on the basis of the performance of the employees and allocated to each of the employees it is an ascertained provision. According to us it is a definite and accrued liability of the assessee for the year for which the services have been rendered by the employees. It is nothing but additional variable salaries payable to the employees. Same partakes character of salary.

11. Accordingly we reverse the finding of the lower authorities and allow the ground number 2 of the appeal of the assessee directing the learned assessing officer to delete the disallowance of Rs. 20569764/- on account of accrued incentive of the staff. Accordingly, ground No. 2 of the appeal of the assessee is allowed.

12. Ground number 3 of the appeal of the assessee is against the confirmation of disallowance of depreciation of Rs. 1552 6521/– on OB vans which has been purchased by the assessee and used by the assessee for business during the assessment year 2004 – 05. The brief facts are that during the year the assessee has shown an addition in plant and machinery of Rs. 2 47367635 on which depreciation has been claimed by the assessee. Out of the above addition, of Rs. 137183653/- was made by the assessee in the month of March 2004 and therefore the AO further enquired into the detail. The details furnished revealed that the addition of Rs. 10351014/– has been made by purchase of 12 OB Vans amounting to Rs. 124212168/–. Assessee submitted that above vans were used for the purposes of the business from 27/03/2004 to 31/03/2004. The assessee submitted that above Vans were purchased initially in the form of Tata 207 which were already granted temporary registration and the bodies were built on them by the builder.

Temporary registration of all these were extended beyond 31/3/2004 and further the permanent registration certificates were not issued during the relevant previous year. The learned assessing officer recorded the details of the registration of each of the van and noted that permanent registration of these Vans are not obtained up to 31/03/2004. He further referred to the section 43 of the Motor Vehicles Act, 1988 and stated that according to the provisions of that section, registration made under the temporary registration could be valid only for a period not exceeding one month and shall not be renewable. Therefore the learned assessing officer noted that assessee was not able to receive back the body mounted vehicles from the bodybuilder, applied for extension of temporary registration in respect of all these vehicles, which in turn were granted by the prescribed authority. Therefore according to him the initial purpose for which this temporary registration certificates were obtained by the assessee was none other than getting them finished as 0B Vans for utilising them for the live telecast. Therefore, according to him still some of them could not be furnished with body within the temporary registration time. Same was further extended from time to time and therefore they were not used for the purpose of the business during the previous year. He further referred to the separate chart in respect of each of the Van showing shoot out time in minute and date wise. He further referred that the shoot out time claimed to have been telecast by the assessee with the help of these vans does not appear to be correct. He further held that fact is that those vehicles remained with the bodybuilder during the period in which the temporary registration remained effective does not entitle the assessee to claim depreciation u/s 32 of the income tax act and therefore he disallowed Rs. 15 52 6521.

13. The assessee challenged the same before the learned CIT – A. The learned CIT (A) held that the assessing officer has made this disallowance on the appreciation primarily on the ground that since only temporary registration have been provided to these Vans. It implied that these Vans were not ready for use and only because of that regular registration has not been granted to these Vans. Secondly, he noted that the details regarding the shooting time during the period of the last week of March 2004 was disputed by the Assessing Officer, as according to the AO, it was not possible to telecast the

period as claimed by the assessee and therefore actual use of these once cannot be accepted. He further noted that the authorised representative of the assessee has not provided any documents to establish that these Vans had actually been used during the year. There is no explanation from the AR about the temporary registration of these vehicles. The learned CIT(A) therefore upheld the disallowance.

14. The assessee challenging the above disallowance contested before us that that assessee has purchased Vans during the year and used them for the purposes of the business. He further referred to the copies of the invoices raised by HFCL satellite communication Ltd in the name of the assessee company which shows that the Vans have been ready and by the assessee. He further referred to the date wise detail of Showtime by these vans which has also been filed before the learned assessing officer. He further stated that the learned assessing officer himself has granted depreciation on these vans for assessment year 2005-06, on the opening WDV after allowing the depreciation for assessment year 2004 – 05. He therefore stated that, as assessee has satisfied the ownership test as well as the user test of these Vans depreciation has to be allowed to the assessee.

15. The learned departmental representative vehemently supported the order of the lower authorities and submitted that when the assessee has not got these vans registered permanently in its name and only the temporary registration continues, these vans have not been available for use by the assessee before 31st of March 2004. He further relied upon the finding of the learned assessing officer with respect to shoot time of each of the van and stated that these are not related to these Vans as these vans were not ready for use. He therefore submitted that the disallowance of the depreciation has been correctly made by the learned assessing officer and confirmed by the learned CIT – A.

16. We have carefully considered the rival contentions and find the fact that the assessee has purchased certain vans during the assessment year 2004 – 05. Though, these Vans were purchased as Tata 207 vehicles and, thereon, the body was required to be built. All these vehicles were undisputedly registered temporarily with the Road Transport Authorities. It is also an undisputed fact that these vehicles have not been registered as permanent

registration up to 31/3/2004. The assessee has made an attempt to justify that these vans have been used by it by showing the shooting time which has been disputed by the learned assessing officer. The assessee has produced the copy of the invoices of body building raised by HFCL satellite communication Ltd in the name of the assessee company, which shows that these vans have been returned back to the assessee before the 31/03/2004. All the 12 invoices with respect to the bodybuilding are dated 22/3/2004 to 25/3/2004. Further the report of the utilisation has also been filed with the assessing officer, which shows that these vans have been used by the assessee on or before 31/3/2004. Merely because these vehicles are having temporary registration up to 31/3/2004, could not be registered as a permanent registration on or before that date, it does not show that these vehicles have not been actually owned by the assessee and used for the purposes of the business by the assessee. The assessee has also given the time for which these vehicles have been used for the shooting. The assessee has also stated that after shooting of the news items, it is required to be edited and only after that they can be telecast. Therefore the claim of the AO that shooting time exceeded the actual time available to the assessee does not support the fact that these vehicles have not been used by the assessee for its business. Further it is the fact that for the next assessment year 2005 – 06, the learned assessing officer has allowed the depreciation on written down value of these vans after reducing the depreciation for the assessment year 2004 – 05. Therefore, it is apparent that the learned assessing officer in AY 2005-06 has already reduced the written down value of these vans by the amount of depreciation actually allowed to the assessee. However on the fact that the assessee has shown the purchase of these vehicles, obtained the temporary registration of these vehicles, shown that after bodybuilding they have been received back by the assessee from 22 to 25/03/2004, and they have been used for the purposes of the shooting during the year, it cannot be said that assessee has not used these vans for the purpose of the business of the assessee. Therefore according to us, assessee has also satisfied user test for allowability of depreciation. Accordingly, we reverse the finding of the lower authorities and direct the

learned assessing officer to delete the disallowance of the depreciation. Accordingly, ground number 3 of the appeal is allowed.

17. Ground number 1 of the appeal of the assessee is general in nature. Therefore same is dismissed.

18. Accordingly, appeal of the assessee for assessment year 2004 – 05 in ITA number 2452/Del/2013 is partly allowed.

19. Now we come to the appeal of the revenue in ITA number 6080/Del/2012 for assessment year 2008 – 09 wherein the order of the learned CIT(A)-XI dated 14/8/2012 is challenged.

20. The revenue has raised the following grounds of appeal in ITA No. 6080/Del/2012 for the Assessment Year 2008-09:-

"1. On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs.80,861/- made by the AO on account of advances returned by the assessee."

2. On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs.62,54,353/- made by the AO u/s 40(a) (ia) on account of interest payable to Prasar Bharti. The CIT(A) failed to appreciate that section 10(23)(BBH) has been inserted with effect from 01.04.2013 and is not applicable to the assessment year under consideration."

3. On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs.4,27,172/- made by the AO on account of software expenses by treating them as capital in nature. The C1T(A) failed to appreciate that as per new appendix-1 of the Income Tax rules, 1962, 'Computers including computer software' included in the block of' Machinery and Plant' is eligible for depreciation @ 60%. This does not make difference between the 'application software' and the 'system software'."

4. On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs.3,40,59,992/- made by the AO on account of provision consumption debtors."

21. The 1st ground of appeal is with respect to the disallowance of Rs. 80861/- made by the learned assessing officer deleted by the learned CIT– A. The brief fact shows that the assessee has claimed advances written off of Rs. 80861/–. The assessee stated that it has given advances to its employees for incurring of expenditure on behalf of company and subsequently after incurring expenditure, employees left the company with balance in hand and did not refund the said advance and therefore the same has been written off. The learned assessing officer disallowed the above claim stating that these advances have never been part of credit entries in profit and loss

account in the past. The assessee challenged it before learned CIT-A. The learned CIT – A held that the appellant had claimed the above amount as it was given to the employees for incurring expenditure which was never returned back and therefore the expenditure is incurred in the normal course of business allowed as a deduction. He further held that it is a loss resulting from embezzlement by employees incidental to the business. H held that claim of the assessee is also supported by the decision of the Hon'ble Supreme Court in case of Badridas Daga therefore he deleted the disallowance.

22. The learned departmental representative relied on the order of the learned AO and the learned authorised representative relied on the order of the learned CIT – A.

23. We have heard the rival contentions and found that the amount given to the employees have not been returned by them of the advances given for the various expenses as imprest. Such sum has been written off in the books of accounts as a loss. The learned CIT – A has applying the decision of the honourable Supreme Court allowed the claim of the assessee. Hence, advances were given to employees for the purposes of business, such advances have become bad as employees left the assessee. They are not in the nature of bad debt so, not required to have been credited to Profit and Loss A/c in earlier periods. Conditions of allowability of bad debts do not apply to business losses. We do not find any infirmity in the order of the learned CIT – A and therefore the order of the learned CIT – capital is confirmed.

24. The 2nd ground of appeal is with respect to the disallowance deleted by the learned CIT appeal of Rs. 6254353/- made by the AO on account of interest payable to Prasahar Bharti for non-deduction of tax. The brief fact shows that the assessee has paid interest to Prasahar Bharti and has not deducted tax at source. According to the AO tax is required to be deducted u/s 194A of the income tax act and therefore the disallowance was made. The learned CIT – A held that it is a corporation established by or under the Central act which is under any law for the time being in force exempt from income tax on its income. He further noted that as per the Prasar Bharti Act 1990,

Prasar Bharti is not liable to pay any income tax. Therefore he held that no tax was required to be deducted thereon. Hence he deleted the disallowance.

25. The learned departmental representative vehemently supported the order of the learned assessing officer whereas the learned authorised representative submitted that that there is no requirement of tax deduction at source on interest paid to any corporation established under the act income of which is being exempt. He also supported the order of the learned CIT – A.

26. We have carefully considered the rival contention and perused the orders of the lower authorities. The learned CIT–A has deleted the disallowance since Prashar Bharti is a corporation and not liable to pay income tax on its income as provided under 196 (ii) of the income tax act. Though we find that Prasar Bharti has been established under the Prasar Bharti Act. However, the ld CIT(A) has not given any reason that how interest earned by it is exempt from tax. Provisions of section 10(23BBH) exempts income of Prasar Bharti . Above section was inserted w.e.f. 01.04.2013 (i.e AY 2013-14). Therefore, up to that Assessment Year income of Prasar Bharti was not exempt. Hence, as the impugned assessment year is prior to the date of Assessment Year 2012-13, we are of the opinion that assessee should have deducted tax at source on income of interest paid to Prasar Bharti. Accordingly, we reverse the order of the ld CIT(A) and restore the order of the AO. Ground No. 2 is dismissed.

27. Ground number 3 of the appeal is with respect to the disallowance deleted of Rs. 427172/- on account of software expenses by treating it as a capital expenditure. During the year, assessee has claimed the software expenses of Rs. 1067931/– and debited is to profit and loss account as expenditure, however, the learned Assessing Officer was of the view that the software expenses are capital in nature he disallowed it. The assessee explained that these are the upgradation or purchase of the application software and revenue expenditure in nature because there is no enduring benefit available to the assessee. The learned assessing officer rejected the explanation of the assessee and granted assessee 60% of the depreciation holding that software expenditure is a capital expenditure in nature. The assessee challenged the same before the learned CIT – A who held that software expenditure incurred by the assessee is an application software for

upgradation. The assessee has not incurred any expenditure on acquiring any asset of enduring nature. He further relied upon the decision of the Hon'ble Delhi High Court in case of Ashahi Glass Works Limited. In view of this we do not find any infirmity in the order of the learned CIT – A in deleting the above disallowance.

28. The ground number 4 of the appeal is with respect to the deletion of the addition of Rs. 34059992/– on account of provision consumption of debtors. The learned assessing officer noted that assessee has credit balance of debtors of Rs. 67735487/–. The learned AO noted that it included the provision consumption debtors amounting to Rs. 34059992/-. The assessee submitted the details of these expenditure and stated that assessee company has given discount to its debtors based on its consumption of Airtime during the financial year. It was further stated that the working of the debtors shows that company has given discount to debtors based on the consumption of Airtime during the financial year 2007-08. The assessee also submitted the working of the consumption debtors of Rs. 34,000,000, copies of deal in respect of certain clients and copy of the rate card. The learned assessing officer considered the explanation of the assessee, however rejected stating that nature of accounting head is a provision for discount and is not asset and liability debited to the accounts of the parties. Therefore he made the disallowance of Rs. 34059992/–. The assessee challenged the same before the learned CIT – A who deleted the above disallowance.

29. The learned departmental representative relied upon the order of the learned assessing officer whereas the learned authorised representative relied upon the order of the learned CIT(A) and reiterated submission before him.

30. We have carefully considered the rival contention and found that the claim of the assessee is that company has given discount to its debtors based on consumption of Airtime during the current year. It filed its detail of the credit balance of the debt. From the details of credit balance of debtors, the learned assessing officer enquired about the details of the consumption debtor of Rs. 34,000,000/- which was explained by the assessee, that this is a discount account which is credited by the company by passing an

accounting entry by crediting one control account having details of all the parties separately. As the assessee is in the business of the media the main source of income of the assessee company is broadcasting of advertisement in its channel. The assessee company sale space in its channels to advertiser usually a unit of sale of space is 10 seconds. The assessee company gave various schemes to its advertiser like consumption incentive, series discount etc. In case of consumption incentive, the advertisers are given an offer that in case if it consumes particular amount of time during the given period for broadcasting and advertising then it will be entitled to the consumption incentive. During the year, assessee has passed on this consumption incentive of Rs. 34059992/–. Learned CIT(A) has held that this is the expenditure in the nature of incentive to the advertiser and the assessee has also shown income against this expenditure. Before the learned CIT – A the assessee demonstrated by producing the copies of the deals of some of the parties and shown that it is not an asset or liability but actual expenditure. In view of this, he held that assessee is eligible for deduction of the above expenditure. The learned departmental representative could not point out any infirmity in the order of the learned CIT(A). Therefore, we confirm the order of the learned CIT(A) and dismiss ground number 4 of the appeal of the AO.

31. Ground number 5 is general in nature and therefore dismissed

32. In the result, ITA No. 6080/Del/2012 filed by the learned Assessing Officer for assessment year 2008 – 09 is dismissed.

33. Now we come to the appeal of the assessee for Assessment Year 2009-10 in ITA No. 3657/Del/2013.

34. This appeal is filed by the assessee company against the order of the learned Commissioner of Income Tax (Appeals) – 19, New Delhi dated 28/3/2013.

35. The assessee has raised the following grounds of appeal in ITA No. 3657/Del/2013 for the Assessment Year 2009-10:-

"1. That the order of the Learned Commissioner of Income Tax (Appeals) is bad in Law on the facts and in the circumstances of the case;

2. (a) That the Ld Commissioner of Income tax (Appeals) has gone wrong in disallowing the accrued incentive of Rs.64,58,780/- as claimed by the assessee company during A Y 2009- 10;

(b) That the Learned Commissioner of Income Tax (Appeals) has gone wrong in treating the Accrued Incentive as "Bonus";

3. *That the Learned Commissioner of Income Tax (Appeals) has gone wrong in disallowing a sum of Rs. 20,33,900/- towards interest payable to Prasar Bharti;*

4. *That the Learned Commissioner of Income Tax (Appeals) has gone wrong in disallowing a sum of Rs. 9,87,315/- towards claim of Software Expenses;*

5. *That the Learned Commissioner of Income Tax (Appeals) has gone wrong in disallowing expenses for earning dividend income to the extent of Rs.36, 73,276/-;*

6. *That the Ld. Commissioner of Income Tax (Appeals) has gone wrong in disallowance a sum of Rs.2,37,97,880/- towards leave encashment."*

36. The 1st ground of appeal is against the disallowance made by the learned assessing officer confirmed by the learned CIT – A of the accrued incentive of Rs. 6458780/– claimed by the assessee company during assessment year 2009-10. The assessee is further aggrieved that the above amount has been held by the learned CIT – A, as bonus. The brief facts shows that during the course of assessment proceedings, from the details furnished by the assessee company, it was found that the assessee company has claimed in accrued incentive to staff of Rs. 6458780/–. The assessee company furnished the above details and stated that in order to promote the business of the assessee, it is making incentive payment to its employees. The quantum of incentive is not ascertained and during the year but on estimated basis employee wise such as proposed incentive is calculated. The incentive is neither paid during the year, not related to the employees account and further no tax has been deducted at source on these incentives, therefore, the learned assessing officer disallowed the same. The above disallowance was contested before the learned CIT – A, who held that the above expenditure is a 'bonus' and therefore it is hit by the provisions of section 43B of the income tax act. He further held that such amount is allowable to the assessee a deduction only if it is paid on or before the due date of filing of the return of income and therefore, vide para number 3.9 of the order, he directed the learned assessing officer to allow the deduction on the basis of the actual payment in terms of section 43B of the income tax act. Therefore, the assessee is aggrieved with the order, has preferred this ground of appeal before us.

