N THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'B' KOLKATA

ITA No.1721/Kol/2012
Assessment Years: 2009-10

M/s IFB AGRO INDUSTRIES LTD
PAN NO:AAACI6487L

Vs

JOINT COMMISSIONER OF INCOME TAX
RANGE-6, KOLKATA

ITA No.114/Kol/2013
Assessment Years: 2009-10

DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-6, KOLKATA

Vs

M/s IFB AGRO INDUSTRIES LTD

ORDER

Per: George Mathan:ITA No. 1721/K/2012 is an appal filed by the assessee and ITA No. 114/Kol/2013 is an appeal filed by the revenue against the order of Ld. CIT(A), Central-VI, Kolkata in Appeal No. 173/CIT(A)-VI/R-6/11-12/Kol dated 25.10.2012 for the AY 2009-10. 2. Shri S. K. Tulsiyan, Advocate, Advocate represented on behalf of assessee and Shri Ajoy Kr. Singh, CIT (DR) represented on behalf of revenue. 3. In the assessee's appeal the assessee has raised following grounds:

"1. That, the Ld. CIT(A) erred in retaining addition of Inter-corporate Deposit (ICD) of Rs.11.20 crs. received by the appellant from M/s IFB Automotive Pvt. Ltd. out of total addition of Rs.19.00 crs. made by the Ld. A.O. treating the same as deemed dividend u/s.2(22)(e) of the I.T. Act.1 (a). That, while retaining the addition of Inter-corporate Deposit (ICD) of Rs. 11.20 crs., the Ld.CIT(A) failed to consider that Sec.2(22)(e) of the I.T. Act contained a deeming provision and therefore its terms and conditions were required to be interpreted strictly. 1(b). That, both the Ld. A.O. and the CIT(A) erred in equating Inter-corporate Deposits (ICD) with loans as mentioned in Sec.2(22)(e) of the I.T. Act. 1 (c). That, while adding the Inter-corporate Deposit (ICD) received by the appellant from M/s IFB Automotive Pvt. Ltd., both the Ld. A.O. and the Ld. CIT(A) failed to examíne the matter in the light of the legislative intention of enacting Sec.2(22)(e) of the I.T. Act. 1 (d). That, since the Inter-corporate Deposit (ICD) was received by the assessee from M/s IFB Automotive Pvt. Ltd. not for its own benefit, no addition u/s.2(22)(e) of the I.T. Act was called for.

2. That, both the Ld. A.O. and the Ld. CIT(A) erred in omputing the expenses attributable to the earning of the assessees exempt dividend income of Rs. 1,93,569 at Rs.7,28,706 in terms of

Sec. 14A/RuIe-8D of the I.T. Rules. 2(a). That, since the assessees dividend income of Rs.1,81,065 received at the time of the redemption of 29,98,000 units of Birla Sun Life Liquid Plus arose out of its investment of Rs.3,00,00,000 which was paid out of its own fund, both the Ld. A.O. and the CIT(A) erred in disallowing proportionate interest expenses of Rs.5,74,371 in terms of Rule- 8D(2)(ii) of the I.T. Rules. 2(b). That, both the Ld. A.O. and the CIT(A) erred in computing the average investment for the purpose of Rule-8D(2)(iii) of the I.T. Rules at Rs.3,08,67,000 by taking into account all investments of the assessee as per its Balance Sheet instead of only the dividend yielding investments.

3. That, both the Ld. A.O. and the CIT(A) erred in disallowing the loss of Rs.10,84,000 arising to the assessee on account of fluctuation of foreign exchange rates on the ground that as the said loss was not actually paid by it, it was only a notional loss.

4. That, the appellant craves leave to alter, amend, rescind and substitute any of the abovementioned grounds and add any further grounds before or at the time of hearing of the appeal."

And in revenue's appeal, the revenue has raised following grounds:

"1. Whether on the facts and circumstances of the case, Ld. CIT(A) erred in law in holding that loan granted by M/s IFB Automotive Pvt Ltd. be not treated as deemed dividend within the meaning of Sec 2(22)(e) of the IT Act,1961.

2. Whether on the facts and circumstances of the case, Ld. CIT(A) erred in law in holding that bad debt claimed by the assessee is allowed even when conditions laid down as per Sec 36(1)(vi) is not fulfilled.

