

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.83/CTK/2014

(निर्धारण वर्ष / Assessment Year :2005-2006)

M/s Odisha Power Generation Corporation Ltd., 7 th Floor, Fortune Towers Chandrasekharpur, Bhubaneswar-751023	Vs.	DCIT, Circle-1(1), Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACO 4759 R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.72/CTK/2014

(निर्धारण वर्ष / Assessment Year :2005-2006)

DCIT, Circle-1(1), Bhubaneswar	Vs.	M/s Odisha Power Generation Corporation Ltd., 7 th Floor, Fortune Towers Chandrasekharpur, Bhubaneswar-751023
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACO 4759 R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

Cross Objection No.25/CTK/2014

(Arising out of ITA No.72/CTK/2014)

(निर्धारण वर्ष / Assessment Year :2005-2006)

M/s Odisha Power Generation Corporation Ltd., 7 th Floor, Fortune Towers Chandrasekharpur, Bhubaneswar-751023	Vs.	DCIT, Circle-1(1), Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACO 4759 R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Dillip Kumar Mohanty /Bhagaban Panda

राजस्व की ओर से /Revenue by : Shri D.K.Pradhan,CITDR

सुनवाई की तारीख / Date of Hearing : **09/08/2017**

घोषणा की तारीख/Date of Pronouncement **18/08/2017**

आदेश / O R D E R

Per Bench:

These are the cross appeals filed by the assessee and revenue and the cross objection filed by the assessee. Since the issues are common,

both appeals along with cross objections are heard and disposed off by this common order. For the sake of convenience we shall take up the facts narrated in assessee's appeal in ITA No.83/CTK/2014, wherein the grounds have been raised as under :-

1. *For that the order of assessment dated 28.12.2007 as well as the order of the Ld. CIT (A)-I, Bhubaneswar dated 02.12.2013 are void abinitio, against the natural justice, unjustified, erroneous, arbitrary, contrary to facts, bad in law, without jurisdiction and /or in excess of jurisdiction and legally untenable.*
2. *For that the disallowance and addition of Rs. 1,11,802/- by the Ld. A.O. and confirmed by the Ld. CIT (A), under the head Peripheral Development Expenses are not only contrary to the submission of the assessee but again based on conjecture and surmises so also against the principle of Accountancy and therefore arbitrary, unjustified and not tenable in the eyes of law. Hence liable to be deleted.*
3. *For that the disallowance of Rs. 36,219/- out of Rs. 72,437/- [on estimation 20% of Rs. 3,64,186/-] under the head entertainment expenses are not only contrary to the submission of assessee but also contrary to the documents/evidences placed before the forums below, therefore, the disallowances on estimation is arbitrary, unjustified and not tenable in the eyes of law. Hence liable to be deleted.*
4. *For that the disallowance of Rs. 53,465/- out of Rs. 1,33,662/- [on estimation 50% of Rs. 2,67,323/-] under the head miscellaneous expenses again on estimation in the case of a company maintaining accounts and are statutorily audited are contrary to the evidences/ submissions placed on record and therefore are arbitrary, unjust and not sustainable on fact and law. Hence liable to be deleted.*
5. *For that the disallowance of Rs. 3,01,105/- out of Rs. 4,51,657/- [on estimation 30% of Rs. 15,05,524/-] under the head staff welfare expenses again on estimation in the case of a company maintaining accounts and are statutorily audited are contrary to the evidences/ submissions placed on record and therefore are arbitrary, unjust and not sustainable on fact and law.*
6. *For that the exclusion of 'other income' of Rs. 15,07,63,191/- in computing the deduction U/s. 80IA which is attributable to the business of generation and sale of electricity and eligible for deduction U/s. 80IA of the Income Tax Act is based only on*

presumption conjecture and surmises so also contrary to the submissions placed before the Ld. A.O. as well as CIT (A) and as such are arbitrary, unjustified and not tenable in the eyes of law.

7. *For that the Ld. CIT (A) has erred in law not considering the increase in taxable income due to disallowance of various expenses are otherwise eligible for deduction U/s. 80IA and therefore the disallowance of various expense are to be allowed as eligible for deduction U/s. 801 A.*
8. *That the appellant craves leave to add to supplement modify the grounds herein above before or at the time of hearing of the appeal.*
9. *For these grounds and other grounds if any that will be adduced at the time of hearing, it is prayed that the order of assessment be quashed.*

2. Brief facts of the case are that the assessee is a Govt. of Odisha Enterprise and is solely and wholly engaged in the business of generation of power and has set up its power plants in odisha and filed the return of income for the assessment year 2005-2006 on 28.10.2005 with Nil income after claiming deduction under Chapter VIA and u/s.80-IA of the Act and the return of income was processed u/s.143(1) of the Act on 8.3.2006, subsequently the case was selected for scrutiny and notices u/s.143(2) & 142(1) of the Act were issued. In compliance to the notices, the Id. AR of the assessee along with assessee's administrative in-charge appeared and filed the details and produced the books of accounts. The assessee filed explanations in support of the return of income. The AO dealt on the disputed issue of claim of deduction u/s.80IA of the Act and on perusal of the submissions found that the assessee has income from the sale of power from power plants and is sold to GRIDCO as per the power charges memo and the assessee company has two units of power

generation which has commenced operation on 21.12.1994 and 20.06.1996 and the assessee has claimed deduction u/s.80IA of the Act from the assessment year 2000-01. As per Schedule 9 of the profit and loss account, the assessee has income under the other sources aggregating to Rs.15,07,63,191/-. The AO has called for the explanations as to why other income should not be excluded while computing the income eligible for deduction u/s.80IA and there is no nexus of business of generation of electricity with the other income. The AO perused the written submissions and evidence including other income for deduction u/s.80IA of the Act. The Id. AO found that for the earlier assessment years 2003-04 & 2004-05, the details were submitted by the assessee and they were rejected and as a precedent in the present assessment proceedings the AO has restricted the claim of deduction u/s.80IA of the Act to the extent of Rs.172,04,10,669/- as against the claim by the assessee Rs.187,11,73,860/-. Similarly, the AO has disallowed prior period expenses of Rs.93,640/- relating to earlier years disclosed under the expenditure head of employees remuneration & benefits. Similarly the AO made additions of Rs.1,11,802/- towards peripheral development expenses, Rs.36,219/- on account of entertainment expenses Rs.53,465/- towards miscellaneous expenses and Rs.3,01,105/- on account of staff welfare expenses and assessed total income at Rs.15,19,01,320/- and passed the order u/s.143(3) of the Act, dated 28.12.2007.

3. Aggrieved by the order of the AO, the assessee has filed an appeal with the CIT(A), who has dealt on each disputed issue. The CIT(A) with

regard to claim of deduction under Section 80IA of the Act, has considered the submissions of the assessee and relied on the assessee's own case, referred at page 6 of the order and the coordinate bench decision of Tribunal in assessee's own case in ITA No.93/CTK/2007 for the assessment year 2003-04, which referred at para 4.2.1 and confirmed the action of AO and restricted the claim of deduction u/s.80IA of the Act. On the claim of prior period expenses Id. CIT(A) was satisfied with the explanations as expenses are crystallised in the said financial year and directed the AO to delete the addition. In respect of second disputed issue on peripheral development expenses where the addition was made to the extent of Rs.1,11,802/-, the CIT(A) considered the written submissions referred at para 6.1 and dealt on the issue and confirmed the action of the AO. Similarly, the CIT(A) on the claim of expenditure under the head miscellaneous expenses considered the facts in detail and directed the AO to restrict the disallowance to 20% instead of 50% made by the AO. In respect of entertainment expenses the CIT(A) directed the AO to restrict the expenses to the extent of 10%. Further, in respect of stall welfare expenses of Rs.4,51,657/-, the CIT(A) directed the AO to restrict disallowance to the extent of 20% of the claim and partly allowed the appeal of the assessee.

4. Aggrieved with the order of CIT(A), the assessee has filed an appeal before the Tribunal.

5. Before us, Id. AR submitted that the CIT(A) was erred in confirming the addition on account of provision for miscellaneous expenses, though

such expenses has to be allowed. Ld. DR objected for allowing the ground of assessee.

5.1 We heard rival contentions and perused the material on record. The assessee's contention that the addition under miscellaneous expenses of Rs.27,146/- cannot be acceptable but on perusal of the assessment order, we find that assessee could not provide details and break up of the expenditure for allowing the claim and these expenses are claimed under the administrative expenses. In the appellate proceedings, the assessee submitted the various details of expenditure relating to subscription of newspapers, magazines, periodicals & reimburse and these materials were used for discharging official assignments. Further, the expenditure also includes payment of fees, repair & maintenance of furniture & equipments, printing charges, photography charges, purchase of different small stationeries, expenditure on binding of records Board meeting expense and other departmental meeting expenses. These facts were considered by the CIT(A) and observed that they were not filed during the course of assessment proceedings and become unverified. Therefore, the CIT(A) having considered this has restricted the claim to 20% instead of 50% made by the AO. Accordingly, we found that the CIT(A) has made a reasoned observations and took the decision and we confirm the action of the CIT(A) in restricting the disallowance to 20% and dismiss the ground of appeal of assessee.

6. With regard to the addition on account of peripheral development expenses to the extent of Rs.1,11,802/-, the Id. AR submitted that this

issue is covered in favour of the assessee in assessee's own case by the coordinate bench decision of the Tribunal in ITA No.626/CTK/2012, dated 22.10.2014, wherein the Tribunal held as under:-

29. *Before Id CIT(A), it was submitted that the peripheral development expenses were in the nature of water supply to peripheral village, boundary wall of Sahajbahal ME School, supply of furniture to the school, construction of community hall, sports expenditure, etc. They had been incurred for carrying out smooth activities and maintaining social relationship as a good corporate citizen. It was also submitted that an amount of Rs.33,12,500/- had been doubly added, which was part of Rs.1,08,77,070/- claimed by the assessee under this head. Ld CIT (A) observed that the expenditure incurred on the development of the periphery of the industry was wholly and exclusively for the purpose of business since the business could not function in isolation from the social environment. However, assessee had to establish that such expenditure was related to the advancement of the purpose of business. Following the decision for the assessment year 2004-05 under similar circumstances, payments made to District Collector, Bolangir for incurring for peripheral development was allowable, he directed the AO to allow Rs.33,12,500/- being the amount paid to Collector for peripheral development. He observed that whether the total amount of Rs.1,08,77,070/- included the amount of Rs.33,12,500/- as claimed by the assessee was to be verified by the AO. Accordingly, he directed the AO to verify the same and recompute the disallowance accordingly. However, in sum and substance, he confirmed the action of the AO following the assessment year 2004-05, by excluding an amount of Rs.33,12,500/- and confirming the addition of Rs.75,64,170/-. Being aggrieved, assessee is in further appeal before us.*

30. *At the time of hearing, Id counsel for the assessee submitted that the details of peripheral development expenses are supported with approval/voucher, etc and the same are incurred for the business of the assessee.*

31. *We have heard the rival contentions and perused the record of the case. We do not find any reason to interfere with the order of Id CIT(A) for the reasons given in respect of Ground No.6 for assessment year 2007-08 (supra). Hence, this ground is rejected.*

6.1 Ld. DR for revenue opposed to contention of Id. AR and submitted that this decision of Tribunal will not apply to the disputed issue raised by the assessee.

6.2 We following the judicial precedence, are of the opinion that the addition confirmed by the CIT(A) cannot be sustained and accordingly direct the AO to delete the addition as in the earlier years and this ground of appeal of assessee is allowed.

7. The next ground that the CIT(A) has restricted the disallowance to the extent of Rs.36,219/- of entertainment expenses, Id. AR submitted that the CIT(A) has restricted the claim which is not in accordance with law and relied on the decision of the coordinate bench of the Tribunal in assessee's own case in ITA No.554/CTK/2012 and other connected appeals. Ld.DR on the other hand, relied on the order of AO.

7.1 We have heard rival submissions and perused the material on record. We found that the very same issue has been decided by the coordinate bench of the Tribunal in assessee's own case in ITA No.554/CTK/2012, order dated 22.10.2014, wherein the Tribunal has decided the issue in favour of the assessee after observing as under :-

15. As far as Ground No.7 is concerned, facts of the case are that the Assessing Officer noticed that some of the expenses under the head 'entertainment expenses' appeared to be personal in nature. Accordingly, he disallowed 20% of such expenses on estimate basis. Before Id CIT(A), assessee submitted that the accounts had been audited and tax audit report had been filed and, therefore, the disallowance was not called for. Ld CIT(A) confirmed the AO's action observing that quite a few items were personal in nature.

16. Having heard the rival contentions, we find that the AO has disallowed 20% of the claim of entertainment expenses on adhoc basis without pointing out specific item, which allegedly were personal in nature. The assessee is a Government of Odisha Undertaking. Thus being a legal entity, no disallowance is called for particularly on the ground of the same being personal in nature. Accordingly, Ground No.7 is allowed.

We, following the judicial precedent, direct the AO to delete the addition. Accordingly, we allow this ground of appeal of the assessee.

8. Ground No.4 is that the CIT(A) has confirmed the miscellaneous expenses to the extent of 20% as against 50% of the total expenses disallowed by the AO. Ld.AR submitted that the information was submitted before the CIT(A) and the CIT(A) has not considered the submissions and allowed the partial relief. Ld.DR objected to allow the ground.

8.1 We have heard rival submissions and perused the material on record. From the perusal of the assessment order, we found that the assessee could not substantiate his arguments with the details, therefore, the AO has estimated 50% of the claim, whereas the CIT(A) considered the nature of expenditure which was filed in the appellate proceedings referred at para 8 of the order and observed that these expenditure disallowance is on the higher side and restricted the same to the extent of 20% instead of 50% by the AO. We on perusal of the orders of the lower authorities find that the action of the CIT(A) is in accordance with the circumstances and facts as the assessee could not submit the total break up of claim and we are convinced with the findings of CIT(A) which are reasonable, accordingly, we confirm the action of CIT(A) and dismiss this ground of appeal of the assessee.

9. Ground No.5 is with regard to disallowance of staff welfare expenses. The CIT(A) considered the facts and based on the evidences and submissions and finally restricted the claim to 20%. The Id. AR relied

on the decision of the Tribunal and on the other hand, Id. DR opposed to the grounds. We found that this disputed issue was considered by the coordinate bench of Tribunal in assessee's own case while deciding revenue's appeal in ITA No.636/CTK/2012, dated 22.10.2014, wherein the Tribunal decided the issue in favour of the assessee and against the revenue after observing as under :-

47. As far as Ground No.2 is concerned, the AO noticed that the assessee had incurred an amount of Rs.59,63,289/- being staff welfare expenses. For want of details, the AO disallowed Rs.8,94,493/- being 15% of Rs.59,63,289/- on estimate basis. On appeal, Id CIT(A) deleted the disallowance made by the AO on the ground that there is no finding in the assessment order that the expenditure was not related to business. Hence, department is in appeal before us.

48. Having heard both the sides, we do not find any reason to interfere with the order of Id CIT(A) since staff welfare expenditure was incurred during the course of conducting business activity of the assessee. Ground No.2 of the revenue is dismissed.

We respectfully, follow the decision of the Tribunal as discussed and we found that the staff welfare expenditure was incurred during the course of conducting business activity of the assessee company. Accordingly, we direct the AO to delete the addition and allow this ground of appeal of the assessee.

10. The last ground raised by the assessee that the CIT(A) has erred in confirming the addition of restricting the claim of deduction u/s.80IA. The Ld.AR submitted that the coordinate bench in assessee's own case has dismissed the claim and decided this disputed issue against the assessee. The assessee has filed appeal u/s.260A before the Hon'ble High Court. On the other hand, the Id. DR relied on the order of CIT(A).

We considering the facts and the issue is covered by the decision of the coordinate bench of Tribunal in ITA No.554/CTK/2012, wherein the Tribunal has held as under :-

8. *Ld CIT (A) upheld the AO's action in excluding the amount of Rs.28,28,89,089/- following the order of the CIT(A) for assessment year 2003-04, which was confirmed by the Tribunal in its order, as reproduced by the CIT(A) in the impugned order at para 3.2.1 as under:*

"We have heard both the parties and perused the record. At the outset, we would like to state that details of other income has been provided by the appellant in ground no. 5. From the same, it is absolutely clear that Rs. 14,45,50,798/- was the amount of Interest shown on short term deposits in bank and Rs.9,00,00,000/- was interest from GRIDCO bonds, which were received by the assessee in lieu of unpaid energy bills. Thus, the contention of for the assessee that Rs.9,00,00,000/- was Interest received for delayed payment of power bills by M/s. GRIDCO is not borne out of the facts on record. The assessee has not been able to show any nexus between impugned interest received by it with interest payments. Thus, we find that the disputed issue is squarely covered by the decision of the Hon'ble Apex Court in the case Pandian Chemicals Ltd. Vs. CIT [262 ITR 278 (SC)], which was followed by the Hon'ble Jurisdictional High Court in the case of Tata Sponge (I) Ltd. (supra). We hold that interest of Rs. 9,00,00,000/- was earned by the assessee from- investment of fund in GRIDCO Bond. Thus, the same cannot be considered as interest received by the appellant for late payment of electricity by the GRIDCO. In the above circumstances, we hold that the assessee is not entitled to deduction u/s.80IA w.r.t. other income of Rs,24,97,18,456/- as mentioned in ground nos.2 and 5 taken by the appellant Therefore, these grounds raised by the assessee are rejected."

9. *At the time of hearing, Id counsel for the assessee fairly conceded that above issue has been decided by the Tribunal against the assessee in earlier assessment year. However, the appeal has been filed before the Hon'ble Jurisdictional High Court and, therefore, in order to keep the issue alive, these grounds may be decided as per the decisions of earlier assessment years for the reasons given in assessment year 2003-04.*

10. *In view of above submissions of Id counsel for the assessee, we dismiss Ground Nos.2 to 5.*

We respectfully following the decision of the Tribunal and confirm the action of CIT(A) in restricting the claim u/s.80IA of the Act and we dismiss this ground of appeal of the assessee .

11. The assessee company has also made alternative claim that the disallowances made by the AO shall be eligible for claim u/s.80IA of the Act. Accordingly, we direct the AO with regard to the additions/disallowance which increases the taxable income of the assessee shall be eligible for claim u/s.80IA of the Act and accordingly order be passed. This ground of assessee is allowed for statistical purposes.

12. Thus, appeal of the assessee is allowed in part for statistical purposes.

13. Now, we shall take up the appeal filed by the revenue in ITA No.72/CTK/2014, wherein 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 in facts in deleting the addition made by the AO on account of donation of Rs. 10,00,000/- without giving the AO an opportunity in the matter.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as in facts in deleting the addition of Rs.93,640/- made by the AO on account of prior period expenses.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as in facts in restricting the addition to Rs.52,465/- in place of Rs.1,32,662/- made by the AO towards miscellaneous expenses.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as in facts in deleting the addition of Rs.2,74,933/- made by the AO on account of stores and spares written off.

5. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as in facts in restricting the addition to Rs.3,01,105/- in place of Rs.4,51,657/- made by the AO towards staff welfare expenses.*

6. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as in facts in restricting the addition to Rs.36,218/- in place of Rs.72,437/- made by the AO towards entertainment expenses.*

7. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in accepting the contention of the assessee without giving the AO a reasonable opportunity in violation of Rule 46A.*

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

14. With regard to ground No.1, Id. DR for the revenue submitted before us that the CIT(A) has erred in deleting the addition on account of donations as the assessee was unable to produce any evidence to substantiate his claim before the AO and submitted that the assessee is not eligible for deduction u/s.80G(2)(iii)(hf) of the Act. On the other hand, Id. AR for the assessee has relied on the order of CIT(A).

14.1 We have heard rival submissions and perused the material on record. We found that the assessee produced a letter of CIT, Bhubaneswar letter No.ITO (Tech.)/80G(2)(3)(hf)/R-16/2002-2003/6242 dt.26.2.2003 as per which the Orissa Chief Minister's Relief Fund is eligible for 100% deduction u/s.80G(2)(iii)(hf) of the Act before the CIT(A) in the appellate proceedings, considering the same, the Id. CIT(A) has directed the AO to allow the claim of deduction u/s. 80G(2)(iii)(hf) of the Act. We do not see any reason to interfere with the order of CIT(A) in this regard. Accordingly, this ground of revenue is dismissed.

15. In respect of ground No.2, Id. DR for the revenue submitted that the prior period expenses claimed by the assessee is relating to the earlier years is booked under the head employees remuneration and benefits. The assessee could not substantiate his claim before the AO, therefore, the AO has rightly disallowed the same but the CIT(A) has erred in deleting the addition. Ld.AR on the other hand, relied on the order of CIT(A) and the decision of the Tribunal in assessee's own case.

15.1 We have heard rival submissions and perused the material on record. Although the claim of the assessee has been crystallized during the period relevant to the impugned assessment year is not without merit and it is usual that there could be a spill-over of employees remuneration & other benefits to the subsequent financial year for valid reasons, however, looking to the small amount and considering the volume of transactions, the spill-over of small amounts to the subsequent financial year under reasonable circumstances cannot be ruled out. Accordingly, we see no reason to interfere with the findings of the CIT(A) in deleting this addition and we dismiss this ground of appeal of revenue.

16. Ground No.3 relates to miscellaneous expenses. We have already decided this issue while we have considered the appeal of the assessee in ITA No.83/CTK/2014, wherein we have dismissed this ground and decided against the assessee. Accordingly, following the same reasoning, this ground of revenue's appeal is allowed.

17. Ground No.4 relates to disallowance of stores and spares expenses. Ld. DR before us submitted that the assessee could not furnish

the details along with bills/memos before the AO, therefore, the CIT(A) has erred in deleting the addition made by the AO. On the other hand, Id. AR for the assessee relied on the order of CIT(A).

17.1 We have heard rival submissions and perused the material on record. We found that the assessee has disclosed the stores and spares expenses in question in notes and accounts and the same is consistently followed and it is usual that some shortages and obsolete stores would occur in the course of business. We are of the opinion, that the Id. CIT(A) has taken a reasonable view to delete the addition and no interference is called for in the findings of the CIT(A) in this regard. Accordingly, this ground of revenue is dismissed.

18. Ground No.5 is with regard to disallowance of staff welfare expenses. We have decided this issue in favour of the assessee while considering the appeal of the assessee in ITA No.83/CTK/2014 after relying on the observations made by the coordinate bench of the Tribunal in revenue's appeal in ITA No.636/CTK/2012, dated 22.10.2014. We respectfully, following the decision of the Tribunal and we found in the instant case that the staff welfare expenditure was incurred during the course of conducting business activity of the assessee. Accordingly, we confirm the action of CIT(A) and we decide this ground against the revenue.

19. The revenue has raised ground No.6 with regard to entertainment expenses. Ld. DR before us submitted that the expenses claimed by the assessee includes certain items which are in the nature of personal

expenses of the Directors and employees and Id. AR relied on the order of CIT(A).

19.1 We have already decided this issue while considering the appeal of the assessee in ITA No.83/CTK/2014 above, wherein following the decision of coordinate bench of the Tribunal in assessee's own case in ITA No.554/CTK/2012, order dated 22.10.2014, decided this ground in favour of the assessee and against the revenue. Accordingly, we dismiss this ground of appeal of revenue.

20. The last ground raised by the revenue is with regard to violation of Rules 46A of the IT Rules. Ld. DR submitted that the CIT(A) has accepted the submissions of the assessee without giving any opportunity to the AO, which violates the Rules 46A of the I.T.Rules. However, no evidence has been brought on record by the Id. DR to substantiate the arguments of violation of Rule 46A of the I.T. Rules. Accordingly, we do not find that there was any violation of Rule 46A of the I.T.Rules. Hence, this ground of revenue is dismissed.

21. The assessee has also filed cross objection in CO No.24/CTK/2014 arising out of revenue's appeal in ITA No.72/CTK/2014, which is supportive to the order of CIT(A). Accordingly, this cross objection of assessee is dismissed.

22. In the result, appeal of the assessee i.e. ITA No.83/CTK/2014 is allowed for statistical purposes, appeal of the revenue i.e. ITA No.72/CTK/2014 is partly allowed and the cross objection filed by the assessee in CO No.25/CTK/2014 is dismissed.

Order pronounced in the open court on this 18/08/2017.

Sd/-

(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 18/08/2017

प्र. कु. मि / PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-
M/s Odisha Power Generation Corporation Ltd.,
7th Floor, Fortune Towers
Chandrasekharpur, Bhubaneswar-751023
2. प्रत्यर्थी / The Respondent-
DCIT, Circle-1(1), Bhubaneswar
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