37. The learned authorised representative submitted that the incentive paid by the assessee is not a bonus but it is an additional salary paid to the

employees and therefore it does not partake the character of the bonus and the provisions of section 43B of the act does not apply to it. The learned departmental representative relied on the order of the lower authorities.

38. We have carefully considered the rival contention and identical issue has been decided by us in the appeal of the assessee for assessment year 2004-05, wherein we have held that the incentive payable by the company to the employees is an additional salary and is deductible expenditure. Further, we held that the above amount is additional salary paid by the assessee to its employees, but it cannot be held to be the bonus as per the provisions of section 36 (1) (ii) of the income tax act. Accordingly, we hold that the additional salary payable by the assessee in form of incentive to various employees for the services rendered is not hit by the provisions of section 43B of the Income Tax Act, but as deduction under section 28 of the income tax act. Accordingly, we reverse the order of the lower authorities and direct the learned assessing officer to delete the above disallowance.

39. The 2nd ground of appeal is with respect to the disallowance of interest payable to Prasar Bharti of Rs. 2033900/-. The above issue has been considered by us in in the appeal of the assessee for assessment year 2008 – 09 wherein we have held that that income of Prasar Bharti is exempt from assessment year 2013 – 14 and therefore the assessee should have deducted tax at source on payment made of interest to it. Accordingly, for this year, learned CIT(A) has also upheld the disallowance on the same reason, relying on the board's circular number 3/2012 dated 12/6/2012 explaining that the amendment granting specific exemption from income tax to the Prasar Bharti Broadcasting Corp of India applicable from assessment year 2013 – 14. The present assessment year before us is assessment year 2009 – 10 and therefore the assessee should have deducted tax at source on interest payment made to it. Accordingly, we confirm the disallowance. Accordingly, we dismiss this ground of appeal.

40. Ground number 4 of the appeal is with respect to the disallowance of software expenditure of Rs. 987315/-. The learned assessing officer noted that assessee has incurred software expenses of Rs. 2468287/-. During the year and according to him these are the capital expenditure and therefore he allowed the depreciation at the rate of 60% thereon and the balance

disallowance of Rs. 1480972/– was made. The issue was agitated before the learned CIT – A, who held that the assessee was asked to file a copy of the software bills and explain the nature of such software. However, the assessee has not furnished. He held that Appellant is claim that it is represent revenue expenditure has remained unsubstantiated. The learned CIT – A, noted that it was for the appellant to demonstrate that the software expenses are revenue in nature. But the appellant failed to discharge its burden to prove. The assessee was asked to file a copy of the bill so that the nature of software could be determined. However, the appellant did not furnish any thing before the learned CIT – A, and therefore the argument of the learned authorised representative before the CIT appeal that such as expenses are allowed in appeal in the last year could not be accepted. Therefore, he confirmed the disallowance.

41. Before us the learned authorised representative reiterated the same submission as were reiterated before the learned CIT (A) and stated that in the earlier year. The identical issue has been considered in appeal of the assessee for assessment year 2008 – 09, where on the identical facts and circumstances vide Ground Number 3, the learned CIT(A) has allowed the claim of the assessee holding that software expenditure is revenue in nature. Therefore, it was stated that the issue is squarely covered in favour of the assessee.

42. The learned departmental representative vehemently submitted that when the details have not been furnished by the assessee either before the assessing officer or before the learned CIT appeal as well as before the coordinate bench, it cannot be ascertained whether the expenditure incurred by the assessee on the software expenditure are revenue expenditure or capital expenditure. He therefore submitted that the above disallowance needs to be confirmed.

43. We have carefully considered the rival contention and found that the assessee has not furnished the adequate details before the lower authorities to demonstrate that the software expenditure incurred by the assessee is whether revenue expenditure or capital expenditure. In absence of the adequate details, it cannot be held that these expenses incurred by the assessee is a revenue expenditure. Reliance on the order of the appellate

authorities in earlier years does not support the case of the assessee as it is required to be demonstrated each year whether the expenditure incurred by the assessee is for capital expenditure or revenue nature. As the assessee has not submitted any details before the lower authorities, this ground of appeal is once again set aside back to the file of the learned assessing officer with a direction to the assessee to substantiate it within 30 days of this order before the assessing officer by submitting the proper evidences in the form of the bill and the nature of the software to demonstrate how they are of the revenue expenditure. In the result ground number 4 of the appeal of the assessee is allowed with above direction.

44. Ground number 5 is with respect to the disallowance of expenses for earning dividend income to the extent of Rs. 3673276/-. The brief facts shows that that assessee has made certain investment in shares and for mutual funds out of which the income earned by the assessee is exempt from tax. Therefore, the assessee was specifically asked to show cause vide letter dated 14/11/2011 as to why the expenses should not be disallowed following the provisions of section 14 A of the act read with rule 8D of the income tax rules. The assessee submitted that it has disallowed Rs. 391630/- as per form No. 3CD. However, the learned assessing officer applied the provisions of rule 8D of the income tax rules and computed the expenses disallowance of Rs. 4065236/- being 0.5% of the investment. As the assessee has already disallowed a sum of Rs. 391960/- the net disallowance of Rs. 3673276 was made. The assessee carried the matter before the learned CIT – A. The learned CIT – A confirmed the disallowance.

45. The learned authorised representative submitted before us that the assessee has disallowed RS. 3 91960 under section 14 A of the income tax act as per the tax audit report furnished before the assessing officer. The assessee has shown that this expenditure is disallowable under section 14A. Therefore, the learned assessing officer without recording any satisfaction that why this disallowance made by assessee is not correct. Without recording such satisfaction he submitted that no further disallowance can be made.

46. The learned departmental representative vehemently supported the order of the learned lower authorities and submitted that when the assessee has

earned exempt income, the disallowance under section rule 8D is mandatory.

47. We have carefully considered the rival contention and found that the assessee has disallowed a sum of Rs. 391960/- on his own and shown it into the tax audit report. However the learned assessing officer without recording any satisfaction about the correctness of the claim of the assessee of incurring expenses of only Rs. 391960/- towards earning the exempt income, straightway proceeded to apply the provisions of Rule 8D of the Income Tax Rules, 1962. As held by the honourable Supreme Court that the satisfaction is the mandatory requirement for invoking the provisions Section 14A read with Rule 8D of the Income Tax Rules for making any disallowance. As the learned assessing officer has not recorded any satisfaction about the correctness of the claim of the assessee about the disallowance made by it in its tax audit report, the disallowance made by the learned assessing officer is not sustainable. Therefore, the addition made by the learned assessing officer of Rs. 3673276/– is not sustainable. Therefore, reversing the order orders of the lower authorities, we direct the learned assessing officer to delete the above disallowance. Accordingly, the ground number 5 of the appeal of the assessee is allowed.

48. Ground number 6 of the appeal of the assessee is towards disallowance of Rs. 2379780/- towards leave encashment expenditure. The learned assessing officer asked the assessee to reconcile the difference with the evidence for leave encashment closing balance of Rs. 44138967/- and opening balance of Rs. 20341087/-. In response to this, the assessee submitted that the assessee has claimed leave encashment on accrual basis in the return of income based on the judgement given by the Hon'ble Calcutta High Court in case of CIT vs Exide industries limited 292 ITR 470. It was further stated that though the above judgement of the Hon'ble Calcutta High Court has now been stayed by the Hon'ble Supreme Court, the assessee is entitled to the above claim. The learned assessing officer noted that the decision of the honourable Calcutta High Court has now been stayed by the Supreme Court and it has been clarified that the assessee must pay tax as if section 43B (f) is on the statute though it is entitled to make a claim in its return of income. In view of the above facts, he

disallowed the above sum of Rs. 23797880/–. The assessee challenged the same before the learned CIT – A. He confirmed the above disallowance.

49. The learned authorised representative relied upon the decision of the Hon'ble Calcutta High Court whereas the learned authorised representative relied upon the order of the learned CIT – A.

50. We have carefully considered the rival contention and find that the decision of the Hon'ble Calcutta High Court based on which the assessee has claimed deduction of the leave encashment expenditure has been stayed by the Hon'ble Supreme Court. As the provisions of section 43B (f) of the income tax act is very clear. Therefore, we upheld the disallowances of leave encashment expenditure under section 43B of the income tax act. Accordingly, ground number 6 of the appeal of the assessee is dismissed.

51. Accordingly ITA number 3657/Del/2013 filed by the assessee for assessment year 2009 – 10 is partly allowed.

52. The revenue has raised the following grounds of appeal in ITA No. 4097/Del/2013 for the Assessment Year 2009-10:-

"1. "Ld. CIT(A) erred in law and on the facts of the case in deleting the addition of Rs.64,58,780/- made by the AO on account of accrued incentive to staff."

2. "Ld. CIT(A) erred in law and on the facts of the case in deleting the addition of Rs.2,45,45,215/- made by the AO on account of consumption debtors."

53. The ground number 1 of the appeal of the revenue is with respect to the disallowance of Rs. 6458780/- deleted by the learned CIT – A. The above issue has been extensively considered by us in the appeal of the assessee for assessment year 2009 – 10 (in ITA number 3657/Del/2013) wherein we have deleted the addition confirming the order of the learned CIT(A) and holding that the incentive bonus made by the assessee is not in the nature of Bonus but it is an additional salary for the work performed by the staff of the assessee. In view of this, the ground number 1 of the appeal of the learned assessing officer does not survive.

54. The 2nd ground of appeal is with respect to the deleting the addition of Rs. 24545215/- made by the assessing officer on account of consumption debtors. Identical issue has been considered by us in the appeal of the assessee for assessment year 2008 – 09 in ITA number 6080/del/2012, wherein ground number 4 of the appeal of the assessee, the identical

disallowance is made. We have already deleted the above disallowance. Both the parties confirmed that there is no change in the facts and circumstances of the case. Therefore, for the reasons given by us, in disposing of ground number 4 of the appeal of the learned assessing officer for assessment year 2008 – 09, we also confirm the order of the learned CIT(A) in deleting the disallowance of Rs. 24545215/–. Accordingly, ground number 2 of the appeal of the AO is dismissed.

55. Accordingly, ITA number 4097/Del/2013 filed by the learned assessing officer for assessment year 2009 – 10 is dismissed.

56. This appeal is filed by the assessee against the order of the learned CIT – A – 19, New Delhi dated 28/2/2013 for assessment year 2010 – 11.

57. The assessee has raised the following grounds of appeal in ITA No. 1977/Del/2014 for the Assessment Year 2010-11:-

"1. That the Learned Commissioner of Income Tax (Appeals) has erred in law and on the facts and in the circumstances of the case;

2. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts by sustaining a disallowance of a sum of Rs. 90, 11, 627/- on account of accrued incentives payable to staff as claimed by the assessee company during the impugned assessment year;

2.1 That in doing so, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the basic fact that said accrued incentives are paid on the basis of achievements and targets met by employees and thus, these accrued incentives cannot be treated as "Bonus" as treated by learned CIT (A).

3. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts by sustaining a disallowance of a sum of Rs. 20,07,294/- under section 40(a)(ia) of the Act, on account of interest payable to M/s Prasar Bharti;

3.1 That in doing so, the learned Commissioner of Income Tax (Appeals) has ignored the basic fact that as per the provisions of section 196 of the Act, no tax is required to be deducted on the payments being made to M/s Prasar Bharti and as such, the said disallowance should be deleted.

4. That the Learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining a disallowance of a sum of Rs. 2,15,090/- towards claim of Software Expenses and treating it as capital expenditure.

5. That the Learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining a disallowance of a sum of Rs. 12,85,000/- under section 14A of the Act;"

58. The 1st ground of appeal is against the confirmation of disallowance of Rs. 9011627/- on account of accrued incentive payable to the staff, as claimed by the assessee company during the impugned assessment year. Both the parties confirmed that this issue is identical to the issue involved in the appeal of the assessee for assessment year 2009 – 10, wherein identical disallowance was made and confirmed by the learned CIT – A. We have considered the above issue in the appeal of the assessee for assessment year 2009 – 10, wherein we have deleted the above disallowance holding that the additional incentive paid by the assessee is salary in nature and cannot be held to be the bonus and therefore the provisions of section 43B are not applicable to it. For the similar reasons we also deleted the disallowance made by the learned assessing officer of Rs. 9011627/– on account of incentive payable to the staff. Accordingly, ground number 2 of the appeal of the assessee is allowed.

59. Ground number 3 of the appeal of the assessee is with respect to the disallowance interest paid to Prasar Bharti of of Rs. 2007294/– on account of non-deduction of tax at source. Both the parties confirmed that the identical issue has been decided in the case of the assessee for the earlier years. On careful consideration of the argument of the assessee, it is notice that identical issue has been decided in the appeal of the assessee for assessment year 2009 – 10, wherein it has been held that the exemption granted by the central board of direct taxes to the Prasar Bharti is effective from assessment year 2013 – 14 and not for assessment year 2010 – 11. Therefore, the disallowance under section 40a (ia) of the income tax act was upheld. Ground number 4 of the appeal of the assessee is against the disallowance of Rs. 215090/– towards claim of software expenses, treating it as a capital expenditure. The facts of the case is identical to the facts of the case in of the assessee for assessment year 2009 – 10. During the year assessee has incurred a software expenditure of Rs. 537726/–. The learned assessing officer noted that it is a capital expenditure and therefore granted depreciation at the rate of 60% thereon. Net disallowance of Rs. 215090/– was made. On the appeal before the learned CIT(A), the assessee contested holding that same is revenue expenditure in nature. The learned

CIT – A) number 6 has upheld the disallowance as the assessee failed to demonstrate that the software expenses are revenue or capital in nature.

60. The learned authorised representative submitted that the above expenditure is revenue in nature. The learned departmental representative vehemently submitted that the when the assessee could not produce any details before the lower authorities about the nature of the software along with the invoices. Therefore, it cannot be determined whether the above expenditure is revenue in nature or not. He held that the learned assessing officer has treated the same as capital expenditure and granted depreciation to the assessee.

61. We have carefully considered the rival contention and find that the identical issue has been considered in case of the assessee for assessment year 2009 – 10, wherein, on the identical facts and circumstances of the case, the lower authorities have confirmed the addition of software expenditure holding it to be a capital in nature as the assessee failed to produce the necessary evidences along with the nature of software before them. The same is the fact before us for this year too. Therefore, in view of a direction for assessment year 2009 – 10, we also set aside this issue back to the file of the learned assessing officer with a direction to the assessee to submit the copy of the invoices and the nature of software used by the assessee and to demonstrate that these expenses are revenue in nature. Accordingly, ground number 4 of the appeal of the assessee is set aside to the file of the learned assessing officer.

62. Ground number 5 is with respect to the disallowance of Rs. 1285000/- under section 14 A of the income tax act. The learned assessing officer found that assessee has made investment in shares and mutual fund for earning exempt income. Therefore, the assessee was asked to explain why expenses should not be disallowed under section 14 A of the income tax act applying the rule 8D of the income tax rules. The assessee submitted that it has disallowed a sum of Rs. 101140/- which is disclosed in form number 3 CD of the income tax act rules. However the learned assessing officer proceeded to disallow the expenditure applying rule 8D of the income tax rules 1962. It disallowed a sum of Rs. 1386140/– being 0.5% of the average value of the investment. As assessee has disallowed a sum of RS. 1 01140

in its computation of the total income as well as in form number 3 CD the learned assessing officer made the net disallowance of Rs. 1285000/–. The learned CIT – A, confirmed the above disallowance and therefore the assessee is in appeal before us.

63. The arguments of the authorised representative as well as the learned departmental representative remains the same as it was therein assessment year 2009 – 10.

64. We have carefully considered the rival contention and found that during the course of assessment proceeding the assessee was raised the query that why disallowance should not be made under section 14 A of the income tax act applying Rule 8D of the income tax rules 1962. The assessee submitted that it has disallowed a sum of Rs. 101140/–. However, without recording satisfaction of the assessing officer about the correctness of the claim of the assessee, learned assessing officer disallowed the sum of RS. 1 386140 applying the provisions of rule 8D of the income tax rules. As the learned assessing officer has failed to record any satisfaction about the correctness of the claim of the assessee that it has only incurred a sum of Rs. 101140/– on account of earning exempt income and further the same has been disclosed in form number 3CD of the income tax rules, being the tax audit report the above disallowance cannot be sustained. Therefore, for the similar reasons given by us for assessment year 2009 – 10, we also delete the disallowance of Rs. 1285000/–. Accordingly, ground number 5 of the appeal of the assessee is allowed.

65. Ground number 6 of the appeal of the assessee is with respect to the disallowance of Rs. 13033241/– on account of leave encashment accrued to the employees. Both the parties submitted that the identical issue has been considered in appeal of the assessee for assessment year 2009 – 10, wherein the assessee has made claim according to the decision of the honourable Calcutta High Court whereas the learned assessing officer has made the disallowance applying the provisions of section 43B (f) of the income tax act.

66. We have carefully considered the rival contention and perused that the assessee has claimed leave encashment expenditure without making any payment. As we have held in the assessment year 2009 – 10 in the appeal

of the assessee confirming the above disallowance, we also confirm disallowance of Rs. 13033241/– on account of leave encashment expenditure for the similar reasons. Accordingly, ground number 6 of the appeal of the assessee is dismissed.

67. In the result appeal of the assessee is partly allowed.

68. Accordingly, all the appeals of the assessee as well as the revenue pertaining to this assessee are disposed of by this common order.

Order pronounced in the open court on 28/03/2019.

-Sd/-	-Sd/-
(BEENA A PILLAI) JUDICIAL MEMBER	(PRASHANT MAHARISHI) ACCOUNTANT MEMBER

Dated: 28/03/2019

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi