<u>आयकर अपीलीय अधिकरण, कटक न्यायपीठ,कटक</u>

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

आयकर अपील सं./**ITA No.339 & 340/CTK/2016**

ITA No.376/CTK/2014

(**निर्धारण वर्ष /** Assessment Year : 2010-11, 2012-13 & 2011-12)

DCIT, Corporate Circle1(2)/ ACIT, Circle-2(2), Bhubaneswar	Vs.	National Aluminium Company Limited, NALCO Bhavan, P/1, Nayapalli, Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AAACN 7449 M**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

AND

आयकर अपील सं./**ITA No.352 & 353/CTK/2016**

& ITA No.374/CTK/2014

(**निर्धारण वर्ष /** Assessment Year :2010-11, 2012-13 & 2011-12)

National Aluminium Company Limited, NALCO Bhavan, P/1, Nayapalli, Bhubaneswar	Vs.	JCIT Range-2/ ACIT, Corporate Circle-1(2) Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AAACN 7449 M**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

AND

Cross Objection No.01/CTK/2015 & 25/CTK/2016

(Arising out of ITA Nos.376/CTK/14 & ITA No.340/CTK/2016)

(**निर्धारण वर्ष /** Assessment Year :2011-2012 & 2012-2013)

National Aluminium Company Limited, NALCO Bhavan, P/1, Nayapalli, Bhubaneswar	Vs.	ACIT, Circle-2(2)/ DCIT, Corporate Circle-1(2), Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AAACN 7449 M**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

राजस्व **की ओर से** /Revenue by :Shri Saad Kidwai, CIT DR

निर्धारिती **की ओर से** /Assessee by :Shri Ved Jain/B.K.Mahapatra, ARs

सुनवाई की तारीख **/ Date of Hearing : 25/04/2018**

घोषणा की तारीख**/Date of Pronouncement 27/04/2018**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

These are the cross appeals filed by the assessee and Revenue and cross objections by the assessee, against the separate orders of the CIT(A), Bhubaneswar, for the assessment years 2010-2011, 2011-2012 & 2012-2013.

2. Since issues in all the appeals are common, they were heard together and disposed of by this common order. For the sake of convenience, we shall first consider the facts and grounds raised in assessee's appeal for the assessment year 2010-2011 in ITA No.352/CTK/2016 as under :-

> *That the Order dated 09.06.2016 passed by the Learned Commissioner of Income Tax (Appeals) [in short "CIT(Appeals)"], in so far as sustaining the additions and disallowance made by the Learned Assessing Officer, is based on irrelevant considerations, against natural justice, contrary to facts, arbitrary, erroneous and bad in law.*
>
> *1. Disallowance under "Peripheral Development Expenses" Rs.2,53,69,895/-*
>
> *a. That on the facts and in the circumstances of the case, the Order of the learned CIT(Appeals) in partly sustaining the disallowance of Rs.2,53,69,895/- under 'Peripheral Development Expenses' incurred through Corporate Office of the asseseee is based on irrelevant considerations, contrary to facts, arbitrary, erroneous and bad in law.*
>
> *b. That the aforesaid expenditure of Rs.2,53,69,895/- is incurred by the assessee wholly and exclusively for the purpose of its business. Sustaining of the disallowance by the learned CIT(Appeals) is on mis-appreciation of facts, arbitrary, erroneous and bad both on facts and in law.*
>
> *c. That in similar facts and circumstances, in the past years, in assessee's own case, the Hon'ble ITAT having held that the aforesaid expenditure are fully allowable, the learned CIT*

(Appeals)'s order in not allowing the same is, arbitrary, erroneous and bad both on facts and in law.

d. That the learned CIT(Appeals) in holding that the aforesaid Rs. 2,53,69,895/- are not in the nature of business expenditure, and in the nature of donations and charity and not connected to running of business and not in accordance with notification of Govt. of Odisha is on mis-appreciation of facts, arbitrary, erroneous and bad, both in the eye of law and on facts.

2. Disallowance of Interest on disputed Govt. duty (Electricity Duty and water charges — 82,40,53,232/-

a. That on the facts and in the circumstances of the case, the dismissal of the ground for the addition/disallowance of 82,40,53,232/- under 'Interest on Disputed Govt. duty (Electricity Duty and water charges)' by the learned CIT (Appeals) is arbitrary, erroneous, bad in law and legally untenable.

b. That in similar facts and circumstances, for the Asst. Year 2005-06 and in the past years, in assessee's own case, the Hon'ble ITAT having held that "Interest on unpaid Electricity Duty and water charges" is fully allowable, the learned CIT (Appeals) in not deleting the same is arbitrary, erroneous, and bad, both in the eye of law and on facts and legally untenable.

c. That the sustaining of the addition/disallowance of Z 82,40,53,232/- under "Interest on unpaid Electricity Duty and water charges" by the learned CIT (Appeals) in holding that the said 82,40,53,232/- is in the nature of provision is contrary to facts, arbitrary, erroneous, and bad, both in the eye of law and on facts and legally untenable.

3. Disallowance u/s. 14A Rs.4,70,61,000/-

a. That on the facts and in the circumstances of the case, the Order of the learned CIT (Appeals) in restricting/partly sustaining the disallowance of Rs.4,70,61,000/- u/s.14A of the Act is based on irrelevant considerations, contrary to facts, arbitrary, erroneous and bad in law.

b. That in similar facts and circumstances, for the Asst. Year 2011-12, the learned predecessor CIT (Appeals) having fully deleted similar addition u/s. 14A of the Act, the Order of the learned CIT (Appeals) in ignoring/not following the order and sustaining the disallowance of 4,70,61,000/- is unjustified, arbitrary, erroneous and bad in law.

c. That the assessee having already added sum of Z 2,07,503 u/s.14A of the Act in the computation of income (returned income),

Rule 8D is not applicable and the addition of 4,72,68,503 u/s.14A of the Act is unjustified, arbitrary, contrary to facts, erroneous and bad in law.

d. The assessee's computation of the aforesaid Rs. 2,07,503/- u/s.14A of the Act is based on its books of accounts and is worked out in a reasonable and fair manner and the learned lower authorities have mis-appreciated/misconstrued the same and the disallowance u/s. 14A of the Act is incorrect, arbitrary, erroneous and bad in law.

e. That the learned CIT(Appeals) holding that the aforesaid Rs. 2,07,503/- has no basis and purely adhoc' is incorrect, contrary to facts, arbitrary and erroneous and bad, both in the eye of law and on facts.

4. Additions Under Trial Operation expenses - Rs. 45,37,74,074/-

a. That on the facts and in the circumstances of the case, the sustaining of the addition of Rs. 45,37,74,074/- under 'Trial Operation expenses' by the learned CIT(Appeals) is arbitrary, erroneous, bad, both in the eye of law and on facts.

b. That the lower authorities have failed to appreciate that the aforesaid Rs. 45,37,74,074/- are expenses incurred after start up of the business and are fully allowable u/s.37 of the Act and not a capital expenditure and therefore the addition is unjustified, arbitrary, erroneous, bad, both in the eye of law and on facts.

c. That the learned CIT(Appeals) stating that no explanation has been offered during the appeal proceedings in respect of the aforesaid addition of Rs. 45,37,74,074/- under 'Trial Operation expenses' is incorrect, contrary to facts, arbitrary and erroneous.

5. Disallowance under "Prior period adjustments" - Rs. 21,07,00,000/-

a. That the learned CIT(Appeals) has mis-appreciated the facts and his sustaining of addition/ disallowance of Rs. 21,07,00,000/- under "Prior period adjustments" is contrary to facts, arbitrary, erroneous and bad, both in the eye of law and on facts.

b. That the learned Assessing Officer having accepted the credits under the nomenclature "Prior period adjustments", the learned CIT(Appeals) is unjustified and has erred in not allowing the debits under the said "Prior period adjustments".

c. That the learned CIT(Appeals) stating that there is no evidence that the expenses have crystalised in the year 2009-10 is incorrect,

contrary to facts, arbitrary, erroneous and bad, both in the eye of law and on facts.

d. That without prejudice to Grounds (a) to (b) above, assuming but not admitting that the said amount of Rs. 21,07,00,000/- is for past years, it is submitted that the rates of Income tax for the assessment under consideration being either equal to or lower than the rates in the past assessment years, as the expenses debited under the said 'Prior period expenditure' are otherwise allowable in the past years, the aforesaid amount of Rs. 21,07,00,000/-, even though debited to the PIL account of the current year ought to be allowed.

6. Disallowance of amounts written off in respect of Claims, receivables, advances, shortages etc.- Rs. 12,75,994/-

a. That on the facts and in the circumstances of the case, of the sustaining of the addition/disallowance of Rs. 12,75,994/- in respect of Claims, receivable, advances, shortages etc. written off by the learned CIT(Appeals) is arbitrary, erroneous, bad, both in the eye of law and on facts.

b. That the aforesaid Rs. 12,75,994/- under Claims, receivables, advances, shortages etc. written off being revenue/trading loss, the same ought to be allowed.

c. That the learned CIT(Appeals) has mis-appreciated the facts and has erred in holding that the aforesaid is on capital account.

d. That the learned CIT(Appeals) stating that no explanation has been offered during the appeal proceedings in respect of the aforesaid addition of Rs. 12,75,994/- is incorrect, contrary to facts, arbitrary and erroneous.

7. Disallowance u/s.40(a)(i) of the Act - Rs. 4,36,594/-

That on the facts and in the circumstances of the case, the sustaining of the addition! disallowance of Rs. 4,36,594/- u/s.40(a)(i) of the Act by the learned CIT(Appeals) is arbitrary, erroneous, bad, both in the eye of law and on facts.

That the Assessee having not violated any provisions of section 195 of the Act, there ought not be any addition/ disallowance u/s.40(a)(i) of the Act and the disallowance of the said Rs. 4,36,5942/- is contrary to facts, arbitrary, unjustified, erroneous and bad in law.

c. That the learned CIT(Appeals) stating that no explanation has been offered in respect of the aforesaid addition/disallowance of the said Rs. 4,36,5942/- is incorrect contrary to facts, arbitrary, unjustified, erroneous and bad in law.

8. Disallowance of Provision for Leave Encashment' - u/s.43B(f) of the Act Rs. 18,85,04,549/-

That on the facts and in the circumstances of the case, the sustaining of the disallowance of Rs. 18,85,04,549/- u/s.43B(f) of the Act by the learned CIT(Appeals) is erroneous and bad in law.

9. Disallowance U/s.43B of the Act - Under 'Electricity Duty' & water Charges - Rs. 3,43,72,917/-

a. That on the facts and in the circumstances of the case, the sustaining of disallowance of Rs. 3,43,72,917/- under 'Electricity Duty' u/s. 43B of the l.T Act by the learned Commissioner of lncome Tax (Appeals) is erroneous and bad both on facts and in law.

b. That the learned lower authorities have failed to appreciate that the disallowance u/s.43B of the Act having been made in past years, the deduction in respect of payments thereto ought to have been allowed as claimed in the return and thereby the aforesaid addition of Rs. 3,43,72,917/- and sustenance thereof is incorrect, unjustified, arbitrary, erroneous, contrary to facts and bad in law.

10. Disallowance of claim of Addl. Depreciation u/s.32(i)(iia) of the Act- Rs. 133,19,92,230/- .

That on the facts and in the circumstances of the case, the learned CIT(Appeals) ought to have allowed the claim of Addl. Depreciation of Rs. 133,19,92,230/- u/s.32(i)(iia) of the Act which was disallowed by the Assessing Officer erroneously and hence sustenance thereof is incorrect, unjustified, arbitrary, erroneous, contrary to facts and bad in law.

11. Treatment of:

a. Long term Capital Gains	*Rs. 63,57,13,500/-*
h. Short term Capital Gains	*Rs. 1,89,869/-*

Totaling to Rs. 63,59,29,369/- as "Income from Business"

a. That on the facts and in the circumstances the case, the dismissal of the ground and sustaining of the treatment of

i. Long term Capital Gains of Rs. 63,57,13,500/-;and

ii. Short term Capital Gains of Rs. 1,89,869/-

totaling to Rs. 63,59,29,369/- as "Income from Business" by the learned CIT (Appeals) is arbitrary, erroneous, bad, both in the eye of law and on facts.

b. That in the facts and circumstances of the case, the lower authority holding that the transactions of the assessee in mutual funds and shares and securities should be treated as business activities and income earned from that should be treated as income from business is contrary to facts, arbitrary, erroneous and bad in law. bad, both in the eye of law and on facts.

c. That the assessee having maintained its accounts and disclosed the investments in the Balance sheet under long term investments and having rightly computed its income under the head Capital Gains, Long term Capital Gains of Rs. 63,57,13,500/- and Short term Capital Gains of Rs. 1,89,869/-, the treatment of the aforesaid as 'Business income' by the learned AO and confirmation of the same by the learned CIT(Appeals) is based on irrelevant considerations, arbitrary, erroneous and bad, both in the eye of law and on facts.

d. That in similar facts and circumstances in the past years, the assessee's above method having been accepted by the IT Department, the learned AO as well as the learned CIT(Appeals) are not justified and are erroneous in treating the aforesaid Capital Gains, both Long term Capital Gains of Rs. 63,57,13,5001- and Short term Capital Gains of Rs.1,89,869/- as 'Business income' of the assessee.

e. That without prejudice to Ground (a) to (d) above, in any case as per Board Circular which recognizes that an assessee can have two portfolios, one Investment and other trading, the treatment of the aforesaid Capital Gains, both Long term Capital Gains of Rs. 63,57, l3,5001- and Short term Capital Gains of Rs. 1,89,869/-, as 'Business income' by the learned AO is unjustified, arbitrary, contrary to facts, erroneous and bad in law.

12. Levy of Interest o/s. 234A, 234B, 234C and 234D of the Act - Rs. 1,53,56,380/-, Rs. 53,74,73,300, Rs. 4,09,11,235/- and Rs. 68,90,718/- respectively.

a. That on the facts and in the circumstances of the case, the dismissal of the Grounds in respect of charging of Interest Rs. 1,53,56,380/-, Rs. 53,74,73,300, Rs. 4,09,11,235/- and Rs. 68,90,7181- u/s. 234A, 234B, 234C and 2340 of the Act respectively by the learned CIT(Appeals) is incorrect arbitrary, erroneous and bad, both in the eye of law and on facts.

b. That the assessee having filed its return u/s.139(1) of the Act, the lower authority having denied its liability for interest of Rs.1,53,56,380/- charged u/s. 234A of the Act, the sustaining of the same by the learned CIT(Appeals) in holding that the charging of Interest is mandatory and consequential to the determination of the

total income is arbitrary, erroneous, and bad, both in the eye of law and on facts and legally untenable.

13. That the appellant craves leave to add, supplement, modify the grounds here-in-above before or at the hearing of the appeal.

3. Facts in brief are that the assessee is engaged in the bauxite mining, manufacture of alumina and aluminium & power generation and filed the return of income for the assessment year 2010-2011 with total income at Rs.898,52,61,061/- and also declared under the provisions of Section 115JB of the Act at Rs.1154,86,00,000/- and the return of income was processed u/s.143(1) and notice u/s.143(2) and 142(1) of the Act along with questionnaire were issued to the assessee. In compliance to the notice, ld. AR of the assessee appeared from time to time and submitted the details. The AO on perusal of the profit and loss account found that the assessee has debited peripheral development expenses of Rs.13,83,79,264/- and called for the details. The assessee has filed written submission referred by the AO at page 2 to 12 of the order and after considering the submissions of the assessee the AO was not satisfied whether these funds have been utilized as per the instructions of Government Notification and if so shall be allowable as deduction u/s.35AC of the Act and therefore, expenditure claimed by the assessee does not comply the provisions of Section 37 of the Act and disallowed the claim.

4. On appeal, the CIT(A) having considered the submissions and findings of the assessee has restricted the addition to the extent of

Rs.2,53,69,895/- considering the fact that the expenditure incurred by the assessee was not covered within the notification and held as under :-

> *"3.2 I have considered the matter. The AO disfavours the amounts spent on charity in the guise of peripheral development expenditure. He refers to provisions of section 35AC where deductions on social projects are allowable. He has rightly stated that providing PCR vans to the Commissioner of Police cannot be called as peripheral development expenditure. However, disallowance of entire claim of expenditure as not relating to business is not correct as the assesssee is entitled to claim of deduction on periphery development expenses within the guidelines. By merely providing the nomenclature to expenditure as periphery development expenditure will not disentitle the assessee to claim the same as deduction. Accordingly, it is necessary to examine the items of expenses before allowing or disallowing the periphery development expenses.*
>
> *As per the Govt. of Odisha notifications dt.15.1.2004 and 20.2.2004, periphery development expenses should be spent through the District Committee/Society with the Collector as the head within 50 kms radius of the scheduled area for the development of health, education, communication, irrigation and agriculture. As per the order No.33167 dt.21.8.2004 issued in P&RE/1-49 by the Addl. Secretary to the Government of Odisha, Revenue Department, the definition of peripheral area extends to the entire area of the districts where the industrial or mining activity is carried out. Initially, it was contended that even districts adjacent to such districts would qualify to be called peripheral area. However, the order makes it clear that instead of confining the definition of peripheral area to the taluka or village, where the activity of the company is carried on, the new definition would extend to the entire district. The issue is to be decided/based on the order of the Government of Odisha referred to above and accordingly the entire expenditure on development of the two districts viz: Anugul and Koraput could be treated as peripheral development expenditure incurred wholly and exclusively for the purpose of business.*
>
> *In view of the same, the expenditure incurred through the corporate office at Bhubaneswar amounting to Rs.2,53,69,895/- cannot be categorized as peripheral development expenses since the same is not covered in Govt. of Odisha notification.*
>
> *Some of the major expenses under this category are shown as under:*
>
> *Rotary Club, Bhubaneswar Rs.5,00,000/-*
> *Secretary, National foundation for communal harmony Rs.20,00,000/-*

East coast railway for passenger halt construction	*Rs.26,00,000/-*
Supply of 15 Nos Tata Sumo to Commissioner of Police	*Rs.66,84,705/-*
Entry tax, road tax etc for above Tata Sumo	*Rs.11,78,197/-*
Prana Krushna Parija Trust	*Rs.6,50,000/-*
Renovation of Anand Bazar at Puri	*Rs.25,00,000/-*
Financial assistance to Tara Tarini Temple	*Rs. 5,00,000/-*
Director sports & youth services	*Rs.15,00,000/-*

The details of such expenses are as under:

It is amply clear that the above expenses are not in the nature of business expenditure. They are in the nature of donations, charity and not connected to running of business. Such expenditure is also not for periphery development in the districts of Angul and Koraput and not in accordance with the aforesaid Notifications of Govt. of Odisha. In view of the same, the amount of Rs.2,53,69,895/-, relating to the corporate office, out of the total amount of Rs.13,83,79,264/- is correctly disallowed. There is no finding that the balance expenditure under the head peripheral development expenditure categorized as, refinery (Damanjodi) for Rs.5,10,56,852/-, Smelter(Angul) for Rs.5,08,90,800/- and CPP(Captive Power Plant) for Rs.1,10,61,717/-, totaling to Rs.11,30,09,369/- is not in accordance with the aforesaid Notifications and it appears that the same is correctly claimed as periphery development expenditure. Accordingly, the disallowance of Rs.13,83,79,264/- is restricted to Rs.2,53,69,895/- and thus, the assessee gets a relief of Rs.11,30,09,369/-."

5. On further appeal before us, ld. AR submitted in respect of disallowance that the assessee has incurred the expenditure in the corporate office and also referred to the expenses claimed. Such expenditure was incurred as per the requirement and security of its employees and other public. The ld. AR relied on the judicial decisions and prayed that this expenditure has to be allowed under the provisions of Section 37(1) of the Act. The ld. AR of the assessee further submitted that the issue is dealt by this Tribunal in assessee's own case for ealier years as per details as under:

a) ITA Nos. 66-68, 459, 511-512/CTK/2003 dated 20.11.2005 in respect of A.Y. 1994-95 to 1998-99 and 2000-01 :

b) ITA Nos. 511, 512, 514, 515/CTK/2005 dated 17.07.2007 (A.Y. 1999-00 and 2002-03) :

c) ITA Nos. 191, 193/CTK/2008 dated 25.05.2012 A.Y. 2004-05

d) ITA Nos. 196, 91/CTK/2010 dated 29.06.2012 A.Y. 2005-06 and 2006-07

6. To substantiate the contention the ld. AR further submitted as under:-

- *As far as the allegation of the AO regarding the applicability of section 35AC of the Act is concerned, it is submitted that the said section was inserted in the Act with effect from A.Y. 1992-93 by the Finance Act, 1991. The decisions of this Tribunal in all the cases of the assessee as stated above are after due consideration to the said section.*

- *Further, section 35AC is an enabling provision to allow deduction in respect of specific eligible approved projects / schemes. However, in the case of assessee company, the peripheral development expenses are business expenses and are allowable u/s 37 of the Act, as has been held by this Hon'ble Tribunal in earlier years.*

- *The complete details with regard to Peripheral Development expenses has been submitted before the AO as well as the Ld. CIT(A).*

- *The Ld. CIT(A) has also appreciated the fact that the expenditure incurred by the assessee is as per the Notifications / Orders issued by various local / state authorities.*

- *The Ld. CIT(A) has misinterpreted the clarification of the Order No. 33167 dated 21.08.2004 issued by the Revenue Department, Government of Odisha, whereby it has been clarified that the definition of peripheral area extends to the taluka or village where the activities of the company are carried on.*

- *The expenditure incurred by the assessee is incurred in the defined periphery and has been incurred for business purposes only. Therefore, the addition made by the AO on this account is required to be deleted."*

7. Contra, ld. DR relied on the order of AO.

8. We have heard rival submissions and perused the material on record. We find that the arguments of the ld. AR are supported with the evidence that the expenditure claimed by the assessee has been incurred wholly and exclusively for business purposes but the AO has to verify the claim as to whether the peripheral expenditure in the corporate office is for the particular area of the employees or as a whole. Since we have already decided the issue in earlier assessment years in ITA No.343/CTK/2015 and other connected appeals, order dated 23.04.2018, and the observations of the Tribunal in earlier years are as under :-

> *"10. We have heard rival submissions and perused the material on record. The assessee has claimed the peripheral expenditure of Rs.8,19,11,108/- and the AO has made the additions without considering the nature of expenditure and its benefit to the assessee. The CIT(A) after verifying the facts and considering the submissions made by the assessee in this regard granted the relief but restricted peripheral expenditure in respect of other areas other than the expenditure incurred through corporate office. Ld. AR referred to the paper book and the nature of expenditure incurred by the corporate office. Ld. AR submitted that this issue is covered in favour of the assessee by the earlier order of the Tribunal. On a query from the bench to substantiate the expenditure incurred from the corporate office, the ld. AR referred to the paper book and submitted that assessee has complete information of the expenditure incurred in peripheral area of various districts and the area includes Taluka and villages where company's activities are carried out and this expenditure is incurred on the order of the Government of Odisha. It is wholly and exclusively used for the purpose of business. The ld. AR referred to the nature of the expenditure incurred through the corporate office at Bhubaneswar and further substantiated that the assessee has evidence to prove the claim. Therefore, we, considering the apparent facts and material on record, are of the opinion that the claim of the assessee in respect of incurring of expenditure at peripheral areas as per the order of the Govt. is not disputed and the reasons recorded by the lower authorities in respect of sustenance of the addition to the extent of Rs.56,27,609/- cannot be overlooked. Accordingly, in the interest of justice, we remit this issue to the file of AO to verify the nature of expenditure incurred on the peripheral areas and decide*

the same on merits. This ground of appeal is allowed for statistical purposes."

We respectfully follow the order of the coordinate bench of Tribunal and remit this disputed issue to the file of AO to verify the nature of expenditure incurred on the peripheral areas and decide on merits and allow this ground of appeal for statistical purposes.

9. Ground No.2 relates to disallowance of interest on disputed Govt. duty (Electricity duty and water charges). The AO found that the assessee company has debited an amount of Rs.82,40,53,232/- on account of interest on the disputed Government dues of electricity duty and water charges. The assessee company has challenged the levy of electricity duty and water charges before Hon'ble Orissa High Court. As per the Gazette Notification in this regard, the interest payable on these charges is 1.5% per month on electricity duty, and 2% on compound basis on water charges. The assessee has, therefore, debited the amount of interest in Profit & Loss account and claimed as business expenditure. However, the AO disallowed the claim of the assessee observing that similar claim of the assessee is pending before the higher appellate authorities and matter has not reached at its finality. On appeal, the CIT(A) confirmed the action of AO.

10. On further appeal, ld. AR of the assessee before us submitted that the issue under consideration is squarely covered by the order of this Tribunal in assessee's own case for A.Y. 2006-07 and 2007-08 in ITA Nos. 233, 234/CTK/2011 dated 20.07.2012 and in ITA Nos. 66-68, 459,

511-512/CTK/2003 dated 20.11.2005 in respect of A.Y. 1994-95 to 1998-99 and 2000-01. Ld. AR further stated that the interest liability is as per Statute and has been charged to the Profit & Loss account on accrual basis and comply the per mercantile system of accounting, and is allowable u/s 37 of the Act and prayed that addition by the lower authorities be deleted

11. Contra, ld. DR relied on the order of lower authorities.

12. We have heard rival submissions and perused the material available on record. We find that the issue under consideration is covered by the order of the Tribunal in assessee's own case for the assessment year 2006-07 & 2007-08 in ITA No.233 & 234/CTK/2011, order dated 20.07.2012 and also for the assessment year 2005-06 in ITA No.286/CTK/2013, order dated 11.05.2016 has followed the above order of Tribunal and decided in favour of the assessee. The observation of the Tribunal for the assessment year 2005-06 are as under :-

> *"4. We have considered rival contentions and found that the issue under consideration is covered by the order of the Tribunal in assessee's own case vide order dated 20-07-2012 for the assessment year 2006-07 & 2007-08, wherein the Tribunal on merit allowed such interest after observing as under :-*
>
> > *6.1 With respect to the interest on electricity duty provided for by the assessee was in consequence to the preference and not claimed as prior period expenses on the basis of statutory auditors pointing out that the amount held by the assessee to be paid as statutory duty in a bank was for earning interest. Therefore, corresponding payment of interest was to be provided for. When the issue is subjudice, neither the assessee nor the Department may sit on the judgment to award interest. Therefore, interest being a period payment for the impugned year, has been provided for in the impugned Assessment year cannot be subjected to disallowance for claiming deduction*

u/s.37. The Assessing Officer after having applied his mind allowed the claim in the impugned Assessment Year on both these issues therefore cannot be thrust upon by the learned CIT holding a view other than the view which was legitimately accepted by the Assessing Officer but on the basis of arithmetical finding of the learned CIT which rather leans in favour of the assessee.

5. The issue under consideration are same, respectfully following the order of the Tribunal, we direct the AO to allow assessee's claim of interest insofar as assessee is also offering interest on the amount deposited in the bank account as per the direction of the Hon'ble High Court. When interest on such deposit is brought to tax, there is no reason for disallowing interest payable to Government for non-payment of such duty in Government account.

6. The reasoning given by the AO for disallowing interest on non/delayed payment of water charges are that it was a contingent liability. We found that Tribunal in assessee's own case in earlier years had allowed this claim under similar circumstances and held that interest on unpaid electricity duty and water charges is fully allowable u/s.37 of the Act and provisions of Section 44A of the Act for disallowance is not attracted.

7. It is pertinent to mention here that the ITAT Cuttack Bench in the case of NALCO in the combined order dated 30-11-2005 has held that interest on disputed Electricity Duty are allowable u/s.37 of the Act and further the interest on Electricity Duty, even if a statutory liability, the same do not fall under the ambit of Section 43B of the Act and therefore, even if such interest is not paid the same is not to be disallowed under section 43B.

8. Following the reasoning given hereinabove with regard to the interest on delayed payment of electricity bill, we direct the AO to allow interest on the water bill. We direct accordingly."

We respectfully follow the above orders of the Tribunal and direct the AO to allow the claim of the assessee on account of interest on disputed Govt. duty (Electricity duty and water charges) and this ground of assessee is allowed.

13. Ground No.3 relates to disallowance u/s.14A of the Act. The AO has made the disallowance of Rs.4,72,68,503/- by invoking the provisions

of Section 14A r.w.Rule 8D, observing that the disallowance made suo-moto by the assessee is very less compared to the administrative and employee cost devoted to earn the exempt income.

14. On appeal, the CIT(A) has restricted the disallowance to Rs.4,70,61,000/- considering the fact that the disallowance of Rs.2,07,503/- has been suo-moto made by the assessee. The Ld. CIT(A) has sustained the impugned disallowance holding that the disallowance made by the assessee was purely adhoc and without any basis.

15. On further appeal before us, ld. AR submitted as under :-

- *During the year under consideration, assessee company has earned dividend income of Rs.20,86,51,280/-.*
- *This dividend income has been earned on Current Investments held by assessee which are debt / liquid mutual funds, for which there is no activity. This activity is akin to making short-term fixed deposit with the bank, with the only difference that the income in the liquid funds is a little high than the deposits made with the bank.*
- *The said dividend income has been claimed as exempt by the assessee in its Computation of Income.*
- *Against the same, assessee has suo-moto made a disallowance of Rs.2,07,503/- in its Computation of Income. The computation of the said disallowance made by the assessee is enclosed.*
- *The AO, however, has made the impugned disallowance by invoking the provisions of Rule 8D read with section 14A. The AO has completely ignored the submissions and computation of the assessee and has alleged that the computation of disallowance by the assessee is very less in comparison to the exempt income earned.*
- *The AO, while ignoring the computation of the assessee, has not given any proper reasoning and has merely rejected the same on account of difference in the amount of expenditure incurred and income earned.*
- *Section 14A(2) of the Act requires the AO to first examine the accounts of the assessee and then record his satisfaction in this*

regard, which has not at all been done by the AO in the present case.

It is a settled law that the AO has to first examine the records of

- *the assessee, and only after arriving at the dissatisfaction as to the correctness of the claim of assessee in respect of expenditure incurred in relation to exempt income, that he can resort to the provisions of section 14A read with Rule 8D.*
- *Reliance in this regard is placed on the decision of the Supreme Court in the case of Godrej & Boyce Manufacturing Company Ltd. v. DCIT [2017] 394 ITR 449, wherein the Apex Court has held as under:*
  "37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable"

- *Further reliance in this regard is placed on following judgments:*
  (a) Delhi High Court in the case of H.T. Media Ltd. v. Pr. CIT in ITA No. 548, 549/2015 dated 23.08.2017
  (b) Delhi High Court in the case of Pr. CIT v. U.K. Paints (India) Pvt. Ltd.
  (c) Delhi High Court in the case of CIT v. Taikisha Engineering India Ltd. [2015] 370 ITR 338
- *Further, it is a settled law that if the tax exempt income has been earned without the interference of any employee, no disallowance u/s 14A is called for. Reliance in this regard is placed on the judgment of Delhi High Court in Pradeep Khanna v. ACIT in ITA No. 953 of 2015 dated 11.08.2016.*

- *Therefore, in view of the fact that no dissatisfaction with regard to assessee's claim has been recorded by the AO and considering the settled legal position in this regard, the addition made by the AO and sustained by the Ld. CIT(A) should be directed to be deleted.*

  Without prejudice to the above, it is submitted that the assessee company has earned the exempt income in the form of dividend on the Current Investments held by it, details of which are provided in Schedule F of the Balance Sheet, enclosed at PB 53.

- *The AO, however, while computing the disallowance under clause (iii) of Rule8D has computed 0.5% of the average investments held by the assessee company in whole, which includes the investments in equity shares and long-term debt funds as well, income from which has not been claimed as exempt by the assessee.*
- *It is a settled law that the disallowance u/s 14A could be made only with respect of the investments on which the assessee has earned the exempt income. Reliance in this regard is placed on the following judgments:*
  (a) Delhi High Court in the case of ACB India Ltd. v. ACIT [2015] 374 ITR 108
  (b) ITAT Delhi in the case of ACIT v. Vireet Investment (P.) Ltd. [2017] 58 ITR(Trib.) 313
  (c) ITAT Mumbai in the case of Amrit Diamond Trade Centre Pvt. Ltd. v. CIT in ITA No. 2642/Mum/2013 dated 15.01.2016

- *Therefore, the disallowance to be made, if any, has to be restricted to 0.5% of the Current Investments held by the assessee, which would work out as under:*
  (a) Op. Current Investments Rs.135.90 Crores
  (b) Cl. Current Investments Rs.516.721 Crores
  (c) Avg. Current Investments Rs.326.3105 Crores
  (d) 0.5% of Avg. Current Investments Rs.1,63,15,525/-

  Thus, the disallowance, if any, has to be restricted to Rs.1,63,15,525/-.

16. Contra, ld. DR supported the orders of lower authorities.

17. We have heard rival submissions and perused the material available on record. We find that the AO while computing the

disallowance under clause (iii) of Rule8D has computed 0.5% of the average investments held by the assessee company in whole, which includes the investments in equity shares and long-term debt funds as well, income from which has not been claimed as exempt by the assessee. Ld. AR submitted that on similar circumstances for the assessment 2011-2012, the First Appellate Authority has deleted the additions made by the AO u/s.14A applying rule 8D. The Hon'ble Delhi High Court in the case of H.T. Media Ltd. v. Pr. CIT in ITA No. 548, 549/2015 dated 23.08.2017, wherein the Hon'ble High Court has held as under :-

> *"32. The question regarding the failure of the AO to record his dissatisfaction with the correctness of the Assessee's claim regarding administrative expenses of Rs. 3 lakhs arises in ITA 349 of 2015. Mr Raghvendra Singh is not entirely right in his submission that there is no question framed about the failure by the AO to record his satisfaction. In ITA 349 of 2015, the question framed by this Court by the order dated 15th October 2015 is in fact in two parts: viz., (i) Whether the AO recorded a proper satisfaction in terms of Section 14A (2) and Rule 8 (D) of the Rules and (ii) in calculating the disallowance at 0.5% of average value of investments as per clause (iii) of Rule 8 D (2) of the Rules?*
>
> *33. The contention of Mr. Singh is that if there was a valid recording of satisfaction by the AO as required by Rule 8D (1), then there was no option available to the AO other than to apply Rule 8D (2) of the Rules. Therefore, even according to the Revenue, the applicability of Rule 8D (2) hinges on the recording of the AO in terms of Rule 8D (1) that he was not satisfied with the Assessee's claim regarding expenditure incurred to earn the exempt income.*
>
> *34. The Assessee had explained that Rs. 3 lakhs was being disallowed voluntarily as an "expenditure which could be attributable for earning the said income." The Assessee*

explained that the disallowance had been determined on the basis of cost of finance department in the ratio of exempt income to total turnover. On that basis the disallowance in AY 2005-06 was upheld by CIT (A) at Rs. 1 lakh. The disallowance for this AY was worked out as Rs. 1,42,404/- and since the Assessee had already made a disallowance of Rs. 3 Lacs, no further disallowance was called for.

35. In order to disallow this expense the AO had to first record, on examining the accounts, that he was not satisfied with the correctness of the Assessee's claim of Rs. 3 lakhs being the administrative expenses. This was mandatorily necessitated by Section 14A (2) of the Act read with Rule 8D (1) (a) of the Rules.

36. In para 3.2 of the assessment order, the AO records that, in answer to the query posed by the AO requiring it to produce calculation for disallowances, the Assessee "submitted that they have not incurred any expenditure for earning the dividend income." Thereafter, in para 3.3, the AO records "I have considered the submissions of the Assessee and found not to be acceptable." Thereafter, the AO proceeded to deal with the said provisions of Section 14A and Rule 8D and observed, in para 3.3.1, that making of investment, maintaining or continuing investment and time of exit from investment are well informed and well coordinated management decisions that, in relation to earning of income, are embedded in indirect expenses. It is then stated in para 3.4 that, in view of the above, the provisions of sub-section (2) of Section 14A and Rule 8D of the Rules are in operation and therefore, will strictly be adhered to by the Assessee. In para 3.6 of the assessment order, after discussing Section 14A(1) read with Rule 8D and referring to the decision of the Bombay High Court in Godrej and Boyce Mfg. Co. Ltd v. DCIT (supra), the AO simply stated that "in view of the facts and circumstances and legal position on the issue as discussed above, I am satisfied that the Assessee had incurred expenses to manage its investments which may yield exempt income, and Assessee grossly failed to calculate such expenses in a reasonable manner to ascertain to ascertain the true and correct picture of its income and expenses."

37. In the considered view of this Court, the above observations of the AO in the assessment order are of a broad general nature not with particular reference to the facts of the case on hand.

38. The Court is also unable to agree with Mr. Singh that on this aspect there are concurrent findings of both the CIT (A) as well as the ITAT.

The CIT (A) disallowed the exempt expenses by merely repeating what the AO had stated about the cost that is built into so called 'passive' investments and simply recorded that the AO was bound to Rule 8D and, therefore, was justified in determining administrative costs at 0.5%. Here again, the CIT (A) failed to note that without the mandatory requirement, under Section 14A of the Act and Rule 8D of the Rules, of satisfaction being recorded being met, the question of applying Rule 8D (1) did not arise.

39. Turning now to the order of the ITAT, in para 33, it recorded the submission of the AR that the AO did not record any satisfaction about the Assessee not properly offering expenditure incurred in relation to the exempt income at Rs. 3 lakhs. The ITAT reproduced the contents of para 3.3.1 of the assessment order, which has been extracted by this Court hereinbefore, which contains general observations regarding earning of exempt income. This cannot be accepted as a recording by the AO of satisfaction regarding the claim of the Assessee after examining its accounts. Again, in para 34 of its order, the ITAT simply reproduced para 3.3.6 of the assessment order where, again, no reasons have been provided but only a conclusion has been reached that the AO was "satisfied that the Assessee had incurred expenses to manage its investments which may yield exempt income, and Assessee grossly failed to calculate such expenses in a reasonable manner to ascertain the true and correct picture of its income and expenses."

40. Consequently on the aspect of administrative expenses being disallowed, since there was a failure by the AO to comply with the mandatory requirement of Section 14 A (2) of the Act read with Rule 8D (1) (a) of the Rules and record his satisfaction as required thereunder, the question of applying Rule 8D (2) (iii) of the Rules did not arise. The question framed in ITA 549 of 2015 is answered accordingly.

We found that in the instant case the AO could not make distinction between the equity shares and debt funds and calculated the disallowance, we are of the opinion this disputed issue has to be

re-examined and apply the provisions of Section 14A r.w.rule 8D. Accordingly, we follow the ratio of judicial decision and restore this disputed issue to the file of the AO to re-examine and verify and apply the above provisions. This issue is allowed for statistical purposes.

18. Ground No.4 relates to addition under trial operation expenses. The AO has made the disallowance amounting to Rs.45,37,74,074/- alleging that the said expenditure incurred by the assessee till commercial production starts, could not be claimed as revenue expenditure and has to be capitalized. On appeal, the CIT(A) has sustained the disallowance made by the AO holding that since trial run expenditure is pre-commercial production expenditure, the AO was correct in not allowing the same as revenue expenditure.

19. On further appeal before us, ld. AR of the assessee submitted that during the year under consideration, assessee company has claimed an amount of Rs.45,37,74,074/- under the head Trial Operation expenses and the assessee has produced the details before both the authorities below. He further submitted that the AO as well as the Ld. CIT(A), however, have rejected the claim of assessee alleging that the said expenditure has been incurred prior to the commercial production, and thus, has to be capitalized. Ld. AR submitted that the power generated by the assessee company in the trial run is transferred to the Smelter unit of the company, which is then used for commercial production of aluminium,

and the revenue generated from sale of such products is taken for the computation of taxable income. Therefore, the expenditure incurred by the assessee company on such trial operation has been claimed as revenue expenditure and relied on the following judicial decisions :-

a) Gujarat High Court in the case of ACIT v. Ashima Synthetic Ltd. [2001] 251 ITR 133
b) Bombay High Court in the case of Pr.CIT v. M/s Larsen & Turbo Ltd. ITA No. 421/2015 dated 06.11.2017
c) Rajasthan High Court in the case of Pr. CIT v. Sankalp International in ITA No. 319/2017

20. Contra, ld. DR relied on the order of AO.

21. We have heard rival submissions and perused the material on record. Prima facie, we find that both the lower authorities have rejected the claim of assessee alleging that the said expenditure has been incurred prior to the commercial production, and thus, has to be capitalized, however, the AO as well as the Ld. CIT(A) have not controverted the fact that the Captive Power Plant of the assessee company has been duly commissioned in the year under consideration for commencing commercial production and we support our view with the decision of Hon'ble Bombay High Court in the case of Pr. CIT Vs. Larsen & Toubro Ltd., [2018] 89 taxmann.com 186 (Bombay), wherein the Hon'ble High Court has held as under :-

> ***"6.*** *In the present case the Tribunal, after having considered the orders passed by the Assessing Officer and the CIT (Appeals) was of the view that there was no merit in the denial of depreciation in respect of plant and machinery and that even if the same was to be used for trial production business of manufacture of 'Clinker', the assessee would be entitled to claim depreciation. The Tribunal also relied upon the decision of the Gujarat High Court in Asstt.*

CIT v. Ashima Syntex Ltd. [2002] 122 Taxman 230 which held that even trial production would fall within the ambit of "used for the purpose of business" and once used the assessee could not be deprived of the benefit of a claim for depreciation merely on the basis that the period of use was very short.

***7.** The Tribunal followed the decision of this Court in Industrial Solvents & Chemicals (P.) Ltd.'s case (supra) and held that once the plant commenced operations and a reasonable quantity of product is produced, the business is set up even if product was sub-standard and not marketable. In the case of Industrial Solvents & Chemicals (P.) Ltd. (supra), the Company was new and depreciation was allowed. Following the aforesaid decision the Tribunal directed the Assessing Officer to verify the period of use and restrict depreciation to 50% if the Assessing Officer found that the machinery was used for less then 180 days during the year under consideration.*

***8.** In facts of the present case, we find that the issue is no longer res integra in view of the decision of Industrial Solvents & Chemicals (P.) Ltd. (supra). We have no hesitation in holding that the Order of the Tribunal cannot be faulted inasmuch as the jurisdictional High Court has already held that once plant commences operation and even if product is substantial and not marketable, the business can said to have been set up. Mere breakdown of machinery or technical snags that may have developed after the trial run which had interrupted the continuation of further production for a period of time cannot be held ground to deprive the assessee of the benefit of depreciation claimed.*

***9.** Other question proposed by the Revenue is in relation to computation of book profit under Section 115 JA of the Income Tax Act. The Assessing Officer had held that the provision is toward unexpected liability and therefore was required to be added to the book profit under Section 115JA of the Income Tax Act. The CIT appeals deleted the addition. It was found that item in question was not an item of profit and loss account but was an item of the Trading Account. This aspect we find had been called into question in Income Tax Appeal (L) No. 2010 of 2006 in respect of year 1988-89 and which has been dismissed albeit on the ground of limitation. In the result, in our view no substantial questions of law arise for our consideration. Hence the appeal is not entertained. The appeal is accordingly dismissed. No costs.*

We find the trial operation expenses incurred in the same year of sale. We respectfully follow the judicial decisions and direct the AO to treat the expenditure incurred by the assessee company on such trial operation as

revenue expenditure and allow the claim and this ground of appeal is allowed.

19. Ground No.5 relates to Prior Period Adjustments. The AO has made the disallowance of Rs.21,07,00,000/- alleging that the said expenses are not related to the year under consideration. On appeal, the Ld. CIT(A) has sustained the disallowance made by the AO holding that no evidence was filed in order to prove that the prior period expenses have crystallized during the year under consideration.

20. On further appeal, ld.AR before us submitted as under :-

> *"During the year under consideration, assessee company has booked net prior period adjustment of Rs.11.71 Crores, details of which are given in Schedule W at PB 60. The prior period expenditure incurred by assessee was Rs.21.07 Crores, which was adjusted against the prior period income and the net adjustment of Rs.11,71 Crores was included in the taxable income, as is evident from the Profit and Loss Account enclosed at PB 50.*
>
> *It is pertinent to note that similar disallowance was made by the AO in the case of assessee for A.Y. 2004-05, which was deleted by this Hon'ble Tribunal in ITA Nos. 191, 193/CTK/2008 dated 25.05.2012, relevant findings of the Tribunal being at Case law Page 14 – 15 in Para 10 – 10.1.*
>
> *Complete details with regard to prior period adjustments was submitted before the AO as well as the Ld. CIT(A), which is enclosed at PB 601 – 607.*
>
> *A perusal of the details clearly shows that the expenditure has crystallized during the year under consideration, and thus, the assessee has rightly claimed the said expenditure during the year under consideration.*
>
> *It is a settled law that prior period expenses are to be allowed in the year in which the said expenditure has crystallized. Reliance in this regard is placed on following judgments:*
>
> > *Delhi High Court in the case of CIT v. Modipon Ltd. [2011] 334 ITR 102*

Gujarat High Court in the case of Pr. CIT v. Adani Enterprises Ltd. in ITA No. 566 of 2016 dated 20.07.2016
Bombay High Court in the case of CIT v. Mahanagar Gas Ltd. in ITA No. 1978 of 2011 dated 10.06.2013

Further, it is important to note that the AO has on one hand included the prior period income in the taxable income of the assessee, and on the other hand has disallowed the prior period expenditure of Rs.21.07 Crores.

It is a settled law that the disallowance of prior period expense has to be computed by netting off the prior period income against the prior period expenditure. Reliance in this regard is placed on the recent judgment of Hon'ble ITAT Mumbai in the case of M/s Mazagaon Dock Ltd. v. ITO in ITA No. 5034/Mum/2011 dated 01.02.2016, wherein the Hon'ble Tribunal on similar set of facts has held as under:

"16. The next common issue contested in the appeals filed by the assessee for AY 2004-05 and 2007-08 relate to the disallowance of prior period expenses. We heard the parties on this issue. The assessee had declared prior period income as well as prior period expenses in the accounts relating to both the years referred above. The assessee had netted off the prior period income against prior period expenses and the net amount alone was disallowed by the assessee while computing the total income. However, the assessing officer did not agree with the netting off and accordingly the enhanced the disallowance to the extent of prior period expenses. The Ld CIT(A) also confirmed the same,

17. It is a well settled proposition of law that the income relating to one year cannot be assessee in any other year. Under the same principle, the expenditure relating to one year cannot be claimed in any other year. Both the principles shall have exception, if it is expressly provided in the Act. Hence, we are of the view that the tax authorities are not justified in disallowing entire amount of prior period expenses, while assessing the entire amount of prior period income, without bringing support of any of the provisions of the Act. Accordingly, we are of the view that the assessee was justified in computing the disallowance by netting off the prior period income against the prior period expenditure. We further notice that the assessee has offered net income in assessment year 2007-08, i.e., the prior period income was more than the period expenditure."

Further reliance in this regard is placed on the judgment of this Hon'ble Tribunal in the case of DCIT v. Airports Authority of India in ITA No. 3841/Del/ 2011 dated 16.03.2012 for A.Y. 2007-08, wherein Hon'ble Tribunal has held as under:

"8. We have heard both the parties and perused the material placed before us. We find that with regard to prior period

expenses also, the learned CIT(A) has recorded the finding that similar issue was decided by him for AY 2005-06 in favour of the assessee which was accepted by the Department. The facts of the year under consideration are admittedly identical. Moreover, it was pointed out by the learned counsel for the assessee that though the prior period expenses were to the tune of Rs.9.24 crores but, the assessee has disclosed much more income of the prior period and, in fact, if the assessee's profit & loss account is looked into, there is net credit of the prior period income amounting to Rs.71.55 crores. Thus, the prior period income offered by the assessee was more by Rs.71.55 crores than the prior period expenses claimed in the year under consideration. The Assessing Officer has assessed the prior period income and disallowed prior period expense. He cannot adopt different yardstick for assessing the income and allowing the expenditure. Considering the totality of the above facts, we do not find any justification to interfere with the order of the learned CIT(A) in this regard. The same is sustained and ground no.2 of the Revenue's appeal is rejected."

It is further submitted that the disallowance merely on the ground that the expenses pertain to earlier year should not be resorted to when tax rate are same for both the years.In this regard, reliance is being placed on the judgment of Delhi High Court in the case of CIT vs. Dinesh Kumar Goel 331 ITR 10 (Del) where a similar issue was being examined and court in Para 30 has made a reference to an old judgment of Bombay High Court in the case of CIT vs. Nagri Mills Company Ltd. 33 ITR 681 (Bom.) and also of Delhi High Court in the case of CIT vs. Vishnu Industrial Gases Pvt. Ltd. ITR no. 229 of 1998 dated 6th May, 2008.

Therefore, in view of the facts of assessee's case, as well as the settled position of law, the action of the Ld. CIT(A) in sustaining the impugned addition made by the AO is bad in law, and thus, the addition made on this ground should be directed to be deleted."

21. Contra, ld. DR relied on the order of lower authorities.

22. We have heard rival submission and perused the material available on record. We find the similar issue has been decided in favour of the assessee by the Tribunal in assessee's own case for the assessment years 2007-08 & 2008-2009 in ITA No.343 & 392/CTK/2015, order dated 23.04.2018, wherein the Tribunal observed as under :-

> *"42. We have heard rival submissions and perused the material available on record. We found that the terminology prior period adjustment refers to the expenditure which was not accrued during the year but pertaining to earlier year but crystallized. The ld. AR emphasized that the AO has made addition but failed to consider the prior period income set off against the expenditure and has solely relied on the expenditure and ignored the income. Ld. AR further submitted that the prior period expenses consists of administrative expenses and other income and settlement of claims or crystallization of liability disclosed under prior period expenses adjustments as per the accounting disclosure. Ld. AR subsantiated the arguments with the paper book. Whereas the CIT(A) found that the liability has accrued in the earlier years and the assessee cannot claim the same in the current assessment year and also the reasons envisaged were not supported with the evidence for claim during the current financial year. We considering the material aspects and the concept of income and expenditure remit this disputed issue to the file of AO to verify the claims and grant the set off of prior period income against the prior period expenses and passed the order on merits and the assessee shall cooperate in submitting the information and this ground of appeal of the assessee is allowed for statistical purposes.*

We respectfully follow the judicial precedence and considering the material aspects of facts, remit this disputed issue to the file of AO to examine the claims and grant the set off of prior period income against the prior period expenses and passed the order on merits and the ground of appeal is allowed for statistical purposes.

23. Ground No.6 relates to disallowance of amounts written off in respect of claims, receivables, advances, shortages etc. The AO has made the impugned disallowance of Rs.12,75,994/- alleging that no supporting documents and evidences in this regard were filed by the assessee. On appeal, the Ld. CIT(A) has sustained the disallowance made by the AO holding that the assessee could not claim the written off of the advances when they were not a part of income of earlier years.

24. On further appeal, ld. AR of the assessee submitted as under :-

- *During the year under consideration, an amount of Rs.12,75,994/- has been claimed by the assessee company as write off of claims, receivables, advances, shortages, etc.*

- *Complete details with regard to these expenses was filed before the AO as well as the Ld. CIT(A), which are enclosed at PB 610 – 616.*

- *The write-off was made by the assessee company of the advances paid to suppliers / contractors, which are normal advances in the course of business of the assessee company, and thus, the same should be allowed to be claimed as business expenses.*

- *Further, it is not in dispute that the amount of said advances has been given during the course of business and for business purpose only, which has become irrecoverable. The AO has made the impugned disallowance merely because the said amount has not been included in the income in earlier years.*

- *Since the said amount has been given for business purpose only, such an amount has to be allowed either as a business expenditure u/s 37(1) of the Act, or as a business loss while computing the profits and gains u/s 28 of the Act.*
- *Though the said amount cannot be allowed as a bad debt, as the same has not been included as income in the earlier years, but it has to be allowed as a business loss or business expenditure.*
- *Issue is covered by the judgment of the Supreme Court in the case of Badridas Daga Vs CIT 34 ITR 10(SC)*

Reliance in this regard is placed on the judgment of Hon'ble ITAT Delhi in the case of ACIT v. Claridges Hotels Pvt. Ltd. in ITA Nos. 5848, 5849/Del/2014 dated 10.11.2017 – Relevant findings being in Para 12.

25. Contra, ld. DR relied on the order of lower authorities.

26. We have heard rival submissions and perused the material on record. Prima facie, it is not in dispute that the amount of said advances has been given during the course of business and for business purpose only, which has become irrecoverable. Ld. AR drew our attention to the pages 610 to 616 of the paper book and submitted that the assessee has filed all the details before both the authorities below. Since the said

amount has been utilized for business purpose and has to be allowed either as a business expenditure u/s 37(1) of the Act, or as a business loss while computing the profits and gains u/s 28 of the Act, considering the submissions of ld. AR of the assessee, we are of the opinion that the issue requires further examination by the AO and restore to the file of AO and the assessee shall be provided adequate opportunity of hearing for submitting the details and we accordingly allow this ground of appeal for statistical purposes.

27. Ground No.7 relates to disallowance u/s.40(a)(i) of the Act and Ground No.10 relates to disallowance of claim of additional depreciation u/s.32(i)(iia) of the Act. Both the grounds have not been pressed by ld. AR of the assessee at the time of hearing. Accordingly, we dismiss ground Nos.7 & 10 as not pressed.

28. Ground No.8 relates to provision for leave encashment. The AO has made the disallowance of Rs.18,85,04,549/- u/s 43B(f) of the Act on account of provision for leave encashment, alleging that the same is allowable only if the said expenditure has actually been paid by the assessee. On appeal, the Ld. CIT(A) has sustained the disallowance made by the AO holding that the decision of the Calcutta High Court in the case of Excide Industries Ltd. v. Union of India [2007] 292 ITR 470 has been stayed by the Apex Court.

29. On further appeal before us, ld. AR of the assessee submitted as under :-

"During the year under consideration, assessee company has debited an amount of Rs.18,85,04,549/- in its Profit & Loss account towards leave encashment. The said amount has been computed on a scientific basis and therefore, is allowable deduction u/s 37(1) of the Act.

It is submitted that the Finance Act, 2001 made an amendment to section 43B of the Act by inserting clause (f) in the said section, whereby leave encashment was also included in the scope of section 43B

However, the validity of the aforesaid amendment was challenged before the Hon'ble Calcutta High Court in the case of Exide Industries Ltd. v. Union of India, whereby the Hon'ble Court has struck down the said amendment being arbitrary. The said decision of Hon'ble High Court is cited in [2007] 292 ITR 470. This fact has also not been controverted by the AO or the Ld. CIT(A).

The Ld. CIT(A) has, however, sustained the impugned disallowance holding that the said judgment of the High Court has been stayed by the Apex Court in the case of CIT v. Exide Industries Ltd. in Special Leave to Appeal No. 12060/2008dated 08.09.2008 (enclosed at PB 618)
In this regard, it is submitted that a perusal of the judgment of the Apex Court in the case of CIT v. Exide Industries Ltd. in Special Leave to Appeal No. 22889/2008 dated 08.05.2009 (enclosed at PB 619), clearly shows that the Apex Court has also held that the assessee is entitled to make a claim of the said amount in its return of income.

Issue is covered by the judgment of ITAT Pune in the case of Minilec India P Ltd. Vs ACIT ITA No. 690/PUN/2015 dated 09.04.2018.

Therefore, since the claim of the assessee is in line with the judgment of the Apex Court, the same should be allowed and the action of the Ld. CIT(A) in sustaining the addition made by the AO should be directed to be reversed."

30. Contra, ld. DR relied on the order of lower authorities.

31. We have heard rival submissions and perused the material on record. We found that the similar issue has been decided by the Tribunal in assessee's own case for the assessment years 2007-08 & 2008-2009 in ITA No.343 & 392/CTK/2015, order dated 23.04.2018, wherein the Tribunal has observed as under :-

> *"28. We have heard rival submissions and perused the material on record. The assessee has made the provision for leave encashment and the provision was not added back in the computation of income. As the ld. AR submitted that the above issue is covered by the order of the coordinate bench of the Tribunal in the case of Baitarani Gramya Bank in ITA Nos.318 & 319/CTK/2013 for assessment years 2008-09 & 2009-10, wherein the Tribunal held as under :-*
>
> > *"19.1 The DR also agreed with the submission of ld. AR of the assessee. In the circumstances of the case, we set aside the order of the CIT(A) and remit the matter to the file of the Assessing officer to re-adjudicate the issue in the light of the Hon'ble Supreme Court decision. Hence, this ground is allowed for statistical purposes.*
> >
> > *20. In the result, appeal for the assessment year 2008-09 is partly allowed for statistical purposes."*
>
> *29. We considering the ratio of the decision and the facts to the present case, remit this issue to the file of the AO to examine and allow the claim and this ground of appeal is allowed for statistical purposes."*

Respectfully following the order of the Tribunal and we restore this issue to the file of AO to examine and allow the claim of the assessee and we allow this ground of appeal of the assessee for statistical purposes.

32. Ground No.9 relates to disallowance u/s.43B of the Act made under Electricity Duty & Water Charges. The AO has made the disallowance of Rs.3,43,72,917/- alleging that the amount of electricity duty not paid by the assessee is liable to be disallowed as per the provisions of section 43B of the Act. On appeal, the CIT(A) has sustained the disallowance made by the AO by relying upon the order of his predecessors in assessee's case for A.Y. 2007-08 and 2008-09.

33. On further appeal, before us ld. AR of the assessee submitted as under :-

- *During the year under consideration, assessee has debited an amount of Rs.140,71,26,619/- in its Profit & Loss account on account of electricity duty and water charges.*

- *Out of the above, the assessee has paid an amount of Rs.77,26,74,586/-, and out of the remaining unpaid amount, assessee company has suo-moto made a disallowance in its Computation of Income for Rs.60,00,79,116/-.*

- *The balance amount of Rs.3,43,72,917/- has been disallowed by the AO by invoking the provisions of section 43B, which has been further confirmed by the Ld. CIT(A).*

- *In this regard, it is submitted that the issue under consideration has been decided against the assessee by this Hon'ble Tribunal in assessee's own case for earlier years bearing ITA Nos. 196, 91/CTK/2010 dated 29.06.2012, wherein the findings of this Hon'ble Tribunal are at Page 10 – 13 in Para 16 – 23 (PB 127 – 130).*

34. Contra, ld. DR supported the order of lower authorities and submitted that this issue is not favour of the assessee and there is no merit in the claim of the assessee and liable to be dismissed.

35. We have heard rival submissions and perused the material on record. We find that this issue has been decided against the assessee by the Tribunal in assessee's own case for the assessment years 2007-08 & 2008-2009 in ITA No.343 & 392/CTK/2015, order dated 23.04.2018, wherein the Tribunal observed as under :-

> *"49. We have heard rival submissions and perused the material on record. The liability of Rs.47,35,67,572/- under the provisions of Section 43B of the Act disallowed by the AO dealt by the Cuttack Bench of the Tribunal in assessee's own case and matter is pending before the Hon'ble High Court. We rely on the order of ITAT in ITA Nos.196&91/CTK/2010, order dated 29.06.2012, para 16 to 23 at pages 10 to 13. The relevant observations of the ITAT in this regard are as under :-*
>
> > *"23. We have considered the rival submissions and have perused the material available on record. To set the controversy at rest, we are of the considered view that a disallowance u/s.43B has to be primarily when such*

> *electricity duty has been claimed as expenditure in the impugned assessment year. The assessee could not override the Hon'ble High Court directions. The expenditure remained unpaid for both the years in spite of these directions, therefore, was rightly brought to tax by the ld AO u/s.43B, we uphold the confirmation thereof by the ld CIT(A). This ground for both years stands dismissed."*

> *Respectfully following the decision of the coordinate bench of the Tribunal in assessee's own case for earlier year, we dismiss this ground of appeal of the assessee.*

We follow the judicial precedence and uphold the order of the CIT(A) and dismiss this ground of appeal of assessee.

36. Ground No.11 relates to treatment of capital gain income as business income. The AO has treated the short-term and long-term capital gain earned by the assessee for Rs.1,89,869/- and Rs.63,57,39,500/- respectively as business income of the assessee. The CIT(A) has affirmed the action of the AO by stating that frequent transactions entered into in stocks / shares / mutual funds by the assessee as well as the substantial amount involved in these transactions, reflects that the income earned from these transactions should be taxed as business income of the assessee.

37. Aggrieved by the order of the CIT(A), assessee is in further appeal before us and the ld. AR submitted as under :-

> *"During the year under consideration, assessee company has earned long-term capital gain amounting to Rs.63,57,13,500/- and short-term capital gain amounting to Rs.1,89,869/-.*

> *The said amounts of capital gain income have been charged to tax by the assessee company in its Computation of Income under the head capital gain.*

The AO, as well as the Ld. CIT(A) have alleged that the income earned by the assessee under the head capital gain from its investments has to be assessed under the head business income.

Complete details with regard to the capital gain earned by the assessee company are enclosed at PB 668 – 669.

In this regard, it is submitted that the assessee company has from the very beginning held the investments in mutual funds / liquid funds under the head of 'Investments'. The said investments are primarily held for the purpose of earning dividend income, and not for trading the same..

- *The assessee has not purchased and sold shares. The gain is on the Mutual funds which are not tradable. The investment has to be made with the concerned Mutual fund and encashment is also from the mutual fund and hence it cannot be considered as trade.*
- *Further, it is to be noted that the total profit earned by the assessee company by way of capital gains is only about 4% of the total income of the assessee company, which clearly shows that the assessee company is engaged in the business of mining, manufacturing, generation and production of aluminium and not dealing in mutual funds / liquid funds.*
- *Further, it is important to note that no such disallowance has been made by the AO in the case of assessee company in the preceeding years, whereby also the assessee was following the same policy and showing the income from such investments under the head capital gain.*
- *Now, the CBDT, vide its Circular No. 6/2016 dated 29.02.2016 has also appreciated the fact that if the assessee desires to treat the income from listed shares and securities held for a period of more than 12 months as capital gain income, the same shall not be put to dispute by the AO.*
- *Reliance in this regard is also placed on the following judgments, wherein also the ratio of the above Circular issued by the CBDT was followed:*
  - *(a) High Court of Gujarat in the case of Pr. CIT v. Ramniwas Ramjivan Kasat [2017] 248 Taxman 484*
  - *(b) ITAT Mumbai in the case of Minal Deepak Mehta v. ACIT in ITA No. 657/Mum/2012 dated 23.09.2016*
  - *(c) ITAT Delhi in the case of ACIT v. Rajiv Kapoor in ITA No. 4989/Del/2012 dated 10.03.2016*
  - *(d) ITAT Jaipur in the case of DCIT v. Mahender Kumar Bader [2016] 48 ITR(Trib.) 596*

Further, it is a settled law that units of mutual fund are special category investments and any gain arising on sale of mutual funds is long-term capital gain. Reliance in this regard is placed on the judgment of Delhi High Court in the case of Yama Finance Ltd. v. ACIT in ITA No. 1658 of 2010 dated 01.04.2014

> *Therefore, considering the facts of assessee's case and the judicial precedents in this regard, the action of the Ld. CIT(A) in sustaining the action of the AO is bad in law, and thus, liable to be reversed.*

38. On the other hand, ld. DR relied on the order of lower authorities.

39. We have heard rival submissions and perused the material available on record. We find that the main object of the assessee is manufacturing and assessee being a public sector company has enough funds and made investment in the mutual funds and on redemption the income is offered under the capital gain and the main object being the business and the maximum income is established through the direct business operations and not from the financial transaction. The investment has been made with the mutual funds/liquid funds/ closed ended funds and encashment on redemption/maturity. Further, the total profit earned by the assessee company by way of capital gains is only about 4% of the total income of the assessee company, which clearly shows that the assessee company is engaged in the business of mining, manufacturing, generation and production of aluminium and not dealing in mutual funds / liquid funds. We find the Hon'ble Gujarat High Court in the case of Pr. CIT Vs. Ramniwas Ramjivan Kasat [2017] 248 Taxman 484, has held as under :-

> *"5. The second issue pertains to the treatment to the income earned by the assessee on sale of shares. The assessee contended that the shares were in the nature of his investment and the income earned should be treated as long term capital gain. The Revenue contends that looking to the pattern of holding the shares, the frequency of transactions and other relevant considerations, the assessee was dealing in the business of buying and selling the shares and the income should be taxed as a business income and the Tribunal took the relevant facts into consideration and referred*

to the circular of the CBDT dated 29.2.2016 and held that the return should be taxed as capital gain, be it long term or short term, as the case may be, and not as a business income.

6. Whether to tax the income generated from the sale of shares as capital gain or business income is an issue of frequent dispute between the revenue and the assessees. The Courts in the past have had occasions to consider such issue and through judicial pronouncement various parameters have been laid down to check whether the sale of shares would lead to business income or capital gain. Despite several judicial pronouncements, the controversy did not subside. Each case would have to be considered individually leading to long drawn litigations. The CBTD therefore in order to reduce the litigations, issued the said circular dated 29.2.2016, relevant portion which reads as under:—

2. Over the years, the courts have laid down different parameters to distinguish the shares held as investments from the shares held as stock-in-trade. The Central Board of Direct Taxes ('CBDT') has also, through Instruction No. 1827, dated August 31, 1989 and Circular No. 4 of 2007 dated June 15, 2007, summarized the said principles for guidance of the field formations.

3. Disputes, however, continue to exist on the application of these principles to the facts of an individual case since the taxpayers find it difficult to prove the intention in acquiring such shares/securities. In this background, while recognizing that no universal principal in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. whether the same is in the nature of capital gain or business income), CBDT realizing that major part of shares/securities transactions takes place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, in partial modification to the aforesaid circulars, further instructs that the Assessing Officers in holding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income, shall take into account the following-

a) Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares/securities would be treated as its business income,

(b) In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;

(c) In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT.

5. It is reiterated that the above principles have been formulated with the sole objective of reducing litigation and maintaining consistency in approach on the issue of treatment of income derived from transfer of shares and securities. All the relevant provisions of the Act shall continue to apply on the transactions involving transfer of shares and securities."

7. Two things emerge from this circular. One is that the CBDT desires to obviate the difficulties of the assessees and simultaneously to reduce the litigation. In paragraph 3 of the circular, certain parameters have been laid down. Clause (b) thereof in particular provides that in respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. In other words, the Revenue would not pursue this issue if the necessary ingredients are satisfied, only rider being the stand taken by the assessee in a particular year would be followed in the subsequent years also and the assessee would not be allowed to adopt a contrary stand in such subsequent years.

8. The circular applies with full force in the present case. The Tribunal therefore correctly accepted the assessee's stand."

We respectfully follow the decision of the Hon'ble High Court and we direct the AO to treat the income as capital gains and not as business income and this ground of appeal of assessee is allowed.

40. Ground No.12 relates to levy of interest u/s.234A, 234B, 234C & 234D of the Act. As the return of income was filed as per the CBDT Instruction dated September 27, 2010 in F.No.225/72/2010-ITA.II, therefore no interest has to be calculated. This ground of appeal is allowed.

41. Thus, ITA No.352/CTK/2016 is partly allowed for statistical purposes.

42. Now we shall take up appeals of the assessee for assessment years 2011-2012 & 2012-2013 in ITA Nos.374/CTK/2014 and 353/CTK/2016.

43. Ground No.8 in ITA No.374/CTK/2014 and ground No.6 in ITA No.353/CTK/2016 have not been pressed by the ld. AR of the assessee at the time of hearing, therefore, both the grounds are dismissed as not pressed.

44. Ground No.3 in appeal for assessment year 2011-12 and ground No.2 in appeal for assessment year 2012-2013 are relating to disallowance of interest on disputed Govt. Duty (Electricity Duty and Water Charges).

45. We have already decided this issue in the appeal of the assessee for assessment year 2010-2011, wherein relying on the order of Tribunal in assesee's own case for the assessment year 2005-06 in ITA No.286/CTK/2013, we have directed the AO to allow the claim of the assessee. Following the reasoning given in the above appeal, we allow this ground raised in both the appeals for the assessment year 2011-2012 & 2012-2013 and direct the AO to allow the claim of assessee interest on disputed Govt. Duty (Electricity Duty and Water Charges). This ground of appeal is allowed.

46. Ground No.4 in appeal for assessment year 2011-12 (ITA No.374/CTK/2014) relates to additions made under trial operations expenses.

47. We have decided this issue in the appeal of the assessee for assessment year 2010-2011, wherein we have directed the AO to treat the expenditure incurred by the assessee on such trial operation as revenue expenditure. In the same manner, we allow this ground in terms of findings given in the appeal for assessment year 2010-2011.

48. Ground No.5 in appeal for assessment year 2011-12 and 2012-2013 are relating to disallowance of provision for leave encashment.

49. We have already decided this issue in the appeal of the assessee for assessment year 2010-2011, wherein we restore this issue to the file of AO. Accordingly, following the same reasoning given in the aforesaid appeal, we restore this issue to the file of AO to examine and allow the claim of assessee. Hence, this ground of appeal for both the assessment years under consideration are allowed for statistical purposes.

50. Ground No.6 in appeal for assessment year 2011-12 and ground No.4 in appeal for assessment year 2012-2013 are relating to treatment of long term capital gains and short term capital gains as income from business.

51. We have already decided this issue in the appeal of the assessee for assessment year 2010-2011, wherein relying on the judicial decisions, we have directed the AO to treat the income as capital gains not as business income. Following the same reasoning given in the above appeal, we allow this ground of assessee and direct the AO to treat the income as capital gains.

52. Ground No.7 in appeal for assessment year 2011-12 relates to disallowance u/s.43B of the Act under Electricity Duty & Water Charges.

53. We have already decided this issue in the appeal of the assessee for assessment year 2010-2011 in pra 34 of the order, wherein we have dismiss this ground of assessee relying on the Tribunal order for the assessment years 2007-08 & 2008-09 in ITA No.343&392/CTK/2015, order dated 23.04.2018. Following the same reasoning we uphold the findings of the CIT(A) on the disputed issue and dismiss the ground of appeal of assessee.

54. Ground No.2 in appeal for assessment year 2011-12 relates to disallowance of loss on valuation of non-moving store and spares. The AO has made the disallowance of Rs.5,00,33,596/- stating that the loss claimed on account of diminution in the value of non-moving stores and spares should be restricted to 25% of the original cost, instead of 95% as claimed by the assessee. On appeal, the Ld. CIT(A) has restricted the impugned disallowance made by the AO.

55. On further appeal, ld. AR of the assessee submitted that the assessee company is consistently following the accounting policy of revaluing the non-moving inventory of stores and spares at 5% of the cost, and the loss on account of such revaluation is claimed as revenue expenditure. Ld. AR also submitted that during the year under consideration, the disallowance made by the AO has been restricted by the Ld. CIT(A). The issue under consideration is covered by the order of

this Hon'ble Tribunal in assessee's own case for earlier years. To support the contention, ld. AR relied on the following judicial decisions :-

(a) ITAT Cuttack in assessee's case in ITA Nos. 66-68, 459, 511-512/CTK/2003 dated 20.11.2005 in respect of A.Y. 1994-95 to 1998-99 and 2000-01;

(b) ITAT Cuttack in assessee's case in ITA Nos. 511, 512/CTK/2005 dated 17.07.2007 in respect of A.Y. 1999-00 and 2002-03;

(c) ITAT Cuttack in assessee's case in ITA Nos. 162, 90/CTK/2010 dated 29.06.2012 in respect of A.Y. 2005-06 and 2006-07;

56. Contra, ld. DR relied on the orders of lower authorities.

57. We have heard rival submissions and perused the material available on record. This issue is covered by the earlier order of the Tribunal in assessee's own case for the assessment year 1994-95 to 1998-99 & 2000-2001, order dated 30.11.2005, wherein the Tribunal after relying upon the various judicial pronouncements has held as under :-

> *"19. Considering the totality of the facts of the case and relying on the above case decisions we set aside the order of the CIT(A) on this ground and direct the AO to allow the claim of loss on account of value of non-moving stores and spares at Rs.4,86,70,639/-. We direct accordingly. The Grounds of appeal no.1 by the appellant is accordingly allowed."*

The Tribunal also in assessee's own case in ITA No.162&90/CTK/2010 for assessment year 2005-06 & 2006-07, order dated 29.06.2012, wherein the Tribunal has decided the issue in favour of the assessee. The observation of the Tribunal for the assessment year 2005-06 & 2006-07 are as under :-

> *"9. The first ground raised in respective assessment year is with respect to loss in relation to non-moving stores and spares. This issue has been considered by the Tribunal in assessee's own case since assessment year 1994-95 by way of a combined order dated 30.11.2005 in ITA Nos.66-68/459/511/512/CTK/2003 for A.Ys. 1993-94 to 1998-99 and 2000-2001 and such disallowance was considered fit for deletion. Similarly for the assessment year 2001-02 upto assessment year 2004-05, the Tribunal was pleased to hold that the accounting loss on non-moving stores and spares was in accordance with the accounting policy of the assessee and on the basis of internal verification and, therefore, did not require any interference. The assessee functions with such magnitude of holding slow-moving stores and spares was at liberty to consider its valuation in accordance with consistent system of accounting which it reduced and since the value of the stock was in accordance with provisions of Income Tax Act, it was not to be disturbed. This ground, therefore, is bound to be disposed of accordingly for both the assessment years. They are dismissed."*

We respectfully follow the decision of the Tribunal in assessee's own case and allow the claim of loss on account of value of non-moving stores and spares. Accordingly, this ground of appeal is allowed.

58. Ground No.1 raised in the assessment year 2012-2013 relates to disallowance under peripheral development expenses. We have decided the issue in appeal of the assessee for assessment year 2010-2011 wherein we have remitted the disputed issue to the file of AO to verify the nature of expenditure incurred on peripheral areas and decide on merits. Accordingly, we follow the reasoning given in the aforesaid appeal and restore this issue to the file of AO in terms of our observation in the appeal for assessment year 2010-2011. This ground of appeal is allowed for statistical purposes.

59. Ground No.3 raised in the assessment year 2012-2013 relates to disallowance u/s.14A of the Act. We have decided the issue in appeal of

the assessee for assessment year 2010-2011 wherein we have restored the issue to re-examine and apply the provisions of section14A r.w.rule 8D of. Accordingly, we follow the reasoning given in the aforesaid appeal and restore this issue to the file of AO in terms of our observation in the appeal for assessment year 2010-2011. This ground of appeal is allowed for statistical purposes.

60. Ground No.7 in the appeal for assessment year 2012-2013 relates to levy of interest u/s.234A & 234B of the Act, which is consequential and the AO is directed to calculate as per the provisions of the Act and this ground of appeal is allowed for statistical purposes.

61. In the result, ITA No.353/CTK/2016 for the assessment year 2012-2013 and ITA No.374/CTK/2014 for the assessment year 2011-2012 are allowed partly for statistical purposes.

62. Now, we shall take up the appeals of Revenue in ITA No.376/CTK/2014 (AY : 2011-2012), ITA No.339/CTK/2016 (AY : 2010-11) and ITA No.340/CTK/2016 (AY : 2012-2013).

63. Ground No.1 in appeal for assessment years 2010-11 and 2012-2013 are relating to disallowance of the loss claimed on account of re-valuation of non-moving stores and spares.

64. We have decided this issue in appeal of the assessee for assessment year 2011-2012 (ITA No.374/CTK/2014) in favour of the assessee and against the Revenue relying on the decision of the Tribunal in assessee's own case for the earlier assessment years. We follow the

same reasoning given in the aforesaid appeal and we do not see any reason to interfere with the order of the CIT(A), who has passed a reasoned. Accordingly, we dismiss this ground of Revenue raised in both the years under consideration.

65. Ground No.2 in appeal for assessment years 2010-11 and 2012-2013 and ground No.1 in appeal for assessment year 2011-2012 are relating to disallowance on account of peripheral development expenses.

66. We have decided the issue in appeal of the assessee for assessment year 2010-2011 (ITA No.352/CTK/2016). Ld. DR in respect of partial relief granted by the CIT(A) could not bring on record any new material to take different view. Accordingly, we dismiss the ground of appeal of Revenue.

67. Ground No.3 in appeal for assessment year 2011-2012 and 2012-2013 relates to disallowance u/s.40(a)(i) of the Act. The AO noticed from the record that the assessee has not filed any application for non-deduction or lesser deduction of tax u/s.195(2) and there was no evidence forthcoming from the record that any certificate u/s.195(2)/195(3)/197 was issued by the AO in respect of payment to non-resident, therefore, he made disallowance u/s.40(a)(i) of the Act. On appeal, the CIT(A) deleted the addition observing for the assessment year 2012-2013 as under :-

> *"5.2. I have considered the matter. I have gone through the arguments of the AO for concluding that the assessee was liable to deduct tax at source u/s.195(1), detailed submissions of the assessee, relevant decisions and various facts on record. The dispute has arisen when the assessee purchased raw materials, components, spares parts and construction materials from non-*

resident concerns for a total cost of Rs.256.92 crores, apart from other purchases like capital goods.

As per provisions of sec.135(-1) of the Act, any person responsible for paying (Payer) to a Non- Resident or Foreign Company (Payee) any interest or 'any other sum chargeable under the provision of the Act', is required to deduct tax at source. The provision applies to all the Payers, including individual and HUF. The only specific exclusion provided is in respect of payment of dividend which is exempt by virtue of payment of Dividend Distribution Tax. The scope of the provision is wide and therefore, the implications thereof have far-reaching effect in large numbers of cases as the number of such payments has increased manifold with the development of the economy and growth of cross border transactions in the last decade.

As per the provisions of sec.195(2) of the Act, if the Payer considers that the whole of such a sum would not be chargeable to tax in the hands of the Payee, he may make an application to the Assessing Officer (AO) to determine the appropriate portion of such taxable income by passing .a general or special order and upon such determination, the Payer is obliged to deduct tax only on the portion so determined.

As per the provisions of sec.195(3)/(5) read with Rule 298 of the Act the specified recipient of such a sum can also make an application to the AO in the prescribed form for grant of a certificate authorising him to receive such sum without TDS and upon grant of such a certificate, the Payer is required to make payment without TDS. These provisions are largely used by foreign banks operating in India for receiving payments from their customers without TDS.

Section 195(6) was introduced by the Finance Act, 2008 (with effect from 1.4.2008) providing that the Payer shall furnish the information relating to payments of such sums in the prescribed form and manner. For this Rule 37BB was introduced and the procedure for making remittances is provided for which the certificate of Chartered Accountant in the prescribed Form 15CB is required to be obtained by the Payer before making remittance to the Payee (New Procedure for Remittance). Earlier, there was a requirement for obtaining certificate of Chartered Accountant for making remittance to the Non-Resident, but the same was operating under the Circulars issued by CBDT.

The Apex Court in the case of Transmission Corporation of A.P. Ltd. (239 ITR 597) has held that the expression 'taxable income' used in sec. 195(1) applies to any sum payable to the Non-Resident even if such a sum is a trading receipt in the hands of the payee, if, the whole or part-t-hereof is chargeable to tax under the Act. These provisions are only limited to the sums which are of 'Pure Income' nature. Based on this judgment, it was felt by the Payers of such income that the TDS is required to be made u/s.195(1) only if, the income is chargeable to tax (partly or wholly) under the Act and in cases where, the income itself is not chargeable to tax (Non-taxable income) question of making any

TDS should not arise. However, because of the interpretation that it is not for the assessee to decide whether the income is chargeable in the hands of the Payee or not, the litigation on the obligation to make TDS continues, even after the decision of the Apex .Court in Transmission Corporation of A. P. Ltd and particularly in view of interpretation of this judgment by the Hon'ble Karnataka High Court in the case of CIT (International Taxation) v. Samsung Electronics Co. Ltd, [2009] 185 Taxman 313 (Kar.)/ [2010] 320 ITR 209.

The AO is of the opinion that the decision of the A P High Court in the case of transmission Corporation of A. P. Ltd. v. CIT, which was approved by the Supreme :,Court in 239 ITR 587 (SC) is applicable and accordingly the assessee was liable to deduct tax u/s.195(1). In this case the AO may have considered that the person making payments to a non-resident cannot take a unilateral decision that the payments made by him are not sums chargeable to income tax, and therefore he cannot make such payments without deducting tax at source unless he gets the concurrence of the Assessing Officer as provided in section 195(2) or an exemption certificate under section 195(3). However, as per the High Court's decision the obligation of the assessee is limited to deduct tax u/s.195 on the appropriate portion of the income chargeable under the Act in respect of sums paid under the contract. Accordingly, tax was deductible in respect of income imbedded in the contract amount. In the instant case, the assessee has purchased raw materials from non-resident business entities and no income can be said to have accrued in India in respect of cost of raw materials. The income, if any, earned by the non-resident seller of the raw materials is earned in foreign soil and not taxable under the Indian Income Tax Law. Further, application u/s.195(2) was required to be made in case the assessee was having any doubt about the proportion of income embedded in the remittance and in case the income itself was not assessable in India, there was no requirement to make any application u/s.195(2). In any case, not making an application u/s.195(2) before remittance could at best be considered as a violation and would not attract the provisions of section 40(a)(i).

It was held by the Hon'ble ITAT, Hyderabad, in the case of SOL Pharmaceuticals Ltd. v. ITO [2002] 83 ITD 72 (Hyd.) that Section 195(2) is attracted only in a case where at least a portion of the payment to non-resident is chargeable as income. If no portion is chargeable, then section 195(2) is not attracted.

It was held by the Hon'ble ITAT, Madras, in the case of Indopel Garments (P.) Ltd. v. DCIT, 86 ITD 102 (Mad), that no tax was deductible from the commission paid to the non-residents. Where there is no chargeable income, it is not necessary for assessee to get concurrence of AO u/s. 195(2).

In the case of Graphite Vicarb Ind. Ltd. v. ITO [1986] 18 ITD 58 (Cal.), it was held that section 195(2) envisages application for determining appropriate proportion of the sum which would be chargeable to tax; but does not envisage a case where the

assessee claims that no profits of the sum to be remitted is liable to tax at all.

The case of the assessee is squarely covered by the judgment of the Hon'ble Supreme Court in the case of GE India Technology Cen. (P) Ltd. v. CIT (2010) 327 ITR 456 (SC). The Hon'ble Supreme Court in GE India Technology Cen. (P) Ltd. has also considered the judgment in the case of Transmission Corporation of A. P. Ltd. (supra), support of which was taken by the AO in holding that assessee was required to deduct tax u/s.195(1). The Hon'ble Supreme Court has observed that every remittance would not result in deduction of tax but only in respect of the amount taxable under the provisions of the Income Tax Act. The application u/s.195(2) is required only when the remitter has no doubt that tax is deductible but not sure of the amount of tax to be deducted. In case no tax is deductible on the remittance, no application u/s.195(2) or no certificate u/s.197 is necessary. The Hon'ble Supreme Court in GE India Technology Cen. (P) Ltd. v. CIT (supa), observed as under:

> *"10. ... In Transmission Corpn. of A.P. Ltd.'s case (supra) it was held that TAS was liable to be deducted by the payer on the gross amount if such payment included in it an amount which was exigible to tax in India. It was held that if the payer wanted to deduct TAS not on the gross amount but on the lesser amount, on the footing that only a portion of the payment made represented "income chargeable to tax in India", then it was necessary for him to make an application under section 195(2) of the Act to the ITO(TDS) and obtain his permission for deducting TAS at lesser amount. Thus, it was held by this Court that if the payer had a doubt as to the amount to be deducted as TAS he could approach the ITO(TDS) to compute the amount which was liable to be deducted at source. In our view, section 195(2) is based on the "principle of proportionality". The said sub-section gets attracted only in cases where the payment made is a composite payment in which a certain proportion of payment has an element of "income" chargeable to tax in India. It is in this context that the Supreme Court stated, "If no such application is filed, income-. tax on such sum is to be deducted and it is the statutory obligation of the person responsible for paying such 'sum' to deduct tax thereon before making payment. He has to discharge the obligation to TDS". If one reads the observation of the Supreme Court, the words "such sum" clearly indicate that the observation refers to a case of composite payment where the payeer has a doubt regarding the inclusion of an amount in such payment which is exigible to tax in India. In our view, the above observations of this Court in Transmission Corpn, of A.P. Ltd.'s case (supra) which is put in italics has been completely, with respect, misunderstood by the Karnataka High Court to mean that it is not open for the payer to contend that if the amount paid by him to the non-resident is not at all "chargeable to tax in India", then no TAS is required to*

be deducted from such payment. This interpretation of the High Court completely loses sight of the plain words of section 195(1) which in clear terms lays down that tax at source is deductible only from "sums chargeable" under the provisions of the Income-tax Act, i.e., chargeable under sections 4, 5 and 9 of the Income-tax Act."

In the instant case, the amounts have been paid towards purchase of raw material, etc. on principal to principal basis and the assessee has procured the goods from the non-resident seller at its own cost after making payments on CIF basis. The raw material is sold by the non-resident seller in foreign soil, hence, no income accrues to the non-resident seller in the Indian territory. The AO has not brought any facts on record nor it is apparent that income in respect of transactions arises in favour of the nonresident sellers in the Indian territory or that the income of such nonresidents in respect of transactions is assessable under Indian Income tax Law. In view of the judgment of the Apex Court in the case of GE India Technology Cen.(P) Ltd. v. CIT (supra), it is the clear that if the payment is made to a non-resident, which is not a taxable income in India, then no tax is required to be deducted u/s.195. Accordingly, the disallowance of Rs.256,92,00,000/- made u/s.40(a)(i) made by the AO is hereby deleted.

Similarly, for the assessment year 2011-2012, the CIT(A) has deleted the addition of Rs.337,32,00,000/- made u/s.40(a)(i) of the Act relying on the decision of the Tribunal in case of Paradeep Phosphates Pvt. Ltd. (supra) and GE India Technology Centre Pvt. Ltd. (supra).

68. Against the deletion of addition, the Revenue is in appeal before us and relied on the order of AO.

69. On the other hand, ld. AR relied on the order of CIT(A).

70. We have heard rival submissions and perused the material available on record. Prima facie, we found in the instant case, the amounts have been paid towards purchase of raw material, etc. on principal to principal basis and the assessee has procured the goods from the non-resident seller at its own cost after making payments on CIF basis. The raw material is sold by the non-resident seller in foreign soil,

hence, no income accrues to the non-resident seller in the Indian territory. The Revenue has not controverted this finding of CIT(A) by bring any material on record nor it is apparent that income in respect of transactions arises in favour of the non-resident sellers in the Indian territory or that the income of such nonresidents in respect of transactions is assessable under Indian Income tax Law. The CIT(A) while considering the disputed issue has relied on the decision of Hon'ble Supreme Court in the case of GE India Technology Cen (P) Ltd. Vs. CIT, (2010) 327 ITR 456 (SC) and observed that if the payment is made to a non-resident, which is not a taxable income in India, then no tax is required to be deducted u/s.195 of the Act and deleted the addition. In view of the above, we do not see any reason to interfere in the order of CIT(A), who has passed a reasoned order and the same is upheld and the ground raised in both the appeals for assessment year 2011-2012 & 2012-2013 of Revenue is dismissed.

71. Ground No.2 in the appeal of Revenue for assessment year 2011-12 relates to deletion of addition made on account of provision for provisional salary claimed by the assessee u/s.37 of the Act. The AO stated that in case of the assessee the liability has not been actually arisen and it is merely anticipated and disallowed the same. On appeal, the CIT(A) deleted the addition observing as under :-

> *"The appellant company submitted that it has charged to the P& L Account salary pending finalization of revision of wages/salary of its employees as wage revision for the non-executives was due since 01.01.2007. The appellant company also produced the copy of office memorandum of Govt. of India, dated 26.11.2011 regarding wage revision. The appellant further submitted that since the*

employees have rendered services during the accounting year, the liability has accrued, pending finalization of revision of wage/salary and the expenditure is therefore allowable u/s.37 of the Act. The appellant had produced a number of case decisions supporting their contention. Out of such the ratio of the decision of Hon'ble ITAT, Chennai Bench in the case of Neively Lignite Corporation Ltd. Vs. ACIT holds attention as the similar issue was decided by the ITAT with the words "if liability had accrued during the relevant previous year and quite reasonably could be estimated on the basis of material available with the assessee, then merely because quantification of the same is done in a subsequent year it cannot be said that the provision made for the said liability on a reasonably estimate basis was not allowable deduction…. The revenue had pointed out that the assessee should have made the provisions in the respective years. However, for arriving at the provision there should be some basis available to the assessee and that was in the form of settlements reached for pay revisions of its executives and also by employer NTPC and BHEL which were also made available to the assessee before 31.03.2001."

In the appellant's own case for the A/Y.2006-07 and A/Y.2007-08, the Hon'ble ITAT, Cuttack in their order dated 20.07.2012, ITA No.233 & 234/CTK/2011 has decided the matter in favour of the appellant company. The relevant portion of the order of the ITAT is quoted below :

> *"Provision for the pay revision is provided on the basis of labourers executing the work and labour union in the industrial sectors. The enhanced pay bill which will be assigned to them later can be provided for by the assessee in view of it not being contingent but accrued on the basis of services rendered by the recipients. The change or credit arisen out of a contingency which at the time of occurrence could not be estimated correctly shall not construe the correction or error and change of asset and as such, such items shall not be treated as disallowable u/s.37.The revenue cannot take both the stands for declining to allow the prior period expenses in the impugned A/Ys. For the A/Ys. Just because pay revision occurs every 5 years applicable to the respective years in accordance with the price index. Therefore, we are of the considered view that the issues raised by the Ld. CIT have either being dealt with by us in assessee's own case or by the Assessing Officer in the impugned A/Ys against no loss to the revenue has been pointed out …."*
>
> *In view of the above order of the ITAT, the above provision of Rs.128,28,00,000/- for wage revision is to be allowed."*

72. Ld. DR argued the grounds and relied on the order of AO and prayed for allowing the appeal.

73. Contra, ld. AR of the assessee supported the order of CIT(A) and relied on the order of Tribunal for earlier assessment years in assessee's own case.

74. We have heard rival submissions and perused the material on record. ld. DR submitted that the CIT(A) has erred in deleting the addition as the liabilities are unascertained liabilities, whereas ld. AR submitted that these are the ascertained liabilities and the assessee has filed details before the appellate proceedings. We found that the ld. DR could not controvert with any new findings of the CIT(A) except relying on the order of AO and on perusal of the CIT(A)'s order we found that the assessee has produced the bills and supporting documents. The CIT(A) having considered these facts and also claim made by the assessee has passed a reasoned decision treating as ascertained liabilities and directed the AO to delete the addition. We find the Delhi Bench of the Tribunal has decided the similar issue in case of ACIT Vs. National Fertilizers Ltd., in ITA No.4076/Del/2013, order dated 20.05.2015, wherein the Tribunal held as under :-

> *"9. Ground no.4 is against the deletion of disallowance of Rs.74,01,67,000 being a provision made for wage arrears. The First Appellate Authority has dealt with this issue at paras 8.1 to 8.10. The provision in this case was made based on an office memorandum dt. 26.11.2008 issued by the Government on the recognition of the Pay Revision Committee, for revision of pay scales w.e.f. 1.1.2007. This is not a contingent liability. In the case of ACIT vs. NTPC in ITA 4246/Del/2011 order dt. 23.11.2011, the Tribunal at page 6 para 7 onwards held as follows.*
>
> > *"7. We have carefully considered the submissions and perused the records. We find that Hon'ble Apex Court in the case of Bharat Earth Movers vs CIT has held that '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 presenti 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.

8. Applying the ratio from the aforesaid case law in the present case, we find that wage revision was due w.e.f. 1.1.2007 and the order under appeal is for year 2007-08 relevant to AY 2008-09. The liability in this regard has certainly crystallised and cannot be considered contingent. In our considered opinion, this issue is squarely covered by the decision of the Hon'ble Apex Court in the case of Bharat Earth Movers vs. CIT, hence , we do not find any infirmity in the order of the Ld.CIT(A) and accordingly, we uphold the same.

9.1. The issue is covered by the decision of the Hon'ble Delhi High Court in the case of CIT vs. BHEL352 ITR 88 (Del) wherein it was held that provision for wage revision was based on past experience, previous Pay Commission's reports and other relevant factors and the deduction claimed for period, between the expiry of one wage settlement or agreement, cannot be termed as contingent because the wage and the probable revision or rates of revision would be within the fair estimation of the employer thus, deduction claimed on account of wage revision are permissible.

9.2. Respectfully following the same we dismiss this ground of the Revenue."

Respectfully following the judicial precedence and the facts and circumstances of the case, we are of the considered view that the CIT(A) has rightly deleted the addition and we do not see any reason to interfere with the findings of CIT(A) in this regard and we uphold the same and dismiss the ground of Revenue.

75. Ground No.4 in the assessment year 2011-2012 relates to disallowance made u/s.40(a)(ia) of the Act. The AO made the

disallowance on account of non-deduction of tax at source from payments towards management development and training expenses. On appeal, the CIT(A) deleted the addition.

76. Ld. DR before us relied on the order of AO, whereas ld. AR relied on the order of CIT(A).

77. We have heard rival submissions and perused the material available on record. We find that the CIT(A) while considering the disputed issue he has observed that there is ambiguity on applicability of provisions of the TDS. The CIT(A) further observed that the entire training expenses cannot be for technical services and therefore cannot be construed that TDS should be done as per the Section 194J of the Act. The observation of the CIT(A) in this regard are as under :-

> *"The details of expenditure of Rs.1,14,55,416/- as submitted by the appellant show that the same include participation, delegation, registration fees for attending meeting, seminars and conferences and payments were also made to institutions like Administrative Staff College, Govt. of India and others; which do not attract the TDS provisions. The AO had not segregated exactly which amount requires TDS. There is also ambiguity regarding under what provisions of the section the TDS are to be done. The entire training expenses cannot be for technical services and therefore cannot be construed that TDS should be done as per the Section 194J of the Act. Under such circumstances, ,the expenses claimed by the appellant should not be disallowed and provisions of section 40(a)(ia) should not be attracted. The AO is directed to delete the same.*

From the observation of the CIT(A), we find that findings given by the CIT(A) has just and proper, to which our interference is not required. Accordingly, we uphold the same and dismiss the ground of appeal of Revenue.

78. Ground No.5 in the assessment year 2011-2012 relates to disallowance made on account of prior period expenses.

79. Ld. DR before us relied on the order of AO, whereas ld. AR relied on the order of CIT(A).

80. We have heard rival submission and perused the material available on record. We find the similar issue has been decided in favour of the assessee by the Tribunal in assessee's own case for the assessment years 2007-08 & 2008-2009 in ITA No.343 & 392/CTK/2015, order dated 23.04.2018, wherein the Tribunal observed as under :-

> *"42. We have heard rival submissions and perused the material available on record. We found that the terminology prior period adjustment refers to the expenditure which was not accrued during the year but pertaining to earlier year but crystallized. The ld. AR emphasized that the AO has made addition but failed to consider the prior period income set off against the expenditure and has solely relied on the expenditure and ignored the income. Ld. AR further submitted that the prior period expenses consists of administrative expenses and other income and settlement of claims or crystallization of liability disclosed under prior period expenses adjustments as per the accounting disclosure. Ld. AR subsantiated the arguments with the paper book. Whereas the CIT(A) found that the liability has accrued in the earlier years and the assessee cannot claim the same in the current assessment year and also the reasons envisaged were not supported with the evidence for claim during the current financial year. We considering the material aspects and the concept of income and expenditure remit this disputed issue to the file of AO to verify the claims and grant the set off of prior period income against the prior period expenses and passed the order on merits and the assessee shall cooperate in submitting the information and this ground of appeal of the assessee is allowed for statistical purposes.*

Since the issue is restored to the file of AO in earlier years and the CIT(A) has allowed the relief in favor of the assessee and the ld. DR could not bring any new material to controvert the findings of CIT(A), therefore, we are not inclined to interfere with the order of CIT(A) and we uphold the same and dismiss the ground of Revenue.

81. Ground No.6 raised in the assessment year 2011-2012 relates to disallowance u/s.14A of the Act. We have decided the issue in appeal of the assessee for assessment year 2010-2011 wherein we have restored the issue to re-examine and apply the provisions of section 14A r.w.rule 8D of. Accordingly, we follow the reasoning given in the aforesaid appeal and restore this issue to the file of AO in terms of our observation in the appeal for assessment year 2010-2011. This ground of appeal is allowed for statistical purposes.

82. The assessee has filed cross objections i.e. CO No.01/CTK/2015 (arising out of ITA No.376/CTK/2014) for assessment year 2011-2012 and CO No.25/CTK/2016 (arising out of ITA No.340/CTK/2016) for assessment year 2012-2013. At the time of hearing, ld. AR did not press the cross objections, therefore, the same are dismissed.

83. In the result, appeal of the assessee i.e. ITA No.352 & 353/CTK/2016 and ITA No.374/CTK/2014 are partly allowed for statistical purposes and appeal of Revenue i.e. ITA No.339&340/CTK/2016 are dismissed and ITA No.376/CTK/2014 is partly allowed for statistical purposes, whereas cross objections of assessee i.e. CO Nos.01/CTK/2015 & 25/CTK/2016 are dismissed.

Order pronounced in the open court on this 27/04/2018.

Sd/-	**Sd/-**
(N. S. SAINI)	**(PAVAN KUMAR GADALE)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 27/04/2018

प्र.कु.मि/PKM, Senior Private Secretary

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

1. Appellant-
2. Respondent
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy// **आदेशानुसार/** BY ORDER,

(**Senior Private Secretary**)
आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack