आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री एम बालगणेश, लेखा सदस्य एवं श्री रविश सूद, न्यायिक सदस्य के समक्ष ।
BEFORE SRI M BALAGANESH, AM AND SRI RAVISH SOOD, JM AND

आयकर अपील सं./ ITA No. 5616/Mum/2012

(निर्धारण वर्ष / Assessment Years 2005-06)

आयकर अपील सं./ ITA No. 4043/Mum/2012

(निर्धारण वर्ष / Assessment Years 2006-07)

Tata Steel Limited Bombay House, 24 Homi Body Street, Fort, Mumbai-400 001	**बनाम /** Vs.	Assistant Commissioner of Income Tax-2(3), Dy. Commissioner of Income Tax-2(3) Aayakar Bhawan, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)		**(प्रत्यर्थी/ Respondent)**
स्थायी लेखा सं./PAN No. AAACT2803M		

आयकर अपील सं./ ITA No. 5573/Mum/2012

(निर्धारण वर्ष / Assessment Years 2005-06)

Assistant Commissioner of Income Tax-2(3), Dy. Commissioner of Income Tax-2(3) Aayakar Bhawan, M.K. Road, Mumbai-400 020	**बनाम /** Vs.	Tata Steel Limited Bombay House, 24 Homi Body Street, Fort, Mumbai-400 001
(अपीलार्थी / Appellant)		**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से / **Appellant by**	:	Shri Nishant Thakkar & Ms. Jasmin Amalsadwala, ARs
प्रत्यर्थी की ओर से **/ Respondent by**	:	Shri R. Manjunatha Swamy, CIT DR

सुनवाई की तारीख / **Date of hearing:**	12.09.2019
घोषणा की तारीख / **Date of pronouncement:**	06.11.2019

आदेश / O R D E R

एम बालगणेश, लेखा सदस्य/
PER M BALAGANESH, AM:

These three appeals of Revenue and assessee are arising out of the orders of the Commissioner of Income Tax (Appeals)]-6, Mumbai, [in short CIT(A)], in ITA Nos. CIT(A)-6/IT-129,244/2009-10,2010-11 dated 22.06.2012. The Assessments were framed by the Asst. Commissioner of Income Tax 2(2), Mumbai (in short ACIT/ITO/ AO) for the A.Ys. 2005-06, 2006-07 vide orders dated 26.12.2008, 29.12.2009 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

ITA No. 5616/Mum/2012 for AY 2005-06 – Assessee Appeal

2. The ground Nos. 1 to 1.1 raised by assessee were stated to be not pressed by the learned AR at the time of hearing. The same is reckoned as statement made from the bar and accordingly, the ground Nos. 1 and 1.1 are dismissed as not pressed.

3. The ground Nos. 2 to 2.5 raised by the assessee are with regard to action of the learned CIT(A) upholding the disallowance of expenditure incurred on feasibility study.

4. We have heard rival contentions and gone through the facts and circumstances of the case. This issue is a recurring issue in the case of assessee from AY 1986-87 onwards. The assessee submitted that it has incurred expenditure on feasibility study on a recurring basis year on year and during the year under consideration, the expenditure incurred thereon was ₹5,04,60,373/- which was claimed as revenue expenditure. The learned AO treated the same as capital expenditure and granted depreciation at 25% while completing the assessment. The assessee submitted that the said payment for feasibility study was incurred in connection with its manufacturing activity. The said expenses were incurred for the purpose of excavation of raw materials, i.e. water, power, minerals, etc. for production of Steel. These expenses are recurring in nature and does not result in acquiring any enduring benefit in the capital field. The learned AR has vehemently pleaded that the learned AO erred in observing that said expenditure pertains to import of technical knowhow in relation to a specific plant commissioned at Jamshedpur. He argued that this statement made by the learned AO is factually incorrect. The learned AR submitted that the said expenditure has been incurred for Titania project in Tamil Nadu. The learned AR further elaborated that a Memorandum of Understanding (MOU) was entered into with Government of Tamil Nadu on 27.06.2002 in connection with this Titania Project which involves mining, mineral separation and value addition i.e. Pigments production in phases subject to techno-economic viability. The feasibility study was conducted

with the help of consortium partners comprising of Outokumpu–Finland's physical separation division based in USA, Autokumpu-Lurgi, Germany, Pincock- Allen and Holt, USA, a resource and mineral consulting company and L&T. All these facts were also duly submitted by the assessee before the learned AO .

5. We find that the learned CIT(A) had observed that this expenditure was incurred for a new project which had possibly not started and is not in the nature of Revenue expenditure. The learned CIT(A) had further observed that since the project had not started, the assessee would not be eligible even for depreciation on the same.

6. We find that the assessee had submitted that the feasibility studies were conducted in connection with the prospect for various minerals, which would provide the insight to the management of the assessee for decision making process. It is merely identification of minerals, which may be taken up for the development of steel business of the assessee and does not amount to initiation of new business but, on the other hand, it forms part of the development activities of the assessee's existing business. We find that the ld AR had further stated that the feasibility study was undertaken as part of the vision and strategic growth plans in the "materials" sector. The learned AR pleaded that the assessee examined various business opportunities apart from its primary focus on steel business. He argued that the preliminary analysis indicated that assessee can be one of the lowest cost producers in the world in

heavy mineral sands business. Hence, it was proposed in the present mineral business to develop and process the minerals such as Zircon, limenite, etc. for producing the titanium metal. The proposed study would involve mineral and separation of limenite and other valuable minerals from inland heavy mineral sand deposits in the districts of Tuticorin and Tirunelveli in the state of Tamil Nadu and its upgradation to synthetic Rutile later to Titanium Di-Oxide and ultimately to Titanium metal. This entire *modus operandi* of the aforesaid process had been duly explained by the assessee before the lower authorities. Hence, it can be safely concluded that the feasibility study was conducted for prospecting various minerals which will cater to the current steel and mineral business. We also find that the assessee has submitted before the lower authorities that it had undertaken the entire process for production of Titanium metal in different phases and hence, it would not be correct to state that the company had started mining for Titanium, which is used in paint industry, sunscreen, coloring etc., and not for the purpose of excavation of water, power, mineral etc. for production of steel. The learned AR also drew our attention to the Objects clause provided in the Memorandum of Association and argued that the study was undertaken to analyze the minerals for determining the viability with regard to production of Titanium metal which also involved *inter se* production of Titanium Di-Oxide. The main object of the assessee company was to manufacture Titanium metal having its utility in steel business of the assessee company.

7. We find that the learned AR argued that the issue is covered by the decision of the Tribunal in assessee's own case from AY 1986-87 onwards and placed the orders on record. He also stated that the Revenue had not preferred any appeal against the orders passed by this Tribunal in earlier years on this issue before Hon'ble Bombay High Court except for AY 1985-86, which was also dismissed by Hon'ble Bombay High Court. The learned Departmental Representative argued that incurrence of expenditure on feasibility study was for a different project in earlier years' and hence, the decision rendered thereon by this Tribunal cannot be made applicable for the year under consideration. We find that what is relevant is undertaking of feasibility study for visualizing or initiating a fresh project which would improve the existing line of business of the assessee. We find that in earlier years, this Tribunal had held that expenditure incurred on feasibility study paid to various project consultants to be revenue in nature. We find that this Tribunal in assessee's own case in ITA No. 3964 and 3981/Mum/2003 for AY 1986-87 on 19.02.2014 had held as under: -

> *"16. Next Ground of appeal pertains to disallowance of fees paid to consultants for feasibility studies, amounting to Rs.13.14 lakhs. During the assessment proceedings AO held that the expenditure was incurred in connection with the expansion of the industrial undertaking,*

that it was a capital expenditure, that the expenditure incurred on preparation of feasibility/project report in connection with the expansion of industrial undertaking or in connection with the setting up of a new unit was an admissible deduction u/s.35D of the Act.

16.1.In appellate proceedings FAA held that Rs.5 lakhs were paid to M.N.Dastur & Co.for conduct-ing techno economic feasibility report for producing cold rolled strips, that the steel which was produced in assessee's works would becomes the raw material for the manufacture of cold rolled strips in the Ahmedabad Advance Mills Ltd, that the management of that company was taken over by the assessee, that the study conducted by the consultant was in respect of a new product and it was a new line of activity and not with reference to the existing business operations, that it resulted in enduring benefit, that pamyment of Rs.5 lakhs made to M.N.Dastur & Co. for conducting feasibility studies on production of stainless steel slabs, that it was a new product line, that the assessee

got the evaluation of location, capacity, process and inputs availability for manufacture of stainless steel slabs, that expenditure was incurred in connection with the establishment of a new product line, that the assessee derived enduring benefit, that Fees/hotel and travel expenses paid for techno economic feasibility report by Holtec Engineers Pvt.Ltd. for slag cement project was incurred for a new product and a new project, that it was not related to the existing trading opera -tions, that the waste produced by the assessee became the raw material for the slag cement project, that the AO had rightly treated a sum of Rs. 2,75,107/- as capital expenditure, that a sum of Rs. 1,40,000/- was paid for techno economic feasibility report for slaked lime and water addition facilities at sinter plant, that the sinter plant was a part of the assessee's works for sizing and sintering of iron ore, that the study was undertaken to improve the efficiency in the existing trading operations, that the expenditure was incurred in connection with the existing

trading operations and the expenditure incurred is in the revenue field, that Fee of Rs. 17,500/-was paid to Tata Consultancy Services for conducting a feasibility study on elevator industry was conducted, that the study had no relationship with the existing business and the assessee intended to start a new product line, that the expenditure incurred was in the capital field, that Rs. 22,180/- was paid to Tata Consulting Engineers for conducting a feasibility study of PVC plant based on calcium carbonate route, that the PVC was a new product and had nothing to do with the existing product line of the assessee, that the expenditure incurred was in the capital field.

16.2. Before us, AR submitted that similar issue was decided in favour of the assessee in the preceding AY. DR did not controvert the fact. We find that in the AY.1985-86 assessee had paid fees for feasibility study to the same consultant to whom fess was paid during the year also. While deciding the appeal, Tribunal at paragraph 38 has held as under:

We have perused the details of the expenses. A sum of Rs.10 lakhs was paid for modernization project phase-I.A sum of Rs.2 lakhs and Rs.3 lakhs was paid for project report for feasibility of plastic lines and coated pipes and revamping the ERW Mill respectively. In AY.1968-69 in I.T.A. No.2068/Bom/74-75 the Hon'ble ITAT in assessee's own case considered expenditure on report for increasing production capacity and future development. After elaborate discussion, the Tribunal came to the conclusion that expenditure was not a capital expenditure and allowed deduction of same as a revenue expenditure. Facts and circumstances being identical in this year, respectfully following the decision of the Tribunal, we hold that the expenditure in question has to be allowed as a deduction being a revenue expenditure. Ground No. 12 is allowed.

Following the above, we decide Ground no.16, before us, in favour of the assessee."

8. We find that the Hon'ble Jurisdictional High Court in assessee's own case for AY 1985-86 in Income Tax Appeal No. 3176/2010 dated 26.04.2012 had addressed the issue and decided the same in favour of the assessee. In view of the aforesaid observations, respectfully following the aforesaid jurisdictional precedents in assessee's own case and in view of the fact that no appeal was preferred by the Revenue for AYs 1986-87 to 2004-05 on the similar issue of incurrence of expenditure for feasibility study for project consultancy, we hold that the assessee is entitled for deduction of ₹5,04,60,373/- as Revenue expenditure. Accordingly, the ground nos. 2 to 2.5 are allowed.

9. The ground nos. 3 to 3.1 were stated to be not pressed by the learned AR at the time of hearing and the same is reckoned as statement made from bar and accordingly, the said grounds are dismissed as not pressed.

10. Ground nos. 4 to 4.3 raised by the assessee are with regard to the challenging the action of the learned CIT(A) upholding the disallowance of expenses on account of education cess.

11. We have heard rival contentions and gone through the facts and circumstances of the case. We find that this issue is

squarely covered by the decision of Hon'ble Rajasthan High court in the case of Chambal Fertilisers and Chemicals Ltd. & Anr. Vs. JCIT reported in 102 CCH 0202 (Rajasthan High court) dated 31.07.2018, wherein the question raised before the High Court as under: -

> "*Q.3 in ITA No 52/2018*
>
> *Whether under the facts and circumstances of the case, the learned ITAT has not erred in holding that the education cess is disallowable expenditure under section 40(a)(ii) of the Act?*"

12. We find that the Hon'ble Rajasthan High court took note of the CBDT Circular No. 91.58/66-ITJ (19) dt. 18.05.1967 and held as under: -

> *Interpretation of provision of s.40(a)(ii) of IT Act, 1961-Clarification regarding 18/05/1967*
>
> *BUSINESS EXPENDITURE*
>
> *SECTION 40(a)(ii), Recently a case has come to the notice of the Board where the ITO has disallowed the 'cess' paid by the assessee on the ground that there has been no material change in the provisions*

of s.10(4) of the old Act and s.40(a)(ii) of the new Act.

2. The view of the ITO is not correct. Clause 40(a)(ii) of the IT Bill, 1961 as introduced in the Parliament stood as under:

"(ii) any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains".

When the matter came up before the Select Committee, it was decided to omit the word 'cess from the clause. The effect of the omission of the word 'cess' is that only taxes paid are to be disallowed in the assessments for the year 1962-63 and onwards.

3. The Board desire that the changed position may please be brought to the notice of all the ITOs so that further litigation on this account may be avoided."

13. Similar view was also taken by co-ordinate Bench decision of Kolkata Tribunal in the case of ITC Ltd vs. DCIT in ITA No.

685/Kol/2014 for AY 2009-10 dated 27.11.2018 and by Pune Tribunal in the case of DCIT vs. Bajaj Allianz General Insurance Company Ltd. in ITA Nos. 1111 & 1112/Pun/2017 and CO Nos. 23 & 24/Pun/2019 dated 25.07.2019. Respectfully following the aforesaid decisions, we direct the learned AO to grant deduction on account of education cess. Accordingly, the grounds 4 to 4.3 raised by the assessee are allowed.

14. Grounds Nos. 5 to 5.1 raised by the assessee are with regard to disallowance made under section 14A of the Act.

15. We have heard rival contentions and gone through the facts and circumstances of the case. We find that the assessee has earned dividend of `111,39,52,672/- and claimed the same as exempt in the return of income. The assessee submitted that it did not incurr any expenditure for the purpose of earning exempt income and hence, no disallowance under section 14A of the Act need to be made thereon. The learned AO, however did not agree to the said claim of the assessee and proceeded to apply the computation mechanism provided in Rule 8D(2) of the Rules and made disallowance under section 14A of the Act as under: -

"under Rule 8D(2)(ii) `29.32 crores

Under Rule 8D(2)(iii) `11.18 crores

Total `40.50 crores."

16. We find that the learned CIT(A) had directed the AO to disallow the interest under Rule 8D(2)(ii) by applying the formula followed by him in AY 2007-08 vide assessment order dated 28.10.2011. The learned CIT(A), however, upheld the disallowance made in sum of ₹ 11.18 crores under Rule 8D(2)(iii) of the Rules.

17. We find that the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT reported in [2018] 402 ITR 640 (SC) and Godrej & Boyce Manufacturing Company Ltd vs. DCIT reported in [2017] 394 ITR 449 (SC) had observed that the computation mechanism provided in Rule 8D(2) of the Rules could be made applicable only from AY 2008-09 onwards. Hence, there cannot be any disallowance under section 14A of the Act by applying the computation maximum provided in Rule 8D of the Rules for the year under consideration. We find from the perusal of the balance sheet that the assessee is having sufficient own funds in its kitty and hence, there cannot be any disallowance of interest even if it is to be treated as direct expenditure of the purpose of earning exempt income. With regard to disallowance of administrative expenses, we find that Hon'ble Calcutta High court in the case of CIT vs. R.R. Sen and Brothers (P) Ltd. reported in GA No. 3019 of 2012 and ITAT No. 243 of 2012 dated 04.01.2013 had held as under: -

> *"The court:- the assessee did not show any expenditure incurred by him for the purpose of earning the money which is*

exempted under the income tax. The Tribunal has computed expenditure at 1 per cent of such dividend income which, according to them, is the thumb rule applied consistently. We find no reason to interference.

The appeal is dismissed."

18. Respectfully following the aforesaid decision, we direct the AO to disallow only to 1% of total exempt income under section 14A of the Act. Accordingly, the ground No. 5 and 5.1 raised by the assessee are partly allowed.

19. Ground No. 6 raised by the assessee is with regard to disallowance of commission paid to selling agents in the sum of ₹2,33,28,385/- for effecting sale to Government parties.

20. Brief facts of this issue are that the assessee was asked during the course of assessment proceedings to furnish the details of commission paid. The assessee responded that the said commission were paid to selling agents for effecting sales to Government parties in Northern India , Eastern India and Western India, the details of which are as under: -

A. Northern Region		*(in Rs.)*
Combined marketing services		*18,09,819.39*
United steel industries		*8,43,340.81*
M&M International		*29,04,098.13*
	(A)	*55,57,258.33*

B. Eastern India		
Israfil Middya		*11,33,921.00*
Karnataka Agencies		*120,95,224.25*
Kalinga Agencies		*1,66,708.00*
Bengal Iron & Steel Corporation		*1,28,747.00*
Industry & Commerce Enterprises Pvt. Ltd.		*6,27,692.00*
Rungta Agencies Pvt. Ltd		*3,28,809.00*
Greenfield Associated		*7,93,356,03*
	(B)	*1,52,74,457.28*
C. Western Region		
M/s Nayan Enterprises		*19,05,097.00*
M/s Nayan Traders		*1,22,495.00*
M/s Junee Mktg. Co.		*4,02,715.00*
M/s Industrial Steel		*1,02,491.00*
	(C)	*25,32,798.00*
A+B+C		*233,64,513.61*

21. The learned AO issued notices under section 133(6) of the Act to all the Government parties to verify the claim of the assessee. The reply given by the Government parties fell in two categories (i) where the Government parties have either dealt with assessee on person to person basis or directly; (ii) where the Government parties had accepted that it has dealt through a commission agent. Some of the Government parties did not respond to the notice under section 133(6) of the Act issued by the learned AO. Notice under section 133(6) of the Act issued by the learned AO to some of the parties have been returned unserved. The learned AO on perusal of the various replies

received in response to notice under section 133(6) of the Act from the Government parties concluded that only one party i.e. Department of Sunderban Affairs had confirmed that it dealt with the assessee through the agent i.e. Mr Israfel Middy. In these circumstances, the learned AO show caused the assessee as to why the remaining commission of Rs. 2,33,28,385/- should not be disallowed. The assessee vide letter dated 18.12.2008 had submitted that the agents are basically liaison agents and the functions carried out by them are as under: -

> *"(i) Procurement of orders from the parties;*
>
> *(ii) Collection of payment.*
>
> *(iii) Collection of sale tax declaration forms.*
>
> *(iv) Timely balance of all statutory formalities."*

22. The assessee pleaded that the agents had acted on its behalf and not on behalf of Government parties as there is no contractual agreement between the agents and the Government parties. Hence, the Government parties had confirmed that they had not dealt with assessee company through agents. The learned AO however, disregarded the explanation given by the assessee and observed that in respect of Government parties, where notices under section 133(6) of the Act had returned unserved, the assessee had failed to produce those parties and

no confirmation from the said parties were furnished by the assessee and accordingly, the learned AO took the replies given by the Government parties as sacrosanct and disallowed the entire commission payment made in the sum of `2,33,28,385/- as not incurred for the purpose of business. Before the learned CIT(A), the assessee submitted that the commission agents appointed by the assessee are not by the Government parties. Hence, there would not be any contractual obligation between the said commission agents and the Government parties. The commission agents have rendered liaison services to the assessee and had acted on behalf of the assessee by rendering various services as detailed hereinabove. The assessee further submitted that the total commission paid to various parties in the respective region together with the total sales derived from the respective regions in the form of following table: -

Region	*Commission*	*Sales*	*% of sales*
Northern	*5557258*	*480471655*	*1%*
Eastern	*15274457*	*1142410989*	*1%*
Western	*2532798*	*121464436*	*2%*

23. The learned CIT(A) disposed off this issue raised before him by observing as under: -

> *"9.3 I have gone through the order of the AO and submissions of the appellant. It is seen from page 22 to 23 of the assessment order that all the Government*

Departments from Sr. No. 1 to 31 has stated that there was direct person to person dealing and in case of CPWD (Sr. No. 24) and PWD (Sr. No.25) the notice under section 133(6) of AO were returned back. Sunderban Developed in "II)1" i.e. in the middle part of the assessment order stated that the sale was through agent and in part III, Page 23 & 24, the AO has listed 29 Companies mostly Government companies/ agencies like Railway Board, BSNL, NTPC, irrigation & Waterways, Metro Railway, Sardar SArovar Nagar Nigam Ltd., etc no replies were received by the Assessing Officer. The payments have been made by the appellant through bank to all parties is not a matter of dispute. Various kinds of activities are required to be taken for making sales to various government Agencies and despite various instructions to public sector companies and Goernment Agencies, not to deal through middle man or commission agents, the fact of the mater is that the activity of making sales, receiving payment etc. do require services of commission agents.

The appellant shall produce the confirmation of the commission agents before AO and the AO after being satisfied that the commission agents have rendered services, shall allow deduction accordingly. ”

24. Pursuant to this direction of the learned CIT(A), the assessee appeared before the AO and filed confirmations from various commission agents which are enclosed in pages 251 onwards together with copy of invoices. The assessee further pleaded that no adverse comments were made in Form No. 3CD with regard to the said issue on various statutory compliances by the tax auditor. The assessee also furnished certain invoices raised by the commission agents on the assessee mentioning the fact of rendering of services by the commission agents for effecting sales to Government authorities on behalf of the assessee. The assessee also furnished certain confirmations from agents, wherein they have clearly said that they had rendered services to the assessee for effecting sales to various Government authorities and the list of those parties, i.e. Government agencies, were also included in the confirmation certificate given by them.

25. We have heard the rival contentions and perused the materials on record. We find that the primary basis for disallowance of commission in the instant case is that the assessee had not proved the rendering of services of various

commission agents to the assessee. We find from the various confirmations filed from agents which are enclosed in pages 251 to 270 of the paper book comprising of conformation from agents to whom majority of the amounts were paid together with copy of invoices raised by commission agents on the issue clearly mentioning (a) the fact of rendering of services to the assessee ; (b) liaison services rendered by those commission agents to the respective Government parties clearly mentioning the name of the Government parties also ; (c) the quantities sold by assessee to those respective Government parties ; (d) the rate of commission as agreed to be paid to each of the commission agent for effecting sales to various Government parties. We also find from the said invoices that the said commission bills raised by the agents on the assessee were duly subjected to levy of service tax and TDS compliance thereon have been duly made by the assessee. We find that the assessee had paid commission to the very same parties in subsequent years also and the learned AO had allowed the same in AY 2006-07. The details of the same are as under:

"*3. Trend of Commission in next years.*

Northern	**AY 2005-06**	**AY 2006-07**
Combined Marketing Service	18,09,819.00	2,24,322.00
United Steel Industries	8,43,341.00	21.57,025.00
M & M International	29,04,098.00	1,47,488.65
Eastern		
Israfil Middya	11,33,921.00	16,50,356.00
Karnataka Agencies	1,20,95,224.00	1,66,40,425.99
Kalinga Agencies	1,66,708.00	1,99,376.64
Bengal Iron & Steel Corpn	1,28,747.00	-
Industry & Commerce Ent P. Ltd	6,27,692.00	5,52,837.73

Rungta Agencies	3,28,809.00	27,909.72
Geenfield Associates	7,93,356.00	
Western		
Nayan Enterprises	19,05,097.00	3,02,011.00
Nayan Traders	1,22,495.00	-
June Makg Co	4,02,715.00	-
Industrial Steel	1,02,491.00	-

26. We also find from the chart produced by the assessee that similar payments of commission were made to various selling agents in the past by the assessee and the same were allowed as deduction by the Revenue. The details of commission payments in earlier years are as under: -

FY	*2000-01*	*2001-02*	*2002-03*	*2003-04*
AY	*2001-02*	*2002-03*	*2003-04*	*2004-05*
Total commission	*21.10*	*24.83*	*34.60*	*37.34*
Gross sales	*7759.44*	*7607.48*	*9793.27*	*11920.96*
Net sales	-	-	*8721.32*	*10702.39*
% of Gross sales	*0.27%*	*0.33%*	*0.35%*	*0.31%*
% of net sales	-	-	*0.40%*	*0.35%*

The total gross sales and net sales for the year under consideration is ` 15876.87 and ` 14498.95 respectively.

27. The total commission paid to selling agents during the year is ₹49.65 crores which works out to 0.31% of gross sales and 0.34% of net sales, which is exactly identical to that in the earlier years as tabulated above. It is not in dispute that the

sum of disputed commission i.e. ` 2.33 crores is included in the total commission payment of ` 49.65 crores. In the instant case, we find that the learned CIT(A) had categorically observed that the commission agents had indeed rendered liaison services to the assessee in connection with effecting sales to various Government authorities. It is also not in dispute that these commission agents had acted on behalf of the assessee to liaison with the Government parties and they are appointed as agents only by the assessee and not by the Government parties. Hence, the Government parties in response to notice under section 133(6) of the Act had replied, wherever applicable, that they had dealt with the assessee directly and not through the agent. We also find that the majority of the commission agents had indeed furnished the confirmations duly specifying the requisite details before the learned AO which are already on record but we find that there is no factual finding recorded by the lower authorities with regard to veracity of the said confirmations. Hence, as vehemently argued by the learned DR, we deem it appropriate to remand this issue to the file of the AO for *de novo* adjudication in accordance with law.

28. In the result, the appeal of the assessee for AY 2005-06 in ITA No. 5616/Mum/2012 is partly allowed for statistical purposes.

ITA No. 5573/Mum/2012 for AY 2005-06 - Revenue's appeal

29. The first issue to be decided in this appeal of Revenue is as to whether the learned CIT(A) was justified in deleting the addition on account of contribution made to institution at Jamshedpur and Colleries in the facts and circumstances of the case.

30. We have heard the rival submissions. Both the parties mutually agree that this issue is squarely covered in assessee's own case for AY 1985-86 onwards by order of this Tribunal. The learned AR also placed on record the copy of the order of Hon'ble Jurisdictional High court in assessee's own case for AY 1985-86 in Income Tax Appeal No. 3176/2010 dated 26.04.2012, wherein the question raised by the Hon'ble High Court is as under: -

> *"F. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing contributions to various institutions with whom the assessee had no business nexus;"*

The Hon'ble High Court held as under: -

> *"7. As regards question F, it is common ground between the learned Counsel that the same reasoning that has governed question B would govern question F. The*

Tribunal has noted in paragraph 43 of its decision that the expenses were incurred keeping in mind business expediency in order to have a motivated work force. Hence, no substantial question of law would arise."

31. Respectfully following the said decision, the ground No. 1 raised by the Revenue is dismissed.

32. Ground No. 2 raised by the Revenue is already addressed above in ground No. 5 of the assessee. The decision rendered therein would apply with equal force for Revenue's appeal also on this issue of disallowance of section 14A.

33. In the Result, the appeal of the revenue for AY 2005-06 is dismissed.

ITA No. 4043/Mum/2012 for AY 2006-07 – Assessee Appeal

34. Grounds No. 1 and 3 raised by the assessee for AY 2006-07 were stated to be not pressed at the time of hearing before us by the learned AR and the same is reckoned as a statement made from the bar. Accordingly, the grounds No. 1 and 3 raised by the assessee are dismissed as not pressed.

35. The ground nos. 2 and 2.1 raised by the assessee with regard to disallowance of expenditure incurred on feasibility study are similar to the ground Nos. 2.2 to 2.5 raised by the

assessee for AY 2005-06 and hence, the decision rendered thereon would apply with equal force for this assessment year also except with variance in figures.

36. The ground nos. 4 and 4.1 raised by the assessee for AY 2006-07 are similar to ground Nos. 4 to 4.3 of Asst Year 2005-06 and the decision rendered thereon would apply with equal force for this assessment year also except variance in figures.

37. The ground nos. 5 and 5.1 raised by the assessee for AY 2006-07 are similar to ground Nos. 5 and 5.1 of Asst Year 2005-06 and the decision rendered thereon would apply with equal force for this assessment year also except variance in figures.

38. The assessee had raised additional ground before us with regard to claim of depreciation on Gopalpur project assets. We find that the learned AR stated that this ground arises out of the decision taken by this Tribunal in assessee's own case for AY 1997-98, wherein the order passed by this Tribunal was accepted by the Revenue by not preferring any further appeal to Hon'ble High Court. Since, this ground was omitted to be raised by the assessee, the learned AR prayed for admission of the same and fairly accepted that this issue may be verified by the learned AO. The learned DR submitted that this issue is not covered by the orders passed by this Tribunal for earlier years as the same is incurred for ISP project at Bareili. We find that the basic facts pertaining to this issue are not available for our records from the orders of the lower authorities. At the same

time, if this is consequential issue arising from AY 1997-98 onwards in the form of grant of depreciation, the same should not be denied to the assessee. Hence, we deem it fit appropriate, to admit the additional ground raised by the assessee and remand the entire additional ground to the file of the AO for de novo adjudication in accordance with law. All the arguments of both the parties with regard to the said issue are left upon and no opinion is rendered herein on the same. Accordingly, the additional ground No. 6 raised by assessee is allowed for statistical purposes.

39. In the result, the appeal of the assessee for AY 2006-07 in ITA No. 4043/Mum/2012 is partly allowed for statistical purposes.

40. To sum up,

ITA No.	*AY*	*Appeal By*	*Decision*
5616/Mum/2011	*2005-06*	*Assessee's Appeal*	*Partly allowed for statistical purposes*
4043/Mum/2012	*2006-07*	*-do-*	*-do-*
5573/Mum/2012	*2005-06*	*Revenue's appeal*	*dismissed*

Order pronounced in the open court on 06.11.2019

Sd/-
(रविश सूद /RAVISH SOOD)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

Sd/-
(एम बालगणेश / M BALAGANESH)
(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 06.11.2019

सुदीप सरकार, व.निजी सचिव */ Sudip Sarkar, 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, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**