



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA Nos.412 & 413/CTK/2017**

Assessment Years : 2012-2013 & 2013-2014

Paradeep Phosphates Limited, 5 <sup>th</sup> floor, Bayan Bhawan, Pt Jawaharlal Nehru Marg, Bhubaneswar.	Vs.	ACIT, Corporate Circle 1(2), Bhubaneswar
PAN/GIR No.AABCP 3276 D		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri A.K.Sabat, AR  
Revenue by : Shri A.K.Mohapatra, CIT DR

**Date of Hearing : 29/08/ 2018**  
**Date of Pronouncement : /08/ 2018**

**ORDER**

**Per N.S.Saini, AM**

These are appeals filed by the assessee against the separate orders of the CIT(A)-1, Bhubaneswar both dated 18.7.2017 for the assessment years 2012-13 & 2013-14.

2. Ground No.1 of appeal of both the appeals is general in nature and hence, requires no separate adjudication by us.

3. In Ground No.2 of appeal of both the assessment years, the grievance of the assessee is that the CIT(A) erred in confirming

the disallowance of Rs.2,18,90,457/- for the assessment year 2012-13 and Rs.2,39,28,791/- for the assessment year 2013-14.

4. The brief facts of the case are that the Assessing Officer disallowed Rs.2,18,90,457/- for the assessment year 2012-13 and Rs.2,39,28,791/- for the assessment year 2013-14 u/s.40A(9) of the Act being amount paid to DAV School by the assessee for running the School in the plant premises. The assessee before the Assessing Officer submitted that payment of DAV school management was neither falling under 'setting up' nor 'formation of' nor under "as contribution to" any fund/trust etc, and, therefore, the same was allowable as business expenditure which was not accepted by the Assessing Officer. According to the Assessing Officer, the claim was covered under the provisions of section 40A(9) of the Act and, accordingly disallowed the same for both the assessment years.

5. On appeal, the CIT(A) confirmed the disallowance made by the Assessing Officer.

6. Before us, Id A.R. of the assessee submitted that this issue is covered by the decision of this Bench of the Tribunal in ITA No.264/CTK/2015 for the assessment year 2010-2011 order dated 4.8.2017.

7. Ld D.R. could not controvert the above submission of Id A.R. of the assessee.

8. After considering the rival submissions and perusing the orders of lower authorities, we find that similar disallowance was made by the authorities below in the assessment year 2010-2011 and this Bench of the Tribunal has deleted the disallowance made u/s.40A(9) of the Act. The relevant discussion in the said decision read as under:

"23. Ld A.R. relied on the decision of Delhi Benches of the Tribunal in the case of DCIT vs. Gujarat Guardian Ltd., (2006) 152 Taxman 37 (Del) (Mag), wherein, the assessee had incurred an expenditure of Rs.10 lakhs towards contribution to a school and the Assessing Officer disallowed the same u/s.40A(9) of the Act, which bars deduction of contribution made by an employer to any fund, trust, etc, for the benefit of employees. On appeal, the CIT(A) allowed the deduction by following the decision of the Delhi Benches of the Tribunal in the case of Modi Rubber Ltd vs IAC(IT Appeal Nos.6227 (Delhi) of 1986 and 142 (Del) of 1987 dated 29.1.1993. On further appeal, the Tribunal confirmed the order of the CIT(A).

24. Further, Id A.R. relied on the decision of Hon'ble Kerala High Court in the case of CIT vs N.Radhakrishnan, (2000) 243 ITR 284 (Ker) where the assessee a public sector undertaking engaged in the manufacture and sale of certain chemicals claimed in the assessment year 1985-86, deduction for payment of Rs.5,34,406/- made to FACT school where children of its employees were studying by way of reimbursement of the school's proportionate expenditure on the ground that the same was allowable under section 40A(10) and section 37(1) of the Act as expenditure was incurred for welfare of the employees and for business purposes. However, the Assessing Officer disallowed the claim observing that the payment had no

direct relation with the business activity of the assessee and was more or less in the nature of a donation. The CIT(A) confirmed the disallowance. On appeal, the Tribunal accepted the assessee's claim on the ground the said contribution was for business purposes. On further appeal, Hon'ble High Court held that the expenditure met by the assessee was wholly and exclusively for the welfare of its employees and also for carrying on business of the assessee company more efficiently by having a contended labour force. It was neither a donation covered under section 40A(9) nor a capital in nature not covered by section 37(1) of the Act.. Hence, the Tribunal was justified in allowing the above expenditure towards contribution for the running of the FACT School, as an expenditure for the smooth functioning of the business of the assessee and an expenditure wholly and exclusively for the welfare of the employees of the assessee and thus, allowable under section 37(1) as well as section 40A(10) of the Act.

25. Ld D.R. though relied on the orders of lower authorities but could not cited any contrary decisions before us.

26. After considering the rival submissions and perusing materials available on record, we find that the issue at hand is squarely covered by the decision of Hon'ble Kerala High Court in the case of N.Radhakrishnan quoted above. Respectfully following the same, we set aside the orders of lower authorities and delete the disallowance of Rs.1,74,85,684/- made u/s.40A(9) of the Act and allow the ground of appeal of the assessee."

9. Facts being similar in the assessment years under consideration, respectfully following the precedent, we set aside the orders of lower authorities and delete the disallowance Rs.2,18,90,457/- for the assessment year 2012-13 and Rs.2,39,28,791/- for the assessment year 2013-14 and allow the ground of appeal of the assessee.

10. In Ground No.3 of appeal for the assessment year 2012-13, the grievance of the assessee is that the CIT(A) erred in confirming the disallowance made for non-deduction of compensation received from Government of India towards loss on sale of GOI Bond of Rs.25,49,21,000/-

10. Before us, Id A.R. of the assessee submitted that the assessee has claimed 'diminution in the value of GOI Bonds' as allowable expenses in earlier years. Hence, when Government of India gave compensation of Rs.25.49 crores @ 50% of loss incurred by the assessee, the same amount was offered for taxation as an income in the return of income. Since the department disallowed the claim of the assessee for the earlier assessment years, the assessee claimed before the Assessing officer not to consider Rs.25.49 crores as income being compensation @ 50% against losses in diminution received from GOI since it would tantamount to double taxation by way of disallowing 100% of 'diminution' in earlier assessment years and with further taxing 50% compensation received from GOI against losses and making the same as taxable income. Ld A.R. submitted that the ITAT, Cuttack has allowed the diminution in value of GOI Bonds as allowable expenditure/loss vide order dated 27.4.2018 in ITA No.560/CTK/2013 & ITA No.02/CTK/2013

(Asst.Year 2009-2010), the compensation of Rs.25.49 crores received will be taxable as already offered by PPL in return of income and, accordingly, the ground becomes redundant.

11. In view of the above submission of Id A.R of the assessee, we dismiss the ground of the appeal of the assessee.

12. In Ground No.3 of appeal for the assessment year 2013-14, the grievance of the assessee is that the CIT(A)erred in not allowing non-deduction of gain on account of appreciation in valuation of GOI Bonds of Rs.21,24,60,000/-.

13. Before us, Id A.R. submitted that in the past assessment years 'diminution in value of GOI Bonds' claimed as loss by PPL were not allowed. In view of above, appreciation in value of GOI Bonds of Rs.21,24,60,000/- offered by the assessee as taxable income in return of income ought not to be taxable and the authorities below should have considered such issue suo-motto as consequential issue (due to disallowances made by them earlier). He submitted that that this Bench of the Tribunal has allowed the 'diminution in value of GOI Bonds as loss/allowable expenditure vide its order dated 27.4.2018 in ITA No.560/CTK/2013 and ITA No.02/CTK/2013 (Asst.Year 2009-2010), such appreciation/gain in value of GOI Bonds becomes taxable as rightly offered in the return of income by the assessee.



Hence, the ground becomes redundant.

14. In view of the above submission of Id A.R of the assessee, we dismiss the ground of the appeal of the assessee.

15. In the result, appeals filed by the assessee are partly allowed.

Order pronounced on 29/08/2018.

Sd/-

sd/-

**(Pavan Kumar Gadale)**  
**JUDICIALMEMBER**

**(N.S Saini)**  
**ACCOUNTANT MEMBER**

Cuttack; Dated 29 /08/2018  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : PPI, Bhubaneswar
2. The Respondent. ACIT, Corporate Circle, Bhubaneswar.
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

**Sr. Pvt. Secretary,  
ITAT, Cuttack**