

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK  
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM**

**ITA Nos.69 & 183/CTK/2014**

**(निर्धारण वर्ष / Assessment Years : 2010-2011 & 2011-2012)**

Orissa Mining Corporation Ltd. OMC House, Bhubaneswar-01	Vs.	JCIT, Range-1, Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAACO 3324 L</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**AND**

**ITA Nos.70 & 257/CTK/2014**

**(निर्धारण वर्ष / Assessment Years : 2010-2011 & 2011-2012)**

JCIT, Range-1, Bhubaneswar	Vs.	Orissa Mining Corporation Ltd. OMC House, Bhubaneswar-01
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAACO 3324 L</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Ved Jain, AR/P.V.Rao, AR

राजस्व की ओर से /Revenue by : Shri A.K.Mohapatra, DR

सुनवाई की तारीख / Date of Hearing : **09/05/2018**

घोषणा की तारीख/Date of Pronouncement **17/05/2018**

**आदेश / O R D E R**

**Per Shri Pavan Kumar Gadale, JM:**

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

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.69/CTK/2014 as under :-

1. *Disallowance of periphery development expenses of Rs.58.93 crores on the ground that the expenditure incurred is not related to the business of the assessee is incorrect and bad in law.*
2. *As the prior period expenditure amounting to Rs.2.89 crores was crystallized during the year, adding back the expenditure on the ground of not having been accounted on mercantile system is bad in law.*
3. *Disallowance of mine closure plan (MCP) of Rs.1.97crores being a provision is incorrect and bad in law as the said expenditure have been accounted on accrual basis in terms of Mineral Conservation & Development (Amendment) Rule, 2003.*
4. *Cutting and Removing of Overburden Expenses of Rs.5.53crores being bogus claim is unjustified and bad in law as the said expenditure is in the nature of raising expenses booked as overburden removal expenses.*
5. *Disallowing Ore raising expenses on the ground that there is a huge gap between the expenditure actually incurred and expenditure claimed in the accounts amounting to Rs.136.46crores is imaginary and bogus. Such erroneous conclusion has been arrived that by the Ld. AO taking into consideration some sample cases of Ore raising contracts as the total expenditure incurred on Ore raising.*
6. *That the appellant craves leave to add or to amend the above grounds of appeal before or at the time of hearing of the appeal.*
7. *For these and among other grounds to be urged at the time of hearing adequate relief as may be deemed fit be granted in the matter.*

3. Facts in brief are that the assessee is engaged in mining and trading of minerals, COBP Plant, Ore Handling Plant etc. and following Mercantile System of accounting and filed the return of income for the assessment year 2010-2011 with total income at Rs.1104,17,16,990/- and the return of income was processed u/s.143(1) of the Act. Subsequently, the case was selected for scrutiny 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, Id. AR of the assessee appeared from time to time and

submitted the details and the case was discussed. The AO on perusal of the financial statements has made addition in respect of valuation of closing stock, peripheral development expenses, prior period expenses, mine closure plan, Royalty, cutting and removing of overburden expenses and ore raising expenses and assessed the total income at Rs.1956,71,84,065/- and passed order u/s.143(3) of the Act, dated 04.02.2013. On appeal, the CIT(A) partly allowed the appeal of the assessee. Now, the assessee is in further appeal for both the assessment years under consideration.

4. Ground No.1 raised in the appeal for assessment year 2010-2011 and 2011-2012 is against disallowance of periphery development expenses of Rs.58.93 crores and Rs.12.06 crores.

5. The AO made the addition of periphery development expenses alleging that he is unable to verify as to whether the expenditure incurred was incidental to the business of the assessee or not. In appeal, the CIT(A) has restricted the addition made by the AO on the ground that the said amount is in the nature of financial assistance for various purposes, and are not incidental to the business of the assessee. The CIT(A) has restricted the disallowance to Rs.58,93,21,934/- for the assessment year 2010-2011 and Rs.12,05,73,309/- for the assessment year 2011-2012.

6. Ld. AR before us submitted that the issue is squarely covered in favour of the assessee by the order of this Tribunal in assessee's own case in ITA Nos. 551, 584 and 552/CTK/2012, for the assessment year

2006-07 & 2008-09, order dated 21.12.2012, whereas Id. DR supported the order of CIT(A).

7. We have heard rival submissions and perused the material available on record. The disputed issue of claim of peripheral development expenses as envisaged by the Id. AR is incurred exclusively for the purpose of business and allowable, whereas Id. DR submitted that there is no nexus of claim of expenditure in assessee's business and referred to CIT(A) order. We find that the Tribunal in assessee's own case for the assessment year 2009-2010 in ITA No.177/CTK/2013, order dated 20.09.2017 has restored the matter to the file of AO and observed as under :-

*"7. We have heard the rival submissions and perused the material on record and judicial decision cited above. Prima facie, the peripheral expenses is incurred by the assessee as per the notification and the sanctions of the Government to maintain the relationship with people working at mines and adjoining areas. The peripheral expenses consists of various claims submitted by the Id. AR, which according to us are to be verified and test checked, further on perusal of the assessment order there is no proper findings on the disputed issue, the Id. AR filed written submissions and supported his arguments with the paper book containing details and annexures supporting the claims and judicial decisions. Accordingly, in the interest of substantial justice since the above information was filed and the same was not available with the AO. We direct the AO to examine and check the genuineness of claim and pass the order on merits after providing adequate opportunity of hearing to the assessee and remit the disputed issue to the file of AO and allow the grounds of appeal of the assessee for statistical purposes."*

Respectfully following the order of the Tribunal, we restore the disputed issue to the file of AO to examine and check the genuineness of claim and pass order on merits after providing adequate opportunity of hearing to

the assessee and this ground of appeal for i.e. A.Y.2010-2011 & 2011-2012 is allowed for statistical purposes.

8. Ground No.2 in appeal for assessment year 2010-2011 & 2011-2012 is against the addition on account of prior period expenditure of Rs.2.89 crores and Rs.4.38 crores.

9. The AO made the disallowance on account of prior period expenses as the assessee is following mercantile system of accounting and the assessee shall not be allowed to claim the prior period expenses on actual basis. On appeal, the CIT(A) sustained the addition made by the AO observing that there was no explanations or evidence filed to support that the prior period expenditure claimed has crystallized during the current financial year under consideration.

10. Before us Id. AR submitted that the assessee has provided the complete details including the head of amount, posting date and explanations/narration in regard to each entry to substantiate the claim that the expenditure has crystallized during the year and relied on the judicial decisions, whereas Id. DR relied on the order of CIT(A).

11. We have heard rival submissions and perused the material available on record. We find that this disputed issue is covered by the decision of Tribunal relied in assessee's own case for the assessment year 2009-2010 in ITA No.177/CTK/2013, order dated 20.09.2017 and the Tribunal has decided the issue in favour of the assessee and restored the matter to the file of AO. The observation of the Tribunal is as under :-

*"8. On the second disputed issue of prior period expenditure the Id. AR submitted that assessee has complete information on the*

claim and prayed for an opportunity to submit. On the query from the bench to the ld. AR to explain with reasons for non-filing details before the AO, the AR's explanations are not convincing. We find the prior period expenditure claim was dealt by the coordinate bench of this Tribunal in assessee's own case in ITA No.551/CTK/2012, order dated 18.12.2012 at para 9.1 page 9 where the Tribunal has dealt on the each issue of prior period expenses which reads as under :-

9.1. On the second issue being prior period expenses, we find the contention of the learned Counsel of the assessee justified that it is nobody's case that the accounting of prior period expenses have to be otherwise. A practical method of accounting is considered mercantile when the concept of deriving real income in the hands of the assessee in year to year basis is a mundane requirement insofar as income tax is levied for the impugned Assessment Year only. The very intention on the basis to claim it as prior period expenses indicates that these expenses were not known to them but pertain to that year and they could not have been accounted in the year when they may have accrued which deficiency was required to be fulfilled by the learned CIT(A) when the substantial amount was deleted by him as computed by the Assessing Officer as prior period expenses. The sustenance of part addition on account of prior period expenses have been dealt item- wise by him in his order, which we are inclined to reproduce as follows, has to be considered otherwise.

(i) Pay & allowances - Rs.968,561/- : This was stated to be arrear salary paid to Shri Barinder Singh. It is seen that the order of reinstatement was passed on 16.11.2006 in case of this officer and his leave for the preceding period was sanctioned on 16.03.2007 along with sanction of increments for the preceding years on that day. On the basis of these orders passed by the OMC, the liability had crystallized in financial year 2006-07 and in 2007-08;

(ii) Arrear salary - Rs.3,11,927/- :- Arrear salary of Rs.3,11,927/- consisted of leave salaries only. A copy of the order from AG, Odisha was filed in respect of Dr. Umakanta Mishra amounting to Rs.1,34,610/-. Since this order is dated 10.08.2007, the amount is allowable as the liability crystallized during financial year 2007-08. In respect of the balance amount no details or evidences were furnished;

(hi) Miscellaneous expenses;- Miscellaneous expenses relate to supply of explosives during financial year 2004-05 and, hence, provision should have been made in that year. In any case, no evidence was furnished that the same accrued during the year;

(iv) Repair to the building - Rs.4,35,364/-: This

amount relates to purchase of GGI sheets on 30.12.2005 and repairs in pursuance to agreement entered in financial year 2004-05. Accordingly, the provision should have been made during that year. In any case, no evidence was furnished that the same accrued during the year;

- (v) *Raising expenses- Rs.12,02,510/-: These expenses mostly consist of raising of mineral ore at Dubna mines for 1998-99, 1999-2000, 2000-01 and 2001-02, also includes over burden cutting in 2001 and in respect of agreements/activities done in , 2001-02. Accordingly, provisions should have been made in 'Those years in respect of these expenses. In any case, no / evidence was furnished that the same accrued during the year.*
- vi) *Rent, rates & taxes — Rs.4,58,432/-: In fact, these are rent paid for private plots taken on lease by OMC. As per details filed, the rent was finalized by the Managing Director of the assessee on 16.12.2006. Thus, the provision should have been made in the financial year 2006-07. In any case, no evidence was furnished that the same accrued during the year.*
- (vii) *R&M to machinery — Rs.23,02,201/-: The work by M/s. Mcnall Bharat is in response to work order of the assessee dated 31.10.2002 and the bills were raised by this concern on the assessee on 09.12.2004, 24.10.2006, 05.09.2000 and 05.09.2003. Accordingly, provision should have been made in the relevant financial years. In any case, no evidence was furnished that the same accrued during the year."*

*A mere glance of the above would suggest that the expenses are of a nature which may not have crystallized even after a gap of one year was explained by the assessee appellant before him. He required the evidence of their accrual in the impugned Assessment Year when it was the assessee's claim that they have crystallized in the impugned Assessment Year insofar as they all are revenue in nature and cannot be considered for disallowance even if they were incurred or accrued in the year they pertain to. In other words, we find the contention of the learned Counsel of the assessee appropriate that there is no method to foresee as to what revenue expenditure would have to be provided for after end of the Assessment Year if the accounts are to be balanced for approval by the share holders within six months of the close of the financial year. Therefore, a concept of claiming them as prior period expenses on the basis they having been actually incurred in the impugned Assessment Year has been declared as prior period expenses in accordance with the concept of mercantile system of accounting. In this view of the matter, we are of the considered view that the prior period expenses are bound to be allowed in the impugned Assessment Year having crystallized in the impugned Assessment Year.*

*Therefore, the part confirmation of the addition made by the learned Assessing Officer on this count is therefore directed to be deleted.*

*Whereas the assessee in the assessment proceedings could not substantiate the claim with proper explanations and evidence, therefore, in the interest of substantial justice, we provide one more opportunity as prayed by the Id. AR to represent its case before the AO with the evidences/documents of prior period expenses and the AO shall examine the genuineness and crystallisation of the expenses in the financial year and assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information. Accordingly, we restore the disputed issue to the file of AO and allow the grounds of appeal of the assessee for statistical purposes.”*

Respectfully we follow the order of the Tribunal and we restore the matter to the file of AO who shall examine the genuineness and crystallisation of the expenses in the financial year and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information. Accordingly, This ground of appeal for i.e. A.Y.2010-2011 & 2011-2012 is allowed for statistical purposes.

12. Ground No.3 in appeal for assessment year 2010-2011 & 2011-2012 is relating to addition made on mine closure plan.

13. The AO made the disallowance on the ground that the assessee has made provision of claim on accrual basis is not allowable, whereas on the appeal the Id. CIT(A) has sustained the addition made by the AO holding that the amount claimed is only a provision and not actual expenses.

14. Before us, Id. AR submitted that the assessee is following mercantile system of accounting and the books of account of the assessee are statutorily audited. Ld. AR further submitted that even if expenditure is not actually incurred in the year under consideration but

there is an obligation on the assessee to incur the expenditure based on reliable estimate has to be allowed as deduction and therefore the action of the CIT(A) in sustaining the addition is bad in law and liable to be deleted.

15. Contra, Id. DR relied on the order of lower authorities.

16. We have heard rival submissions and perused the material available on record. We find that the AO has made disallowance by observing that the expenditure claim made by the assessee is only a provision and not actual expense, however, as per the Id. AR the AO as well as CIT(A) has disregarded the fact that the assessee has claimed the said expenditure on actual basis as the assessee has obligation to provide for such expenses, in lieu of Notification issued by the Ministry of Mines. We find that this issue is covered by the decision of Hyderabad bench of the Tribunal in the case of National Mineral Development Corporation Limited, in ITA No.1593/Hyd/2014, dated 20.03.2015, wherein the Tribunal has remitted the disputed issue to the file of AO to verify the claim of the assessee. The observation of the Tribunal in this regard is as under :-

*"8. We have considered the submissions of the parties and perused the orders of the revenue authorities as well as material on record. The coordinate bench in assessee's own case for AY 2010-11 (appeal filed by revenue.) in. ITA No. 17931Hyd/2013 vide order dated 9th May, 2014 while dealing with the similar issue, held as follows:*

*"46. Ground No.2 pertains to the issue of mine closure obligation of Rs.12.13 crores. The facts are that assessee is a public sector undertaking and debited the above amount towards mine closure obligation. This was a provision made towards expected future liability to close mines which are exploited by the organization. Assessee explained that that this is a statutory -liability for which a*

separate fund has been created with DC. The A.O. did not agree and disallowed the obligation on the reason that it is a contingent upon certain future events. Therefore, it was not allowable as revenue expenditure. Considering the detailed submissions and also the orders of his predecessor in the earlier year i.e.. A.Y. 2.008- CIT(A) allowed the expenditure.

47. At the outset, it was submitted that this issue was crystalised in favour of the assessee against the Revenue by 1TAT in earlier years and in the later year in A.Y-7 2-0-C33770-9 in

"9 We have heard the arguments of both the parties, perused the record and have gone through the orders of the authorities below as well- as the decisions cited. In AY 2006-07, the coordinate bench in assessee's own case (supra), held as follows

11. We have heard both the parties, perused the record and gone through MO orders of the authorities below. It is observed that the basis of calculation for the relevant AY 2006-07 for Rs. 71.18 crores was submitted during the original assessment and accepted by the AO. The detailed calculation of Rs. 21.31 crores charged to P&L A/c (on the basis of Rs. 71.18 crores) was also enclosed and produced before the CIT. Hence, the CIT is wrong in his observation that the estimate of Rs: 21.31 crore is excessively on a higher side and absolutely no realistic or-rational basis for such calculation. 12. The CH" is not correct in invoking the provisions of section 263 as we find that the issue is debatable and when two views are possible the AO has taken one view: The Apex Court in the case of Malabar Industrial Co. Ltd. Vs. CIT reported in 243 1TR 83 as well as CIT Vs. Max India Ltd. reported in 295 ITR 282 has held that when there are two views possible and the AO has taken one view, the order of the AO cannot be considered as erroneous and hence the CIT cannot exercise revisional power u/s 263. As pointed out above, the provisions for an accrued existing liability, even though, the actual expenditure may take place at a later date is an allowable deduction and the CIT erred in treating it as an unascertained liability. Therefore, we set aside the order of the CIT passed u/s 263 and the order of the AO is restored.'

9.1 The above decision relied upon by the AR of the assessee. though, it was delivered in assessee's own case for AY 2006-07 cannot be applied to the facts of the case as that order was delivered by the Tribunal in connection with the order passed u/s 263. The order passed u/s 263 read with section 143(3) and the order passed u/s 143(3) read with section 251 are standing on different footing. The scope of section 263 is not par with the provisions of section 251 of the Act. Being so, we cannot borrow support from the order of the Tribunal passed in ITA No 991/Hyd/2011-for AY 2006-07, on which reliance placed by the

*assessee's counsel in the present case, there is a categorical finding given by the CIT(A) that there are certain mines not yet commenced. On that mine closure obligation works out to Rs.4,98,058/- cannot be allowed. Further, mines at Kumaraswamy and Lalpur where there is no production, being so, no obligation is allowable. Further, assessee has not given year-wise breakup. Being so, the CIT(A) directed the AO to ascertain the account of year-wise mining, which has been done from the remaining mines and allow mine -closure obligation to the extent mining done corresponding to the current year. He further gave a direction to the AO if the assessee fails to provide such data, then, prorata has to be applied, Thus,. the CIT(A) has given a categorical finding in para 4.3 & 4.4 of his order. Therefore, we do not find any infirmity on that part. of the order and accordingly, we confirm the same. This ground raised by the assessee is dismissed'*

*4.8 Respectfully following the above decision, we hold that mine closure, obligation is not a contingent liability but ascertain liability. However, it has to be verified that whether assessee has made the claim on the mines which are in working condition which are being operated or not. If the assessee has made the claim on mines which have not started operations, the same -cannot be allowed, As rightly held by the CIT(A) in A.Y. 2008-09, ascertainability of liability is to be ascertained year-wise. Therefore, to that extent, following the Coordinate Bench decision, we direct the assessee to furnish the relevant data to the A.O. towards the mines closure obligation and A.O. is directed to verify and allow the amount accordingly. Subject to the above observations, the ground No.2 is considered as allowed for statistical purposes.*

*9. As the issue under consideration is materially identical to that of AY 2010-11, respectfully following the decision of the coordinate bench in that year, we remit the issue to the file of the AO with a – direction to verify and allow the assessee's: claim following the decision of coordinate bench in AY 2010-11. This ground of revenue is allowed for statistical purposes."*

We respectfully follow the above judicial precedence and apply to the present case and remit the disputed issue to the file of AO and direct the AO to verify the claim of the assessee and allow the same as per the observations made in the above decision of the Tribunal. Accordingly, this ground of assessee for assessment year 2010-2011 & 2011-2012 is allowed for statistical purposes.

17. Ground No.4 in the appeal for assessment years 2010-2011 & 2011-2012 is relating to disallowance of cutting and removing of overburden expenses.

18. The AO has made the impugned disallowance by holding that the said the expenses as bogus expenses and also alleged that no such expenditure was incurred by the assessee during the previous year. On appeal, the CIT(A) sustained the addition as the assessee failed to support its claim with proper evidences and bills and vouchers.

19. Before us, Id. AR of the assessee submitted that the assessee has filed complete details before the lower authorities. Ld. AR further submitted that since the expenditure has been incurred by the assessee wholly and exclusively for the business purposes, the action of the AO in making the impugned addition unilaterally bad in law and is liable to be deleted.

20. Contra, Id. DR relied on the order of CIT(A).

21. We have heard rival submissions and perused the material available on record. We find that the assessee has submitted before lower authorities that during the year under consideration overburden cutting and removing expenses was incurred during the year and the assessee that the assessee company being a public sector undertaking maintains proper books of accounts and also gets its accounts duly audited and no comment with regard to any bogus expenditure claimed has been referred in the tax audit report. Ld. AR prayed for an opportunity to substantiate its claim before the authorities below. Accordingly, we

remit the disputed issue to the file of AO and direct the assessee to file the evidence before the AO and the AO shall pass the order in accordance with law after providing adequate opportunity of hearing to the assessee. This ground of appeal of assessee for both the assessment years under consideration is allowed for statistical purposes.

22. Ground No.5 in appeal for the assessment years 2010-2011 & 2011-2012 is relating to disallowance on account of ore raising expenses.

23. The AO has disallowed the amount due to difference between the actual expenditure incurred by the assessee and the expenditure claimed in the books of accounts. On appeal, the CIT(A) sustained the addition observing that the assessee could not substantiate its claim with evidence.

24. Ld. AR before us, submitted that the books of accounts of the assessee company were audited and no discrepancy in this disputed issue has been pointed out in the tax audit report as the quantitative details of ore have also been verified by the tax auditors and prayed for deleting the addition.

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

26. We have heard rival submissions and perused the material available on record. The contention of ld. AR is that the assessee has furnished complete details with regard to ore raising expenditure in respect of each of the contractors before the authorities below, however, the same have not been thoroughly examined nor verified and therefore prayed for an opportunity to substantiate its claim. Considering the facts

and circumstances of the case and the submission of the assessee, we remit this issue to the file of AO to verify and examine and also direct the assessee to substantiate its claim and provide complete details and the AO shall provide adequate opportunity of hearing to the assessee. Accordingly, this ground of assessee for assessment years 2010-2011 & 2011-2012 is allowed for statistical purposes.

27. In the result, appeal of the assessee for assessment years 2010-2011 & 2011-2012 (ITA Nos.69 & 183/CTK/2014) are allowed for statistical purposes.

28. Now, we shall take up appeals of Revenue for the assessment years 2010-2011 & 2011-2012 (ITA Nos.70 & 257/CTK/2014).

29. Ground No.1 to 7 for the assessment year 2010-2011 and ground No.1&2 for the assessment year 2011-2012 are relating to deleting the addition made on account of difference in closing stock valuation.

30. The AO has made the addition by alleging that the assessee ought to have valued its closing stock at NRV only. On appeal, the CIT(A) deleted the impugned addition made by the AO by relying upon the order of this Tribunal in assessee's own case for assessment year 2008-09 and 2009-10.

31. Ld. DR relied on the order of AO and made submission on method of valuation of stock, whereas ld. AR supported the order of CIT(A) and submitted that the issue is covered in favour of the assessee by the decision this Tribunal for the preceding assessment years.

32. We have heard rival submissions and perused the material available on record. The Id. AR submitted on valuation of stock that the CIT(A) has dealt on findings of the AO and submit observation made in earlier years in respect of variance in applying and following Accounting Standard-2 of ICAI, whereas Id. DR emphasised that the Revenue has been raising this issue for the earlier assessment year. We found that the findings of Id. AO on valuation of closing stock as referred in the assessment order cannot be overruled and whereas the calculation adopted by the assessee is one of the consistency method which has been accepted and the Revenue has been adopting for assessment purpose. Ld. CIT(A) has observed at para 3.2 page 4 of the order as under :-

*“3.2 I have considered the matter carefully. The AO has rejected the method of valuation followed by the assessee. The AO has also found fault with the value of closing stock assuming that assessee has correctly followed the method of valuation. The AO in the earlier years also made similar observations which have not found favour with appellate authorities. The estimate of closing stock by the AO at Rs.1395,01,33,113/- following the method adopted by the appellant does not inspire any confidence and the averaging method is faulty. From the AO's computation no-reasonable basis is discernible to justify why appellant's computation is to be rejected. Under similar facts and circumstances, the CIT(A) has decided the issue of valuation of closing stock in favour of the appellant for the AYs 2008-09 & 2009-10. I, have gone through the order of the Hon'ble ITAT for the AY 2008-09 in ITA No.551/CTK/2012 (supra). The Hon'ble ITAT, Cuttack Bench, also recently passed order in favour of the appellant for AY 2009-10, in ITA Nos.163 & 177/CTK/2013 dated 8.11.2013, following its own orders for earlier years. Since the attendant facts in the impugned assessment year are same as in the AYs 2008-09 & 2009-10, in regard to method of valuation of closing stock and following the decision of the ITAT which is binding on me, the addition made by the AO for the amount of Rs.1961,70,81,903/- is hereby deleted.”*

We follow the judicial precedence and rely on the decision of the coordinate bench of the Tribunal in assessee's own case for the assessment year 2009-2010 in ITA No.163/CTK/2013, order dated 08.11.2013, wherein the Tribunal observed as under :-

*“ 10. At the time of hearing Id. DR submitted that ground No.1 to 7 are in respect of recognition and differential valuation of closing stock, where the CIT(A) has erred in allowing in favour of the assessee relying on the coordinate bench Tribunal decision of the earlier year and prayed for allowing the appeal. Contra, Id. AR relied on the orders of CIT(A).*

*11. We have heard rival submission and perused material on record. Ld.DR's contention that CIT(A) erred in deleting the addition we find the coordinate bench of the Tribunal in assessee's own case in ITA No.551/CTK/2012 has decided the issue in favour of the assessee and we respectfully follow the judicial precedence and uphold the action of CIT(A) allowing the claim relying upon the decision of the Tribunal and dismiss the grounds of appeal of the revenue.”*

On applying the ratio of the decision to the present case, we do not see any good reason to interfere in the order of CIT(A) and upheld the issue and accordingly we dismiss the ground of appeal Nos.1 to 7 raised for the assessment year 2010-2011 & ground No.1&2 raised for assessment year 2011-2012.

33. Ground No.8 in the appeal for assessment year 2010-2011 & ground No.3 in the appeal for assessment year 2011-2012 is relating to deleting the addition made on account of peripheral development expenses.

34. In assessee appeal, for assessment year 2010-11, 2011-12, we have restored the matter of balance claim to the file of AO and CIT(A) has observed at page 5 to 8 para 4.2 & 4.2.1 of the order as under :-

*“4.2 I have considered the matter carefully. During the course of appeal hearing, the appellant filed 8 page list of PDE in the Paper Book. The same is analyzed as under :-*

*Through 'Bangui.' account an amount of Rs.59,200/- has been spent on 12 items which are in the nature of financial assistance for cultural events, puja, clubs, individuals, etc. Through 'Barbi!' account an amount of Rs.58,09,292/- has been spent on 6 items, out of which Rs.54,99,292/- relates to a bill for development of a road and Rs.2 lac relates to financial assistance to two schools. However, no details, evidences or explanation furnished as to the nature of expenses even though the amount is substantial. The rest of the amounts are on account of financial assistance for temples and entertainment programmes.*

*Through 'Daitari' account an amount of Rs.9,69,201/- has been spent on 2 items. No details or evidence has been furnished as to the nature and purpose of such expenses.*

*Through 'Gandhamardan' account an amount of Rs.1,48,90,359/- has been spent and shown as 25 items. The same includes amounts of Rs.2,28,297/-, Rs.2,65,928/- and Rs.3,05,511/- totaling to Rs.7,99,736/- for construction of compound walls of various schools. The expenditure includes Rs.5 lacs as contribution to the Collector. The expenditure also includes financial assistance of Rs.1,50,000/-, Rs.1,00,000/-, Rs.10,000/-, Rs.10,000/-, Rs.1,50,000/- and Rs.2,00,000/- to various schools for sports, entertainment programmes, etc. The statement of expenditure also includes Rs.30,54,343/- and Rs.93,34,435/- for improvement of road from Ichinda Zero Point to weigh bridge No.1 in Keonjhar district, but no vouchers/bills/evidences for the same has been given even though the amounts are substantial. Rest of the items of expenditures are in the nature of financial assistance for schools, sports associations, entertainment programmes, clubs, seminars, etc.*

*Through 'Head Office' account an amount of Rs.53,22,81,966/- has been shown on, various items of expenditure. The same includes Rs.20 lacs for a college at Boudh as per the Government order, Rs.10,12,434/- for construction of school at Koipusi. Rest of the expenditures are in the nature of financial assistance for sports meets, conferences, entertainment programmes, payment for journalists welfare, cricket matches, chess/tennis tournaments, sponsorship for exhibitions, film festivals, refreshment for seminars, purchase of air conditioners, xerox machines,*

*inverter for a minister, voltage stabilizer for a Secretary to Govt. of Odisha, etc. The expenditure also includes an amount of Rs.22,28,060/- for hiring of helicopter (in the list stated as for train but voucher shows for helicopter) for Dalailama and flight charges of Rs.8,32,765/- for one of ex-Presidents of India. The amount includes provision for expenses for an amount of Rs.51,47,73,739/-. The expenditure also includes Rs.52,70,000/- paid as donation.*

*Through 'JK Road' account an amount of Rs.43,26,526/- has been spent on various items. The same includes Rs.20,000/- to a club, Rs.5 lacs, 30,000/-, Rs.10,000/-, Rs.10,000/-, Rs.8 lacs, Rs.1 lac and Rs.20,000/- as financial assistance to Yuba Sakti Club, Gymnasium, Jajpur District Athletic, Utkal Journalist Association, VN Municipality, Sanskriti Bhawan, Temple Pratistha, Ratha Yatra and Cricket Tournament, respectively. The rest of the expenses are shown as PD work for Sukinda Block in the mines area, but no details or explanation available as to the nature of expenses. The expenses include an amount of Rs.11,07,698/- as first R/A bill for PD work at chrome region of Jajpur, but no details or explanation available as to the nature of expenses.*

*Through 'Kaliapani' account an amount of Rs.97,560/- has been stated as spent for health camp and mid day meal.*

*Through 'Khandadhar' account Rs.35 lacs has been spent for development of Barsuan—Dalamukcha road, however, no details, evidence or explanation available as to the nature of expenses even though amount is substantial.*

*Through 'Koira' account an amount of Rs.4,51,668/- has been spent for construction of compound wall of Koira College.*

*Through 'South Kaliapani' account an amount of Rs.4,84,460/- has been spent for sinking of tube wells.*

*4.2.1 In the assessment order, the AO has referred to the Notification dt.15.1.2004 wherein it has been mentioned that the periphery development expenditure should be spent through District Committee/Society within 50 kms of the scheduled area and for the purpose of health, education, communication, irrigation and agriculture. The appellant has not contradicted the AO's observations in this regard. However, the appellant has not provided item-wise explanation for expenses made whether such expenses are covered in the said notification of Government of Odisha. The appellant has also not justified even major items of*

expenditure in terms of the said notification. However, the appellant has submitted correspondence on the Collector's letter regarding the amount of Rs.20 lacs to Boudh College. The 8 page list of PDE submitted in Paper Book contains brief narration of the expenditure. Peripheral Development expenditure is allowable in terms of said notification of Government of Odisha since considered as incidental for the purpose of business and in terms of requirement of commercial expediency. Accordingly, the expenses as narrated earlier related to education, building of roads within 50 kms of the scheduled area and payment made through the Collector or on the advice of the Collector are considered as allowable. The amounts spent for hiring train/helicopter for Dalailama is not considered as related to business. The provision of Rs.51,47,73,739/- is not allowable since it is a provision. The donation made for Rs.52,70,000/- cannot be considered as spent for peripheral development and the appellant should have claimed such amount u/s.80G. The financial assistance to clubs, associations, sponsorship of various programmes cannot be considered as for peripheral development as it does not add up to enhance infrastructure in the relevant area. Accordingly, the following amounts are considered as correctly spent on peripheral development.

Compound Wall (Gandhamardan A/c.)	Rs.7,99,736/-
Contribution to Collector (Gandhamardan A/c.)	Rs.5,00,000/-
Boudh College (Head Office A/c.)	Rs.20,00,000/-
School at Koipusi (Head Office A/c.)	Rs.10,12,434/-
Compound wall of Koiria College (Koiria A/c.)	Rs.4,51,668/-
Sinking of tube wells (South Kaliapani A/c.)	<u>Rs.4,84,460/-</u>
	Rs.50,48,298/-

Accordingly, the disallowance of Rs.59,43,70,232/- is restricted to Rs.58,93,21,934/- (59,43,70,232 - 50,48,298). This ground of appeal is allowed partly.”

Whereas Id. DR could not bring on record any new material evidence to controvert the findings of the CIT(A) on the disputed issue. Accordingly, we dismiss the ground of appeal of Revenue.

35. Ground No.9 in the appeal for assessment year 2010-2011 & ground No.4 in the appeal for assessment year 2011-2012 is relating to deleting the addition on account of provision of royalty expenses.

36. The AO made the addition alleging that the assessee has claimed provision of royalty as expenditure and further mentioned that the excess royalty for previous years has been claimed by the assessee which is not allowable in the current financial year. On appeal, the CIT(A) has deleted the addition observing that the amount of provision is actually the payment of royalty made on accrual basis and is allowable to the assessee.

37. Ld.DR before us relied on the order of AO, whereas Id. AR has supported the order of CIT(A).

38. We have heard rival submissions and perused the material on record. Prima facie the contention of Id. AR that the amount of royalty is paid by the assessee company to the State Government for dispatch of ore from the mines. Therefore, only upon payment of the royalty, the approval is accorded by the State Government for dispatch of ore. Ld. CIT(A) has also observed that the payment of royalty has been rightly accounted for on accrual basis. The observations of the CIT(A) at page 13 para 7.2 which reads as under :-

*“7.2 I have considered the matter carefully and find much substance in the appellant’s submission. It appears that unless advance payment of royalty is made, the minerals cannot be removed from the mines for sale. As long as the actual royalty is not determined and adjusted against advance payment, the advance royalty paid would continue in the books as provision for royalty. The appellant is following this method of accounting consistently. The provision is actually an advance payment. In view of the same, addition made by the AO is deleted.”*

We find that the CIT(A) has called for the remand report from the AO to examine the disputed issue and further observed that as long as the

actual royalty is not determined and adjusted against advance payment, the advance royalty paid would continue in the books as provision for royalty and accordingly deleted the addition. The Id. DR could not controvert with any new material in the findings of the CIT(A), hence, we find there is no error in the order of CIT(A), who has considered the assessee's submission and report of the AO and has passed a reasoned order and accordingly we uphold the same and dismiss this ground of appeal of Revenue for assessment years 2010-11 & 2011-12.

39. Ground No.5 & 6 in the appeal for assessment year 2011-2012 is relating to deleting the addition made on account of NPV payment towards compensatory forestation.

40. The AO in the assessment proceedings has treated the NPV payment is in the nature of capital expenditure and made addition. On appeal, the CIT(A) has deleted the addition by relying on the order of coordinate bench of the Tribunal in assessee's own cases for preceding years, wherein similar addition has been deleted.

41. Ld. DR before us relied on the order of AO, whereas Id. AR of the assessee supported the order of CIT(A).

42. We have heard rival submissions and perused the material available on record. We find that this disputed issue is squarely covered by the decision of coordinate bench of the Tribunal in assessee's own case for assessment years 2008-09. We have perused the order of Tribunal in assessee's own case for the assessment year 2008-09 in ITA No.552/CTK/2012, wherein the Tribunal has held as under :-

*“15. Having heard both parties on this issue we are of the considered view that the learned CIT(A) has given full credence to the finding of the Assessing Officer to the moot question whether it was the Assessing Officer's endeavor to adopt a particular method of valuation being fully aware of the fact that being a public sector undertaking it was to maintain its account on mercantile system of accounting when the cost determined by it to value its stock was in accordance with the principles of accounting standard followed by the assessee insofar -as the learned Counsel of the assessee has submitted that the method of accounting has been prescribed by the I.T.Act,1961 u/s.145 and the Accounting Standards notified have to be adopted for the provisions of Section 145(2). Therefore, the valuation of inventories as inscribed by the AS-2 indicate that the inventories of mining industries are to be measured at net realizable value in accordance with the well established practice in those industries. This means that the assessee has the option to choose the lower of the cost or net realizable value consistently when the net realizable value has been defined as estimating of selling price in the ordinary course - of business being less than estimated cost of completion and the estimated cost necessary to make the sales. It is not the case of the assessee that the net realizable value is not known or could not be known which can be known at the time of sale only. But in or to adopt the consistent system of valuation at lower of cost or net realizable value the assessee determined that the cost would be less than the realizable value. Therefore, there could be variety of revenue recognition as inscribed in AS-9 which was also considered by the learned CIT(A) in detail and distinguished by the learned CIT(A) to hold that when a sale is assured in a forward contract or the Government guarantee or were market exists and there is a negligible risk of failure of sale, the goods involved are often valued at net realizable value. Such amounts while not revenue as defined in the Accountant Standard are sometimes recognized in the statement of profit & Loss appropriately described (refer to Mahanadi Coal Field Ltd's ITAT decision). Now the learned CIT(A) therefore proceeded to consider the revenue recognition method in detail when the accounting policy were to be dealt with by the learned CIT(A) on the implement of non-compliance with the Accounting Standard as enumerated by the Institute and the accounting standard as enumerated by the I.T.Act. He noted that the qualifications disclosure may or may not have any impact— on the computation of total stock for the purpose of the Act when Section 145 provides that Section should be followed by the assessee to whom they are applicable. Section 44AB therefore requires the assessee to maintain a report on accounts of relevant information furnished in Form 3CD. Form 3CD vide clause 11(d) requires reporting of the details of deviation, if any, in the method of accounting employed in the previous year from accounting standards prescribed under Section 145 and the effect thereof on the profit or loss. Therefore, he considered the nullity to be brought out by the Assessing Officer there being no material difference between the AS(IT-I) and AS(IT-II) notified by the Government and corresponding AS-1 and AS-5 of the*

*Chartered Accountants Institute of India. Therefore, considering the totality of the facts and on the fact finding that whether the Assessing Officer was to adopt this valuation being higher than the cost input of the assessee for the subsequent year would be available to it for the purpose of at the time of the opening stock which would be sold whether the income being the realizable value to be reduced from the income rendered to tax by the assessee was not answered in the affirmative. We, therefore, do not find any infirmity in the order of the learned CIT(A) who has rightly deleted the addition of Rs.373.89 crores on the facts and circumstances which have been elaborately brought out in his order, which needs no interference. We uphold the same.*

16. On the second issue of deletion of the addition of Rs.4,69,45,200, we find that the issue stands covered in favour of the assessee by the decision of the ITAT as was also considered for the Assessment Year 2006-07 insofar as it has been rightly brought on record by the learned CIT(A) that the assessee being a public sector undertaking could not claim expenses much less depreciation as was considered in the case of Orissa Forest Development Corporation Ltd.. We uphold the impugned order of the learned CIT(A) on this issue.”

We respectfully following the judicial precedence do not see any reason to interfere in the order of CIT(A) and we uphold the same and dismiss this ground of appeal of Revenue for assessment year 2011-2012.

43. Thus, appeals of the Revenue for assessment year 2010-2011 & 2011-2012 are dismissed.

44. In the result, the appeals of the assessee i.e. ITA Nos.69&183/CTK/2014 are allowed for statistical purposes and appeals of Revenue in ITA Nos.70&257/CTK/2014 are dismissed.

Order pronounced in the open court on 17/05/2018.

**Sd/-**

**(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**

**(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

**कटक Cuttack; दिनांक Dated 17/05/2018**

प्र.कु.मि/PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-

2. प्रत्यर्थी / The 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