3. Whether on the facts and circumstances of the case, Ld. CIT(A) erred in law in deleting the addition made u/s 43B even when the amount was not paid within due date.

4. Whether on the facts and circumstances of the case, Ld. CIT(A) erred in law in deleting the addition made on account of excessive and unjustified business expenditure.

5. Whether on the facts and circumstances of the case, Ld. CIT(A) erred in law in deleting the addition made on account of notional loss due to foreign exchange fluctuation.

6. That the appellant craves for leave to add, delete or modify any of the grounds of appeal before or at the time of hearing."

4. First we take up ITA No. 1721/K/2012 (Assessee's appeal). In the assessee's appeal in regard to ground no. 1 to 1(d) the assessee has challenged the action of CIT(A in retaining the addition of the Intercorporate deposits of an amount of Rs.11.20 cr. received by the assessee from M/s. IFB Automotive Pvt. Ltd. (M/s. IFB) out of the total addition of Rs.19 cr. made by AO by treating the same as deemed dividend u/s. 2(22)(e) of the Act. It was submitted by the Ld. AR that the assessee is a company which is doing the business of manufacture of rectified spirit and IMFL, marine products and trading of feed and beer. It was the submission that the assessee had received Inter-corporate deposits from M/s. IFB. It was the submission that the assessee held 18.82% of the shares of M/s. IFB. It was the submission that the Inter corporate deposits received by the assessee had been treated by the AO as a loan received by the assessee from M/s. IFB. It was the submission that consequent to the treatment of the Inter-

corporate deposits as a loan the AO had invoked the provisions of section 2(22)(e) of the Act and had made the addition of the total of the Inter corporate deposit received. It was the submission that the Ld. AR had filed a detailed written submission running into 18 pages. It was the submission that though the AO had taken the figure of Rs.19 cr. in fact the assessee had received the Inter corporate deposits of only an amount of Rs.11.20 cr. The Ld. AR drew our attention to the letters from M/s. IFB at pages 187 to 201 of the paper book, wherein it was mentioned by M/s. IFB that they were interested in placing the Inter corporate deposit with the assessee as banks would not be interested in taking short term deposit. It was further shown that an amount of Rs.17.5 cr. had deposited by M/s. IFB through RTGS in the bank account of the assesee but Rs.12 cr. out of the same was immediately returned as it was deposited without the assessee's permission. It was further submission that on appeal the Ld. CIT(A) had accepted the contention of the assessee that the Inter corporate deposit was only to an extent of Rs.11.20 cr. It was the submission that even the Ld. CIT(A) had treated the Inter corporate deposits as a loan and had consequently treated the amount of Rs.11.20 cr. as deemed dividend u/s. 2(22)(e) of the Act. The Ld. AR drew our attention to the order of Ld. CIT(A), wherein the Ld. CIT(A) had asked for certain clarifications and which were answered by the assessee, the same was found in pages 11 to 14 of the order of the Ld. CIT(A) in para 6 of his order. It was the submission that the Inter corporate deposits were not in the nature of loan and the assessee had never asked M/s. IFB for any loan. The Ld. AR drew our attention to para 24 of the order of Ld. CIT(A) at page 22 of his order, wherein the Ld. CIT(A) has on the ground that the word "Inter-corporate deposit" was very limited to Companies and was synonymous with the term loan as also on the ground that Inter corporate deposit is not a legal word in the I. T. Act nor used any where in the Act to make it different from loans or advances held the same to be a loan for the purpose of invoking the provisions of section 2(22)(e) of the Act. It was the further submission by the Ld. AR that the decisions relied on by the Ld. CIT(A) were clearly in respect of those companies where a loan had been taken, it was not a case where Inter corporate deposits were taken. It was the further submission that the issue in the assessee's case was squarely covered by the decision of the Coordinate Bench of this Tribunal, Bombay Bench in the case of *Bombay Oil Industries Ltd. reported in (2009) 28 SOT 383 (Bom)* **= *(2009-TIOL-297-ITAT-MUM)***, wherein it had been held that Intercorporate deposits were different from loans and advances and the same would not come within the purview of deemed dividend. It was the submission that the Ld. CIT(A) in para 23 of his order did refer to the decision in the case of Bombay Oil Industries Ltd. (supra), but, however, wrongly interpretated the said decision to be a case where the issue was whether interest on deposits representing investment of surplus fund would fall or not under the definition of Interest as given in section 2(7) of the Interest Tax Act, 1974. The Ld. AR further drew our attention to the decision of the Hon'ble jurisdictional High Court of Calcutta in the case of *Pradip Kr. Malhotra Vs. CIT reported in 338 ITR 538* **= *(2011-TIOL-486-HC-KOL-IT)***, wherein it has been categorically held that a gratuitous loan or advance given by a company to those classes of shareholders would not come within the purview of section 2(22)(e) of the Act but not cases where the loan or advance is given in return to an advantage conferred upon the company by such shareholders. The Ld. AR further drew our attention to the decision of the Special Bench of this Tribunal in the case of *Gujarat Gas & Financial Services Ltd. reported in 115 ITD 218 (Ahd) (SB)* **= *(2008-TIOL-516-ITAT-AHM-SB)***, wherein in para 68 of the said order, the Special Bench has considered the issue whether the interest on Inter-corporate deposits is interest on loans or advances and had come to a conclusion that the two expressions loans and a deposit are to be taken different and distinction can be summed up by stating that in the case of loan the needy person approaches the lender for obtaining the loan therefrom. The loan is clearly loan at the terms stated by the lender. In the case of deposits, however, the depositor goes to the depositee for investing his money primarily with the intention of earning interest. Consequently, the Special Bench had held that investments made by way of short term deposits cannot be considered as loans and advances.

It was the submission that in view of the decision of the Coordinate Bench of this Tribunal in the case of Bombay Oil Industries Ltd. (supra) as also the decision of the Special Bench in the case of Gujarat Gas & Financial Services Ltd. (supra) as also the decision of the Hon'ble jurisdictional High Court of Calcutta in the case of Pradip Kr. Malhotra (supra), the addition as sustained by the Ld. CIT(A) by applying the provisions of section 2(22)(e) of the Act was liable to be deleted in so far as the assessee had not taken any loans from M/s. IFB, but M/s. IFB had placed the Intercorporate deposits with the assessee. In reply, the Ld. CIT(DR) drew our attention to the order of the Ld. CIT(A) in para 6 referred to supra, wherein the Ld. CIT(A) had asked for certain clarifications from the assessee. He further drew our attention to para 8 of the order of CIT(A) to submit that the documents as produced before the Ld. CIT(A) representing the Director's Minutes Book resolutions passed by the Board of Directors could be a fabricated document in so far as the documents were not serially numbered. It was the submission that the term Intercorporate Deposit had been rightly treated by the Ld. CIT(A) and the AO to be a loan or advance to which the provisions of section 2(22)(e) of the Act applied. The Ld. CIT(DR) vehemently supported the orders of the lower authorities and further relied on the decision of the Hon'ble Bombay High Court in the case of *Star Chemicals Pvt. Ltd. reported in 203 ITR 11*, wherein it has been held that a loan to a shareholder to the extent to which the company process accumulated profits was liable to be treated as deemed dividend. It was the submission that the assessee having taken the loan from M/s. IFB under whatever name called the same was liable to be treated as a deemed dividend u/s. 2(22)(e) of the Act.

