

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.197/CTK/2017

(निर्धारण वर्ष / Assessment Year :2013-2014)

Asst.CIT, Corporate Circle-1(2), Bhubaneswar	Vs.	National Aluminium Company Limited, NALCO Bhawan, 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.211/CTK/2017

(निर्धारण वर्ष / Assessment Year :2013-2014)

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

AND

Cross Objection No.10/CTK/2017

(Arising out of ITA No.197/CTK/2017)

(निर्धारण वर्ष / Assessment Year :2013-2014)

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

निर्धारिती की ओर से /Assessee by : Shri B.K.Mahapatra,CA

राजस्व की ओर से /Revenue by : Shri Saad Kidwai, CITDR

सुनवाई की तारीख / Date of Hearing : **27/06/2018**

घोषणा की तारीख/Date of Pronouncement **29/06/2018**

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 objection by the assessee, against the order of the CIT(A)-1,

Bhubaneswar, passed in IT Appeal No.0511/15-16, dated 03.02.2017 for the assessment years 2013-2014.

2. Since issues in both the appeals are common, they were heard together and disposed of by this common order. First we shall consider the grounds raised in assessee's appeal facts narrated therein for the assessment year 2013-2014 in ITA No.211/CTK/2017 as under :-

1. *That the order dated 03.02.2017 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 the principles of natural justice, contrary to facts, arbitrary, erroneous and bad in law.*
2. **Disallowance under "Peripheral Development Expenses" - Rs.1,81,73,621/-**
 - a. *That on the facts and in the circumstances the case, the order of the learned CIT(Appeals) in partly sustaining the disallowance of Rs.1,81,73,621/- under 'Peripheral Development Expenses' incurred through appellant's Corporate Office is based on irrelevant considerations, contrary to facts, arbitrary, erroneous and bad in law.*
 - b. *That the aforesaid expenditure of Rs.1,81,73,621/- 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 appellant's own case, the Jurisdictional ITAT (Hon'ble ITAT Cuttack Bench, Cuttack) having held that the similar, 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 sustaining of the disallowance of Rs.1,81,73,621/- under 'Peripheral Development Expenses' by the learned CIT(Appeals) by holding the same are in the nature of and charity and donations is on mis-appreciation of facts, arbitrary, erroneous and bad, both in the eye of law and on facts.*
 - e. *That the learned CIT(Appeals) in holding that the aforesaid Rs.1,81,73,621/- are not in the nature of business expenditure,*

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.

- f. That without prejudice to Ground (a) to (e) above, out of the aforesaid Rs.1,81,73,621/- under 'Peripheral Development Expenses' the amounts eligible for deduction u/s.80G ought to be allowed as deduction.

3. Disallowance of Interest on disputed Govt. duty (Electricity Duty and water charges — Rs.168,47,54,889/-

- a. That on the facts and in the circumstances the case, sustaining the addition/disallowance of Rs.168,47,54,889/- under 'Interest on Disputed Govt. duty (Electricity Duty and water charges)' by the learned CIT (Appeals), ignoring the written submissions and the orders of the jurisdictional ITAT Bench, is against the principles of natural justice, arbitrary, erroneous, bad in law and legally untenable.
- b. That the learned CIT (Appeals) ignoring and not following the order of the Jurisdictional ITAT (Hon'ble ITAT Cuttack Bench, Cuttack) for the Asst. Year 2005-06 in appellant's own case, wherein in similar circumstances, the issue of allowbilty of 'Interest on Disputed Govt. duty (Electricity Duty and water charges)' having been decided in favour of the assessee, his order in confirming the addition/disallowance of Rs.168,47,54,889/- under 'Interest on Disputed Govt. duty (Electricity Duty and water charges)' is an act of judicial impropriety, bad in law and illegal and deserves to be set aside on this ground alone.
- c. 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 Cuttack Bench having held that "Interest on unpaid Electricity Duty and water charges" is fully allowable, the learned CIT (Appeals) in not deleting the said addition/disallowance of Rs.168,47,54,889/- under 'Interest on Disputed Govt. duty (Electricity Duty and water charges)' is arbitrary, erroneous, and bad, both in the eye of law and on facts and legally untenable.
- d. That the aforesaid Rs. 168,47,54,889/- under "Interest on unpaid Electricity Duty and water charges, although a statutory liability, the learned CIT (Appeals) holding that the same is a provision and disallowable because the same is under dispute and no demand has been raised in respect thereof, is arbitrary, erroneous, and bad, both in the eye of law and on facts and legally untenable.

4. **Disallowance of claim of Addl. Depreciation u/s.32(i)(iia) of the Act- Rs.30,93,207/-**

- a. *That the learned CIT (Appeals) has mis-appreciated the facts and the sustaining of disallowance of Rs.30,93,207/- under 'Additional Depreciation u/s.32(1)(iia) of the I.T Act is contrary to facts, erroneous and bad, both in the eye of law and on facts.*
- b. *That the acquisition and installation in respect 'New Plants' having been made after 01.04.2005, the claim of Addl. Depreciation of Rs.30,93,207/- u/s.32(i)(iia) of the Act ought to be fully allowed.*
- c. *That the details in respect of Additions to 'New Plants' having been furnished, the learned CIT(Appeals) holding that no purpose would be served in remanding the matter to the AO, is against the principles of natural justice, arbitrary, unjustified, erroneous and bad, both in the eye of law.*
- d. *That on the facts and in the circumstances the case, the learned CIT(Appeals) ought to have allowed the claim of Addl. Depreciation of Rs.30,93,207/- u/s.32(i)(iia) of the Act.*

5. **Disallowance u/s. 14A Rs.5,19,29,172/-**

- a. *That on the facts and in the circumstances the case, the order of the learned CIT (Appeals) in restricting/partly sustaining the disallowance of Rs.5,19,29,172/- 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 Rs.5,19,29,172/- is unjustified, arbitrary, erroneous and bad in law.*
- c. *That the assessee having already added sum of Rs.1,20,828/- u/s.14A of the Act in the computation of income (returned income), Rule 8D is not applicable and the sustaining of the addition of Rs.5,19,29,172/- u/s.14A of the Act is unjustified, arbitrary, contrary to facts, erroneous and bad in law.*
- d. *The appellant's computation of the aforesaid Rs.1,20,828/- u/s.14A of the Act is based on its books of accounts and is worked out in a reasonable and fair manner, 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.1,20,828/- has no basis and purely ad hoc' is incorrect, contrary to facts, arbitrary and erroneous and bad, both in the eye of law and on facts.*
6. **Addition of Rs.59,81,49,044/- as "Income from Business and**
- i. treatment of Short term Capital Gains of Rs.4,55,26,088/- as "Income from Business"; and**
 - ii. Discarding of Loss under Long term Capital Gains of Rs.8,89,62,948/- (in respect of Rs.57,53,86,000/- gains booked in Profit and Loss Account, after indexation) and treating as "Income from Business"**
- a. *That on the facts and in the circumstances the case, the dismissal of the ground and sustaining of:*
- i. the treatment of Short term Capital Gains of Rs.4,55,26,088/- as "Income from Business"*
 - ii. Ignoring and discarding the Loss under Long term Capital Gains of Rs.8,89,62,948/- (in respect of Rs.57,53,86,000/- gains booked in Profit and Loss Account, after indexation); and*
 - iii. the addition of Rs.59,81,49,044/- 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 i.e. Loss under Long term Capital Gains (loss) of Rs.8,89,62,948/- (after indexation) and Short term Capital Gains of Rs.4,55,26,088/-, the treatment of the aforesaid as 'Business income' and the addition of Rs.59,81,49,044/- by the learned AO and the 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 without prejudice to Ground (a) to (c) above, in any case as per Board Circular which recognizes that an assessee can have two portfolios, one Investment and other trading, the ignoring and discarding of the aforesaid Loss under Long term Capital Gains of Rs.8,89,62,948/- (in respect of Rs.57,53,86,000/- gains booked in Profit and Loss Account, after indexation) and the treatment of the aforesaid Gains including Short term Capital Gains of Rs.4,55,26,088/-, as 'Business income' by the lower authorities is unjustified, arbitrary, contrary to facts, erroneous and bad in law.*

7. **Non deduction of credit amount under Provision for Leave Encashment' disallowed in past assessment years u/s.43B(f) of the Act- Rs. 11,31,24,984/-**

a. *That on the facts and in the circumstances the case, the learned CIT (Appeals) has order of the learned CIT (Appeals) in dismissing the ground for the Non deduction of credit amount of Rs.11,31,24,984/- under 'Provision for Leave Encashment' disallowed in past assessment years u/s.43B(f) of the Act is on mis-appreciation of facts, unjustified, arbitrary, erroneous and bad, both in the eye of law and on facts.*

b. *That on the facts and in the circumstances the case, the learned CIT (Appeals) holding that the ground in respect of Non deduction of credit amount of Rs.11,31,24,984/- under 'Provision for Leave Encashment' disallowed in past assessment years u/s.43B(f) of the Act does not flow from the assessment order and dismissal of the same is on mis-appreciation of facts, arbitrary, erroneous, bad, both in the eye of law and on facts and legally untenable.*

c. *That in the past assessments years, the lower authorities having disallowed amounts debited under "Provision for Leave Encashment u/s.43B(f) of the Act, the amount of Rs.11,31,24,984/- credited during the accounting year 2012-13 under the said "Provision for Leave Encashment" ought to be deducted in computing the assessed income for the assessment year 2013-14.*

8. *That the appellant craves leave to add, supplement, modify the grounds herein-above before or at the hearing of the appeal."*

3. The brief facts are that the assessee is a public sector company is engaged in the business of bauxite mining, manufacture of Alumina and Aluminum & Power Generation and filed its return of income for the assessment year 2013-2014 electronically on 28.09.2013 with total

income of Rs.825,55,04,003/- and under the provision of section 115JB of the Act at Rs.619,50,19,389/- and the return of income was processed u/s.143(1) of the Act and subsequently, the case was selected for scrutiny under CASS and notices u/s.143(2) & 142(1) were issued. In compliance, the AR of the assessee appeared from time to time and filed written submissions and the Assessing Officer completed the assessment u/s.143(3) of the Act, dated 26.02.2016, *inter alia*, making additions/disallowances aggregating to Rs.264,80,17,609/- under the following heads and assessed the total income of Rs.1090,35,21,610/-:-

- i) Disallowance of Peripheral Development Expenses at Rs.22,32,20,569/-;
- ii) Disallowance of claim of additional depreciation at Rs.30,93,207/-;
- iii) Interest on disputed Govt. dues (Electricity Duty and Water charges) at Rs.168,47,54,889/-;
- iv) Treating short term and long term capital gain as business income at Rs.59,81,49,044/-;
- v) Disallowance u/s.14A of the Act at Rs.5,19,29,172/-; and
- vi) Disallowance of the loss on account of revaluation of non-moving stores and spares at Rs.8,68,70,728/-

4. Against the above additions and the order of the AO, the assessee filed an appeal before the CIT(A). In the appellate proceedings the assessee reiterated the submissions made before the AO and filed detailed written submissions. The CIT(A) after considering the submissions of assessee and findings of AO has partly allowed the appeal of the assessee.

5. Against the order of CIT(A), both the assessee and Revenue are in appeal before the Tribunal and the first ground of appeal is general in nature.

6. Second ground raised in assessee's appeal is with respect to the disallowance made by the AO and reduced by the CIT(A) under Peripheral Development Expenses. In the assessment proceedings, the AO observed that the peripheral development claimed by the assessee are not incurred wholly and exclusively incurred for the business purpose and disallowed the claim. In appeal the CIT(A) has restricted the disallowance to Rs.1,81,73,621/-.

7. Before us, Id. AR submitted that the amount of Rs.22,32,20,569/- incurred under Peripheral Development Expenses is not for charity and is a business obligation on the part of the assessee and is incurred wholly and exclusively for the purpose of business of the assessee and is fully allowable as deduction u/s.37 of the Act. Id. AR further emphasized that the peripheral expenditure has been allowed for the earlier assessment years and the assessee has disclosed these facts in both assessment and in the appellate proceedings. The peripheral expenditure was allowed in assessee's own case by this Bench of the Tribunal in assessee's own case in ITA No.66-68, 459, 511 & 512/CTK/2003 order dated 30.11.2015 and in subsequent years. The Id. AR also placed copy of the order passed by this Bench of the Tribunal in ITA No.343&392/CTK/2015 and other connected assessee's appeals, order dated 23.04.2018 for the assessment years 2007-08 & 2008-09 and for other subsequent years.

8. Contra, Id. DR relied on the assessment order of the AO.

9. We have heard rival submissions and perused the material on record. The assessee has claimed the peripheral expenditure of Rs.22,32,20,569/- and the AO has made the addition 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 disallowance of peripheral expenditure to the extent of Rs.1,81,73,621. Ld. AR submitted that this issue is covered in favour of the assessee by the earlier orders of the Tribunal. We have gone through the order of the Tribunal in assessee's own case in ITA No.343&392/CTK/2015 and other connected appeals, dated 23.04.2018 for the assessment years 2007-08 & 2008-09. Further Id. AR relied on the decision of Tribunal in assessee's own case in ITA No.352/CTK/2016 along with other connected appeals for the assessment year 2010-2011, 2011-12 & 2012-2013. The observations of the Tribunal in this regard are as under :-

"8. We have heard rival submissions and perused the material on record. We find that the arguments of the Id. 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 Id. 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 Id. 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."

From the above observations of the Tribunal, we find that the expenditure claimed by the assessee has been incurred wholly and exclusively for business purposes as envisaged by the assessee however, 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. Accordingly, we respectfully following judicial precedence and the order of the Tribunal and we restore 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.

10. Third ground of appeal is with respect 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.168,47,54,889/- on account of interest on the disputed Government dues and others. 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.

11. On further appeal to the Tribunal, the Id. 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 mercantile system of accounting, and is allowable u/s 37 of the Act and prayed that addition by the lower authorities be deleted. The Id. AR filed a copy of order of the Tribunal in assessee's own case for the assessment year 2010-2011 in ITA No.352/CTK/2016 and other connected appeals, dated 27.04.2018, wherein the Tribunal has decided the issue in favour of the assessee relying on the earlier decision of the Tribunal in assessee's own case for

the assessment years 2006-2007 & 2007-2008 in ITA Nos.233&234/CTK/2011, dated 20.07.2012 and also for the assessment year 2005-06 in ITA No.286/CTK/2013, order dated 11.05.2016. The observations of the Tribunal in this regard are as under :-

“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."

We respectfully follow the reasoning and observation of the judicial decision and direct the AO to delete the disallowance of interest on disputed Govt. duty (Electricity duty and water charges) and this ground of appeal of assessee is allowed.

12. In fourth ground of appeal grievance of the assessee is that the CIT(A) erred in confirming the disallowance of additional depreciation u/s.32(1)(iia) of the Act. The AO in the course of assessment proceedings found that there is no mention regarding the date of acquisition of these assets. The assessee explained that under industrial projects of this kind it is natural and common that the procurement of individual machinery and installation activities go on stretching from one year to the another and it is not possible to install and commission all such items in the same year of acquisition (procurement). The AO observed that in the absence of the

dates of acquisition of all the individual parts & machineries, the assessee cannot be presumed to have complied with the requirement of acquisition to be made after 31.03.2005, therefore, the AO disallowed the claim of additional depreciation.

13. On appeal, the CIT(A) observed that the ITAT has remanded this matter in earlier years to the AO for re-verification and allowance of the claim as per law, whereas the assessee claimed that all the relevant details could be produced, however, the CIT(A) observed that the decision of ITAT has no application in the year under consideration as the AO has already allowed the major part of the claim of additional depreciation and the relevant details could be filed by the assessee. Accordingly, the CIT(A) held that the assessee could not furnish the details of acquisition and installation and therefore the AO disallowed the additional depreciation, and confirmed the disallowance on account of additional depreciation.

14. Against the order of CIT(A), the assessee is in appeal before us.

15. Ld. AR submitted that the assessee is eligible for claim of additional depreciation and the assessee was also substantiated its claim before the lower authorities. Ld. AR further submitted that similar issue has been decided by this bench of the Tribunal in assessee's own case for the assessment years 2005-06 & 2006-07 in ITA Nos.196&91/CTK/2010, in order dated 29.06.2012 and for the assessment years 2007-08 & 2008-09 in ITA Nos.343&392/CTK/2015 and other connected appeals, order dated 23.04.2018.

16. Contra, Id. DR relied on the orders of lower authorities.

17. We have heard the parties and perused the material on record. We find that the coordinate bench of the Tribunal in assessee's own case for the assessment years 2007-08 & 2008-09 in ITA Nos.343&392/CTK/2015 and other connected appeals, order dated 23.04.2018, the Tribunal following its earlier order of for the assessment years 2005-06 & 2006-07 in ITA Nos.196&91/CTK/2010, order dated 29.06.2012, has dealt the issue and held as under :-

"23. We have heard the parties and perused the material on record. We find that the coordinate bench of the Tribunal in assessee's own case for the assessment years 2005-06 & 2006-07 in ITA Nos.196&91/CTK/2010, order dated 29.06.2012 has dealt the issue and held as under :-

"26. Having heard both parties, we find that similar issue had come up for consideration before the Tribunal in assessee's own case for the assessment year 2004- 05 and the Tribunal vide its order dated 25.5.2012 restored the matter to the file of the AO for reconsideration and allow the claim of additional depreciation u/s.32(1)(ia) on the plant and machinery acquired and installed after 1.4.2002, observing as under:

"Having considered the rival submissions, we find that on a plain reading of section 31(1)(ia) inserted by the Finance Act, 2002, it is dear that both acquisition and installed of plant or machineries should take place after 31.3.2002 to enable the assessee to claim additional depreciation of 15% if it achieves substantial expansion by way of increase in the installed capacity by not less than 25% in the previous year. The RPU unit as contended by the assessee though acquired by the assessee on amalgamation which the amalgamated company had started commencement of installation of the said unit. The assessee also contended before us that to start the unit, many plant & machinery were acquired and installed after 1.4.2002 (during F.Y. 2002-03 and 2003-04) enabling the Unit to become operative and capable o manufacturing rolled products for commercial purpose. Such submission was also made before the authorities below but we find that assessing authorities have not examined this aspect of the case whether any such plant and machinery acquired and installed after 1.4.2002 in the said plant by the assessee. Therefore, finding force in the contention of Id A.R. of the assessee, we restore this issue o the file of the AO for reconsideration in the light of above observation and allow the claim of additional

depreciation u/s.32(1)(iia) on the plant and machinery acquired and installed after 1.4.2002 enabling the unit to become operative and capable of manufacturing RPU for commercial purpose."

27. Consistent with the view taken by the Tribunal in the preceding assessment year, we restore the matter to the file of the AO under similar observation for A.Y. 2006- 07. This ground is allowed for statistical purposes. However, we do not find merit in the contention of Id CIT(A) in arbitrarily disallowing the additional depreciation claimed in accordance with law without controverting facts as have been brought on record as per law and the directions of the Tribunal. The same is directed to be deleted for the assessment year 2005-06."

Respectfully following the order of the coordinate bench of the Tribunal, we restore this matter to the file of the AO for fresh adjudication in respect of the claim of additional depreciation u/s.32(1)(iia) of the Act and this ground of appeal of the assessee is allowed for statistical purposes."

We find the issue is similar to the present facts and circumstances of the case, and we respectfully follow the above judicial precedence of this bench of the Tribunal and remit the matter to the file of AO for reconsideration of claim of additional depreciation u/s.32(1)(iia) of the Act. Accordingly, we allow this ground of assessee for statistical purposes.

18. Ground No.5 relates to disallowance u/s.14A of the Act. The AO has made the disallowance of Rs.5,19,29,172/- by invoking the provisions of Section 14A r.w.Rule 8D, observing that the disallowance suo-moto made by the assessee is very less compared to the administrative and employee cost devoted to earn the exempt income.

19. On appeal, the CIT(A) has confirmed the disallowance as there may not be any direct expense and that the assessee has not made any interest payments related to earning of exempted dividends and

accordingly, the only way disallowance can be computed proportionately as per Rule 8D(2)(iii) of I.T.Rules.

20. Ld. AR before us submitted that the assessee has already disallowed the sum of Rs.1,20,828/- in the computation of income with the (return of income) u/s.14A of the Act in respect of expenses incurred relating to its exempted income and Rule 8D is not applicable. Ld. AR further submitted that this issue has been decided by the Tribunal in ITA Nos.352/CTK/2016 along with other connected appeals, order dated 27.04.2018 for the assessment year 2010-2011. Contra, Id. DR relied on the order of AO.

21. We have heard rival submissions and perused the material on record. In the instant case the AO made the disallowance u/s.14A of the Act and applied Rule 8D. The CIT(A) in appeal has confirmed the action of AO. We find that this issue has been decided by the Tribunal in assessee's own case for the assessment year 2010-2011 in ITA No.352/CTK/2016 along with other connected appeals vide order dated 27.04.2018, wherein the Tribunal observed as under :-

“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 Rule 8D 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."

22. From the above judicial decisions, we find that the Tribunal has restored the disputed issue to the file of AO for re-examination and re-verification and apply the provisions of Section 14A r.w.rule 8D and in the instant case, the issue being similar, we find that the AO has not complied with the mandatory requirement of Section 14A (2) of the Act read with Rule 8D (1) (a) of the Rules and we respectfully follow the above judicial decision of the Tribunal and remit the disputed issue to the file of AO for re-examination and verification and to decide the issue on merits after complying the mandatory requirement of the provisions of Section 14A of the Act and this ground of appeal is allowed for statistical purposes.

23. Ground No.6 relates to treatment of short term and long term capital gain. The AO has treated the short-term and long-term capital gain earned by the assessee as business income of the assessee. The CIT(A) has affirmed the action of the AO by stating that the transactions are

much higher than the closing balances in the balance sheet. Against the order of CIT(A), the assessee is in further appeal before the Tribunal.

24. Ld. AR before us submitted that the investments are mostly held for the purpose of earning income and not for trading and in the balance sheet it can be seen that most of the investments in MF are held for more than 1 year and accordingly is classified as long term investments. Ld. AR further submitted that the AO ought to have considered the head of income as per the return of income filed by the assessee and the income ought not be treated as business income of the assessee but the AO has to consider the income from capital gains, long term capital gains (after indexation) and short term capital gains as per the return of income. Ld. AR further relied on the order of Tribunal in assessee's own case for the assessment year 2010-2011 in ITA No.352/CTK/2016, order dated 27.04.2018 along with other connected appeals, wherein the Tribunal has allowed the disputed issue and prayed for allowing the appeal. On the other hand, Id. DR relied on the order of CIT(A).

25. We have heard rival submissions and perused the material available on record. We find that in the instant case the AO has treated the short-term and long-term capital gain earned by the assessee as business income of the assessee and in appeal, the CIT(A) has confirmed the action of AO. At the outset, we find that the Tribunal in assessee's own case for the assessment year 2010-2011 in ITA No.352/CTK/2016, order dated 27.04.2018 along with other connected appeals, has allowed

the appeal of the assessee. The observations of the Tribunal in this regard are as under :-

“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 assessee. 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 CBDT 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 assesseees 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."

We agree with the ratio of judicial decision applicability to the present case and we direct the AO to treat the income under the capital gains and not as business income and allow this ground of appeal of the assessee.

26. Last ground relates to non-deduction of credit amount under provision for leave encashment disallowed in the past assessment years u/s.43B(f) of the Act. The AO made disallowance on account of provision for leave encashment u/s 43B(f) of the Act, on the ground 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 as there are no proper explanation envisaged by the assessee.

27. On further appeal before us, Id. AR of the assessee submitted this issue has been decided by the Tribunal in assessee's own case for the assessment year 2010-2011 in ITA No.352/CTK/2016 along with other appeals, order dated 27.04.2018 and prayed for allowing the appeal. Contra, Id. DR relied on the order of lower authorities.

28. We have heard rival submissions and perused the material available on record. We find that the Tribunal in assessee's own case for the assessment year 2010-2011 in ITA No.352/CTK/2016 along with other appeals, order dated 27.04.2018 relying on its earlier order has restored

the disputed issue to the file of AO. The observations of the Tribunal in this regard are as under :-

“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 Id. 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 Id. 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.”

We follow the reasoning of the Tribunal and accept the judicial precedence and remit the disputed issue to the file of AO to examine and allow the claim of the assessee. Accordingly, this ground of appeal is allowed for statistical purposes.

29. Thus, appeal of the assessee is partly allowed for statistical purposes.

30. Now, we shall take up appeal of the Revenue in ITA No.197/CTK/2017, wherein the Revenue has raised the following grounds:-

1. *In the facts and circumstances of the case, the Ld. CIT(A) is not justified in deleting the addition of Rs.8,68,70,728/- made by way of disallowance of the loss claimed on account of 're-valuation of non-moving stores and spares'.*
2. *In the facts and circumstances of the case, the Ld. CIT(A) is not justified in deleting Rs.20,50,46,948/- out of the addition of Rs.22,32,20,569/-made by way of disallowance on account of the claim of 'peripheral development expenses'.*
3. *Other grounds, if any, may be agitated at the time of hearing.*

31. Ground No.1 in appeal of Revenue argued by Id. DR is relating to disallowance of the loss claimed on account of re-valuation of non-moving stores and spares and Id. AR relied on the order of CIT(A).

32. We have decided this issue in assessee's own case for the assessment year 2011-2012 in ITA Nos.374/CTK/2014, wherein the Tribunal has observed as under :-

"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."

We respectfully follow the decision of the Tribunal in assessee's own case for earlier year and dismiss this ground of appeal of Revenue.

33. Ground No.2 in appeal of the Revenue argued by the Id. DR is relating to disallowance on account of peripheral development expenses and Id. AR relied on the order of CIT(A).

34. We have decided the issue in appeal of the assessee for assessment year 2010-2011 (ITA No.352/CTK/2016) and in ITA Nos.339&340/CTK/2016 for the assessment years 2010-2011 & 2012-2013. Ld. DR in respect of partial relief granted by the CIT(A) could not controvert or bring on record any new material to take different view. Accordingly, we dismiss the ground of appeal of Revenue.

35. Thus, appeal of Revenue is dismissed.

36. The assessee has filed cross objection i.e. CO No.10/CTK/2017 (arising out of ITA No.197/CTK/2017) for the assessment year 2013-2014, which is in supportive to the order of CIT(A). As we have dismissed the appeal of Revenue, the cross objection filed by the assessee has become infructuous, hence, the same is dismissed.

37. In the result, appeal of the assessee i.e. ITA No.211/CTK/2017 is partly allowed for statistical purposes and appeal of Revenue i.e. ITA No.197/CTK/2017 and cross objection of assessee i.e. CO No.10/CTK/2017 are dismissed.

Order pronounced in the open court on this 29/06/2018.

Sd/-
(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 29/06/2018

प्र.कु.मि/PKM, Senior Private Secretary

आदेश की प्रतिलिपि अग्रहित/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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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