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

आयकर अपील सं./**ITA No.118/CTK/2014**

(**निर्धारण वर्ष /** Assessment Year : 2010-2011)

ACIT,Circle-2(1), Bhubaneswar	Vs.	M/s Mazda Concrete Products (P) Ltd., 3rd Floor, The Grand, Rajbhawan Road, Somajiguda, Hyderabad
		स्थायी लेखा सं./PAN No. : **AABCM 9883 H**
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

राजस्व **की ओर से** /Revenue by : Shri Piyush Kolhe, CITDR

निर्धारिती **की ओर से** /Assessee by : Shri B.Satyanarayana Murty, FCA AR

सुनवाई की तारीख / **Date of Hearing : 21/03/2018**

घोषणा की तारीख/**Date of Pronouncement 23/03/2018**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

The Revenue has filed this appeal against the order of CIT(A)-II, Bhubaneswar dated 12.02.2014.

2. The Revenue has raised the following grounds :-

> 1. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as facts in deleting the addition of Rs.3,50,24,517/- made by the AO on account of suppression of closing stock.*
>
> 2. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as facts in deleting the addition of Rs. 17,34,99120/- made by the AO on account of deemed dividend u/s.2(22)(e) of-the Act.*
>
> 3. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law-as well as facts in deleting the addition of Rs.57,75,425/- made by the AO on account of interest paid u/s.40(a)(ia) of the Act.*
>
> 4. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as facts in deleting the addition of Rs. 15,59,634/- made by the AO on account of rent paid u/s.40(a)(ia) of the Act.*

5. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as facts in deleting the addition of Rs.9,34,443/- on account of provision for gratuity u/s.40A(7) of the Act without giving an opportunity to the AO.*

6. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as facts in deleting the addition of Rs.37,44,371/- on account of bad debt written off u/s.40A(7) of the Act without giving an opportunity to the AO.*

7. *On the facts and in the circumstances of the case, the Ld. CIT (A) is not justified in law as well as facts in deleting the addition of Rs. 1,29,22,607/- made by the AO on account of CENVAT credit.*

8. *The appellant craves to alter, amend or add any other ground that may be considered necessary in course of the appeal proceeding.*

Ground No.1:

2. Brief facts of the case are that the assessee is in the business of manufacturing of concrete sleepers and filed the return of income electronically on 28.09.2010 for the assessment year 2010-2011 disclosing a total income of Rs.1,39,47,330/- and the return of income was processed u/s.143(1) on 15.07.2011. Subsequently the assessee company has filed revised return of income on 22.03.2011 showing total income of Rs.Nil. The case was selected for scrutiny through CASS and notice u/s.143(2) and 142(1) were issued to the assessee along with questionnaire. In compliance the AR of the assessee appeared from time to time and produced books of accounts like cash book, ledger, bank book & journal along with bills/vouchers and the same were test-checked and the case was discussed. The AO on perusal of financial statements found that the assessee has shown closing stock as per the original return

of income of Rs.29,26,84,583/-. Subsequently the assessee company has filed revised return of income showing closing stock of Rs.32,77,09,100/- and total income as Rs.NIL. On comparison of the both the returns of income the AO found that due to increase in closing stock, the income for the year as per revised return of income is reduced to Nil. On clarification by the assessee, the return of income was filed after finalization of value of closing stock, however, the revision of closing stock after finalization of accounts was not furnished. Therefore, the AO disallowed the excess claim of closing stock and added Rs.3,50,24,517/- to the total income of the assessee.

3. Aggrieved with the disallowance made by the AO, the assessee filed appeal before the CIT(A). The CIT(A) after considering the submissions of assessee and findings of AO, has observed as under :-

> *"It is evident that the original Return of Income based on provisional accounts was filed by the appellant within the time allowed u/s. 139(1) of the Act. A revised Return of Income based on final accounts after statutory audit was filed within the time allowed u/s. 139(5) of the Act. The appellant submitted that in the original Return the closing stock was shown at Rs. 29,26,84,583/- whereas in the revised Return the closing stock was shown at Rs. 32,77,09,100/-. The appellant further stated that while filing the original Return of Income, only the stock of finished goods was declared and the stock of raw materials and stores and spares were inadvertently missed which was corrected in the revised Return of Income. The appellant had submitted a comparative chart of the same and submitted that the same was explained to the AO at the time of assessment. Due to the increased valuation of the closing stock, the income of the appellant must have increased. The AO had mentioned that the appellant had retuned income at Rs.1,39,47,330/- originally where in revised Return it is NIL. However, this statement does not explain the increase in closing stock. From the returns of the appellant for both original and revised, it is evident that the appellant had not shown the value of raw materials and stores and spares in the Closing Stock in the original Return. I therefore do not see any reason to treat the difference as excess claim of closing stock when the appellant is*

> *legally empowered to file a revised Return. The AO did not give any finding regarding verification of excess claim of closing stock in the assessment order. I therefore direct the AO to delete this addition of Rs. 3,50,24,517/-."*

4. Against the above order of CIT(A) the Revenue is in appeal before the Tribunal.

5. Before us, the Id. DR relied on the order of AO, whereas the Id. AR of the assessee relied on the order of CIT(A) and filed materials/papers to support the case.

6. We have heard rival submissions and perused the materials available on record. We find that the assessee in the appellate proceeding submitted that while filing the original Return of Income, only the value of stock of finished goods was declared and by mistake the stock of raw materials and stores and spares were inadvertently excluded and was corrected in the revised Return of Income. The Id. AR submitted comparative chart of the stock valuation and computation and submitted that the same was explained to the AO in the assessment proceedings. Due to increase in valuation of the closing stock, the income of the assessee have increased but offset by claim of additional depreciation. The Id. CIT(A) was satisfied with the explanation on closing stock with supporting evidence and also both return of income filed u/s.139(1) and 139(5) of the Act. We found the CIT(A) observed that the assessee had not disclosed the value of raw materials and stores and spares in the Closing Stock in the original Return of Income. The Revenue could not confront with any new material against the finding of the CIT(A).

Accordingly, we do not see any reason to interfere with the decision of the CIT(A) on this issue and the same is upheld. We dismiss the ground of appeal of the Revenue.

<u>Ground No.2</u> :

7. The AO during the scrutiny found that the assessee company has received loans/advance from M/s. Rayalseema Concrete Sleepers (P) Ltd. amounting to Rs. 17,34,99,270/- during the F/Y. The AO further found that the assessee company has more than 10% of its shares held by Patil Rail Infrastructure (P) Ltd. Similarly, the company M/s. Rayalseema Concrete Sleepers Pvt. Ltd. has more than 10% of its shares held by Patil Rail Infrastructure. M/s. Rayalseema Concrete Sleepers (P) Ltd. has accumulated profits. The AO dealt on the provisions of Section 2(22)(e) of the I. T. Act, and relied on judicial decisions in the case of P. Sarada Vs CIT (SC) 229 ITR 444 and considered the amount of Rs.17,34,99,270/- as deemed dividend in the hands of the assessee u/s.2(22)(e) of the Act and made addition to the income.

8. Aggrieved by the disallowance made by the AO the assessee filed an appeal before the CIT(A) and the CIT(A) after considering the submissions of assessee and findings of AO, has deleted the addition made by the AO by observing as under :-

> *"The appellant during hearing has submitted many decisions of higher legal authorities which emanated from the principle set forth in the case of CIT vs C. P. Sarathy Mudaliar (1972) 83 ITR 170 (SC) . The apex court concluded that amounts paid by way of advance of loan to a registered share holder alone can be taxed as deemed dividend in the hands of the share holder. Following this judgement number of courts have held that while invoking the*

provisions of Section 2(22)(e) of the I. T. Act, a registered share holder of a company alone can be taxed while receiving an amount by way of loan or advance and no other entity can be taxed.

The appellant particularly brought our attention to the ratio of the case of CIT vs Ankitech (P) Ltd. (2012) 340 ITR 14 (Delhi High Court) which has dealt with the identical issue as involved in the case of the appellant. The appellant had cited the decision where the Hon'ble High Court had decided in the above case along with a group of similar cases. At .the cost of repetition, I would like to discuss the relevant facts of the case.

The assessee company had received advances of certain amounts by way of book entry from M/s. JGPL and there are share holders having substantial interest in the assessee company and also are having 10% of the voting power in M/s. JGPL. The assessee company and M/s. JGPL do not hold shares of each other. The AO held that the amount received by the assessee company from M/s. JGPL which constituted advances and loans would be treated as deemed dividend within the meaning of Section 2(22)(e) and would be added to the income of the assessee. The Commissioner (A) affirmed the view taken by the AO. On second appeal, the tribunal held that the loans and advances would not be assessed in the hands of the assessee company as it was not the share holder in the company M/s. JGPL. The Learned tribunal held that such deemed dividend would have to be taxed, if at all, in the hands of the share holders who had a substantial interest in the assessee company and were also holding not less than 10% of the voting power in M/s. JGPL.

On revenue's appeal, the Hon'ble Delhi High Court opined that- "the intention behind the provisions of 2(22)(e) is to tax dividend in the hands of share holders. The deeming provision at it applies to the case of loans/advances by a company to a concern in which its share holder has substantial interest is based on the presumption that the loans/advances would ultimately be made available to the share holders of the company giving the loan/advance……… Further, it is an admitted case that under normal circumstances, such a loan/advance given to the share holders or to a concern would not qualify as dividend. It has been made so by legal fiction created u/s. 2(22)(e). This legal provision relates to dividend. Thus by a deeming provision, it is the definition of the dividend which is enlarged. Legal fiction does not extend to 'share holder'……..if the intention of the legislature would have been to tax such loan or, advance as deemed dividend at the hands of 'deeming shareholders', then the legislature would have inserted deeming provision in respect of share holder as well, that has not happened ……… Therefore under no circumstances the provisions of Section 2(22)(e) could be invoked. ".

> *Since the appellant company's case is identical with the case above where the Hon'ble Delhi High Court has already taken a view and issued orders, following the same, the amount of Rs. 5,16,15,980/- should also not be treated as deemed dividend u/s. 2(22)(e) of the Act. The AO is directed to delete the addition and give relief to the appellant of Rs. 17,34,99,270/-."*

9. Against the above order of CIT(A) the Revenue is in appeal before the Tribunal.

10. Before us, the ld. DR relied on the order of AO, whereas the ld. AR of the assessee relied on the order of CIT(A) and judicial decisions.

11. We have heard rival submissions and perused the materials available on record. We find that the assessee has filed statements in the course of assessment proceedings that the assessee company along with other fellow subsidiary companies M/s ISCO Track Sleepers (P) Ltd. and M/s Annavaram Concrete (P) Ltd. has availed loan of Rs.41.00 crores in the name of M/s Rayalaseema Concrete Sleepers (P) Ltd.(RCSPL) from IDFC. The share of the assessee company in this loan is 40%. The assessee also submitted all the relevant facts and supporting documents in the assessment proceedings, whereas the AO made addition u/s.2(22)(e) of the Act. The assessee in the course of appellate proceedings has made a detailed submissions relying on the judicial decisions dealt at pages 7 to 11 of the order of CIT(A). The CIT(A) found that the assessee along with two other sister concerns have availed loan of Rs.41 crore in the name of M/s RCPL from IDFC and such loan was first disbursed to M/s RCPL and M/s RCPL in turn has disbursed the loan to the three subsidiary companies. The assessee submitted that the

company M/s. Rayalseema Concrete Sleepers P. Ltd. does not hold any shares in the assessee company nor the assessee company holds any shares in M/s. RCPL. The assessee further submitted that these facts were presented before the AO during assessment but the AO did not give any finding on the evidence produced by the assessee. The assessee during appeal hearing submitted the details, which were submitted before the AO. The CIT(A) through a letter requested the AO to verify and respond whether the details regarding loan from IDFC disbursed to M/s. RCPL and in turn disbursed to the assessee were submitted before the AO during assessment. The AO vide letter dated 30th January, 2014 submitted that "it is confirmed that the said submission dated 28.03.2013 was filed by the assessee to this office on 29.03.2013." For further verification, the CIT(A) requisitioned the assessment record of the assessee and found that the assessee in response to show cause of the AO through ordersheet noting dated 26.03.2013 submitted the details regarding loan from IDFC, disbursement of the same to M/s. RCPL and further disbursement from M/s. RCPL to the 3 subsidiary companies including the assessee company. The assessee had submitted the letter of sanction of loan from the IDFC where it is mentioned that as per agreement, the loan of Rs. 41 crores was sanctioned by IDFC out of which Rs. 28.89 crores was disbursed during the F/Y. 2009-10. As per the terms of the loan agreement, this loan was taken by M/s. RCPL for the purpose of meeting the funding requirement of its fellow subsidiaries namely -(1). M/s. Mazda Concrete Products (P) Ltd., (2). M/s. ISCO Tract

Sleepers (P) Ltd. and (3). M/s. Annavaram Concretes products (P) Ltd. for modernization and setting up of additional units and accordingly the loan amounts was disbursed by M/s. RCPL to the respective fellow subsidiaries. The CIT(A) verified the loan agreement, the ESCROW Account of M/s. RCPL with the ICICI Bank where the loan amount from the IDFC was received, the transfer of such loan amount to the current account of M/s. RCPL in the ICICI Bank and then disbursement of such loan amount to the 3 subsidiary companies including the assessee company. It is found that such loan from IDFC through M/s. RCPL was transferred to the assessee company during the F/Y. 2009-10 amounting to Rs. 12,18,83,290/-. This amount is not the loan/advance from M/s. RCPL to the assessee company as stipulated by the AO in the assessment order rather this amount is the advance from IDFC through a loan agreement disbursed to the assessee company through M/s. RCPL. To the query that why IDFC did not disburse loan to the 3 subsidiary companies including the assessee company directly and why the loan was disbursed through M/s. RCPL, the assessee submitted that M/s RCPL was a profit making company and the loan from IDFC could be sanctioned only through M/s.RCPL. We find that the CIT(A) after considering the facts and submissions of the assessee as well as finding of the AO, held that the loan of Rs.12,18,83,290/- which is advanced by IDFC to the assessee company through M/s RCPL should not be treated as deemed dividend u/s.2(22)(e) of the Act and also advance from M/s RCPL to the assessee amounting to Rs.5,16,15,980/-, the CIT(A)

observed that the M/s RCPL is a profit making company and has sufficient accumulated profits to advance the loan of Rs.5,16,15,980/- to the assessee company. The CIT(A) following the decision of Hon'ble Delhi High Court in the case of CIT Vs. Ankitech (P) Ltd. 340 ITR 14(Delhi HC) , held that amount of Rs.5,16,15,980/- should not be treated as deemed dividend u/s.2(22)(e) of the Act and directed the AO to delete the addition of Rs.17,34,99,270/-. Accordingly, we do not find any error in the above order of the CIT(A) and the same is upheld and this ground of Revenue is dismissed.

Ground No.3

12. The AO in the scrutiny assessment found that the assessee has paid interest of Rs.57,75,425/- disclosed under interest expenses apportioned from the holding company and the assessee company has not deducted tax on such payments and AO invoked the provision of Section 40(a)(ia) of the Act and disallowed the interest expenses claimed by the assessee.

13. Aggrieved by the disallowance made by the AO the assessee filed an appeal before the CIT(A) and the CIT(A) after considering the submissions of assessee and findings of AO, has deleted the addition observing at page 19 of the order which reads as under :-

> *"From verification of the details submitted by the appellant such as payment of interest to IDFC by M/s. RCPL and in turn the ledger account of the appellant company with M/s. RCPL where the apportioned interest amounts for the appellant company have been debited, it is evident that the interest amount paid by M/s. RCPL to IDFC on behalf of the appellant against the loan disbursed to the appellant were claimed by the appellant company in its P/L*

> *Account. The interest amount of Rs.57,75,425/- is not the amount paid to M/s. RCPL, rather in a way reimbursement of the interest paid by M/s. RCPL to IDFC on behalf of the appellant company. M/s. RCPL did not earn any interest income from the payment by the appellant company. M/s. RCPL while paying interest to IDFC had deducted tax at source until a certificate issued by ITO, TDS Ward-1(3), Chennai-34, for no deduction of tax on interest paid to IDFC was obtained by them.*
>
> *In line with the discussion above, it is concluded that the debited interest amount is not a payment of interest by the appellant company to M/s. RCPL and rather reimbursement of interest paid by M/s. RCPL to IDFC on behalf of the appellant company. M/s. RCPL was not required to deduct tax from payment of interest to IDFC. Therefore, the provisions of Section-40a(ia) of the Act, are not to be attracted on such payments. The appellant had submitted the ratio of decision in the case of M/s. Onward E-Services Ltd. vs ACIT, Central Circle-37, Mumbai where the Mumbai Bench of ITAT held that the reimbursement of interest to another company does not result in any income in the hands of the payee and hence, the provisions of Section 194A of the Act, are not applicable to the payer.*
>
> *As per the discussion above, the AO is directed to allow the interest expenditure amounting to Rs. 57,75,425/- to the appellant and delete the addition made in this regard."*

14. Against the above order of CIT(A) the Revenue is in appeal before the Tribunal.

15. Before us, the ld. DR relied on the order of AO, whereas the ld. AR of the assessee relied on the order of CIT(A) and supporting material papers.

16. We have heard rival submissions and perused the materials available on record. We find that the CIT(A) while dealing with the disputed issue has observed that debited interest amount is not a payment of interest by the appellant company to M/s. RCPL and rather reimbursement of interest paid by M/s. RCPL to IDFC on behalf of the assessee company, whereas M/s. RCPL deducted tax on payment of

interest to IDFC. The assessee company has only reimbursed the interest amount and the provisions of Section 40a(ia) of the Act, are not attracted on such payments. Hence, the CIT(A) directed the AO to allow the interest expenditure amounting to Rs.57,75,425/- to the assessee and deleted the addition. We are of the substantive opinion that the nature of transaction of payment of interest by the assessee company to M/s RCPL Ltd. is only a reimbursement of interest amount on loan apportioned and no element of interest income actually made in this regard. In our opinion, there is no infirmity in the order of CIT(A) . the CIT(A) has dealt on the provisions of law and considered the explanation vis-à-vis explanation of the assessee and deleted the addition and we do not find any error in the decision of CIT(A) and upheld the same and dismiss the ground of appeal of the Revenue.

Ground No.4.

17. The AO in the assessment proceedings held that the assessee company has paid Rs.15,59,634/- to M/s Patil Rail Infrastructure P. Ltd. towards rent and no tax deducted on such payments. Hence, the AO disallowed the expenses claimed and added the same to the total income of the assessee.

18. Aggrieved by the disallowance made by the AO the assessee filed an appeal before the CIT(A) and the CIT(A) considered the submissions of assessee and findings of AO, has deleted the addition observing at page 21 of the order which reads as under :-

"The appellant produced before me the Lease Agreement for the office premises between the house owner and M/s. PRIL, the holding company of the appellant and other companies, where it is depicted that lease of built up area of 18,030 sq. ft. of office space bearing Unit No. 3, 4 & 5 of 3rd and 4th Floor of the building at a monthly rent of Rs. 10,81,800/- have been given on lease to M/s.-PRIL for a period of 9 years. The rented space has been shared by the holding company along with the entire subsidiary companies including the appellant company. The holding company pays consolidated rent to the Lessor after deducting due TDS from such payments. The portions of the rent for the office premises of the subsidiary companies including the appellant were reimbursed to the holding company through accounting entries in the respective ledgers of the subsidiary companies. The holding company M/s. PRIL does not earn any income out of such rent reimbursement by the subsidiary companies.

The appellant further submitted that the facts and supporting evidences as above were submitted before the AO on 29.03.2013 and the AO did not give any finding on such evidences in his assessment order.

From the verification of the ledger account of the appellant company, the holding company and the details of rent paid by the holding company to the lessor of the property, the veracity of the contention of the appellant is established. Apparently, though the details were there with the AO, the AO did not mention anything in the assessment order. I had already discussed that reimbursement of an expense shall not be subjected to TDS as per the decision of legal authorities. Moreover, the holding company M/s. PRIL did not earn any income out of such rent reimbursement and had deducted due TDS from the total rent amount paid to the lessor.

Under these circumstances, I am of the view that the provisions of 'Section 40a(ia) of the Act, are not attracted to the rent reimbursement as discussed above and the expenses debited by the appellant as rent amounting to Rs.15,59,634/- should be allowed. The AO is directed to delete the addition."

19. Against the above order of CIT(A) the Revenue is in appeal before the Tribunal.

20. Before us, the ld. DR relied on the order of AO, whereas the ld. AR of the assessee relied on the order of CIT(A).

21. We have heard rival submissions and perused the materials available on record. The ld. AR explained that the CIT(A) on verification of

the ledger account of the assessee company and the holding company and the details of rent paid by the holding company to the lessor of the property, accepted the contention of the assessee that payment of rent is in the nature of reimbursement and assessee has filed details in the assessment proceedings. We find the CIT(A) observed that reimbursement of an expense shall not be subjected to TDS as no element of income in the hands of recipient and moreover, the holding company M/s. PRIL did not earn any income out of such rent reimbursement but has deducted TDS on rent amount paid to the lessor of property. Therefore, the CIT(A) observed that the provisions of Section 40a(ia) of the Act, are not attracted to the rent reimbursement and the expenses debited by the appellant amounting to Rs.15,59,634/- be allowed and directed the AO to delete the addition. We find that the findings of the CIT(A) on this disputed issue is just and proper. Accordingly, we see no reason to interfere with the above finding of the CIT(A) and the same is upheld and this ground of Revenue is dismissed.

<u>Ground No.5 & 6</u>

22. The AO has added Rs.9,34,443/- as provision for gratuity and Rs.37,34,371/- as bad debts written off during the year.

23. Aggrieved by the above order of the AO the assessee filed an appeal before the CIT(A) and the CIT(A) after considering the submissions of assessee and findings of AO, has deleted the addition made by the AO by observing as under :-

> *"Since the appellant had itself added back both the amounts to its total income and filed the Return of Income, once again disallowing the same pertains to double addition. The AO is directed to delete the above additions."*

24. Against the above order of CIT(A) the Revenue is in appeal before the Tribunal.

25. Before us, the Id. DR relied on the order of AO, whereas the Id. AR of the assessee relied on the order of CIT(A).

26. We have heard rival submissions and perused the materials available on record. We find that the assessee has added back both the amounts to its total income and filed the Return of Income and the Id. AR supported the fact with correct computation of income and once again disallowing the same amount tantamount to double addition. We find that the CIT(A) has rightly directed the AO to delete the addition as both the above disallowances were already disallowed u/s.40A(7) of the Act. Accordingly, we are not inclined to interfere with the above finding of the CIT(A) and the same is upheld and this ground of Revenue is dismissed.

Ground No.7

27. The AO during scrutiny found that the assessee had shown CENVAT credit on input goods outstanding as on 31.03.2010 amounting to Rs.1,29,22,607/- in the balance sheet under the head loans and advances. The opening CENVAT credit as on 01.04.2009 was Rs.77,04,655/-, there being an increase of Rs. 55,17,952/- during the yean The AO found that the CENVAT credit outstanding has not been included in the valuation of closing stock as per provisions of Section

145A of the Act. In absence of such practice the AO observed that the sum of Rs.1,29,22,607/- shown in the loans and advances in the balance sheet should be added to the total income and made an addition to the total income.

28. Aggrieved by the disallowance made by the AO the assessee filed an appeal before the CIT(A) and the CIT(A) considered the submissions of assessee and findings of AO and has deleted the addition made by the AO by observing as under :-

> *"The AO during scrutiny found that the appellant had not added the outstanding CENVAT credit amounting to Rs. 1,29,22,607/- to the closing stock in the P/L Account though the same was shown by the appellant under the head loans and advances. The AO felt that as per Section 145A of the Act., valuation of closing stock should have been inclusive of the amount of CENVAT duty paid. The AO then added the same to the total income of the appellant.*
>
> *The appellant submitted that as per accounting principle, if the CENVAT credit is to be added to the closing stock of year, the proportionate amount should be added to the opening stock of the year also. The appellant had not added the outstanding CENVAT credit to the closing stock of the previous year. The appellant had submitted that the ratio of the decision given by Mumbai "D" Bench in the case of R. R. Kabel Ltd. vs ACIT, Mumbai where it is held that balance in the CENVAT credit account should not be added to the figure of the closing stock without modifying the figures of purchases, sales and opening stock.*
>
> *Accordingly, the AO is directed to add the outstanding CENVAT credit to the closing stock for the year and modify the opening stock with the outstanding CENVAT credit of the previous year."*

29. Against the above order of CIT(A) the Revenue is in appeal before the Tribunal.

30. Before us, the ld. DR relied on the order of AO, whereas the ld. AR of the assessee supported the order of CIT(A).

31. We have heard rival submissions and perused the materials available on record. We find that the CIT(A) while dealing with issue found that the assessee had not added the outstanding CENVAT credit to the closing stock of the previous year. The CIT(A) also considered the ratio of the decision relied upon by the assessee in the case of R. R. Kabel Ltd. vs ACIT, Mumbai where it is held that balance in the CENVAT credit account should not be added to the figure of the closing stock without modifying the figures of purchases, sales and opening stock. Hence, the CIT(A) directed the AO to add the outstanding CENVAT credit to the closing stock for the year and modify the opening stock with the outstanding CENVAT credit of the previous year. We are of the substantive opinion that the CIT(A) has rightly directed the AO in this aspect and we do not see any reason to interfere with the above findings of the CIT(A) on this issue and the same is upheld and this ground of appeal of Revenue is dismissed.

32. Ground No.8 raised by the Revenue is general in nature and, hence, requires no separate adjudication by us.

33. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this 23/03/2018.

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

कटक Cuttack; दिनांक Dated 23/03/2018

प्र.कु.मि/PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-
   ACIT,Circle-2(1), Bhubaneswar
2. प्रत्यर्थी / The Respondent-
   M/s Mazda Concrete Products (P) Ltd., 3rd Floor, The Grand, Rajbhawan Road, Somajiguda, Hyderabad
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