5. We have considered the rival submissions. At the outset, a perusal of the facts in the assessee's case clearly show that the dispute in the appeal primarily revolves around the issue as to whether the Intercorporate Deposits received by the assesee from M/s. IFB is a 'loan' or 'advance' or is a 'deposit'. Admittedly, the provisions of section 2(22)(e) of the Act refers to only 'loans' and 'advances' it does not talk of a 'deposit'. The fact that the term 'deposit' cannot mean a 'loan' and that the two terms 'loan' and the term 'deposit' are two different distinct terms is evident from the explanation to section 269T as also section 269SS of the Act where both the terms are used. Further, the second proviso to section 269SS of the Act recognises the term 'loan' taken or 'deposit' accepted. Once it is an accepted fact that the terms 'loan' and 'deposit' are two distinct terms which has distinct meaning then if only the term 'loan' is used in a particular section the deposit received by an assessee cannot be treated as a 'loan' for that section. Here, we may also mention that in section 269T of the Act, the term 'deposit' has been explained vide various circular issued by CBDT. Thus, the view taken by the Ld. CIT(A) that the Intercorporate deposit is similar to the loan would no longer have legs to stand. A perusal of the decision of Hon'ble Special Bench of this Tribunal in the case of Gujarat Gas & Financial Services Ltd. referred to supra, clearly shows that the Hon'ble Special Bench had taken into consideration the decision of the Special Bench of this Tribunal in the case of *Housing & Urban Development Corporation Ltd. reported in 102 TTJ (Del.) (SB) 936* to come to the conclusion that loans and deposits are to be taken different and distinct. Further, in view of the decision of Hon'ble Coordinate Bench of this Tribunal in the case of Bombay Oil Industries Ltd. , referred to supra, wherein the coordinate bench of this Tribunal has held as follows:

"10. We have heard the rival submissions and perused the material on record. The authorities below have not controverted the claim of the assessee company that the amount received from above three companies is ICDs. The AO held against the assessee only on account that it had failed to explain, the investment is neither loan or advance. It is a settled position that deposits cannot be equated with loans or advances. The jurisdictional High Court in the Durga Prasad Mandelia's case (supra) has noticed the distinction between deposits and loans in the context of s. 370 of the Companies Act. The Court held as under:

"There can be no controversy that in a transaction of a deposit of money or a loan, a relationship of a debtor and creditor must come into existence. The terms 'deposit' and 'loan' may not be mutually exclusive, but nonetheless in each case what must be considered is the intention of the parties and the circumstances. In the present case, barring the assertion of the respondent that the moneys advanced by the company to the Associated Cement Companies constitute a loan and offend s. 370 of the Companies Act, there is nothing else to show that moneys have been advanced as a loan. In the context of the statutory provisions, the word 'loan' may be used in the sense of a 'loan' not amounting to a deposit. The word loan in s. 370 must now be construed as dealing with loans not amounting to deposits, because, otherwise, if deposit of moneys with corporate bodies were to be treated as loans, then deposits with scheduled banks would also fall within the ambit of s. 370 of the Companies Act. Therefore, moneys given by the company to the other bodies corporate is a loan within the meaning of s. 370 of the Companies Act must be negatived. Therefore, the petitioners would well be entitled to the relief."

Sec. 370 of the Companies Act, 1956 was subsequently amended to include deposits into its ambit thereby indicating the distinction between deposits and loans/advances. The recent decision of the Tribunal in the case of Gujarat Gas Financial Services Ltd.'s case (supra) has elaborately considered the issue whether interest on ICDs is interest on loans or advances and whether the same is exigible to chargeable interest under Interest-tax Act. The Tribunal after considering the entire precedent on the issue though in the context of the Interest-tax Act had categorically held that interest on ICDs is not akin to interest on loans or advances. The relevant portion of the order of the Tribunal cited supra which runs from paras 68 to 74 is reproduced below:

"68. Before the AO the assessee as regards income from ICD the assessee company accepted this interest of Rs. 1,21,54,153 along with interest on bill discounting Rs. 1,48,74,208 and other interest of Rs. 3,66,184 can be bought under the purview of the Interest-tax Act, 1974. However before CIT(A) it was submitted that these are interest on deposits and the nature is that of the investment and so interest-tax being leviable on loans and advances and not on fixed deposits, the amount was not to be included. The CIT(A) held:

"I have carefully considered the matter and find that the definition of interest does not speak of excluding this amount in its definition. Accordingly therefore, the inclusion by the AO of these items is found justified and is upheld."

69. The submission of the assessee is that these ICDs being neither loans or advances, interest earned on these is not exigible to interest tax in view of the decision of Ahmedabad Tribunal in the case of Utkarsh Fincap (P) Ltd. vs. ITO (2006) 101 TTJ (Ahd) 210 **= *(2006-TIOL-108-ITAT-AHM)***. *Reliance is also placed on the decision of Housing & Urban Development Corporation Ltd. vs. Jt. CIT (2006) 102 TTJ (Del) (SB) 936 : (2006) 5 SOT 918 (Del)(SB), Stanrose Holding Ltd. (ITA No. 25/Mum/1966) and Persepolis Investment Co. (P) Ltd. (ITA No. 51/Mum/1997). The Learned Departmental Representative on the other hand supported the decision of the CIT(A) and submitted that when assessee itself had offered it to tax where the question of allowing it as not taxable. He also submitted that it is taxable as held in Bajaj Auto Holdings Ltd. vs. Dy. CIT (2005) 96 TTJ (Mumbai) 856 : (2005) 95 ITD 356 (Mumbai).*

70. We have heard the parties and considered the riva submissions. It might be true that assessee had offered it to tax initially but he claimed it as not taxable and therefore the matter has to be examined on merits and to determine as to whether it is taxable under the Act. We

find it is not taxable in the light of the decision in the case of Utkarsh Fincap (P) Ltd. (supra) wherein Ahmedabad Bench of the Tribunal after considering the decision in the case of Federation of Andhra Pradesh Chambers of Commerce & Industry & Ors. vs. State of Andhra Pradesh & Ors. (2001) 165 CTR (SC) 672 : (2001) 247 ITR 36 (SC) **= *(2002-TIOL-735-SC-IT)***, *CIT vs. Sahara India Savings & Investment Corporation Ltd. (2003) 185 CTR (All) 136 : (2003) 264 ITR 646 (All) and following the decisions in the case of Gujarat Industrial Investment Corpn. Ltd. (sic), Oriental Insurance Co, Ltd. vs. Dy. CIT (2004) 82 TTJ (Del) 1084 : (2004) 89 ITD 520 (Del) held that interest on ICDS are not chargeable to interest-tax, as the deposits are not in the nature of loans or advances. It held as under:*

"The words 'loans and advances' should be understood conjointly and not in isolation. If so read, the advances which are in the nature of loan alone should be covered in the term. Ordinarily an advance is a payment beforehand and it does not connote, the idea of repayment. It is adjusted when the action for which the money is advanced is completed and if not repaid on expiry of the loan like a deposit. The company is not bound to accept the deposit made, if proceedings on the basis of the prospectus a person interest to make a deposit. By issuing prospectus of a company invites offer for making deposit and that is not offer to receive deposit whereas in case of loan the assessee prays for a loan. It offers to borrow money and once that offer is accepted, the lender is bound to give money to the borrower on terms settled. It is also to be noticed that a taxing statute has to be strictly construed and the subject cannot be taxed unless comes within the letter of law. The argument that a particular income falls within the spirit of the law cannot be availed of by the Revenue. It is trite law that no tax can be imposed on the subject without the words in the Act. No tax can be imposed by inference or analogy. The cardinal principle of interpretation of fiscal law is that it should be considered strictly. In view of the above, the interest in ICDS unless they clearly fall within the meaning of interest on loans and advances would not be taxable. ICD can neither be a loan not an advance. Therefore, the AO is directed to exclude the interest on ICD from the assessment of the assessee. Consequently, the levy of penalty made would also not stand. They are, accordingly deleted."

71. It has considered the decision of Bajaj Auto Holdings Ltd.s case (supra) referred to by the CIT(A) and distinguished by stating that Mumbai Bench has proceeded on a footing that deposit would be an advance. and would be includible in the term with interest on deposit and advance. The Bombay Bench is more persuaded by the reason that the interest on deposit was not excluded from the definition of interest and the term interest on loans and advances was wide enough to include the same. It had not considered that whether it was not a loan nor an advance and as to whether the amended definition of interest under the Act was exhaustive or inclusive. In holding that the ICD is not an advance the Ahmedabad Tribunal also noticed that the meaning of the term advance as understood in the commercial words and as stated under the title what is advance in the following words :

"It was held in KM. Mohammed Abdul Kadir Rowther vs. S. Muthia Chettiar (1960) 2 Mad. LJ 13 at 15 that advance means literally a payment beforehand; in certain cases it may be a loan but it cannot be said that a sum paid by way of advance is necessarily a loan. In Raja of Venkatagiri vs. Krishnayya Rao Bahadur AIR 1948 PC 150 at p. 155, it was observed that ordinarily and advance does not connote any idea of repayment. It is, therefore, clear that the word advanced used in s. 296 means an advance in the nature of a loan and not merely an advance as is understood in the common parlance in the sense of payment of money beforehand and which is likely to become due at some future time."

72. It has also referred to s. 296 of Companies Act regulating loans to directors for book debt which was in the nature of loans or advances from its inception.

73. In the case of Housing & Urban Development Corporation Ltd. (supra), the Special Bench after considering various decisions and circulars of CBDT held that deposits in the form of securities and bonds cannot be considered as loans and advances and as such interest thereon shall be outside the scope of interest defined under s. 2(7) of the Interest tax Act. Para 22 of the order reads as under:

"22. From the foregoing discussion we are of the considered view that despite similarities, the two expressions loans and deposits are to be taken different and the distinction can be summed up by stating that in the case of loan, the needy person approaches the lender for obtaining the loan therefrom. The loan is clearly lent at the terms stated by the lender. In the case of deposit, however, the depositor goes to the depositee for investing his money primarily with the intention of earning interest. In view of this legal position, it has to be held that interest on deposits representing investment of surplus funds would also not fall under the definition of interest as given in s. 2(7) of the Act and as such would not be liable to interest tax. The answer to the question under reference in our humble opinion is that investments made by way of short-term deposits and also in the form of securities and bonds cannot be considered as loans and advances and as such interest thereon shall be outside the scope of 'interest' defined under s. 2(7) of the Act."

74. In these circumstances we hold that interest on ICDs is not an interest on loan or advance therefore would not be includible in the chargeable interest under the Interest tax Act.

From the above it is clear there is distinction between deposits vis-a-vis loans/advances. s. 2(22)(e) enacts a deeming fiction whereby the scope and ambit of the word dividend has been enlarged to bring within its sweep certain payments made by a company as per the situations enumerated in the section. Such a deeming fiction would not be given a wider meaning than what it purports to do. The provisions would necessarily be accorded strict interpretation and the ambit of the fiction would not be pressed beyond its true limits. The requisite condition for invoking s. 2(22)(e) of the Act is that payment must be by way of loan or advances. Since there is a clear distinction between the ICDs vis-a-vis loans/advances, according to us the authorities below were not right in treating the same as deemed dividend under s. 2(22)(e) of the Act. Since we hold that ICDs do not come within the purview of deemed dividend under s. 2(22)(e) of the Act, the alternative contention of the assessee namely by virtue of s. 2(22)(e)(ii) of the Act, the unsecured loans received by the assessee is not dividend is not adjudicated."

We are of the view that the Intercorporate deposits cannot be treated as a loan falling within the purview of section 2(22)(e) of the Act.

6. Admittedly, the Ld. CIT(A) has also accepted the fact that what the assessee has received is Intercorporate deposits, this fact remains unchallenged. The Ld. CIT(A) has, after accepting that this is intercorporate deposit proceeded to hold that the term intercorporate deposit was synonymous of loan. At this point, the Ld. CIT(A) fell into error as an intercorporate deposit is not a loan but a deposit which has a meaning different from the term loan. The decisions as relied on by the Ld. CIT(A) as also by the Ld. CIT(DR), admittedly, are on 'loans'. None of the decisions referred to by the Ld. CIT(A) or the Ld. CIT(DR) discusses anywhere that deposits are to be treated as loans. Consequently, respectfully following the decision of the coordinate bench of this Tribunal in the case of Bombay Oil Industries Ltd. referred to supra, the addition

representing intercorporate deposits treated as loan by the AO and as confirmed by the Ld. CIT(A) stands deleted.

7. In regard to ground nos. 2 to 2(b) of the assessee's appeal which was against the action of Ld. CIT(A) in computing the expenses attributable to the earning of the assessee's exempt dividend income, it was submitted by the Ld. AR that the issue is covered by the decision of the Hon'ble Bombay High Court in the case of *Godrej & Boycee Mfg. Co. Ltd. Vs. DCIT reported in 328 ITR 81 =* ***(2010-TIOL-564-HC-MUM-IT)***. It was the submission that the assessee itself had invoked the provisions of section 14A of the Act and had disallowed the expenditure attributable to the earning of the dividend income. It was the submission that the assessee had a share capital of Rs.8 cr. and had reserves and surplus at Rs.56 cr. It was the submission that the investments were only Rs.2,96,17,000/-. It was the submission that as per the decision of Godrej & Boycee Mfg. Co. Ltd., referred to supra, there must be a proximate relationship between the expenditure and the income which does not form part of the total income. It was the submission that the AO had not shown how the expenditure as disallowed by him had any proximate relationship to the income which does not form part of the total income. In reply, the Ld. DR vehemently supported the order of AO. It was the submission that as the assessee had not given any convincing reply before the AO, the AO had made the said addition. It was the submission that the issue can be restored to the file of the AO for readjudication in line with the decision of the Hon'ble Bombay High Court in the case of Godrej & Boycee Mfg. Co. Ltd., referred to supra,.

8. We have considered the rival submissions. A perusal of the order of the Ld. CIT(A) shows that the Ld. CIT(A) in para 36 of his order states that the assessee has not been able to establish with sufficient material the manner of calculating the amount disallowable for earning the exempt income. However, a perusal of the decision of the Hon'ble Bombay High Court in the case of Godrej & Boycee Mfg. Co. Ltd., referred to supra, shows that this is not what the said decision directs. Under these circumstances, this issue is restored to the file of the AO for readjudication in line with the decision of the Hon'ble Bombay High Court in the case of Godrej & Boycee Mfg. Co. Ltd., referred to supra.

9. In regard to ground no.3 of assessee's appeal, which was against the action of the Ld. CIT(A) in disallowing the loss of Rs.10,84,000/- arising to the assessee on account of the fluctuation of foreign exchange rate, it was submitted by the Ld. AR that the issue was squarely covered by the decision of the Hon'ble Supreme Court in the case of *CIT Vs. Woodward Governor India (P) Ltd. reported in 312 ITR 254* **=** ***(2009-TIOL-50-SC-IT)***. It was the submission that the assessee had taken a working capital loan. It was the submission that this issue can be restored to the file of the AO for readjudication in line with the decision of the Hon'ble Supreme Court in the case of Woodward Governor India (P) Ltd., referred to supra. It was the further submission that in the immediately subsequent assessment year the assessee had shown a profit of Rs.4,93,000/- and the same had also been offered to tax. In reply, the Ld. DR submitted that the issue can be restored to the file of AO for readjudication.

10. We have considered the rival submissions. A perusal of the order of the AO clearly shows that the AO has not taken into consideration the decision of the Hon'ble Supreme Court in the case of Woodward Governor India (P) Ltd., referred to supra, when making the said disallowance. Under these circumstances, this issue is restored to the file of the AO for readjudication after granting the assessee adequate opportunity to substantiate its case as also to take into consideration the decision of the Hon'ble Supreme Court in the case of Woodward

Governor India (P) Ltd., referred to supra. This ground of appeal of assessee is allowed for statistical purposes.

11. Ground No. 4 of the assessee's appeal is general in nature.

12. Now, we are coming to revenue's appeal i.e. ITA No.114/K/2013. In regard to the revenue's appeal in ground no. 1, which was against the action of CIT(A) in holding that the loan granted by M/s. IFB was not to be treated as deemed dividend. The Ld. CIT(DR) submitted that the submissions in regard to ground no.1 to 1(d) of assessee's appeal was applicable to this ground also. The Ld. AR in reply, reiterated the stand in regard to the said grounds in the assessee's appeal.

13. We have considered the rival submissions. At the out set, a perusal of the order of CIT(A) clearly shows that the Ld. CIT(A) has not held that the loan granted by M/s. IFB was not deemed dividend within the meaning of section 2(22)(e) of the Act. Consequently, it is noticed that the ground as raised by the revenue is misconcieved and the same is dismissed.

14. In regard to ground no.2 of revenue's appeal, which was against the action of Ld. CIT(A) in holding that the bad debts claimed by the assessee was allowable even though the conditions laid down in section 36(i)(vi) of the Act is not fulfilled, it was submitted by the Ld. DR that the assessee had not satisfied the condition that the debt had earlier been taken in computing the assessable income. The Ld. CIT(DR) vehemently supported the order of the AO. The Ld. AR submitted that the amount was a trading loss and was directly connected to the assessee's business. It was the submission that this amount had been shown as income in the year of sale. The trading loss in a business was deductible in computing the profits of the business. It was the submission that the copies of the ledger account of M/s. Satya Sai Sea Food and M/s. Amriteesh Enterprises were not also sent to the AO by CIT(A) and it was only after verifying the same, the addition as made by AO have been deleted. We have considered the rival submissions. A perusal of the order of the Ld. CIT(A) in para 58 of his order clearly shows that the ledger account of M/s. Satya Sai See Food and M/s. Amriteesh Enterprises was sent by the Ld. CIT(A) to the AO. No defect in the same had been pointed out. Further, a perusal of the ground as raised by the revenue clearly shows that the revenue is against the action of the ld. CIT(A) in deleting the addition by accepting a claim of bad debt whereas Ld. CIT(A has categorically held that it was a business loss having nexus with the business dealing with the assessee. Consequently, here also, it is noticed that the ground as raised by the revenue is misconcieved as the Ld. CIT(A) has not held that the bad debt is allowable but the loss is allowable as a trading loss. Consequently, the said ground stands dismissed.

16. In regard to ground no. 3 of revenue's appeal, which is against the action of Ld. CIT(A) in deleting the addition made by the AO u/s. 43B of the Act. The Ld. CIT, DR submitted that the amount of PF and ESI had not been paid within the due date as provided in the PF Act. In reply, the Ld. AR submitted that the amounts have been paid before the due date of filing the return. It was the submission that in view of the decision of Hon'ble Supreme Court in the case of *Alom Extrusions Ltd. reported in 319 ITR 306* **=** ***(2009-TIOL-125-SC-IT)***, the same was liable to be allowed. He vehemently supported the order of the Ld. CIT(A). A perusal of the decision of the Ld. CIT(A) in para 60 and 61 of his order clearly shows that the Ld. CIT(A) has taken into consideration the decision of the Hon'ble jurisdictional High Court in the case of *Arambag Hatcheries Ltd. Vs. CIT in ITA No.267 of 2004* dated 11.03.2011 for deleting the disallowance as the PF and ESI amounts have been deposited within the due date of filing of the income tax return u/s. 139(1) of the Act. It is also noticed that the issue is squarely covered by the decision

of the Hon'ble Supreme Court in the case of Alom Extrusions Ltd., referred to supra. Under these circumstances, the said ground stands dismissed.

17. In regard to ground no.4 of revenue's appeal, which was against the action of Ld. CIT(A) in deleting the addition made on account of excessive and unjustified business expenditure, the Ld. CIT,DR submitted that to prevent the leakage of revenue on account of unjustified expenditure 1% of the expenditure claimed by the assessee was treated as excessive and disallowed. The Ld. DR vehemently supported the order of AO. In reply, the Ld. AR submitted that the books of account of the assessee having not been rejected and no defects in the same have been pointed out, consequently, no disallowance was call for. He vehemently supported the order of Ld. CIT(A) on this issue.

18. We have heard rival submissions. A perusal of para 66 of the order of CIT(A) clearly shows that the Ld. CIT(A) has taken into consideration that the gross profit and net profit ratio for the current assessment year was better than that of the immediately earlier assessment year. Further, we are of the view that as no defects in the books of account have been pointed out no ad hoc disallowance can be made on presumptions and surmises that there is leakage of revenue. Under these circumstances, we are of the view that the finding of the Ld. CIT(A) on this issue does not call for any interference and consequently, the said ground stands dismissed.

19. In regard to ground no. 5 of revenue's appeal, which is against the action of Ld. CIT(A) in deleting the addition made on account of notional loss due to foreign exchange fluctuations, it was fairly agreed by both the sides that the issue was identical to the issue in ground no. 3 of assessee's appeal. As ground no. 3 of assessee's appeal has been restored to the file of AO for readjudication after taking into consideration the decision of the Hon'ble Supreme Court in the case of Woodward Governor India (P) Ltd., referred to supra, the said ground in revenue's appeal also stands allowed for statistical purposes.

20. Ground No. 6 of revenue's appeal is general in nature and does not call for any adjudication.

21. In the result, both the appeals of assessee and revenue are partly allowed for statistical purposes.

22. Order pronounced in the open court.