IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA

BEFORE SHRI S.S.GODARA, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA Nos.1875, 1300 & 1299/Kol/2019

(निर्धारणवर्ष / Assessment Years:2016-17, 2015-16 & 2012-13)

DCIT, Circle-3(1), Kolkata	**Vs.**	**Shri Ramesh Prasad Sao** **91A/1. Avani Signature, Park Street, 2nd Floor, Kolkata-700016**
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **ALAPS 8363 F**		
(Appellant)	**..**	**(Respondent)**

Appellant by : Shri Supriyo Pal, Addl. CIT
Respondent by :Shri Miraj D Shah, A.R

सुनवाईकीतारीख/ **Date of Hearing** : **09/07/2020**

घोषणाकीतारीख/**Date of Pronouncement** : **24/08/2020**

आदेश / O R D E R

Per Dr. A.L. Saini, AM:

The captioned three appeals filed by theRevenue, pertaining to assessment years2016-17, 2015-16 & 2012-13 respectively, are directed against the separate orders passed by the Commissioner of Income Tax (Appeal), Kolkata, which in turn arise out of separate assessment orders passed by the Assessing officer u/s 143(3) of the Income Tax Act, 1961 (in short the "Act").

2. Since these three appeals filed by the Revenue for assessment years 2016-17, 2015-16 & 2012-13 respectively contain common and identical grounds therefore, these appeals have been clubbed and heard togetherand a consolidated order is being passed for the sake of convenience and brevity.

3. First we shall take revenue's appeal in ITA No. 1875/Kol/2019, for A.Y. 2016-17,wherein the grounds of appeal raised by the revenue are as follows:

> *1. The ld. CIT(A) has erred in law and in facts in deleting the addition of Rs. 2,63,708/- made by the Assessing Officer on account of periphery development expenses where assessee has failed to furnish any evidences to establish that the above expenses are related to business expenses as per the mining provisions as the assessee had made those expenses directly without contributing the same in periphery development fund under the aegis of the periphery development society and periphery development committee.*
>
> *2. The ld. CIT(A) has erred in law in deleting the addition of Rs. 1,84,620/- made by the Assessing Officer on account of the Exchange Rate Fluctuation. As per the details submission filed by the assessee, the assessee had not exported any raw materials to overseas country in which the exchange loss had accrued.*
>
> *3. The ld. CIT(A) has erred in law in deleting the addition of Rs. 2,54,61,464/- made by the Assessing Officer on account of depreciation where the assessee had no activity of mining during the relevant year and was engaged only in lifting of closing stock during the period as per order of the Hon'ble High Court, Odisha.*
>
> *4. The appellant craves leave to make any addition, alteration or modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings.*

4. Now, we shall take these grounds one by one

5.Ground no. 1 raised by the revenue in ITA Nos.1875, 1300 & 1299/Kol/2019, is common and relates to periphery development expenses.

6. Brief facts qua the issue are that during the scrutiny proceedings the assessing officer noticed thatassessee has debited a sum of Rs.2,63,708/- under the head "Periphery Development Expenses". 'Periphery' means the entire district where a particular industry or mining industry is set up. For Keonjhar district there is a Periphery Development Fund (PDF) which functions through two main mechanisms - the Periphery Development Committee (PDC) and the Periphery Development Society (PDS). The PDS is responsible for the collection of the periphery development contributions from the mining companies and for implementation and supervision of the development activities approved by the PDC and funded from the periphery development contributions. The Director of Mines serves a demand notice to individual companies to collect their share of periphery development contribution and the actual collection proceeds along the

same route as does any revenue collection by the district administration. The projects are directly implemented by the PDS or through their line agencies like PWD. The assessing officer examined the ledger copy of periphery development expenses filed by assessee and noticed that these expenses were directly made by assessee on food relief materials, building of roads and temples etc. instead of contribution to the PDF. The mode of expenditure for periphery development as per government scheme, is different than what the assessee claimed. Therefore, the assessing officer was of the view that these expenses were not bonafide business expenses therefore Rs. 2,63,708/- was added back to the total income of the assessee.

7. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the ld. CIT(A) who has deleted the addition made by the Assessing Officer observing the following:

> *"7. I have gone through the order of the Id. A.O. and submissions made by the ld. A.R. of the assessee. There is no doubt that CSR activities are business expenditure. However, expenses against malaria eradication, distribution of mosquito nets, etc. do not appear to be the expenditure in the case in hand as claimed by assessee. As noted by the ld. A.O., they are towards the Orissa Flood Relief and building of temple, road, etc. This expenditure is also part of the ledger account of the assessee. It is done in consultation with State Government authorities. The ld. A.R. has submitted details of vouchers incurred towards Peripheral Development Expenses. The Id. A.O. has not doubted any of the vouchers or memos. He is only doubting the expenditure on account of the provisions of Income-tax Act, 1961. He has stated that expenditure above 5% is not permitted.*
>
> *8. I am afraid the stand of the A.O. cannot be accepted. The Periphery Development Expenses, if incurred have to be taken as a business expenditure. The maximum that was to be explained as per the Id. A.O. was 5%. He has sort of accused the assessee for spending more that 5%. This stand of the Id. A.O. cannot be accepted in as much as how much the assessee spends legitimately is the decision of the assessee. The Revenue cannot question this expenditure as per the decision of the Apex Court in 288 ITR 1. 1 may clarify that the decision in Thakur Prasad Sao And Sons Pvt. Ltd. was on the provisions of Sections 36 & 37 of the Income-tax Act, 1961. There is no doubt that Corporate Social Responsibility is very much a business expenditure and come within the realm of Sections 36 and 37 of the Income-tax Act, 1961. The famous decision ofN. M. D.C Ltd[ITA No. 1791/Hyd/2008 dated 30.09.2009] would come to the rescue of the assessee.*

9. I have taken the same stand in a consolidated order in the case of M/s. Thakur Prasad Sao And Sons Pvt. Ltd. for the Assessment Years 2013-14 & 2014-15 and the same assessee, Shri Ramesh Prasad Sao for the Assessment Years 2012-13, 2014-15 and 2015-16. There is no reason for me to digress. For the sake of consistency, the said mound is allowed."

8. Aggrieved the order of the ld. CIT(A) the revenue is in appeal before us .

9. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other material available on record. Before us, the ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity and on the other hand the ld. Counsel for the assessee has relied on the order of the ld CIT(A). We note that the Periphery Development Expenses are for the purposes of welfare of the peoples residing nearby mining activities and it is responsibility of the company which was carrying out the business of mining and it is mandatory for the mining industry to look after the development of the area in which the mines areoperating.These expenses were wholly and exclusively for the business purpose. That being so, we decline to interfere in the order passed by the ld. CIT(A), his order on this issue, is hereby upheld and the ground no. 1 raised by the revenue in ITA Nos.1875, 1300 & 1299/Kol/2019are dismissed.

10. Ground no. 2 raised by the revenue relates to addition on account of Exchange Rate Fluctuation of Rs. 1,84,620/-.

11. Brief facts qua the issue are that during the scrutiny proceedings the assessing officer noticed that the assessee had claimed an amount of Rs. 1,84,620/- under the head of 'Exchange Rate Fluctuation'. The AO was of the view that the assessee company had not exported any raw materials to overseas country in which the exchange loss had accrued. The Id. A.O. also distinguished the decision of CIT vs.

Woodward Governor India (P) Ltd. 312 ITR 0254 (SC), and made addition of Rs. 1,84,620/-.

12. Aggrieved by the order of the Assessing Officer the assessee carried the matter in appeal before the ld. CIT(A) who has deleted the addition made by the Assessing Officer observing the following:

> *"17. I have gone through the order of the Id. A.O. and the submissions made by the assessee. There is no doubt there was an exchange rate fluctuation on purchase of parts of Aircraft. The said spareparts were changed as per the rules of DGCA. This is a mandatory requirement. Thus, once the mandatory loss are being pursued, for a capacity which is as per the regulations, the said loss does not lead to trading activities. In my view, the Id. A.O. has erred in distinguishing with the case of Woodward Governor India (P) Ltd. Once an asset is purchased, the same goes into the block of assets. Moreover, the use of Aircraft was a mandatory requirement. It is important to note that the assessee had stopped working as per the order of the Supreme Court. Thus, the addition made by the Id. A.O. has no legs to stand. The assessee succeeds in Ground of Appeal No. 8."*

13. Aggrieved by the order of the ld. CIT(A), the revenue is in appeal before us.

14. The ld. DR for the Revenue before us, has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity and on the other hand the ld. Counsel for the assessee has relied on the order of theld CIT(A).

15. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials available on record. We note that the exchange loss was incurred on account of purchase of spare parts of the Aircraft and the same had been capitalized during the relevant year. The assessee owned an Aircraft on which expenses were incurred every year to its maintenance and such expenses were revenue in nature and any loss incurred from such activity is also revenue in nature. As per policy of DGCA, certain internal spare parts of Aircraft are to be replaced. The exchange loss which arose on account of purchase of spare parts was capitalized and exchange loss arose on account of undertaking regular

maintenance hence it is a revenue expenses.That being so, we decline to interfere in the order passed by the ld. CIT(A), his order on this issue, is hereby upheld and the ground no. 2 raised by the revenue is dismissed.

16. Ground no. 3 raised by the revenue in ITA No.1875/kol/2019 and ITA No. 1300/kol/2019 relates to addition of Rs. 2,54,61,464/- on account of depreciation.

17. Brief facts qua the issue are that during the assessment proceedings the ld. A.O. examined the Tax Audit Report and Balance Sheet as well as submission given by the assessee. The AO was of the view that the assessee has not followed extraction of Iron Ore during the relevant year andhe had no activity of mining during the relevant year and was engaged only lifting of closing stock during the year, therefore, assessing officer made an addition of Rs.2,54,61,464/-.

18. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the ld. CIT(A) who has deleted the addition made by the Assessing Officer observing the following:

> *"13. I have gone through the order of the Id. A.O. and the submissions made by the assessee. The issue here is that the mining company was a running company. It had stopped production for the time being in order to cater to the decision of the Hon'ble Supreme Court. Importantly, when an asset is procured, it goes into the block of assets. The only aspect is the use. If an asset goes into the block of assets, the same goes into depreciation. There is no doubt that the assessee was also the owner of the machinery. The decision of the Calcutta High Court in* ***CIT vs. Norplex Oak India reported in 198 Taxman 0470*** *clearly decides the case in favour of the assessee. In Para Nos. 11 to 17, the issue has been dealt at length and in favour of the assessee. In the light of the above discussion, the assessee succeeds in ground of appeal No.7"*

19. Aggrieved by the order of the ld. CIT(A) the revenue is in appeal before us.

20. The ld. DR for the Revenue before us, has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity and on the other hand the ld. Counsel for the assessee has relied on the order of the ld CIT(A).

21. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials available on record. We have gone through the order of ld CIT(A) and we note that there is no any infirmity in the order of ld CIT(A).That being so, we decline to interfere in the order passed by the ld. CIT(A), his order on this issue, is hereby upheld and the ground no. 3 raised by the revenue in ITA No.1875/kol/2019 and ITA No. 1300/kol/2019 are dismissed.

22. Now we shall take revenue's appeal in ITA No. 1300/Kol/2019 for A.Y. 2015-16 wherein ground no. 2 raised by the revenue reads as follows:

> *2. The ld. CIT(A) has erred in law in deleting the addition of Rs. 2,93,237/- made by the Assessing Officer on account of the employees contribution to PF. The order of the ld. CIT(A) is erroneous as because it violates the provision of Section 36(1)(va) read with Section 2(24)(x) of the I. T . Act and it contradicts the Board's Circular No. 22/2015 dated 17.12.2015, para no. 5 where it is clarified that "this Circular does not apply to claim of deduction relating to employee's contribution to welfare fund which are governed by Section 36(1)(va) of the Act.*

23. Brief facts qua the issue are that during the scrutiny proceedings the assessing officer examined the tax audit report and noticed that employee's contribution to PF was deposited to the respective accounts beyond the grace period of 5 days, therefore he made addition of Rs. 2,93,237/-.

24. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the ld. CIT(A) who has deleted the addition made by the Assessing Officer observing the following:

> *"11. I have considered the arguments of the Id. A.O. as well as the contentions made by the Id. A.R. of the assessee. This issue has been decided by the Kolkata Bench of the Tribunal in the case of Animesh Sadhu vs. A.C.I.T. in ITA No. 11/Kolkata./2013 when it has been stated in Para 3, 4 and 5 as under:-*
>
> > *"3. At the time of hearing, it was submitted by the Id. A.R. that in Ground No.1 the assessee has challenged the action of the Id. CIT(Appeals) in confirming the disallowance of the employees' contribution to the Provident Fund which was paid within the prescribed due date. It was the submission that the employees' contribution to Provident Fund was paid*

on 14.02.2008 for which he showed the copy of the challans at page 23 of the paper book. It was the submission that the assessment year was 2008-09. It was the submission that in view of the decision of the Hon'ble Jurisdictional High Court in the case of CIT -vs.- Vijay Shree Limited reported in 224 Taxman 12 (Cal.) the disallowance was liable to be deleted.

4. In reply, the Id. D.R. vehemently supported the order of the Assessing Officer and ld. CIT(Appeals).

5. We have considered the rival submissions. As it is noticed that the employees' contribution to the Provident Fund has been paid before the due date of filing of the return as also before 31st March, 2008, in view of the decision of the Hon'ble Jurisdictional High Court in the case of Vijay Shree Limited referred to supra, the disallowance as made by the Assessing Officer and as confirmed by the Id. CIT(Appeals) stands deleted. Consequently Ground No. 1 of the assessee's appeal stands allowed."

12. Considering the fact that the jurisdictional High Court as well as jurisdictionalTribunal has decided the issue that the assessee may contribute before the due date of filing of Return of Income, there can be no argument on the issue. The assessee succeeds in Ground of Appeal No. 3."

25. Aggrieved by the order of the ld. CIT(A) the revenue is in appeal before us.

26. The ld. DR for the Revenue before us has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity and on the other hand the ld. Counsel for the assessee has relied on the order of the ld CIT(A).

27. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials available on record. We note that contribution towards PF was made by the assessee before the due date of filing Return of Income and before 31st March, 2008.We note that Hon'ble Jurisdictional High Court of Calcutta in the case of CIT -vs.- Vijay Shree Limited reported in 224 Taxman 12 (Cal.), has held that if the PF contribution is made by the assessee before the due date of filing Return of Income then it would be sufficient compliance and no

addition should be made.That being so, we decline to interfere in the order passed by the ld. CIT(A), his order on this issue, is hereby upheld and the ground no. 2 raised by the revenue is dismissed.

28. Now we shall take revenue's appeal in ITA No. 1299/Kol/2019 for A.Y. 2012-13 wherein ground no. 2 raised by the revenue reads as follows:

> *2. The ld. CIT(A) has erred in law in deleting the addition of Rs. 2,35,89,000/- made by the Assessing Officer on account of suppression of sale. As per Balance Sheet and Tax Audit Report the assessee had shown shortage or wastage of 7863 M. T. Iron ore, while as per H-1 Form there was no entry of wastage or shortage of Iron Ore.*

29. Brief facts qua the issue are that the assessee company is engaged in the business of mining of iron ore. The Assessing Officer observed that in written submission shortage to the extent of Rs. 7863 MT of iron ore, has been shown which is also shown in the audited accounts, thereforeassessing officer added a sum of Rs. 3,14,52,000/- at the market apparent price and on the basis of iron ore.

30. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the ld. CIT(A) who has deleted the addition made by the Assessing Officer observing the following:

> *"8. I have gone through the order of the ld. Assessing Officer and the assessee. There is no doubt that the Balance Sheet and H1 analysis have been prepared on two different states and period. Thus, taking them as the difference would be an error. I have checked the two analysis and the Books of Accounts carefully u/s 250(4) of the Income Tax Act, 1961. I have found no difference. As such, assessee succeeds in Ground of Appeal no. 3."*

31. Aggrieved by the order of the ld. CIT(A) the revenue is in appeal before us.

32. The ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity and on the other hand the ld. Counsel for the assessee has relied on the order of the ld CIT(A).

33. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials available on record. The ld. Counsel for the assessee stated that the difference was basically due to reconciliation of opening balance as shown in the Balance Sheet and Form H1. The latter is prepared in the month of May and stock taken in H1 is on the basis of volumetric analysis. We note that ld CIT(A) examined the reconciliation statement submitted by the assessee during the appellate proceedings and he found it correct.That being so, we decline to interfere in the order passed by the ld. CIT(A), his order on this issue, is hereby upheld and the ground no. 2 raised by the revenue is dismissed.

34. In the result, all the appeals of the revenue are dismissed.

Order pronounced in the Court on 24.08.2020

Sd/-	**Sd/-**
(S.S.GODARA)	**(A.L.SAINI)**
न्यायिकसदस्य / JUDICIAL MEMBER	**लेखासदस्य / ACCOUNTANT MEMBER**

कोलकाता /Kolkata;
दिनांक/ Date: 24/08/2020
(*SB, Sr.PS*)

Copy of the order forwarded to:
1. DCIT, Circle-3(1), Kolkata
2. Shri Ramesh Prasad Sao
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), KolkataBenches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches