

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “B” KOLKATA**

Before **Shri N.V.Vasudevan, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

**ITA No.1616/Kol/2016**  
Assessment Year :2012-13

ACIT, LTU-1, 6 <sup>th</sup> Floor, Large Tax Payer Unit, 180, Shantipally, Kolkata-107	<b>V/s.</b>	M/s Hindustan Copper Ltd., Tamra Bhawan, Ashutosh Chowdhury Avenue, Kolkata-19 <b>[PAN No.AAACH 7409 R]</b>
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Md. Usman CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Sanjay Bhattacharya, FCA
सुनवाई की तारीख/Date of Hearing	16-01-2018
घोषणा की तारीख/Date of Pronouncement	04-04-2018

**आदेश /O R D E R**

**PER Waseem Ahmed, Accountant Member:-**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-23, Kolkata dated 11.05.2016. Assessment was framed by ACIT, LTU-1, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 12.03.2015 for assessment year 2012-13. The grounds raised by Revenue reads as under:-

*“1(A) That on the facts and circumstances of the case, Ld. CIT erred in law and on facts while holding that Club Subscription Fees were annual subscriptions including renewal of corporate club member fees whereas the club subscription fees were actually capital expenditure amounting to Rs.18,75,767/- and were never claimed by assessee in earlier years as revenue expenditure.*

*(b) That on the facts and circumstances of the case, Ld. CIT(A) erred in law and on facts while holding that the Club subscription fees were revenue in nature and not capital expenditure relying on the decision of DCIT vs. Makers Development Services Ltd. [1994] 75 taxman 125 (Bom).*

2. That on the facts and circumstances of the case, Ld. CIT(A) erred in law and on facts while deleting the addition made to the tune of Rs.31,91,500/- being expenses relating to earlier years.
3. That on the facts and circumstances of the case, Ld. CIT(A) erred in law and on facts while holding that Rule 8D(2)(iii) involving an amount of Rs.53,27,283/- shall have to be restricted to the dividend earning shares/mutual funds only and not aggregate investment in dividend schemes ignoring the decision of Godrej and Boyce Mfg. Co. Ltd. vs. DCIT (ITA 626 and WP No-758 of 2010) (Cal).
4. That on the fact and circumstances of the case, Ld. CIT(A) erred in law and on facts while holding that provision for performance related pay amounting to Rs.8,00,00,000/- is an allowable expenditure.
5. That on the facts and circumstances of the case, Ld. CIT(A) erred in law and on facts while deleting addition has made a wrong comparison between the gross balance as at the beginning of the year being Rs.50,559.15 lakhs and net balance as at the end of the year being Rs.47,863.84 lakhs.
6. That on the facts and circumstances of the case, Ld. CIT(A) erred in law and on facts while holding that apportionment of salaries, wages, allowances and contribution to PF/Gratuity etc under the Head "Mine Development Expenditure" to the tune of Rs.39,03,30,003/- on historical basis is not a capital expenditure.
7. That the appellant craves for leave to add, delete and/or modify any of the grounds of appeal before or at the time of hearing."

Md. Usman, Ld. Departmental Representative appeared on behalf of Revenue and Shri Sanjay Bhattacharya, Ld. Authorized Representative appeared on behalf of assessee.

2. First issue raised by Revenue in ground No.1 is that Ld. CIT(A) erred in treating the expenses of ₹18,75,767/- incurred towards club subscription fee/ renewal of club membership fees as revenue expenditure.
3. Briefly stated facts are that assessee is limited company and engaged in business of mining and sale of copper and other by-products. The assessee in the year under consideration has claimed club subscription fees of ₹18,75,767/- only. However, Assessing Officer was of the view that the impugned expenses are in the nature of capital expenditure and accordingly, he cannot be allowed as revenue expenditure. Thus, AO disallowed the same and added to the total income of assessee.
4. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that AO has not issued show cause to it before treating the impugned expenses as capital in nature. The AO has

assumed that club subscription expenses are capital in nature on the basis of details in the tax audit report. The club subscription fee was paid to various clubs so that the assessee-company can solicit the business through the club activities. As such, the club provides a platform where lot of people of different organizations come on regular basis. In view of the above, this expense cannot be treated as capital in nature and accordingly, it was prayed for deletion of the same. The assessee before Ld. CIT(A) also filed the necessary details for the ready reference. Ld. CIT(A) after considering the submissions of assessee and materials available before him deleted the addition made by AO by observing as under:-

*"1. I have carefully considered the action of the Ld. AO in making the disallowance in the matter. It is observed that the Club Subscription Fees had been paid in respect of the various Directors of the assessee-company in order to give them scope to mix up with various senior officials of different organizations at the Club for soliciting business by way of orders, and enhance the business prospects of the assessee. I find that the contentions of the assessee / Ld. ARs that there had not been any personal interest of any of the Directors in becoming a member of the club and that the expenses towards club subscriptions had been wholly and exclusively incurred towards the purposes of the business of the assessee have sufficient strength and merit. It is also pertinent to find that the Ld. Assessing Officer had not show-caused the assessee-company or enquired about the nature and requirement to make these payments in the nature of the club subscriptions, and only on assumption he has treated the club subscriptions as capital in nature.*

*2. On perusal of the general ledger report of the club subscription fees account of the assessee, which was also submitted before the AO during the scrutiny, it is seen that the expenses were towards the guest and visitors for the Government undertaking, and therefore the requirement of business exigency also stands explained.*

*3. It has been decided in several cases that payment made on behalf of directors by assessee would be allowable expenditure. In the case of **DCIT Vs. Makers Development Services Ltd**, [1994] 75 taxman 125 (Bom), the Hon'ble ITAT Bench "D" in IT Appeal No.6751 (Bom) of 1993, on similar issues has decided the matter in favour of the appellant. The relevant portion of the order is as under:*

**'Section 37(1) of the Income-tax Act, 1961 – Business expenditure – Allowability of – Assessment year 1987-88 – Whether payment made by assessee-company towards subscription to clubs of its directors was an allowable business expenditure – Held, yes**

**FACTS**

During the accounting year relevant to the assessment year 1987-88, the assessee-company incurred expenditure on payment of subscription to certain clubs and claimed deduction thereof as business expenditure. The ITO disallowed it on the ground that it was personal

expenditure which could not be said to have been incurred by the assessee for business purposes. However, on appeal, the Commissioner (Appeals) allowed it.

On appeal by the revenue:

HELD

In the instant case, the assessee was a private limited company. The expenditure incurred by it, therefore, could not be personal in nature. The expenditure on payment to the clubs was only for subscription payment and not for running bills for enjoying of the facilities of food etc. Membership of a club in the modern society is a very effective way of transact business dealings. The directors of the assessee-company and its employees would get opportunity to get together with the clientele and in that process advance their business interest. Such expenditure, therefore, could not be said to be in the nature of entertainment. In any case, it was not even the case of the ITO that the expenditure was in the nature of entertainment. His reason for disallowance was that it was personal expenditure which it could not be, the assessee being a corporate body. The Commissioner (Appeals) was, therefore, justified in allowing the assessee's claim."

*4. It is quite apparent that the expenses so incurred by the appellant either towards subscription or towards other payments in entertaining the clients and business partners were revenue in nature and were incurred for the purpose of business of the assessee. Therefore, the Ld. Assessing Officer was not correct in disallowing **Rs.18,75,767** by treating the Club subscription fees as capital expenditure. The disallowance remains unsustainable in the facts emergent, and therefore is ordered to be **deleted**.*

*The ground of appeal is accordingly decided in favour of the assessee-company, and therefore stands **allowed**."*

The Revenue, being aggrieved is in appeal before us.

5. Before us Ld. DR has relied on the order of AO whereas the Ld. AR for the assessee filed paper book which is running from pages 1 to 60. He drew our attention pages 5 to 9 of the paper book where the details of club expenses were placed. The Ld. AR claimed that the club expenses have been incurred in connection with the business of assessee. Ld. AR for the assessee has relied on the order of Ld. CIT(A).

6. We have heard the rival contentions of both the parties and perused the material available on record. In the instant case, assessee has claimed certain expenses under the head "club subscription fees" which were treated as capital in nature. Therefore, same was disallowed by the AO however, the addition made by AO subsequently deleted by Ld. CIT(A) by observing that

club subscription fees represents that the expenses incurred in connection with the business of assessee. It is undisputed fact that no capital assets came into existence out of expenditure incurred by the assessee under the head "club subscriptions fees". Therefore, same cannot be treated as capital expenditure. Similarly, there was no benefit derived by the assessee out of club subscription fees which is spreading over more than a year. Therefore, same cannot also be treated as deferred revenue expenditure as well. We also note that the clubs provide several kinds of facilities such as conferences, business meetings, as well as provision for multimedia exhibition. Many clubs allow membership to companies or other business entities. The membership is given in name of company or other concern. It is very well known that the clubs are a platform to meet people. The meetings can be privately organized or can be in the course of mass meetings or gatherings at the time of functions or celebrations at club. By visiting clubs, chances of making new contacts improve. With new contacts people can do more interactions which can be beneficial for business and profession. Therefore business organizations like company, firm, bank, co-operative society etc. functions through human agencies which may be directors or other officers of business organization. Therefore, business organizations provide facility to their officers to attend and avail services of clubs. Clubs make company or other business organization as its member. This is generally called as corporate membership. The expenses may be in nature of entrance fees, annual fees, life membership fees and reimbursement of actual expenses etc. The purpose of the expenditure is to have a suitable platform for meeting people and getting advantages of meeting many people at a time to maintain old contacts and also to make new contacts. The main purpose of the organization is to induce its officers to attend such places for maintaining and making contacts for the benefit of business. Even if some personal advantage is obtained by officers, it will be in nature of maintaining good relations with officers and in nature of staff welfare expenses. Therefore, the expenses are incurred wholly and exclusively for the purpose of business. By obtaining membership for a period

of more than one year, there may be an advantage of enduring nature. However, such advantage is in the field of revenue benefit and not for obtaining any capital asset or obtaining benefit in capital field. Therefore such expenses will be of revenue nature.

In the light of above reasoning, we hold that the order of the Ld. CIT(A) is correct and in accordance with law and no interference is called for. We hold accordingly. Consequently, Revenue's ground is dismissed.

7. Next issue raised by revenue in ground No.2 is that Ld. CIT(A) erred in deleting the addition made by the AO for ₹31,91,500/- on account of prior period expenses.

8. During the course of assessment proceedings, AO observed that expenses amounting to ₹ 31,91,500/- pertaining to earlier years which cannot be allowed as deduction in the year under consideration. Therefore, the AO disallowed the same and added to the total income of assessee.

9. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that no prior period expenses were claimed during the year as held by the AO, in fact, there were prior period expenses of ₹31,91,500/- in respect of Indian Copper Complex Unit, Ghatshila, which was written back during the year by crediting the profit and loss account. Therefore the disallowance made by the AO is based on wrong assumption of facts. Ld. CIT(A) after considering the submissions of assessee deleted the addition made by the AO by observing as under:-

*"DECISION:*

- 1. I have carefully considered the action of the Ld. Assessing Officer and the submissions made by the appellant-company / Ld. ARs. On carefully perusing the individual Tax Audit Report of 'Indian Copper Complex' Unit, Ghatshila, it is observed that an amount of R.31,91,500/- had been shown in bracket against the particulars of income or expenditure of prior period. It is clear that the amount was credited to the profit & loss account. Hence the Assessing Officer was incorrect in holding the amount shown in the bracket as a debit item and an expenditure item and holding that the expenditure related to earlier year.*

2. *It is quite apparent that the Ld. AO has appreciated the position incorrectly, and has not given any opportunity to the appellant-assessee to clarify or bring forth the correct position in the matter. In the said situation, the Ld. AO has not observed the basic principles of “**audi alterum partum**”, otherwise the matter could easily have been explained by the assessee.*
3. *Accordingly, I have no hesitation in holding that the Ld. Assessing Officer was snot correct in making the addition of Rs.31,91,500/- to the appellant's income as income tax had already been paid on the impugned amount by the assessee. The addition made is unsustainable in the facts of the case, and is ordered to **be deleted.**”*

Aggrieved by the above finding of Ld. CIT(A), the Revenue is in appeal before the Tribunal.

10. Before us Ld. DR vehemently relied on the order of AO whereas Ld. AR submitted that assessee has credited its profit and loss by way of writing back the prior period item. In fact, the AO wrongly assumed the expenses have been claimed as deduction during the year. As such, the amount shown in a signified that it has been credited to the profit and loss account. Ld. AR in support of assessee's claim drew our attention on the relevant portion of the Tax Audit Report showing the adjustment on account of prior period item, which is placed on pages 10 and 11 of the paper book. He relied on the order of Ld. CIT(A).

11. We have heard the rival contentions of both the parties and perused the material available on record. In the present case, AO assumed that assessee has written off the prior period item during the year. The assumption of AO was based on the Tax Audit Report furnished by assessee where the figure of ₹31,91,500/- was shown under the (bracket). As per Ld. AR the amount of prior period item was credited in the profit and loss account. Therefore, there is no question of writing off the same under the head “prior period items”. We also note that Ld. DR failed to bring anything on record contrary to the arguments advanced by Ld. AR for the assessee. Therefore, after perusing the Tax Audit Report, we hold that the assessee has not claimed any expense under the head “prior period item”. Therefore, there is no question of making the disallowance for the same. As such, assessee has credited the profit and

loss account by the amount of ₹31,91,500/- on account of prior period adjustment. In view of the above proposition, we do not find any infirmity in the order of Ld. CIT(A). Accordingly, we uphold the same. This ground of Revenue's appeal is dismissed.

12. Next issue raised by Revenue in Ground No.3 is that Ld. CIT(A) erred in deleting the addition made by the AO for ₹53,27,283/- under the provision of Section 14A r.w.s. 8D(2)(iii) of the Income Tax Rule, 1962.

13. During the course of assessment proceedings, AO observed that assessee has earned dividend income of ₹ 8 crore which was claimed as exempted income under the provision of Section 10(34) of the Act. But the assessee has not made any disallowance of the expenditure incurred in connection with the dividend income. Accordingly, AO invoked the provision of Rule 8D of IT Rules, 1962 made the disallowance as under:-

1. Rule 8(2)(i) direct expenditure - nil
2. Rule 8(2)(ii) interest expenditure – nil
3. Rule 8(2)(2)(iii) indirect expense administrative expense ₹53,27,283/-

The above expense was disallowed by the AO and added to the total income of assessee.

14. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that there were certain investments made in mutual fund in Growth Scheme, thus no dividend income was possible in respect of such investment. The income if any on such mutual fund would be subject to capital gains tax. Therefore, AO should not have included such investment while making the disallowance under Rule 8D(2)(iii) of IT Rules.

Similarly, the investments which have not yielded the dividend income during the year should have been excluded from the computation of the disallowance under Rule 8D(2)(iii) of the IT Rules, 1962. The assessee accordingly furnished the calculation for making the disallowance under Rule 8D(2)(iii) which worked out at ₹23,81,828/- only. Ld. CIT(A) after considering the

submissions made by assessee deleted the addition made by AO in part by observing as under:-

**“DECISION**

1. I have considered the reasoning and the action of the Ld. O, and the submissions made by the Ld ARs. After careful consideration of the fact and issues at hand, I find that the Ld. Assessing Officer was quite correct in applying disallowance of expenditure u/s.14A read with Rule 8D; however, he appear to have erred in taking into account for the calculation of disallowable sum u/s.14A read with Rule 8D(2)(iii), the amount of investment in Growth-oriented Investments in Mutual Funds which are not capable of giving rise to any exempt Dividend income and the Income of which are taxable under the head Capital Gains.
2. From the detailed schedules of the Investments in Mutual Funds as on 31.03.2011 and 31.03.2012, the separate figures of investments in Growth schemes and Dividend schemes of Mutual Funds can be ascertained. Further it is also observed from the submissions that the assessee had given the details of the Growth-oriented Mutual Fund Units i.e. MF-Growth schemes, the sale of which would give rise to capital gain or loss. It is observed from the Return of Income that the assessee has computed Income under the head “Capital gains from the Investments under the MF Growth Schemes and on which capital gains were calculated and the return reflected a Long Term Capital loss of R.1,77,55,340. It is also to be observed that the Mutual Fund (MF) investments were made in accordance with the Department of Public Enterprises Guidelines, and the investment were made after due approval from the parent Ministry of Mines, Government of India.
3. In view of the apparent and undisputed fact that the Income from MF-Growth Schemes were already considered by the assessee for the calculation of Income under the head Capital Gains, it is quite apparent that the same cannot be considered again for the calculation of the disallowance amount u/s.14A with Rule 8D(2)(iii) for those investments giving exempt dividend income.
4. The correct calculation of the disallowable sum u/s. 14A read with Rule 8D(2)(iii), in my considered view, would be as follows:
  - i) Aggregate of investments from Mutual fund-dividend schemes as on 31.03.2011: Rs.35,27,27,585/-
  - ii) Aggregate of investment form mutual fund – dividend schemes as on 31.03.2012 : Rs.60,00,03,480/-
  - iii) Average investment =  $(Rs.35,27,27,585 + Rs.60,00,03,480) / 2 = Rs.47,63,65,533/-$
  - iv) Disallowable amount = @ 0.5% of Rs.47,63,65,533 = Rs.23,81,828
5. Therefore, the Assessing Officer was not correct in calculating the disallowance of expenditure u/s 14A read with rule 8D as Rs.53,27,283/-. The disallowed amount as calculated above will be Rs.23,81,828 which should substitute the amount of Rs.53,27,83 disallowed by the Assessing Officer. Accordingly, thee disallowance made by the Ld. AO is sustained to the extent of Rs.23,81,828/- and for the balance amount the assessee-company is allowed relief.

*This ground accordingly stands allowed partly in favour of the assessee-company.”*

Being aggrieved by this, Revenue is in appeal before us.

15. Before us both parties relied on the order of authorities below as favourable to them.

16. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the AO has invoked the provisions of Rule 8D of the IT Rules, 1962 for making the disallowance of the expenditure incurred by assessee in connection with exempted income claimed by assessee. It is a settled law that the investment which have been yielded dividend income during the year can only be considered for the purpose of disallowance under Rule 8D(2)(iii) of the IT Rules, 1962. In this regard, we find support and guidance from the order of Coordinate Bench of this Tribunal in the case of *REI Agro Ltd. v. Dy. CIT* [2013] 35 taxmann.com 404/144 ITD 141 (Kol.) which was also affirmed by the Hon'ble Calcutta High Court vide Order dated 09.04.2014 in GA No. 3581 of 2013, wherein it was held that the disallowance as per Rule 8D shall be made by taking into consideration only those shares, which have yielded dividend income in the year under consideration. Therefore we direct the AO to make the disallowance under rule 8D after considering the investments which have yielded the dividend income during the year. Consequently, Revenue's ground of appeal is dismissed.

17. Next issue raised by Revenue in ground No.4 is that Ld. CIT(A) erred in deleting the addition made by the AO for ₹ 8 crores on account of provision for performance related pay.

18. The assessee in the year under consideration has created a provision of ₹ 8 crore on account of Performance Related Payable (PRP for short) to executives which was shown under the head "Employees Benefit Expense". On question by the AO about such provision it was submitted that the assessee has been paying PRP to the employees benefit expense which is

based on the performance of the assessee-company in a particular year. As such, a fair estimate of ₹ 8 crore was calculated and claimed in the profit and loss account. However, the actual payment was made for ₹ 9.41 crore dated 14.02.2013 on account of PRP. However, the AO disregarded the contention of assessee by observing that the expense on account of PRP for ₹ 8 crore was not incurred during the year. Accordingly, same was disallowed and added to the total income of assessee.

19. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that it has been claiming expenses towards PRP on year-to-year basis. There was a Memorandum of Understanding between assessee and Govt. of India for making payment to the executives for their performance. This fact, was duly brought to the notice of AO that actual liability was incurred on account of PRP for ₹9.41 crore which was paid on 14.02.2013. The assessee is following a mercantile system of accounting and accordingly it is liable for claiming expenses which can be ascertained with reasonable accuracy. Merely the exact amount was not quantified till the date of finalization of the financial statement cannot be the basis for making the disallowance. Similar expense was allowed by AO in earlier assessment year without making any disallowance. The amount of PRP was calculated on the basis of formula issued by the Department of Public Enterprises, Govt. of India. Ld. CIT(A) after considering the submission made by assessee deleted the addition made by the AO by observing as under:-

*“DECISION:*

*1. I have carefully considered the reasons offered by the Ld AO while making the impugned addition of Rs.8,00,00,000/-. The various submissions and explanations offered by the Ld A.Rs for the appellant-company have also been considered. The assessee-company had made a provision of Rs.8,00,00,000 towards Performance Related Pay (PRP) payable to its Executives for the Financial Year 2011-12 based on a fair estimate, and the disclosure of the same was made in the Accounts Annual Report under Point 4 of Note No. 34-Notes to Accounts.*

*2. It is observed that the basis of the Provision for PRP of the assessee was their performance vis-a-vis the Memorandum of Understanding [MOU] signed*

*with the Government of India and the performance of the Executive Cadre of the assessee-company in a particular year. It is quite clear that the PRP is calculated as per the formula and details as stated in the Dept. of Public Enterprises, Govt. of India letter dated 26.11.2008. The Assessing officer has recorded that PRP was debited to the Profit & Loss Account under the head "Employees Benefit Expenses". It has also stated by the Ld A.Rs that the actual liability was later on determined and specifically quantified at Rs.9.41 Crore, and the said sum was paid by the assessee on 14/02/2013 to the eligible Executive Cadre.*

*3. It is also observed that the appellant had all along been following the Mercantile system of Accounting. It is thus seen that the liability for Performance Related Pay is an ascertainable liability, the exact amount payable of which cannot be calculated at the time of the preparation of the Accounts. The actual payment of Rs.9,41,00,000/- towards Performance Related Pay were made to the Executives of the assessee the next year when all the details were known and ascertained correctly. It was also submitted before the Assessing Officer that in the earlier years this procedure was followed, and the Revenue has not found fault with the same. It is also to be observed from the Copy of the Assessment Order related to AY 2011-12 dated 28.03.2014, that the procedure of debit of PRP to the Profit and Loss account on the mercantile basis has not been disturbed during the assessment.*

*4. In the matter of such liabilities which remain ascertained during the year, but as such require proper calculation to arrive at the precise figure, various Hon'ble Courts have decided that there could be various upward or downward revision at the time of finality. However these ought to be allowed business expenditure, on a mercantile basis, as consistently followed by the taxpayer. In the case of Biocon Ltd Vs DCIT (LTU) Bangalore, [2013] 35 taxmann.com 335 (Bangalore - Trib.) (5B) dated 13.07.2013, the Hon'ble ITAT, Bangalore has decided such a similar matter in favour of the appellant.*

*"IT: Discount on ESOP is an allowable deduction under section 37(1) during years of vesting on basis of percentage of vesting during such period, subject to adjustment at time of exercise of option.*

*Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of [Discount on ESOP] - Assessment years 2003-04 to 2007-08 - Assessee-company issued Employee's Stock Option Plan (ESOP) and claimed difference between market price and exercise price as deduction under section 37(1), spread equally over vesting period of four years, on basis of SEBI Guidelines and accounting principles - Assessing Officer disallowed same, holding it as a contingent liability or a short receipt of share premium - Whether, discount on premium under ESOP is simply a mode of compensating employees for their continued services to company and is a part of their remuneration, and cannot be described either as a short capital/share premium receipt or-e capital expenditure - Held, yes - Whether, mere fact that quantification is not precisely possible at time of incurring liability would not make an ascertained liability a contingent - Held, yes - Whether, where liability in respect of ESOP is incurred at end of each year,*

which is quantified at end of vesting period when employees become entitled to exercise options, discount on ESOP is an ascertained liability and not a contingent liability - Held, yes - Whether, discount on ESOP being a general expense, is an allowable deduction under section 37(1) during years of vesting on basis of percentage of vesting during such period, subject to upward or downward adjustment at time of exercise of option - Held, yes [Para 11.1.6] [In favour of assessee]"

*5. Along similar lines, the Hon'ble High Court of Himachal Pradesh in the case of CIT Vs Himachal Pradesh Tourism Development Corporation [2013] 35 taxmann.com 450 (Himachal Pradesh) [date of order 16.05.2013] has adjudicated that since provision made towards leave encashment of employees was in respect of ascertained and definite liability, the same would not be added while computing book profit for purpose of levy of MAT under section 115JB Section 115JB of the Income-tax Act, 1961 - Minimum alternate tax [Leave encashment provision] - Assessing Officer treated provision made by assessee towards leave encashment of employees as in respect of unascertained liability and added same in book profit for purpose of levy or MAT- Tribunal deleted addition and held that provision made was in respect of ascertained and definite liability - Whether since issue was already stand answered by decision of Apex Court in Bharat Earth Movers v. CIT [2000] 112 Taxman 61, appeal filed by revenue was to' be dismissed - Held, yes [Para 3] [In favour of assessee]*

#### FACTS

- The assessee made provision towards leave encashment of employees. The Assessing Officer added the same by treating it as unascertained liability for ascertaining book profit.
- On appeal, the Commissioner (Appeals) confirmed the order of the Assessing Officer.
- On second appeal, the Tribunal held that the provision made was in respect of 'ascertained and definite liability' of the assessee towards leave allowance to be paid to the employees.
- The Tribunal relying upon the decision of the Apex Court in the case of Bharat Earth Movers v. CIT [2000] 245 ITR 428 deleted the order of the Assessing Officer.
- On revenue's appeal to the High Court:

#### HELD

- It is not open for this Court to overturn the finding of fact so recorded by the appellate Tribunal and, more so, when the issue is already covered by the decision of the Apex Court in the case of Bharat Earth Movers v. CIT [2000] 245 ITR 428/112 Taxman 61. [Para 2]
- The argument of the appellant that the finding recorded by the Tribunal is in appropriate, cannot be the basis to admit these appeals and, more so, when the substantial question, formulated by the department, already stands answered by the decision of the Apex Court in Bharat Earth Movers (supra). Hence, dismissed. [Para 3]

#### CASE REVIEW

Bharat Earth Movers v. CIT [2000] 245 428/112 Taxman 61 (SC) (para 3) followed.

CASES REFERRED TO

*CIT v. Bharat General & Textile Industries Ltd. [1986] 157 ITR 158 (Cal.) (para 2) and Bharat Earth Movers v. CIT [2000] 245 ITR 428/112 Taxman 61 (SC) (para 2).*

*Vinay Kuthiala and Mrs. Vandana Kuthiala for the Appellant. Vishal Mohan and Rattan Thakur for the Respondent.*

ORDER

*A.M. Khanwilkar, Cl. - Heard counsel for the parties.*

*2. These appeals have been filed by the Department on the assertion that it raises substantial question of law as follows:-*

*"Whether the provision made by the assessee for leave encashment is not an ascertained liability and is thus liable to be added to the "book profit" under Explanation 1 to Section 115JB of the Income-tax Act, 1961?"*

*In both these appeals, the Assessing Officer, relying on the decision of the Calcutta High Court, in the case of CIT v. Bharat General & Textile Industries Ltd. [1986] 157 ITR 158 held that the provision made by the respondent in the books of account towards leave encashment of employees for the relevant period was unascertained liability and, therefore, was required to be disallowed. The Appellate Tribunal, however, over turned that finding recorded by the Assessing Officer. The Appellate Tribunal accepted the plea of the respondent that the provision made by the respondent in the concerned accounting year was in respect of "**ascertained and definite liability**" of the respondent towards leave allowance to be paid to the employees. Consistent with that finding, the Appellate Tribunal, relying on the decision of the Apex Court in the case of Bharat Earth Movers v. CIT [2000] 245 ITR 428/112 Taxman 61 allowed the appeal and was pleased to set aside the assessment order to the extent disallowing the amount towards leave allowance to be paid to the employees. The Appellate Tribunal allowed the claim of the respondent assessee. It is not open for this Court to overturn the finding of fact so recorded by the Appellate Tribunal and, more so, when the issue is already covered by the decision of the Apex Court in the case of Bharat Earth Movers case (supra). It will be apposite to advert to the exposition of the Apex Court in the said decision, which reads thus:-*

*"The law is settled: if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain."*

*(Emphasis supplied)*

3. The argument of the appellant that the finding recorded by the Tribunal is inappropriate, cannot be the basis to admit these appeals and, more so, when the substantial question, formulated by the Department, already stands answered by the decision of the Apex Court in Bharat Earth Movers (supra). Hence, dismissed."

*6. After consideration of the facts emergent from the matter, and the law as laid down in the case of Bharat Earth Movers by the Hon'ble Supreme Court, I am inclined to accept the submission of the assessee that the provision for the liability towards the Performance Related Pay payable to the Executives of the appellant in relation to the Financial Year 2011-12 (relevant for the Assessment Year 2012-13) had been an ascertained liability and hence the Ld. Assessing Officer's action in disallowing the entire provision of Rs.8,00,00,000 is unjustified. Therefore, the referred amount of Rs. 8 crore is a deductible expenditure for the AY 2012-13. The addition made by the Ld. AO on this account is not sustainable and is ordered to be deleted.*

*This ground of appeal is accordingly adjudicated as allowed in favour of the appellant-undertaking."*

The Revenue being aggrieved is in appeal before us.

20. Before us Ld. DR submitted that the amount of PRP is representing the provisions which are not allowable as deduction under the Act. He vehemently relied on the order of AO.

On the other hand, Ld. AR submitted that the amount of PRP was calculated as per the Memorandum of Understanding issued by the Department of Public Enterprises, Govt. of India vide No.2(70/08-DPP(we) dated 26.11.2008. Therefore it was claimed that the PRP was not a mere provision but it was representing the ascertain liability of the assessee. Ld. AR in support of assessee's claim filed a copy of office memorandum which is placed on pages 26 to 47 of the paper book. He relied on the order of Ld. CIT(A).

21. We have heard the rival contentions of both the parties and perused the material available on record. In the present case, the provision created by the assessee towards PRP was considered by the AO as unascertained provision and accordingly disallowance was made by AO. However, Ld. CIT(A) observed that assessee has been paying PRP as per the office memorandum issued by the Public Enterprises, Govt. of India. The assessee has been claiming deduction on account of PRP on year-to-year basis. Thus, Ld. CIT(A)

was of the view that the provision for PRP does not represent the unascertained liability. Accordingly, Ld. CIT(A) deleted the addition made by the AO. From the foregoing discussion, we find that the undisputed fact the assessee has been claiming deduction on account of PRP on year-to-year basis which was not disallowed by AO in other years. The PRP was quantified by the assessee in pursuance to the formula provided by the Department of Public Enterprise, Govt. of India. No defect of whatsoever has been pointed out by the AO while framing his assessment proceedings in the amount of PRP determined by the assessee for the year under consideration. The liability on account of PRP pertaining to the year under consideration was settled / paid by the assessee on 14.02.2013 for ₹ 9.41 crore and this fact was duly brought to the notice of AO during his assessment proceedings. In this view of the above, we hold that the provision claimed by assessee on account of PRP does not represent the ascertain liability. Thus, the impugned liability was very much crystallized during the year but exact amount was not quantified. In this regard, we find support and guidance from the judgment of Hon'ble Supreme Court in the case of *Bharat Earth Movers vs. CIT* (2000) 245 ITR 428/122 taxman 62 (SC), wherein it was held as under:-

*“The law is settled: if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied, the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain.”*

We also find support and guidance from the order of ITAT Special Bench of Bangalore in the case of *Biocon Ltd. vs. DCIT (LTU)* (2013) 35 taxmann. 335 (Bang), where the head note of Special Bench order reads as under :-

*“Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of [Discount on ESOP] - Assessment years 2003-04 to 2007-08 - Assessee-company issued Employee's Stock Option Plan (ESOP) and claimed difference between market price and exercise price as deduction under section 37(1), spread equally over vesting period of four years, on basis*

*of SEBI Guidelines and accounting principles - Assessing Officer disallowed same, holding it as a contingent liability or a short receipt of share premium - Whether, discount on premium under ESOP is simply a mode of compensating employees for their continued services to company and is a part of their remuneration, and cannot be described either as a short capital/share premium receipt or a capital expenditure - Held, yes - Whether, mere fact that quantification is not precisely possible at time of incurring liability would not make an ascertained liability a contingent - Held, yes - Whether, where liability in respect of ESOP is incurred at end of each year, which is quantified at end of vesting period when employees become entitled to exercise options, discount on ESOP is an ascertained liability and not a contingent liability - Held, yes - Whether, discount on ESOP being a general expense, is an allowable deduction under section 37(1) during years of vesting on basis of percentage of vesting during such period, subject to upward or downward adjustment at time of exercise of option - Held, yes [Para 11.1.6] [In favour of assessee]"*

In view of the above proposition, we hold that the provision created by assessee in relation to PRP does not represent the uncertain liability and therefore the same are very much eligible for deduction u/s 37(1) of the Act. We respectfully following the decision of Hon'ble Supreme Court and consistent view of Hon'ble Special Bench of Bangalore decline to interfere with the order passed by the Ld. CIT(A) on this account and accordingly the ground taken by Revenue is regretted.

22. Next issue raised by Revenue in Ground No.5 is that Ld. CIT(A) erred in deleting the addition made by AO for ₹46,64,85,570/- on account of mismatch in the amount brought forward from the previous year.

23. The assessee in the year under consideration has shown Mine Development Expenditure in its financial statement as detailed under:-

FY 11-12 AY 12-13					
MINE DEVELOPMENT EXPENDITURE				WORKING MINES	OPEN CAST
PARTICULARS	TOTAL	ICC	RCP	KCC	MCP
As per Lat Balance sheet	5055914569.97	314969412.00	121638097.66	1046078427.21	3573228633.10
Add: expenditure during the year (as per Note below)	1568822869.14	0.00	0.00	246941483.00	1321881386.14
	6624737439.11	314969412.00	121638097.66	1293019910.21	4895110019.24

Less: value of ore recovered during Mine Development	108981555.67	0.00	0.00	105241404.00	3740151.67
Less: amortization during the year	1262886433.25	2155713.00	0.00	34642341.00	1226088379.25
	5252869450.19	312813699.00	121638097.66	1153136165.21	3665281488.32
Less: provisions	466485504.18	273603981.00	121638097.66	71243425.52	
Total	4786383946.01	39209718.00	0.00	108192739.69	3665281488.32
Note: MIINE DEVELOPKMENT EXPENDITURE					
Salaries, wages, allowances	313744483.60			27524558.00	286219925.60
Contribution to provident & other funds	28211760.70			2389783.00	25821977.70
Workmen & staff welfare expenses	19105763.89			1703461.00	17402302.89
Gratuity	29267995.35				29267995.35
Sstdore, spares & tools consumed	420022784.20			2966547.00	417056237.20
Power, fuel & water	47214350.06			7670763.00	39543587.06
Royalty	4543162.00			4543162.00	
Repair & maintenance	220345333.07			198539944.00	21805389.07
Insurance	422452.72				422452.72
Overburden removal expenditure	400330110.10				400330110.10
Depreciation	54188680.48			1514680.00	52674000.48
Other expenses	31425992.97			88585.00	31337407.97
Total	1568822869.14	0.00	0.00	24947483.00	1321881386.04

The AO during the course of assessment proceedings has observed that assessee has shown closing balance of Mine Development Expenditure as on 31.03.2011 at ₹458,94.29 lakh. Thus, the amount of closing balance should have become the opening balance of the year under consideration but assessee has shown opening balance at ₹50559.15 lakh only resulting a difference of ₹466.86 lakh. Accordingly, AO treated the impugned difference as income and added to the total income of assessee.

24. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before the Ld. CIT(A) submitted as under:-

*“Though the appellant explained with the help of the above chart as appearing in the balance sheet, that the gross balance as at the beginning of the year and at the end of the year had been Rs.50,559.15 lac and Rs.52,528.70 lac respectively and after reduction of a provision made in earlier years of*

Rs.4,664.86 lac from both the gross balances, the net balances as at the beginning of the year and as at the end of the year had become Rs.45,894.29 lac and Rs.47,863.84 la. On receipt of the assessment order, it was observed that the Assessing Officer, without properly appreciating the details submitted by the appellant, made a comparison between the gross balance as at the beginning of the year (Rs.50,559.15 lac) and the net balance as at the end of the year ((Rs.47,863.84). The Assessing Officer did not appreciate that at the starting of the chart it had been the gross balance which had been taken into account and therefore the comparison should have been made in between either the gross balance or the net balances and not under any circumstance between the gross balance of a year with the net balances of another year. As a result the Assessing Officer came to a wrong finding of an alleged over-stated balance of Rs.4,664.86 lac which was actually representing the amount of provision made for an earlier year which remained constant both at 31-03-2011 and 31-03-2012. The Assessing Officer should have also appreciated that no fresh provision had been made for the financial year 2011-12 (relevant for the assessment year 2012-13) and hence no mount had been charged to the profit and loss account of the year. It is submitted that the same procedure of reflection of the Mine Development Schedule in the Account was being followed by the appellant consistently in the earlier year too and the same had been accepted in the relevant assessments. copy of the am order for AY 2011-12 is enclosed at annexure-5 for ready reference.

On the basis of the above details and explanations the appellant submits that the Assessing Officer under a wrong assumption considered of an alleged over-stated balance of Rs.46,64,85,570 and as a result his action in adding back R.46,64,85,570 was unjustified and accordingly the appellant submits that the addition of Rs.46,64,85,570/- may kindly be deleted.”

Ld. CIT(A) after perusing the submissions of assessee deleted the addition made by AO by observing as under:-

**“DECISION:**

1. I have carefully considered the action of the Ld. AO and the reasons recorded by him in the order, as well as the arguments and submissions made by the Ld. ARs in respect of (a) Rs.46,64,85,570 as an overstated brought forward amount of Mine Development Expenditure. It is very clear that the Assessing Officer has made a wrong comparison between the Gross balance as at the beginning of the year (Rs.50,559.15 lac) and the Net Balance as at the end of the year (Rs.47,863.84).
2. The Ld. Assessing Officer, if at all, should have either compared the balances between the Gross Balances or the Net Balances and not between the gross balance of a year with the Net Balances of another year. It is also observed that the figure of Rs.4,664.86 lac presents provision made in an earlier year which remained the same as on 31.03.2011 an 31.03.2012. It is clear from the Note No.13.2 of the Annual Report that no fresh provision has been made for the previous year 20011-12 (Assessment Year 2012-13) and no such amount has been charged to the profit and loss account of the year. Hence, no overstatement of the opening balance has been found to occur. It is also observed that the

*system of reflection of the Mind Development Schedule in the Account was being followed by the assessee consistently in the earlier year too and the same had been accepted in the earlier assessment 11-12 as evident from the Assessment Order for AY 2011-12. Further, from the copy of the Assessment order of the succeeding AY 2013-14, it is observed that no disallowance on the basis of such assumption as been made by the Assessing Officer. Hence, the addition of Rs.46,64,85,570 made by the Ld.ao is unsustainable in the fact of the case, and is ordered to be deleted."*

The Revenue, being aggrieved, is in appeal before us.

25. Before us both parties relied on the order of Authorities Below as favorable to them.

26. We have heard the rival contentions of both the parties and perused the material available on record. In the present case, the addition was made by the AO on account of mismatch observed between closing figure of the last year vis-a-vis opening figure for the year under consideration. In this regard, we find that assessee has shown gross amount as opening balance of ₹50559.15 lac which was coming from the previous year as evident from the Note No.13.2 shown in the Annexure of balance-sheet which is placed on page 53 of the paper book. However, the assessee in the earlier year reduced the amount of gross provision by ₹4664.86 lac for the provision created during the year. Thus, the net Mind Development Expenditure was shown at ₹45894.92 lac but the assessee instead of carrying forward the net amount has taken the gross amount i.e. ₹50559.15 lac to the subsequent year as opening balance and reduced again the amount of provision for ₹4664.86 lac as credited in the immediate preceding year. As such, we note that there was no difference between the closing balance of the preceding year vis-à-vis opening balance of the current year as observed by the AO. In fact, the AO has compared the amount of net Mine Development Expenditure with the amount of opening gross balance of Mine Development Expenditure shown during the year thus, and accordingly observed the difference in the amount. The relevant extract of the mine development expenditure as per note 13.2 of the annual report is reproduced below:-

“Note No. 13.2 MINE DEVELOPMENT EXPENDITURE

As per Last Balance Sheet	50559.15	45065.38
Add : Expenditure during the Year (as per Note Below) <u>15688.24</u>		<u>13527.10</u>
	66247.39	58592.48
Less: Value of ore recovered during Mine Development 1089.82		390.28
Less: Amortization during the year	12628.87 <u>13718.69</u>	<u>7643.05</u> <u>8033.33</u>
	52528.70	50559.15
Less: Provision	4664.86	4664.86
<b>TOTAL</b>	<b><u>47863.84</u></b>	<b><u>45894.29</u></b>
	=====	=====

In view of the above, we hold that there was no difference between the amounts of closing balance shown in the immediate preceding year vis-à-vis amount of opening balance of the year under consideration. Accordingly we find no reason to interfere with the finding arrived by the Ld. CIT(A). Under the circumstances, this issue of Revenue’s appeal is dismissed.

27. Next issue raised by Revenue in ground No.6 is that Ld. CIT(A) erred in holding that apportionment under the head “Mine Development Expenditure” for ₹39,03,30,003/- is not capital expenditure.

28. The assessee during the year has capitalized Mine Development Expenditure for ₹ 15,688.24 lacs as detailed under:-

“ i) Salaries, wages, Allowances	3137.45	2759.51
ii) Contribution to provident & Other Funds	282.12	278.45
iii) Workmen & staff welfare expenses	191.06	206.34
iv) Gratuity	292.68	306.72
v) Stores, spares & Tools consumed	4200.23	3839.09
vi) Power, fuel & water	472.14	290.97
vii) Royalty	45.43	39.80
viii) Repair & Maintenance	2203.45	1474.03
ix) Insurance	4.23	--
x) Overburden removal expenditure	4003.30	3675.66
xi) Depreciation	541.89	535.59
xii) Other expenses	<u>314.26</u>	<u>120.94</u>
<b>TOTAL</b>	<b><u>15688.24</u></b>	<b><u>13527.10</u></b>

During the course of assessment proceedings, AO observed that similar expense was also claimed in the profit and loss account of assessee. Accordingly, AO sought an explanation from the assessee for claiming the above expense in profit and loss account as well as capitalizing the same under the head "Mine Development Expenditure" but assessee failed to provide any explanation. Therefore, the AO disallowed the same and added to the total income of assessee.

29. Aggrieved, assessee preferred an appeal before Ld. CIT(A). Before Ld. CIT(A) assessee filed following submissions:-

*"(b) salaries, wages etc (Rs.39,03,30,003) on receipt of the assessment order it was noted by the appellant that the Assessing Officer on observing that both under the head "Employees; benefit s Expenses" (a revenue expenditure account) debited to the profit and loss account and "Mine Development expenses" (a capital expenditure account) in respect of which amortization had been claimed, certain specific expenses under the headings (i) "Salaries and wages & allowances", (ii) "Contributions to provident and other funds", (iii) "Workmen and Staff Welfare expenses" and (iv) "Gratuity", were appearing. Without making any enquiry in this regard, the Assessing Officer wrongly assumed that same expenses under the abovementioned headings had allegedly been claimed twice by the appellant – once under the Employees' benefit expenses through Profit and Loss Account and again through amortization of Mine Development Expenditure. It appears that the Assessing Officer, just because of the use of the same nomenclature wrongly assumed of a double claim allegedly made by the appellant. The appellant submits that in its annual report and accounts, it had been clearly stated that in the case of working mines where development activities were going on simultaneously, the expenses were being apportioned between the capital and revenue on the basis of in-house technical estimates (Point No.7.2 in Schedule 33 being significant Accounting Policies appearing in the Annual Report and accounts of FY 2011-12). The appellant submits that it has always been the practice of the appellant to make fair apportionment on the basis of certain technical estimates of such expenses which could have been incurred both for running of the business of the appellant as a whole as well as exclusively for the purpose of Mine Development. The Assessing Officer should have appreciated that there could not have arisen any occasion on the part of the appellant in claiming same expense twice. The Assessing Officer should have appreciated that the accounts of the appellant not only went through the statutory audit but also a very thorough audit was carried out by the office of the Comptroller & Auditor General of India. The Assessing Officer, under a wrong assumption, considered the salaries, wages etc. amounting to Rs.39,03,30,003 as having been allegedly claimed by the appellant through both the profit and loss account as well as through the amortization of Mine Development Expenditure and on the basis of his such wrong observation he disallowed the said sum of Rs.39,03,003. It is submitted that the same*

procedure of reflection of such expenses in the "Employees' benefit Expenses" in the profit and loss account and "Mine Development Schedule" in the balance sheet, in the accounts was being followed by the appellant consistently in the earlier year too and the same had been accepted in the relevant assessments. Copy of the assessment order for AY 2011-12 is enclosed at Annexure-5 for ready reference please.

The appellant submits that it had been totally under a wrong assumption that the Assessing Officer made the disallowance of Rs.39,03,30,003 as an alleged double claim of expenses and thus his such action should be considered as unjustified. Accordingly, the appellant submits that the disallowance of R.39,03,30,003 may kindly be deleted.

During the course of the appeal proceedings, the Ld. ARs have submitted that for the succeeding AY 2013-14, the AO has accepted the contentions related to these items involving the carry-forward of balances of mine development expenditure and non-claiming of expenditure towards salary, wages etc., on two occasions in the same account for the same year. A copy of the said order for AY 2013-14 dated 29.01.2016 was also submitted."

However, Ld. CIT(A) after considering the submissions of assessee deleted the addition made by the AO by observing as under:-

"3. I have also considered the submissions made in respect (b) of double claim totaling Rs.39,03,30,003 towards Salaries, Wages, Allowance, Contribution to Provident Fund, Workmen and Staff Welfare Expenses and Staff Gratuity included under the Mine Development Expenditure. It is observed from Note No. 27 and Note No. 13.2 of the Annual Report that both under the head "Employees' benefits Expenses" (a revenue expenditure account- Note No. 27) debited to the Profit and Loss Account and "Mine Development expenses" (a Capital expenditure account- Note No. 13.2), certain specific expenses under the headings (i) "Salaries and Wages & Allowances", (ii) "Contributions to Provident and Other Funds", (iii) "Workmen and Staff Welfare expenses" and (iv) "Gratuity", were appearing with the same nomenclature.

4. It is also observed from the Accounting Policy of the Assessee in their Annual Report and Accounts, that in the case of working mines where development activities were going on simultaneously, the expenses were being apportioned between the Capital and Revenue on the basis of in-house technical estimates (Point No.7.2 in Note 33 being Significant Accounting Policies appearing in the Annual Report of FY 2011-12). The assessee has also submitted that it has always been the practice of the appellant to make a fair apportionment on the basis of certain technical estimates of such expenses which could have been incurred both for running of the business of the appellant as a whole as well as exclusively for the purpose of Mine Development.

5. It is also well appreciated that the accounts of the Assessee goes through Statutory Audit as well as audit by the Office of the Comptroller & Auditor General of India. Just on the basis of a common nomenclature, it cannot be assumed that the Salaries, Wages, etc. amounting to Rs.39,03,30,003 have been claimed by the appellant through both the Profit and Loss Account as

*well as through the amortisation of Mine Development expenditure. It is also observed that the assessee has reflected such expenses in the "Employees' Benefits Expenses" in the Profit and Loss account and "Mine Development Schedule" in the Balance Sheet, consistently in the earlier years too and the same had been accepted in the relevant assessments including in the Assessment of F.Y. 2010-11 as is observed from the Copy of the Assessment Order for AY 2011-12 placed in the file. On considering the above facts, I am of the view that there had not occurred any case of the Assessee claiming certain expenses such as Salaries, Wages etc twice and therefore the disallowance made by the Assessing officer is considered as unjustified. Further, from the copy of the Assessment Order of the next AY 2013-14, it is observed that no disallowance on the basis of such assumption has been made by the Assessing Officer. Hence, the addition of Rs. 39,03,30,003 made by the Ld. Assessing officer is also unsustainable in the facts of the case, and is ordered to be deleted."*

Being aggrieved by this order of Ld. CIT(A) Revenue filed an appeal before us.

30. Before us both parties relied on the order of Authorities Below as favourable to them.

31. We have heard the rival contentions of both the parties and perused the material available on record. In the present case, AO has observed that assessee has claimed double deduction on account of expenses discussed above by debiting in the profit and loss account and simultaneously capitalizing the same under the head "Mine Development Expenditure". However, we note that assessee has not claimed double deduction of the same expense rather it has apportionment the expense between capital and revenue on the basis of in-house technical estimates. The assessee has duly disclosed the basis of apportionment in its Schedule Forming parts of the accounting. The relevant portion of the Schedule in relation to Mine Development Expenditure reads as under:-

*"7.2 In case of working mines, where development activities are going on simultaneously: expenses are apportioned between capital or revenue on the basis of inhouse technical estimates."*

From the above, we conclude that no double deduction has been claimed by assessee on account of same expenses as discussed in the preceding paragraph. Therefore, we do not find any infirmity in the order of LD. CIT(A). Accordingly, we uphold the same. This ground of Revenue's appeal is dismissed.

32. Last issue of Revenue's appeal is general and does not call for any separate adjudication.

33. **In the result, Revenue's appeal stands dismissed.**

Order pronounced in the open court       /03/2018

Sd/-

(न्यायिक सदस्य)

(N.V.Vasudevan)

(Judicial Member)

Kolkata,

\*Dkp, Sr.P.S

दिनांक:- 04/04/2018      कोलकाता ।

Sd/-

(लेखा सदस्य)

(Waseem Ahmed)

(Accountant Member)

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-ACIT, LTU-1, 6<sup>th</sup> Fl, Large Tax Payer Unit, 180, Shantipally, Kol-107
2. प्रत्यर्थी/Respondent-M/s Hindustan Copper Ltd., Tamra Bhawan, Ashutosh Chowdhury Avenue, Kolkata-19
3. संबंधित आयकर आयुक्त / Concerned CIT      Kolkata
4. आयकर आयुक्त- अपील / CIT (A)      Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of

Office/DDO

आयकर अपीलीय अधिकरण,

कोलकाता ।