आयकर अपीलीय अधिकरण, कटक न्यायपीठ,कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM

ITA No.333/CTK/2014 (AY : 2007-2008)
ITA No.381/CTK/2015 (AY : 2006-2007)
ITA Nos.92,93&375/CTK/2016(AY:2010-11 to 2012-2013)
ITA No.271/CTK/2017 (AY : 2013-2014)

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

AND

ITA No.374/CTK/2016 (AY : 2012-2013)
ITA No.243/CTK/2017 (AY : 2013-2014)

DCIT, Circle-2(1), Bhubaneswar	Vs.	Orissa Mining Corporation Ltd. OMC House, Bhubaneswar-01
स्थायी लेखा सं/PAN No. : **AAACO 3324 L**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

निर्धारिती **की ओर से** /Assessee by	:	Shri P. Venugopal Rao & Shri Sidhartha Ranjan, ARs
राजस्व **की ओर से** /Revenue by	:	Shri Subhendu Dutta, DR

सुनवाई की तारीख / **Date of Hearing**	:	**25/09/2019**
घोषणा की तारीख/**Date of Pronouncement**	:	**16/10/2019**

आदेश / O R D E R

Per Bench :

These are the cross appeals filed by the assessee and Revenue against the separate orders of CIT(A)-I, Bhubaneswar for the assessment years 2006-07, 2007-08, 2010-11, 2011-12, 2012-13 & 2013-14

2. Since issues in all the appeals are common, they were heard together and disposed of by this common order. First we shall decide appeal of the assessee for the assessment year 2007-2008 in ITA No.333/CTK/2014, wherein the assessee has taken the following grounds :-

1. *Disallowance of Periphery Development expenses amounting to Rs.2,25,03,777/- on the ground that they are not incidental to business is bad in law and incorrect.*

2. *Disallowance of the claim of additional depreciation of Rs. 44,31,012/- on addition to assets during the relevant assessment year is illegal and not in line with the provisions of income tax Act, 1961.*

3. *Disallowance of mine closure plan (MCP) expenses of Rs.1,97,00,000/- being a provision is incorrect and bad in law as the said expenditure have been accounted for on accrual basis in terms of Mineral Conservation & Development (Amendment) Rule, 2003.*

4. *Disallowance of deduction under section 80G of Rs.7,52,58,750/- arbitrarily is unjust and bad in law.*

5. *For that the appellant has submitted all relevant documents at the time of several hearings before the Ld. CIT (A) which he has not considered which is unjust and therefore bad in law.*

6. *That the appellant craves leave to add or to amend the above grounds of appeal before or at the time of hearing of the appeal.*

7. *For these and among other grounds to be u.ged at the time of hearing, adequate relief as may be deemed fit be granted in the matter.*

3. Facts in brief are that the assessee is engaged in mining and trading of minerals, COBP Plant, Ore Handling Plant etc. and following Mercantile System of accounting and filed the return of income for the assessment year 2007-2008 with total income at Rs.686,31,84,470/-

and the return of income was processed u/s.143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s.143(2) and 142(1) of the Act along with questionnaire were issued to the assessee. In compliance to the notice, ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. The AO on perusal of the financial statements has made addition in respect of peripheral development expenses, depreciation, mine closure plan and disallowance u/s.80-G and assessed the total income at Rs.723,25,24,529/- and passed order u/s.143(3) of the Act, dated 26.03.2013. On appeal, the CIT(A) dismissed the appeal of the assessee. Now, the assessee is in further appeal before the Income Tax Appellate Tribunal for the assessment years under consideration.

Ground No.1 : Disallowance of Peripheral Development Expenses amounting to Rs.2,25,03,777/-.

4. The AO made the addition of periphery development expenses alleging that he is unable to verify as to whether the expenditure incurred was incidental to the business of the assessee or not. In appeal, the CIT(A) has confirmed the addition made by the AO on the ground that the said expenses are not incidental to the business of the assessee.

5. Ld. AR before us submitted that the issue is squarely covered in favour of the assessee by the order of this Tribunal in assessee's own case in ITA Nos. 69 & 183/CTK/2014, for the assessment year 2010-11 & 2011-12, order dated 17.05.2018, whereas ld. DR supported the order of CIT(A).

6. We have heard rival submissions and perused the material available on record. The disputed issue of claim of peripheral development expenses as envisaged by the ld. AR is incurred exclusively for the purpose of business and allowable, whereas ld. DR submitted that there is no nexus of claim of expenditure in assessee's business and referred to CIT(A) order. We find that the Tribunal in assessee's own case for the assessment year 2010-2011 & 2011-2012 in ITA No.69&183/CTK/2014, order dated 17.05.2018 at para 7 has restored the matter to the file of AO relying its earlier order dated 20.09.2017 passed in ITA No.177/CTK/2013 for A.Y.2009-2010, after observing as under :-

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

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

> *Respectfully following the order of the Tribunal, we restore the disputed issue to the file of AO to examine and check the genuineness of claim and pass order on merits after providing adequate opportunity of hearing to the assessee and this ground of appeal for i.e. A.Y.2010-2011 & 2011-2012 is allowed for statistical purposes."*

Respectfully following the above observations of the Tribunal, we restore this issue to the file of AO to examine the genuineness of the claim of the assessee and pass order accordingly after providing adequate opportunity of hearing to the assessee. Accordingly, ground No.1 of appeal of the assessee is allowed for statistical purposes.

Ground No.2 : Disallowance of Additional Depreciation of Rs.44,31,012/-

7. During the course of assessment proceedings, the assessee stated that additional depreciation claimed by the company on additions to assets during the year amounting to Rs.44,31,012/- has not been

considered. However, the AO did not accept the contention of assessee and added the difference amount of Rs.44,31,012/- back to the total income of the assessee. In appeal the CIT(A) observed that the assessee could not explain in what manner the findings of AO are not correct and confirmed the disallowance on account of additional depreciation made by the AO.

8. Before us, ld. AR submitted that during the course of assessment the assessee furnished details of depreciation claimed along with additional depreciation for additions to Plant & Machinery made during the year. The Tax Auditor's report on depreciation claimed u/s.44AB was also furnished to substantiate the additional claim of depreciation. However, the AO refused to take cognizance of the fact and simply ignored the claim of additional depreciation. It was also the contention of ld. AR that during the year the assessee made additions to plant & machinery amounting to Rs.2,90,31,535/- which consist of Rs. 1,52,78,585/- being more than 6 months and Rs. 1,37,52,950/- being less than 6 months. Drawing our attention to the table mentioned in the page 3 of the paper book, ld. AR submitted that additional depreciation as per the law @ 20% for more than 6 months and @10% for less than 6 months was claimed. Ld. AR also drew our attention to Annexure-2 placed at page 23 of the paper book, which is audit report, and

submitted that the assessee has correctly claimed the additional depreciation and the disallowance made on this account is unjustified and the same deserves to be deleted.

9. On the other hand, ld. DR relied on the orders of lower authorities.

10. After considering the rival submissions of both the parties and perusing the entire material placed on record along with the orders of both the authorities below, we find that the AO made the disallowance of depreciation on the basis that the explanation of the assessee was not convincible and in the same line, the CIT(A) also upheld the action of AO as the assessee could not substantiate his claim properly. Now, the ld. AR drawing our attention to the audit report placed in the paper book at page 23, submitted that the tax auditor's report was submitted before both the authorities below to substantiate the additional claim of depreciation, however, both the authorities below have not considered the same, therefore, ld. AR submitted that the issue may be restored to the file of AO for consideration of the tax audit report and allow the additional depreciation. Ld. DR has no objection if the issue is set aside to the file of AO for further verification. Accordingly, we restore the issue of additional depreciation to the file of AO for further verification and pass order as per law after considering the

documents/evidences. Needless to say, the assessee should be given reasonable opportunity of hearing. The assessee is also directed to cooperate with the AO for early disposal of the issue. Ground No.2 of appeal of the assessee is allowed for statistical purposes.

Ground No.3: Disallowance of Mine Closure Plan (MCP) expenses of Rs.1,97,00,000/-

11. At the outset, ld. AR before us submitted that this issue has been decided by the Tribunal in ITA No.69/CTK/2014 along with other connected appeals, order dated 17.05.2018 for the assessment year 2010-2011. On the other hand, ld. DR relied on the order of both the lower authorities.

12. After considering the submissions of both the sides and perusing the entire material available on record on the issue in question, we find that the very similar issue has been decided by this bench of the Tribunal in the case of M/s Mahanadi Coalfields Ltd. in ITA No.181/CTK/2018 vide order dated 24.09.2019, wherein the Tribunal in para 14 has observed as under :-

> *14. After hearing both the parties and perusing the entire material available on record along with the order of the tribunal, as placed by the ld. AR, we find that the Tribunal has already dismissed this issue while considering the appeal of the Revenue in ITA No.397/CTK/2013 along with other connected appeals, order dated 20.03.2018, for the assessment years 2010-2011 to 2014-2015. However, before us ld. AR submitted that the provision was made for Rs.115.41 crores and he also submitted that the above amount mines wise has been transferred to the Escrow Account as*

> *per the guidelines dated 07.01.2013 issued by the Ministry of Coal, Govt. of India. But on being asked by the bench as to when the above provision amount was paid, the ld. AR was unable to explain the same before us. Therefore, this issue is sent back to the file of AO for verification as to when the provisions were made by the assessee in his books of accounts as per the guidelines issued by the Ministry of Coal (supra) and paid for claiming the deductions as per the provisions of Income Tax Act. Accordingly, this ground of Revenue is allowed for statistical purposes.*

Respectfully, following the above observations of the Tribunal in the case of M/s Mahanadi Coalfields Ltd. (supra), we restore this issue to the file of AO for verification as to when the provisions were made by the assessee in his books of accounts as per the guidelines issued by the Government of India and paid for claiming the deductions as per the provisions of Income Tax Act. Accordingly, this ground of Revenue is allowed for statistical purposes.

Ground No.4&5 : Disallowance of deduction u/s.80G of the Act at Rs.7,52,58,750/-

13. The assessee has claimed deduction of Rs.9,72,68,750/- towards donation u/s.80-G of the Act. The AO found that the donation of Rs.5,00,00,000/- was paid to CM's relief fund during F.Y.2005-06 vide Cheque No.326840 dated 29.03.2006. Therefore, the AO did not allow the same in the year under consideration. The CIT(A) in appeal confirmed the addition made by the AO holding that the claim of the assessee is not related to the impugned assessment year.

14. Before us, ld.AR, at the outset, drew our attention to the page No.37 of the paper book regarding donation received by the Director, Environment-Cum-Spl. Secretary to Government of Odisha acknowledging that amount of Rs.5 crores received towards contribution of assessee-OMC to Orissa Environment Management Fund Trust. Ld. AR also drew our attention to page 40 of the paper book regarding donation made to Chief Minister's Relief Fund bearing Cheque No.231855, dated 31.03.2007. And, ld. AR submitted that the donations made by the assessee deserves to be allowed u/s.80-G of the Act. On the other hand, ld.DR relied on the orders of authorities below.

15. After considering the rival submissions of both the parties and perusing the entire material placed on record along with the orders of both the authorities below as well as the documents filed by the assessee in the form of paper book, we find that the assessee has made donations of Rs.5 corers through Cheque No.324545 dated 31.03.2007 to Orissa Environment Management Fund Trust and Rs.5 crores to Chief Minister's Relief Fund vide Cheque No.231855, dated 31.03.2007. From the documents submitted by the assessee before us, we find that the letter of acknowledgement issued by the Director, Environment-Cum-Spl. Secretary to Government of Odisha is dated 03.05.2007 and in the letter it is mentioned that the date of cheque is 31.03.2007.

Similarly, the letter of acknowledgement issued by the Special Secretary to Government of Odisha is dated 09.04.2007 and in the letter it is mentioned that the date of cheque is 31.03.2007. Ld. AR also filed statement of bank account and submitted that both the transactions have been made during the year under consideration i.e. assessment year 2007-2008, therefore, the donations paid by the assessee may be allowed u/s.80-G of the Act. From the above submissions of the assessee and on perusal of the documents placed before us in the form of paper book by the assessee, we are of the opinion that the issue requires verification on the part of the AO. Accordingly, we remit this issue to the file of AO for further verification and the assessee is directed to submit the documents substantiating the claim that the donations have been paid during the impugned assessment year. Needless to say the assessee should be given sufficient opportunity of hearing. Ground Nos.4&5 of appeal of the assessee are allowed for statistical purposes.

16. Grounds No.6 & 7 are general in nature, which do not require any adjudication.

17. Thus, appeal of the assessee for A.Y.2007-2008 in ITA No.333/CTK/2014 is allowed for statistical purposes.

18. Now, we shall take appeal of the assessee in ITA No.375/CTK/2016, for A.Y.2012-2013 wherein the assessee has taken following grounds of appeal :-

> 1. *Disallowance of periphery development expenses of Rs. 3.28 crores on the ground that the expenditure incurred is not related to the business of the assessee is incorrect and bad in law.*
>
> 2. *As the prior period expenditure amounting to Rs.1.36 Crores was crystallized during the year, adding back the expenditure on the ground of not having been accounted on mercantile system is bad in law.*
>
> 3. *Disallowance of mine closure plan (MCP) of Rs.1.97 Crores being a provision is incorrect and bad in law as the said expenditure have been accounted on accrual basis in terms of Mineral Conservation & Development (Amendment) Rule, 2003.*
>
> 4. *That the appellant craves leave to add or to amend the above grounds of appeal before or at the time of hearing of the appeal.*
>
> 5. *For these and among other grounds to be urged at the time of hearing, adequate relief as may be deemed fit be granted in the matter.*

19. Ground Nos.4 & 5 are general in nature and therefore, the same do not require any adjudication.

20. Ground No.1 & 3 are similar to the grounds decided by us somewhere in the above para while deciding the appeal of the assessee for A.Y.2007-2008, wherein we have restored both the issues to the file of AO for further verification. Therefore, in the light of the observations made in the appeal of the assessee for A.Y.2007-2008, both these

grounds are also remitted back to the file of AO for further verification. Accordingly, ground Nos.1 & 3 are allowed for statistical purposes.

21. Ground No.2 relates to disallowance made on account of prior period expenses amounting to Rs.1.36 crores.

22. At the outset, ld. AR before us submitted that this issue has been decided by the Tribunal in ITA No.69/CTK/2014 along with other connected appeals, order dated 17.05.2018 for the assessment year 2010-2011. On the other hand, ld. DR relied on the order of both the lower authorities.

23. We have also gone through the order of the Tribunal dated 17.05.2018 in assessee's own case for the assessment year 2010-2011 and found that the Tribunal has decided the issue relying on the decision of this bench of the Tribunal in assessee's own case for A.Y.2009-2010, in ITA No.177/CTK/2013, dated 20.09.2017. The relevant observations of the Tribunal are as under :-

> *11. We have heard rival submissions and perused the material available on record. We find that this disputed issue is covered by the decision of Tribunal relied in assessee's own case for the assessment year 2009-2010 in ITA No.177/CTK/2013, order dated 20.09.2017 and the Tribunal has decided the issue in favour of the assessee and restored the matter to the file of AO. The observation of the Tribunal is as under :-*
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> > *"8. On the second disputed issue of prior period expenditure the ld. AR submitted that assessee has complete information on the claim and prayed for an opportunity to submit. On the query from the bench to the ld. AR to explain with reasons for non-filing details before the AO, the AR's explanations are not convincing. We find the prior period expenditure claim was dealt*

by the coordinate bench of this Tribunal in assessee's own case in ITA No.551/CTK/2012, order dated 18.12.2012 at para 9.1 page 9 where the Tribunal has dealt on the each issue of prior period expenses which reads as under :-

> *9.1. On the second issue being prior period expenses, we find the contention of the learned Counsel of the assessee justified that it is nobody's case that the accounting of prior period expenses have to be otherwise. A practical method of accounting is considered mercantile when the concept of deriving real income in the hands of the assessee in year to year basis is a mundane requirement insofar as income tax is levied for the impugned Assessment Year only. The very intention on the basis to claim it as prior period expenses indicates that these expenses were not known to them but pertain to that year and they could not have been accounted in the year when they may have accrued which deficiency was required to be fulfilled by the learned CIT(A) when the substantial amount was deleted by him as computed by the Assessing Officer as prior period expenses. The sustenance of part addition on account of prior period expenses have been dealt item- wise by him in his order, which we are inclined to reproduce as follows, has to be considered otherwise.*
>
> *(i) Pay & allowances - Rs.968,561/- : This was stated to be arrear salary paid to Shri Barinder Singh. It is seen that the order of reinstatement was passed on 16.11.2006 in case of this officer and his leave for the preceding period was sanctioned on 16.03.2007 along with sanction of increments for the preceding years on that day. On the basis of these orders passed by the OMC, the liability had crystallized in financial year 2006-07 and in 2007-08;*
>
> *(ii) Arrear salary - Rs.3,11,927/- :- Arrear salary of Rs.3,11,927/- consisted of leave salaries only. A copy of the order from AG, Odisha was filed in respect of Dr. Umakanta Mishra amounting to Rs.1,34,610/-. Since this order is dated 10.08.2007, the amount is allowable as the liability crystallized during financial year 2007-08. In respect of the balance amount no details or evidences were furnished;*
>
> *(iii) Miscellaneous expanses;- Miscellaneous expenses relate to supply of explosives during financial year 2004-05 and, hence, provision should have been made in that year. In any case, no evidence was furnished that the same accrued during the year;*

(iv)Repair to the building - Rs.4,35,364/-: This amount relates to purchase of GGI sheets on 30.12.2005 and repairs in pursuance to agreement entered in financial year 2004-05. Accordingly, the provision should have been made during that year. In any case, no evidence was furnished that the same accrued during the year;

(v)Raising expenses- Rs.12,02,510/-: These expenses mostly consist of raising of mineral ore at Dubna mines for 1998-99, 1999-2000, 200001 and 2001-02, also includes over burden cutting in 2001 and in respect of agreements/activities done in , 2001-02. Accordingly, provisions should have been made in 'Those years in respect of these expenses. In any case, no / evidence was furnished that the same accrued during the year.

vi) Rent, rates & taxes — Rs.4,58,432/-: In fact, these are rent paid for private plots taken on lease by OMC. As per details filed, the rent was finalized by the Managing Director of the assessee on 16.12.2006. Thus, the provision should have been made in the financial year 2006-07. In any case, no evidence was furnished that the same accrued during the year.

(vii) R&M to machinery — Rs.23,02,201/-: The work by M/s. Mcnall Bharat is in response to work order of the assessee dated 31.10.2002 and the bills were raised by this concern on the assessee on 09.12.2004, 24.10.2006, 05.09.2000 and 05.09.2003. Accordingly, provision should have been made in the relevant financial years. In any case, no evidence was furnished that the same accrued during the year."

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

> *as prior period expenses on the basis they having been actually incurred in the impugned Assessment Year has been declared as prior period expenses in accordance with the concept of mercantile system of accounting. In this view of the matter, we are of the considered view that the prior period expenses are bound to be allowed in the impugned Assessment Year having crystallized in the impugned Assessment Year. Therefore, the part confirmation of the addition made by the learned Assessing Officer on this count is therefore directed to be deleted.*
>
> *Whereas the assessee in the assessment proceedings could not substantiate the claim with proper explanations and evidence, therefore, in the interest of substantial justice, we provide one more opportunity as prayed by the ld. AR to represent its case before the AO with the evidences/documents of prior period expenses and the AO shall examine the genuineness and crystallisation of the expenses in the financial year and assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information. Accordingly, we restore the disputed issue to the file of AO and allow the grounds of appeal of the assessee for statistical purposes."*

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

Following the above observations of the Tribunal, we also restore this issue to the file of AO for examination of genuineness and crystallization of the expenses in the financial year. Needless to say the assessee shall be given reasonable opportunity of hearing. Ground No.3 is allowed for statistical purposes.

24. Thus, appeal of the assessee for A.Y.2012-2013 in ITA No. 375/CTK/2016 is allowed for statistical purposes.

25. Now, we shall take appeal of the assessee in ITA No.271/CTK/2017, for A.Y.2013-2014 wherein the assessee has taken following grounds of appeal :-

1. *Disallowance of periphery development expenses of Rs. 2.59 Crores on the ground that the expenditure incurred is not related to the business of the assessee is incorrect and bad in law.*

2. *As the prior period expenditure amounting to Rs.1.17 Crores was crystallized during the year, adding back the expenditure on the ground of not having been accounted on mercantile system is bad in law.*

3. *Disallowance of mine closure plan (MCP) of Rs.1.97 Crores being a provision is incorrect and bad in law as the said expenditure have been accounted on accrual basis in terms of Mineral Conservation & Development (Amendment) Rule, 2003.*

4. *That the appellant craves leave to add or to amend the above grounds of appeal before or at the time of hearing of the appeal.*

5. *For these and among other grounds to be urged at the time of hearing, adequate relief as may be deemed fit be granted in the matter.*

26. Ground Nos.4 & 5 are general in nature and therefore, the same do not require any adjudication.

27. Ground No.1 & 3 are similar to the grounds decided by us somewhere in the above para while deciding the appeal of the assessee for A.Y.2007-2008, wherein we have restored both the issues to the file of AO for further verification. Therefore, in the light of the observations made in the appeal of the assessee for A.Y.2007-2008, both these grounds are also remitted back to the file of AO for further verification. Accordingly, ground Nos.1 & 3 are allowed for statistical purposes.

28. Ground No.2 relates to disallowance made on account of prior period expenses amounting to Rs.1.17 crores.

29. This issue is similar to the ground decided by us somewhere in the above para while deciding the appeal of the assessee for A.Y.2012-2013 in ITA No.375/CTK/2016, wherein we have restored the issue to the file of AO for for examination of genuineness and crystallization of the expenses in the financial year. Therefore, in the light of the observations made in the appeal of the assessee for A.Y.2012-2013, this ground is also remitted back to the file of AO for for examination of genuineness and crystallization of the expenses in the financial year. Accordingly, ground No.2 is allowed for statistical purposes.

30. Thus, appeal of the assessee for A.Y.2013-2014 in ITA No.271/CTK/2017 is allowed for statistical purposes.

31. Now, we shall take the appeal of the assessee for A.Y.2006-2007, in ITA No.381/CTK/2015, wherein the assessee has taken the following grounds :-

1. *Disallowance of Periphery Development expenses u/s 147 of the IT. Act, 1961 amounting to Rs.20,23,92,256/- on the ground that it is not incidental business is bad in law and incorrect.*

2. *The said expenditure was accepted by the then Ld. Assessing Officer (AO) in the reassessment u/s 147 dtd. 21.03.2011 and hence, subsequent rejection of the same in the subsequent re-assessment tantamount to change of opinion and therefore is not valid.*

3. The said expenditure incurred amounting to Rs.35,88,55,396/- includes not only Periphery Development expenses but also CSR expenses of OMC.

4. That the appellant craves leave to add or to amend the above grounds of appeal before or at the time of hearing of the appeal.

5. For these and among other grounds to be urged at the time of hearing, adequate relief as may be deemed fit be granted in the matter.

32. Ground Nos.4 & 5 are general in nature and therefore, the same do not require any adjudication.

33. Ground No.1, 2 & 3 are similar to the grounds decided by us somewhere in the above para while deciding the appeal of the assessee for A.Y.2007-2008, wherein we have restored both the issues to the file of AO for further verification. Therefore, in the light of the observations made in the appeal of the assessee for A.Y.2007-2008, both these grounds are also remitted back to the file of AO for further verification. Accordingly, ground Nos.1, 2 & 3 are allowed for statistical purposes.

34. Thus, appeal of the assessee in ITA No.381/CTK/2015 for A.Y.2006-2007 is allowed for statistical purposes.

35. Now, we shall take up the appeals of the assessee in ITA Nos.92&93/CTK/2016 for the assessment years 2010-2011 & 2011-2012 arising out of the order of CIT(A) in confirming the penalty levied u/s.271(1)(c) of the Act.

36. At the outset, ld. AR submitted that the AO has deleted the penalty for the A.Y.2010-2011 & 2011-2012 as per the direction of the Tribunal for the above assessment years in ITA No.69&183/CTK/2014, therefore, when the returned income of the assessee has been accepted by the AO, then there is no question of penalty arises. Accordingly, ld. AR submitted that the penalty levied in both the years under consideration may kindly be deleted. On the other hand, ld.DR did not controvert to the above submissions of the assessee.

37. After hearing both the sides and perusing the entire material on record, we find that the issue/addition/disallowance on which basis the AO has levied penalty, has been decided by the Tribunal vide order dated 17.05.2018 passed in ITA Nos.69&183/2014. As submitted by ld. AR before us that the penalty has been deleted by the AO considering the direction of the Tribunal in the assessee's own case vide order dated 17.05.2018. Accordingly, the penalty proceedings initiated by the AO for both the years under consideration have become infructuous as the same has already been deleted by the AO. Thus, both the appeals of the assessee in ITA No.92&93/CTK/2016 are dismissed as has become infructuous.

38. Thus, appeals of the assessee in ITA No.92&93/CTK/2016 for A.Ys.2010-2011& 2011-2012 are dismissed.

39. Now, we shall take both appeals of the Revenue in ITA No.374/CTK/2016 & ITA No.243/CTK/2017 for the assessment years 2012-2013 & 2013-2014. Similar grounds have been taken by the Revenue in both the appeals except different in figure. For the sake of convenience we shall take into consideration the grounds taken by the Revenue for A.Y.2012-2013 as under :-

> 1. *That on the facts and circumstances of the case, the Ld. CIT (A) erred in law by deleting the addition made by the AO on account Net Present Value(NPV), when the assessee had not submitted any evidence in the course of assessment u/s. 143(3) of the I.T Act, 1961.*
>
> 2. *On the facts and in the circumstances of the case, the. Ld. CIT (A) has erred in law in not accepting the examination of findings made by the AO on the issue.*
>
> 3. *The appellant craves to alter, amend or add any other ground that may be considered necessary in course of the appeal proceeding.*

40. The sole ground raised by the Revenue in both the appeals is with regard to deleting the addition made on account of NPV payment.

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

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

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

> *"15.Having heard both parties on this issue we are of the considered view that the learned CIT(A) has given full credence to the finding of the Assessing Officer to the moot question whether it was the Assessing Officer's endeavor to adopt a particular method of valuation being fully aware of the fact that being a public sector undertaking it was to maintain its account on mercantile system of accounting when the cost determined by it to value its stock was in accordance with the principles of accounting standard followed by the assessee insofar -as the learned Counsel of the assessee has submitted that the method of accounting has been prescribed by the I.T.Act,1961 u/s.145 and the Accounting Standards notified have to be adopted for the provisions of Section 145(2). Therefore, the valuation of inventories as inscribed by the AS-2 indicate that the inventories of mining industries are to be measured at net realizable value in accordance with the well established practice in those industries. This means that the assessee has the option to choose the lower of the cost or net realizable value consistently when the net realizable value has been defined as estimating of selling price in the ordinary course - of business being less than estimated cost of completion and the estimated cost necessary to make the sales. It is not the case of the assessee that the net realizable value is not known or could not be known which can be known at the time of sale only. But in or to adopt the consistent system of valuation at lower of cost or net realizable value the assessee determined that the cost would be less than the realizable value. Therefore, there could be variety of revenue recognition as inscribed in AS-9 which was also considered by the learned CIT(A) in detail and distinguished by the learned CIT(A) to hold that when a sale is assured in a forward contract or the Government guarantee or were market exists and there is a negligible risk of failure of sale, the goods involved are often valued at net realizable value. Such amounts while not revenue as defined in the Accountant Standard are sometimes recognized in the statement of profit & Loss appropriately described (refer to Mahanadi Coal Field Ltd's ITAT decision). Now the*

learned CIT(A) therefore proceeded to consider the revenue recognition method in detail when the accounting policy were to be dealt with by the learned CIT(A) on the implement of non-compliance with the Accounting Standard as enumerated by the Institute and the accounting standard as enumerated by the I.T.Act. He noted that the qualifications disclosure may or may not have any impact— on the computation of total stock for the purpose of the Act when Section 145 provides that Section should be followed by the assessee to whom they are applicable. Section 44AB therefore requires the assessee to maintain a report on accounts of relevant information furnished in Form 3CD. Form 3CD vide clause 11(d) requires reporting of the details of deviation, if any, in the method of accounting employed in the previous year from accounting standards prescribed under Section 145 and the effect thereof on the profit or loss. Therefore, he considered the nullity to be brought out by the Assessing Officer there being no material difference between the AS(IT-I) and AS(IT-II) notified by the Government and corresponding AS-1 and AS-5 of the Chartered Accountants Institute of India. Therefore, considering the totality of the facts and on the fact finding that whether the Assessing Officer was to adopt this valuation being higher than the cost input of the assessee for the subsequent year would be available to it for the purpose of at the time of the opening stock which would be sold whether the income being the realizable value to be reduced from the income rendered to tax by the assessee was not answered in the affirmative. We, therefore, do not find any infirmity in the order of the learned CIT(A) who has rightly deleted the addition of Rs.373.89 crores on the facts and circumstances which have been elaborately brought out in his order, which needs no interference. We uphold the same.

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

We respectfully following the judicial precedence do not see any reason to interfere in the order of CIT(A) and we uphold the same and dismiss this ground of appeal of Revenue for both the assessment years under consideration i.e. A.Y.2012-2013 & 2013-2014.

44. Thus, appeals of the Revenue for assessment years 2012-2013 & 2013-2014are dismissed.

45. In the result, the appeals of the assessee i.e. ITA Nos.333/CTK/2014, 375/CTK/2016, 271/CTK/2017 & 381/CTK/2015 are allowed for statistical purposes, whereas ITA Nos.92&93/CTK/2016 and appeals Revenue in ITA Nos.374/CTK/2016 & 243/CTK/2017 are dismissed.

Order pronounced in the open court on 16/10/2019.

Sd/-	Sd/-
(C.M.GARG)	**(L.P.SAHU)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

कटक Cuttack; दिनांक Dated 16/10/2019

Prakash Kumar Mishra, Sr.PS.

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(**Senior Private Secretary**)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack