

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

श्री सी.एम.गर्ग, न्यायिक सदस्य एवं श्री एल.पी.साहु, लेखा सदस्य के समक्ष

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

आयकर अपील सं./ITA No.379/CTK/2017

(निर्धारण वर्ष / Assessment Year : 2009 - 2010)

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| DCIT, Corporate Circle-1(1), Bhubaneswar | Vs. | M/s Industrial Development Corporation of Orissa Ltd., IDCOL House, Ashok Nagar, Bhubaneswar |
| स्थायी लेखा सं./PAN No. : AAACI 4821 L | | |

AND

आयकर अपील सं./ITA No.392/CTK/2017

(निर्धारण वर्ष / Assessment Year : 2009 - 2010)

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| M/s Industrial Development Corporation of Orissa Ltd., IDCOL House, Ashok Nagar, Bhubaneswar | Vs. | DCIT, Corporate Circle-1(1), Bhubaneswar |
| स्थायी लेखा सं./PAN No. : AAACI 4821 L | | |

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| (अपीलार्थी / Appellant) | .. | (प्रत्यर्थी / Respondent) |
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| निर्धारिती की ओर से / Assessee by | : | Shri S.C.Bhadra, CA |
| राजस्व की ओर से / Revenue by | : | Shri M.K.Gautam, CIT-DR |

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| सुनवाई की तारीख / Date of Hearing | : | 29/01/2020 |
| घोषणा की तारीख / Date of Pronouncement | : | 17/02/2020 |

आदेश / ORDER

Per L.P.Sahu, AM:

These are the cross appeals filed by the Revenue and assessee, arising out of the order dated 15.06.2017 passed by the CIT(A)-3, Bhubaneswar, for the assessment year 2009-2010.

2. First we shall take up the appeal of the Revenue in ITA No.379/CTK/2017 for A.Y. 2009-2010, wherein following grounds have been raised :-

1. *The order of the Ld. CIT(A) is erroneous on facts and in law.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is not justified in deleting the addition of Rs.2,82,00,000/- made by the AO disallowing the claim of provisions made by the assessee towards contingent and unascertained expenditure.*
3. *On the facts and circumstances of the case and when the assessee has not been able to establish that a business liability has definitely arisen during the financial year 2008-09, the Ld. CIT(A) was not justified in deleting the addition of Rs. 2,82,00,000/- made by the AO in the assessment, following disallowance of the claim of provision made by the assessee towards salary liability of employees pending pay revision.*
4. *Having regard to the specific comments by the Statutory Auditor, under point No. 9.3 of the 'Notes on Account' referred to by the AO at Page-10 of the assessment order, and in absence of any evidence produced by the assessee to establish that a business liability has definitely arisen during the financial year 2008-09, the Ld. CIT(A) was not justified in deleting the disallowance of Rs. 2,82,00,000/- towards a contingent liability.*
5. *The appellant craves to alter, amend or add any other ground that may be considered necessary in course of the appeal proceedings.*

3. Brief facts of the case are that the assessee is an undertaking of Government of Odisha and derives income from corporate services and mining business. The assessee filed its original return of income electronically on 24.09.2009 disclosing the total income at Rs.53,50,20,000/- which was later revised on 22.12.2010 showing a total income of Rs. Nil after setting off brought forward losses. During the course of assessment proceedings, the AO found that the assessee

has made compensation to the extent of Rs.1722.75 lakhs to IDCOL Kalinga Iron Works Ltd (IKIWL), a wholly owned subsidiary of the corporation, on account of purchase of ore from outside sources being the additional cost over the raising cost for captive use. The AO issued show cause to justify admissibility of the expense on this score and after careful consideration of the reply of the assessee, he found that the compensation was not made as per commercial expediency, rather, it was made on moral grounds for survival of IKIWL. Therefore, the AO added the same back to return income of Rs.53,50,20,000/- and after allowing set off of unabsorbed depreciation brought forward from earlier years of Rs.28,80,98,231/-, he assessed income of the year at Rs. 41,91,96,769/-, rounded off to Rs.41,91,96,770/-. Further the assessment was completed u/s.263/143(3) of the Act dated 30.07.2014 determining total income at Rs.94,73,96,770/-. Subsequently, the assessment u/s.147/251/143(3) of the Act was completed on 20.01.2015 in the case of M/s OMC Ltd. by way of making additions under the head illegal Mining, Mine Closure Plan and difference in production data. Thereafter M/s OMC Ltd. preferred appeal before CIT(A)-1, Bhubaneswar against the additions made by the AO for the respective assessment year, wherein the CIT(A) upheld the addition on account of different in production. In the said appellate proceeding, M/s OMC Ltd. submitted before the CIT(A) that Roida, C-

Block Iron Ore Mines is operated by the Industrial Development Corporation of Orissa Limited (IDCOL) as per the Government of Odisha order. The CIT(A) directed the AO to directed the AO to reduce the undisclosed production related to Roida, C-Block Iron Ore Mines and recompute the addition accordingly. Thereafter the AO giving appeal effect added the value of undisclosed production/sales to the tune of 48540 M.T. i.e. Rs.24,27,00,000/- in the hands of assessee on account of the fact that the Roida, C-Block Iron Ore Mines is operated by the IDCOL. A notice u/s.148 of the Act was issued to the assessee and the assessment was completed u/s.147/263/143(3) of the Act on a total income at Rs.94,73,96,770/-.

3. Aggrieved from the assessment order, the assessee appealed before the CIT(A) and the CIT(A) deleted the addition of Rs.282.73 lakhs on account of admissibility of provisions created for unforeseen and unascertained expenditure and confirmed the addition made on account of admissibility of claim of loan and advance written off at Rs.50 crores. Accordingly, the CIT(A) partly allowed the appeal of the assessee.

4. Against the deletion of addition made on account of admissibility of provisions created for unforeseen and unascertained expenditure, the Revenue is in appeal and the assessee is in appeal against the

confirmation of addition on account of admissibility of claim of loan and advance written off before the Income Tax Appellate Tribunal.

5. Before us, ld. DR before us relied on the order of Assessing Officer and submitted that when the assessee has not been able to establish that a business liability has definitely arisen during the financial year 2008-09, the CIT(A) was not justified in deleting the addition of Rs.2,82,00,000/- made by the AO in the assessment, following disallowance of the claim of provision made by the assessee towards salary liability of employees pending pay revision. It was also submitted by the ld. DR that having regard to the specific comments by the Statutory Auditor, under point No. 9.3 of the 'Notes on Account' referred to by the AO at Page-10 of the assessment order, and in absence of any evidence produced by the assessee to establish that a business liability has definitely arisen during the financial year 2008-09, the CIT(A) was not justified in deleting the disallowance of Rs.2,82,00,000/- towards a contingent liability. Therefore, ld. DR submitted that the appeal of the Revenue deserves to be allowed and the addition made by the AO should be upheld.

6. On the other hand, ld. AR of the assessee supported the observations of the CIT(A) to the extent of deleting the addition made on account of admissibility of provisions created for unforeseen and unascertained expenditure and submitted that the CIT u/s.263 of the

Act dated 24.03.2014 directed the AO to examine as to whether the provision made for pay revision is a contingent liability or an ascertain liability in the light of the decision of Hon'ble Delhi High Court in the case of CIT Vs. Bharat Heavy Electrical Limited, order dated 11.09.2012. However, the AO did not follow the above direction of CIT and brushed aside the submission of the assessee in the course of hearing and stuck to his own conviction that the provision of unforeseen and unascertained expenditure is not allowable being contingent liability. It was also submitted by the ld. AR that when the case of the assessee is compared with that of CIT vs Bharat Heavy Electrical Limited, the assessee is in a better footing that the decision of the pay revision after other formalities is approved in the Board of Directors and committees of the Board examined all the factors to recommend pay revision which happened only in the year Financial Year 2008-09. Therefore, the provision of pay revision is made and ascertained in the Financial Year 2008-09 for which the provision should have been allowed. To support his contentions, ld. AR relied on the decision in the case of Pr. CIT Vs. Agro Industries Corporation Limited (2017) 391 ITR 127 (P&H). It was also contended by ld. AR the CIT(A) has gone through the submissions of the assessee and the judicial pronouncement and the material available before him during the course of appellate proceedings and rightly delete the addition, to

which no interfere is called for. Therefore, ld. AR submitted that the appeal of the Revenue being devoid of merits, deserves to be dismissed.

7. After carefully considering the submissions of both the sides and perusing the entire material available on record along with the orders of authorities below, we find that during the course of assessment proceeding, the AO noticed that the assessee has made a provisions of Rs.282.73 lakh towards revision of pay and debited the same to the profit and loss account of the year and the same being purely a contingent and unascertained liability, therefore, the AO stated that it was not admissible as a deduction for computing the income for the relevant assessment year. However, the CIT(A) deleted the impugned addition relying on the decision of Haryana Agro Industries Corporation Ltd. (2017) 391 ITR 127 (P&H) and Bharat Heavy Electrical Ltd. 245 ITR 428 (Delhi), held that the provision towards pay revision debited to the P&L Account is an ascertained liability crystallized in the year under appeal and the same is an admissible deduction. The relevant observations of the CIT(A) in this regard are as under :-

"Decision :The Hon'ble Apex Court in the case of Meal Box Company of India Ltd. V.s Their Workmen, 73(1969)ITR 53 held as follows :

"If a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to quantify and discharge at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible . If these requirements are satisfied, the liability is not a

contingent one. The liability is in present though it will be discharged at a future date it does not make any difference if the future date on which the liability shall have to be discharges is not certain."

In appellant's case, the Board of Directors of IDCOL in their 323rd meeting held on 23.12.2008, constituted a committee to examine and recommend the revision of scale of pay of the employees of IKIWL and IFCAL w.e.f. 01.01.2006 in line with State Govt, employees. In the mean time the Govt, of Orissa by a notification dated 07.01.2009 revised the pay scale of Govt, employees. The recommendation of the committee constituted by the Board of Directors of IDICOL was placed before the Board in their 324 meeting held on 11.02.2009. While considering the recommendation of the committee, the Board constituted a Directors' Committee to examine the projected cash flow statement of IDCOL Group of Companies and submit a suitable note to CMD on the capability of the IDCOL Group to bear the additional financial burden. CMD was authorized by the Board to take necessary action on the same. The Directors' Committee has considered the projected profitability statement and projected cash flow statement for the next 5 years from FY 2009-10 to FY 2013-14 along with the audited figures for FY 2006-07, FY 2007-08 and estimated figures for FY 2008-09. The Committee has mentioned that the Corporation is in a position to bear the additional financial burden. The amount payable in FY 2008-09 is crystallized when the Board of Directors of IDCOL and the committees of the Board had taken the decision on 11.02.2009 and 16.02.2009 on the basis of the ascertained liabilities to pay arrear salary to the employees as per recommendation of 6th Pay Commission w.e.f 01.06.2006 . In view of the above and placing reliance in the case of CIT vs. Haryana Agro Industries Corporation Ltd. (2017) 391 ITR 127 (P&H) HC and Bharat Heavy Electrical Ltd. 245 ITR 428(Delhi), it is held that the provision towards pay revision debited to the P&L Account is an ascertained liability crystallized in the year under appeal and hence it is an admissible deduction. This ground of appeal of the appellant is allowed."*

From the above observations of the CIT(A), we find that the CIT(A) while dealing with the issue has observed that the Board of Directors of assessee company on 323rd meeting held on 23.12.2008 has constituted a committee to examine and recommend the revision of sale of pay of the employees of IKIWL and IFCAL w.e.f.01.01.2006 in the line with State Government employees. The committee has mentioned that the corporation is in a position to bear the additional financial

burden and the amount payable in F.Y.2008-2009 is crystallized when the Board of Directors of assessee company and the committees of the Board had taken the decision on 11.02.2009 & 16.02.2009 on the basis of ascertained liabilities to pay arrear salary to the employees as per the recommendation of 6th Pay Commission w.e.f. 01.06.2006. Therefore, the CIT(A) has rightly allowed the deduction towards pay revision debited to the profit and loss account holding the same as ascertained liability crystallized during the year under consideration. We also find that the case laws relied on by the CIT(A) are squarely applicable to the present facts of the case. Ld. DR also could not bring any new material on record to controvert the above findings of the CIT(A). Accordingly, we do not see any good reason to interfere with the observations of the CIT(A) in deleting the addition so made by the AO on account of admissibility of provisions created for unforeseen and unascertained expenditure. Thus, we uphold the findings of the CIT(A) recorded in this regard and dismiss the grounds of appeal raised by the Revenue.

8. Thus, appeal of the Revenue is dismissed.

9. Now, we shall take up appeal of the assessee in ITA No.392/CTK/2017 (AY : 2009-2010), wherein the assessee has raised the following grounds of appeal :-

1. *The order of assessment as well as the Appellate Order is against law, weight of evidences and probabilities of the case.*

2. *The Learned Commissioner of Income Tax (Appeals), has most arbitrarily disallowed write off of doubtful loans and advance to subsidiary amounting to Rs.50.00 crore, on flimsy ground that proper accounting treatment has not been given in the books of account for write off of advance which came out of his presumption and surmise. Further, he raised the question of res judicata which was not part of the order u/s 263 and it was also explained to him in course of hearing that Revenue Authority is bound to follow the rule of consistency in income Tax proceeding*
3. *For these, among other reasons, to be argued at the time of hearing, the order of assessment shall be squashed to meet the end of justice.*

10. Since we have already taken into consideration the facts of the case while deciding the appeal of the Revenue in para 3 above, therefore, the same are not being repeated.

11. Ld.AR before us filed written submissions, which read as under :-

*"The Learned Assessing Officer while framing the order has not carried out the direction given by the Learned Commissioner of Income Tax when the order is only framed u/s 263/143(3) of the Act on the direction of Learned Commissioner of Income Tax. The Learned Commissioner of Income Tax has directed the Learned Assessing Officer to redo the assessment in the light of decision of Honourable Income Tax Appellate Tribunal (ITAT), Cuttack, and the assessee's own case for the AYs. 1989-90 & 1990-91. The operating part of the order of the ITAT, Cuttack Bench, contained in **page no.- 14, para-20** of the order is as under.*

*"Object set out in the memorandum covers all activities for promotion of industrial development in Odisha. Loans and advances, promotional activities etc, in our opinions, are not outside of the objects of assessee's company as per its Memorandum of Association and hence, **the loss arising in writing off the loans and advances is liable to be treated as loss incurred in the course of carrying on its business and allowable as deduction in the years of consideration. In Para-18 and 19 of the ITAT order**" The Honourable Members have vividly discussed about the subsidiary companies and reasons forgiving loan & advances and also reasons for write up off advances.*

*The Learned Assessing Officer while framing his order in para - ii, discussed about the loan amounting to Rs.50.00 crore, advance by the appellant for one of its subsidiary (IKIWL) was written off as the certainty of realization was doubtful on account of continuous loss because of global meltdown. He has quoted notes of account which is a disclosure of facts by the appellant. He has also mentioned that doubtful loan and advances in the Balance Sheet as per **schedule - 8**, as on 31.03.2009 and 31.03.2008, stood at the same figure. Hence, it is not*

written off. The Learned Assessing Office has not properly understood the accounts of the appellant. The facts is that the

advances given to the KIWL has been written off without making any provision by crediting to the loan account amounting of Rs.50.00 crore and debiting the same to the Profit and Loss account **under the head Advance Written off.**

The Learned Assessing Officer without going through the decision of ITAT, Cuttack, in the assessee's own case for the Assessment Years 1989-90 &1990-91, asked the appellant why the claim written off of loan Rs.50.00 crore shall not be disallowed. The appellant made his submission by referring the (ITAT) Order and also explained how the doubtful loans and advances have been written off without disturbing the provision.

The Learned Assessing Officer concluded his opinion stating that "however, the principle of resjudicata is not applicable in income tax proceedings". The Learned Assessing Officer has gone beyond his jurisdiction when he was not asked to form any opinion regarding principle of resjudicata. However, recently the Delhi Tribunal in its order dtd.9th February, 2017, in the case of Patanjali Yogapitha vs ADIT, pronounced that though the principle of resjudicata does not apply to Income Tax , proceedings but revenue Authority are bound to follow the rule of consistency in income tax proceedings where facts are remaining same under the principle that "Judicial propriety requires -- consistency". The Honourable Bench in its order has cited plethora of judgments starting from "J judgment of Supreme Court, in the case of Radhasomani Satsanga vs CIT 193 ITR 321 and ending I with numbers of judgments of various High courts including Orissa High Courts in the case of CIT vs Harish Chandra Gupta 132 ITR 799. Deviating from the original issue, the Learned Assessing Officer relied upon number of cases relating the year from 1950 to 2002, the fact of each of the cases quoted by him is squarely different than the case of the appellant. Moreover, the Learned Commissioner of Income Tax directed him only to do the reassessment in the light of the decision of the Honourable ITAT, Cuttack.

It is to be noted that the survival of its subsidiary is very much the business of the appellant as the goodwill and creditworthiness of the subsidiary is the same as those of its own. The technical distinction between the two is limited only to the purposes of the Companies Act. For the outside world, both the parent company and the subsidiary company are one and the same. For example, no bank or businessman will do business with the subsidiary without the guarantee of the parent company. The purposes of both are concurrent. This is especially true of a losing and sick subsidiary vis-a-vis its wholly owned parent company.

In the case of this very appellant, the same question came up for decision by the ITAT in the assessment years 1989-90 and 1990-91. By common order dt.25.09.1997, the Tribunal has decided the issue in favour of the assessee relying on the decisions mentioned at **Para - 14, Page no. - 7** of the order which, we believe, has become final".

5. The Learned Commissioner of Income Tax (Appeal), while disposing appeal discussed in detail the Income Tax Appellate Tribunal (ITAT) order ITA No. ITA No,69&70(CTK) of 1994, 25.09.1997, relating to the write off of loan to subsidiary and also another order of ITAT 585/CTK/2012, 26.04.2017, allowing compensation given to subsidiaries as business expenses. In the operating part of his order, he mentioned that :

Respectfully following the orders of the Hon'ble Tribunal, it is found that claim of the appellant to write off the loans and advances of Rs.50.00 crore given to IKIWL is, prima facie, an admissible business expenditure subject to the condition that the appellant has fulfilled the accounting principles while passing the entries in the books of accounts. In this regard, the entries in the P&L account were perused and it is found that the appellant has claimed deduction of Rs.50,03,67,000/- as other provisions and this deduction is obviously related to the alleged writing off the loans and advances given to IKIWL. On perusal of the Schedule - 8 of the Balance Sheet, it transpires that the opening and closing balance under the head Unsecured considered doubtful is Rs.20,18,01,000/- meaning thereby that the corresponding contra entry of Rs.50,03,67,000/- has not been shown in Balance Sheet under the above head. The Ld. AR in his reply stated that advances given to IKIWL has been written off without making any provision by crediting to the loan account. But, in Schedule-8 of loans and advances there is no such posting except posting of Rs.20,18,01,000/- as unsecured loan considered doubtful and this posting is repetition of posting made in Schedule - 8.

In other words, the submission of the Ld. AR that the alleged sum has been actually written off in the books of Accounts by corresponding credit in the account of IKIWL is not in conformity with the 74 audited accounts. Since the P&L accounts stands reduced by Rs.50,03,67,000/-, unless the said amount matches with the amount actually written off to the account of IKIWL, no deduction is permissible. In Schedule-8, loans and advances, unsecured loans considered good, given to . Y subsidiary companies was having opening balance of Rs. 9^54^97^000/- and the closing balance was Rs.93,87,80,000/- and thus, the total reduction was Rs.4,67,17,000/-. Likewise, unsecured loans considered doubtful was having opening balance of Rs.20 1jy)1J300/- and closing balance of Rs.20,18,01,000/-. From the above, it cannot be said that the alleged sum was written off.

*The Learned Commissioner of Income Tax (Appeal) without understanding the principle of accounts, has loosely commented that advance to IKIWL written off does not match with the amount actually written off. The first allegation of the Learned Commissioner of Income Tax (Appeal) is " **On perusal of the Schedule - 8 of the Balance Sheet, it transpires that the opening and closing balance under the head Unsecured considered doubtful is Rs.20,18,01,000/- meaning thereby that the corresponding contra entry of Rs.50,03,67,000/- has not been shown in Balance Sheet under the above head**". It is explained*

to him that advance given to IKIWL has been written off without making any provision by crediting to the loan account. He further commented that in Schedule- 8, loan and advance, given to subsidiaries were having opening balance of 98,54,97,000/- and the closing balance was Rs.93,87,80,000/-, and thus, the total reduction was Rs.4,67,17,000/-. He concluded that it cannot be said that the alleged sum was written off. This comment of Learned Commissioner of Income Tax (Appeals) is purely on surmise and imagination. In Schedule-8, relating to advance made to number of subsidiaries, the opening and closing balance relates to group of subsidiaries. During the year, advances made to subsidiaries which is debited to their accounts and written off of advance is shown as credit in advance account and debited to profit & Loss account. The resultant of all these transaction discloses the closing balance at the end of the year. Moreover, the account is audited by a Statutory Auditor, appointed by C & AG and also by A. G. Odisha. Both the Auditors have not commented anything wrong relating to written off of loan and advance.

The appeal before the Learned Commissioner of Income Tax (Appeal) arose against the order of the Learned Assessing Officer made u/s 263/143(3) of the Income Tax Act. The said Assessment order is made as per the direction made under section 263 of the Income Tax Act. On the face of the order, the observation of the Commissioner of Income Tax was that the provision for bad and doubtful debt as per schedule-8, amounting to Rs. 20,18,01,000/-, stood same at the end of the year as per opening balance and hence, no provision was made. The appellant, in compliance to his above observation replied vide its letter dtd. 05.03.2014 that "since the Board has approved to write off of advances, no provision of written off was required. Doubtful advance as mentioned at Schedule-8 of Rs.20,18,01,000/-, represents provision for doubtful advance of other sick companies made on the basis of audit objection in earlier years' account. The amount of Rs.50.00 crore, written off during the year was debited directly to Profit & Loss account and reduced from advance amount of IKIWL.

On receipt of reply, the Learned Commissioner of Income Tax, resolved the issue and has not given the direction to the Learned Assessing Officer to examine the above issue.

The Learned Assessing Officer while framing order u/s 263/143(3) did not made any enquiry over the subject and unnecessarily confused by reproducing the above issue in his order. Similarly, the Learned Commissioner of Income Tax (Appeal), without making any enquiry and going through the order of the Learned Commissioner of Income Tax, on surmise and presumption, concluded that proper accounting treatment has not been given to the write off of doubtful advance.

Finally, both the Assessing Officer and the Learned Commissioner of Income Tax (Appeal) have raised the issue of res judicata. As per their opinion res judicata is not applicable basically for infirmities, notice in writing off the loan and advance to the subsidiary. The question of res

judicata was not part of the order of the Learned Commissioner of Income Tax. In the written submission, which is reproduced in the order of the Learned Commissioner of Income Tax (Appeal) in page -10, referred the case of Delhi Tribunal in the case of Patanjali Yoga Pitha vs ADIT where, it is pronounced that though the principle of resjudication does not apply to Income Tax proceeding, but Revenue Authorities are bound to follow rule of consistency in Income Tax proceeding where facts are remaining same under the principle that "judicial propriety requires consistency". Delhi High Court in its order has cited plethora of judgments starting from judgment of Supreme Court to Odisha High Court. Therefore, the Learned Commissioner of Income Tax (Appeal) ignoring the judgment cited, concluded that principle of res judicata shall apply to the case of the appellant.

The above issues were argued at the time of hearing on 14.08.2018. The Learned Commissioner of Income Tax (A) in prima facie respecting two nos of ITAT appeal orders bearing ITA No,69&70(CTK) of 1994 25.09.1997,,and order ITA No. 585/CTK/2012, dtd.26.04.2017, placed in the Paper Book at page no. 72 and 135, agreed to write off of Rs.50.00 crore as bad debt. But he could not properly understood accounting entry of write off of advance on the plea that provision for bad and doubtful debt remains same. Again he observed that in schedule - 8 loan and advances considered good given to subsidiary companies having opening balance of Rs.98,54,97,000/- and closing balance is Rs.93,87,80,000/- and thus the total deduction is Rs.4,67,17,000/- instead of Rs.50,03,67,000/-.

After submission of the case before the Bench the Honourable Bench decided to settle the accounting entry of Rs.50.00 crore, which is the only issue to be addressed

The Honourable Bench asked to file an additional Paper Book certified by the Management and journal entry reflecting debiting write off of advance and credit to the account of IKIWL. The same was filled on 21.08.2018, contained in page no. - 129 of the 1st additional Paper Book. The case again heard on 29.08.2018. The Honourable Bench asked to file a Paper Book disclosing the amount written off in the ledger of IKIWL. The ledger copy along with other relevant papers was filed on 11.09.18. Although the case was fixed for hearing on 25.10.2018, probably due to strike of the Advocates the hearing could not be taken place.

*6. Your Honour may kindly refer to schedule - 8 of Balance sheet, page no. - 17 contain in the Paper Book. The same sub head "**advance to subsidiary**" amounts to Rs.93,87,80,000/- as on 31st March 2009, and opening balance is Rs.96,54,97,000/-. The details of opening balance amounting to Rs.98,54,97,099/- and closing balance of Rs.93,87,79,894/-, is placed in page 1 of the 2nd additional Paper Book (Additional Information). Item no. 1 of page - 1 of additional information contains IKIWL account where Rs. 50.00 crore under dispute is shown as written off. The 1st column contains Opening*

Balance 2nd column contains advance Released 3rd column contains Advance refunded 4th column contains Advance written off and 5th column contains closing Balance. Hence, the position of opening balance and closing balance is now clear, which are the bone of contention of amount disputed by the CIT (A).

*Your Honour may refer to page - 3 of the 2nd additional Paper Book (Additional Information), where ledger copy of IKIWL starts with opening balance of Rs.86,39,42,458/-. In **page no. - 14** of ledger account on 31st March 2009, Rs.50.00 crore is written off and in the same page the closing balance stands at Rs.80,83,02,337/-.*

Therefore there is no accounting mistake in write off of advance given to IKIWL. The same may kindly be accepted.

*Moreover, in the IKIWL account in other income head contained in schedule - 12, given in the note no. - 6, **page no. - 73** of the account statement of IKIWL discloses written off of amount of Rs.50.00 crore.*

12. On the other hand, ld. DR relied on the orders of both the authorities below.

13. After hearing both the sides and perusing the entire material available on record along with the observations made by both the lower authorities in their respective orders and the paper book filed by the assessee, we find that during the course of assessment proceedings the AO found that the allowance of doubtful loans/advances in the scrutiny assessment was irregular and therefore, he disallowed the inadmissible claim of the assessee. The CIT(A) observed that the total income in normal computation is higher than the book profit, therefore, the provisions of Section 115JB of the Act are not applicable in the case of the assessee for the year's under consideration. The CIT(A) also held justified the findings of AO that res judicate is not applicable for infirmities noticed in writing off the loans and advances of the

subsidiary company IKIWL. During the course of hearing, ld. AR drew our attention to schedule - 8 of Balance sheet, page no. - 17 of paper book, wherein "advance to subsidiary" amounting to Rs.93,87,80,000/- as on 31st March 2009 and opening balance is Rs.96,54,97,000/- have been mentioned. The details of opening balance amounting to Rs.98,54,97,099/- and closing balance of Rs.93,87,79,894/-, is placed in page 1 of the 2nd additional Paper Book. He also submitted that Item no. 1 of page - 1 of additional information contains IKIWL account where Rs. 50.00 crore under dispute is shown as written off. It was vehemently argued by ld. AR that in the said additional information the 1st column contains Opening Balance; 2nd column contains advance Released; 3rd column contains Advance refunded; 4th column contains Advance written off and 5th column contains closing Balance. Hence, the position of opening balance and closing balance is now clear. Further ld. AR referred to the page - 3 of the 2nd additional Paper Book, where ledger copy of IKIWL starts with opening balance of Rs.86,39,42,458/- and also submitted in page no.414 of ledger account on 31st March 2009, Rs.50.00 crore is written off and in the same page the closing balance stands at Rs.80,83,02,337/-. Therefore there is no accounting mistake in write off of advance given to IKIWL. However, the CIT(A) observed as under :-

"In other words, the submission of the Ld. AR that the alleged sum has been actually written off in the books of accounts by corresponding

credit in the account of KIWL is not in conformity with the audited accounts. Since the P&L A/c stands reduced by Rs.50,03,67,000/-, unless the said amount matches with the amount actually written off to the account of KIWL. no deduction is permissible. In Schedule -8, Loans and advances, unsecured loans considered good given to subsidiary companies was having opening balance of Rs.98,54,97,000/- and the closing balance was Rs.93,87,80,000/- and thus, the total reduction was Rs.4,67,17,000/-. Likewise, unsecured loans considered doubtful was having opening balance of Rs.20,18,01,000/- and closing balance of Rs.20,18,01,000/-. From the above, it cannot be said that the alleged sum was written off."

In view of the above facts and circumstances of the case and considering the submissions made by the Id. AR of the assessee and the observations of the CIT(A), we set aside the impugned order passed by CIT(A) and remit the matter to the file of CIT(A) to pass a fresh order after considering the submissions of the assessee as well as the documents filed by the assessee in the form of paper book before us. Needless to say, the assessee shall be given due opportunity of hearing. The assessee is also directed to cooperate the CIT(A) in early disposal of the case.

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

15. In the result, appeal of the Revenue is dismissed and appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17/02/2020.

Sd/-
(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 17/02/2020

Prakash Kumar Mishra, Sr.P.S.

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

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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack