

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI SHAMIM YAHYA (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA Nos.5676 & 5677/MUM/2019  
(Assessment Years: 2013-14 & 2014-15)**

DCIT-1(2)(1),  
Room No. 535, Aayakar  
Bhavan, New Marine Lines,  
Mumbai – 400 020

M/s Indian Rare Earth Ltd.  
Vs. Plot No.1207, ECIL Building,  
Veer Savarkar Marg,  
Near Siddhi Vinayak Temple,  
Prabhadevi,  
Mumbai – 400 028

**PAN No. AAACI2799F**

**(Revenue)**

**(Assessee)**

Assessee by : Shri V. Mohan, A.R  
Revenue by : Ms. Shreekala Pardeshi, D.R

Date of Hearing : 31/08/2021  
Date of pronouncement : 02/09/2021

**ORDER**

**PER RAVISH SOOD, J.M:**

The present appeals filed by the revenue are directed against the respective orders passed by the CIT(A)-2, Mumbai, dated 10.06.2019 for A.Y.2013-14 and A.Y. 2014-15. As common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order. We shall first take up the appeal filed by the revenue for A.Y. 2013-14, wherein the impugned order has been assailed on the following grounds before us:

- “1. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was right in deleting the disallowance of Rs.1,55,75,721/- on

account of Corporate Social Responsibility (CSR) and failing to appreciate that as per the Companies Act, Corporate Social Responsibility (CSR) is an appropriation of profits below the line and hence is not an allowable expenditure under the Income Tax Act.

2. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the land acquisition expenses of Rs.60,70,699/- on account of land acquisition failing to appreciate that the expenditure is directly related to the acquisition of land and is therefore, in the nature of capital expenditure.
3. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the enhanced compensation towards land acquisition expenses of Rs.2,00,821/- on account of land acquisition failing to appreciate that the expenditure is directly related to the acquisition of land and is therefore, in the nature of capital expenditure.
4. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was right in deleting the disallowance of Rs.1,32,19,675/- on account of Corporate Social Responsibility (CSR) and failing to appreciate that as per the Companies Act, Corporate Social Responsibility (CSR) is an appropriation of profits below the line and hence is not an allowable expenditure under the Income Tax Act.
5. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was right in deleting the disallowance of Rs.1,32,19,675/- on account of Corporate Social Responsibility (CSR) and failing to appreciate that the expenditure incurred by the assessee under the head "Corporate Social Responsibility (CSR)" does not qualify within the ambit of Section 37(1) as the amount is not expended wholly & exclusively for the purpose of business."

2. Briefly stated, the assessee which is engaged in the business of separation and processing of rare earth minerals had e-filed its return of income for A.Y. 2013-14 on 30.03.2015, declaring a total income of Rs.272,93,81,960/-. The return of income filed by the assessee was processed as such u/s 143(1) of the Act. Subsequently, the income of the assessee was assessed u/s 143(3) of the Act at Rs.276,94,49,610/- after inter alia making the following disallowances :

Sr. No.	Particulars	Amount
1.	Disallowance of assessee's claim for deduction of Corporate Social Responsibility (CSR).	Rs.1,55,75,721/-.
2.	Disallowance of Land Acquisition Expenses	Rs.60,70,699/-
3.	Disallowance of School Expenses.	Rs.1,32,19,675/-.

3. Aggrieved, the assessee assailed the assessment order before the CIT(A). Qua the disallowance of land acquisition expenses AND school expenses, the CIT(A) found favour with the contentions advanced by the assessee and vacated the said respective disallowances. As regards the assessee's claim for deduction of Corporate Social Responsibility (for short "CSR") expenses of Rs.1,55,75,721/- that were disallowed by the A.O, it was observed by the CIT(A), that the same were voluntary expenditures in the nature of donations to government schools, government hospitals, village panchayat, resettlement colonies for supply of school uniforms, books, computers, medicines, construction of road, construction of shed, community hall, supply of water facility to villages etc. The CIT(A), was of the view, that the aforesaid expenses were liable to be disallowed unless business expediency was proved. It was, thus, observed by the CIT(A) that the expenditure in the nature of donations were to be disallowed, for the reason, that the same were not incurred for the purposes of business u/s 37(1) of the Act. It was further observed by the CIT(A), that the deduction of the aforesaid expenditures which were in the nature of donations would be permissible in terms of the provisions of Sec. 80G of the Act. Backed by his aforesaid view, it was observed by the CIT(A) that insofar certain Village Development Expenses that were incurred by the assessee at the instance or direction of the Hon'ble High Court of Kerala/State Government Authorities i.e supply of drinking water to residents of Eloor by way of payment of 1/4<sup>th</sup> share of KSPCB, contribution of Mining Area Welfare Board etc. were concerned, the same being in the nature of expenses/contributions that the assessee was constrained to incur/make in the interest of its business, the same, were thus to be allowed as a deduction on the ground of business expediency. Accordingly, the CIT(A) restored the issue to the file of the A.O, with a direction, that if the assessee was able to adduce evidence to show that the aforesaid expenditure was incurred at the directions of the Government Authorities, whether State or Central, for which approval of its competent authority was obtained during the

year under consideration, then, the A.O would allow the consequential relief to the assessee.

4. The revenue being aggrieved with the order passed by the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee, at the very outset, submitted, that the issue involved in the present appeal was squarely covered by the order passed by the Tribunal in the assessee's own case for A.Y. 2012-13 in ITA No. 4526/Mum/2017, viz. ACIT-1(2)(2), Mumbai Vs. M/s Indian Rare Earth Ltd., dated 30.01.2019. Our attention was drawn by the Id. A.R to the relevant observations of the Tribunal as regards the issue involved in the appeal before us.

5. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the assessment order. But then, the Id. D.R could not rebut the claim of the assessee's counsel that the issue involved in the present appeal was covered by the order passed by the Tribunal in its own case for the immediately preceding year.

6. We have heard the Id. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record. As observed by us hereinabove, the A.O in the present case had carried out four disallowances, viz. (i). disallowance of CSR expenses: Rs.1,55,75,721/-; (ii). disallowance of land acquisition expenses: Rs.60,70,699/-; (iii) disallowance of the provision for enhanced compensation on land acquisition: Rs.2,00,821/-; and (iv) disallowance of school expenses: Rs. 1,32,19,675/-. Considering the aforesaid multiple issues as regards which disallowances have been made in the hands of the assessee, we shall hereinafter deal with the same in a chronological manner.

7. We shall first take up the disallowance of the assessee's claim for deduction of CSR expenses of Rs.1,55,75,721/-. On a perusal of the records, we find that

the assessee had incurred the CSR expenses, viz. Village Development Expenses during the year under consideration, as under:

Particulars/Name of Units	Always	Chavra	MK	Oscorn	Total
Construction of Road, Community Hall, Lighting Facility, Library, Rest Sheds ETC at Near by Village		58,501	24,000	3,18,116	4,00,617
Drinking Water Facility to Villages	17,50,901	52,16,664		8400	69,75,965
Plantation in Peripheral villages				23,033	23,033
Contribution to Mining Welfare Board		55,55,145			55,55,145
Contribution to fishermen Welfare Fund			14,00,000		14,00,000
Providing Uniform, Books, Computers, Furniture to Nearby School		2,99,542		72,548	3,72,090
Providing Medical Facility, Policies to Fishermen Villages/peripheral Villages			4,33,087	4,15,784	8,48,871
Total	17,50,901	1,11,29,852	18,57,087	8,37,881	1,55,75,721

As observed by the CIT(A), the expenditure that was incurred by the assessee insofar the same was in the nature of donations, was to be disallowed, for the reason, that the same was not incurred for the purpose of its business u/s 37(1) of the Act. At the same time, the CIT(A) had observed, that the deductions against the aforesaid donations would be permissible to the assessee in terms of the provisions of Sec.80G of the Act. Also, it was observed by the CIT(A) that as majority of the village development expenditure had been incurred by the assessee at the instance or direction of the Hon'ble High Court of Kerala/State Government Authorities, viz. supply of drinking water to the residents of Eloor by way of a payment of 1/4<sup>th</sup> share of KSPCB, contributions of Mining Area Welfare Board etc., the same having been incurred/borne in the interest of its business was to be allowed as a deduction on the ground of business expediency, though, subject to the condition that the assessee was able to substantiate that such expenditure/contributions were incurred/made pursuant to the directions of the government authorities, whether State or Central, and for which the approval of its competent authority was obtained during the year under consideration. At this

juncture, we may herein observe that the legislature in all its wisdom had vide the Finance (No.2) Act, 2014, w.e.f 01.04.2015 inserted 'Explanation 2' to Section 37(1) of the Act, which reads as under:

"[Explanation 2- for the removal of the doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.]"

However, as the aforesaid 'Explanation 2' had been made available on the statute prospectively w.e.f 01.04.2015 i.e from A.Y 2015-16, thus, the same would not be applicable to the case of the assessee before us i.e A.Y. 2013-14. In the backdrop of our aforesaid deliberations, we are of the considered view, that no infirmity emerges from the order of the CIT(A), who had rightly held that the expenses and contributions that were made by the assessee towards village development expenses as per the directions of the Government Authorities, whether State or Central, for which the approval of the Competent Authority was received during the year under consideration were to be allowed as a deduction while computing its income. Accordingly, concurring with the view taken by the CIT(A), we are not persuaded to accept the claim of the revenue that the CIT(A) had erred in allowing the assessee's claim for deduction with respect to CSR contributions. The **Ground of appeal No. (i)** is accordingly dismissed.

8. We shall now take up the claim of the revenue that the CIT(A) had erred in allowing the assessee's claim for deduction of Land Acquisition Expenses of Rs.60,70,699/-, failing to appreciate that the expenditure in question was in the nature of a capital expenditure. As is discernible from the orders of the lower authorities, we find that the land acquisition expenses of Rs.60,70,699/- were incurred by the assessee at the direction of the Government of Kerala, towards establishment cost, salary, pension etc. of certain posts sanctioned to look after the land acquisition issues of the assessee company. Before the lower

authorities, it was categorically submitted by the assessee that the expenditure in question was nothing but reimbursement of salary, rent, electricity and other office maintenance expenditure of the Land Acquisition office of the Government of Kerala and Tamil Nadu at the site of the assessee company. However, as observed by us hereinabove, the A.O holding a conviction that the expenditure incurred was in the nature of a capital outlay i.e towards acquisition of a capital asset, therefore, disallowed the same. On appeal, it was observed by the CIT(A) that a similar disallowance was vacated by his predecessor while disposing off the assessee's appeal for A.Y. 1997-98 and A.Y. 2012-13. Also, it was observed by the CIT(A) that the order passed by his predecessor for A.Y.2012-13 had thereafter been upheld by the ITAT, Mumbai, vide its order dated 30.01.2019. Backed by the aforesaid facts, the CIT(A) vacated the aforesaid disallowance made by the A.O.

9. We have given a thoughtful consideration to the aforesaid issue, and find, that as stated by the Id. A.R, and rightly so, the aforesaid issue is squarely covered by the order passed by the Tribunal in the assessee's own case for the immediately preceding year i.e A.Y.2012-13 in ITA No.4526/Mum/2017, dated 30.01.2019. In its aforesaid order, the Tribunal while vacating the disallowance of the land acquisition expenses of Rs.53,09,116/- that was made by the A.O, had observed as under:

"8. We shall now advert to the disallowance of Rs.53,09,116/- made by the A.O in context of impugned land acquisition expenses. The A.O while disallowing the aforesaid expenses of Rs. 53,09,116/- which were booked by the assessee under the head „miscellaneous expenditure" had observed that the same pertained to acquisition of land. The A.O held a conviction that as the expenditure incurred by the assessee was in context of acquiring land, hence the same was required to be capitalized and could not have been claimed by the assessee as a revenue expenditure. 9. We have deliberated at length on the issue under consideration and find that the bifurcated details of the miscellaneous expenditure of Rs. 53,09,116/- booked by the assessee in its profit and loss account for the year under consideration was as under:

Sr. No.	Particulars	Amount
1.	Engagements Fees	Rs.39,200/-
2.	Encumbrance Certificate fee	Rs.10,780/-

3.	Scrutiny charges to advocate	Rs.24,500/-
4.	Sweeping Charges	Rs.11,000/-
5.	Building Evaluation Charges etc.	Rs.14,000/-
6.	Miscellaneous expenses	Rs.4,145/-
7.	Establishment charges	Rs.52,05,491/-
	Total	Rs.53,09,116/-

We find that the major portion of the expenditure of Rs.52,05,491/- (out of total expenditure of Rs. 53,09,116/-) was incurred by the assessee towards maintenance of the office of the land acquisition unit of the Government of India. On a perusal of the facts, it emerges that the said expenditure was incurred by the assessee pursuant to an understanding between the Government of Kerala and the assessee, as per which the assessee was to bear the expenditure of the land acquisition unit set up by the State Government at the site of the assessee's business. The aforesaid expenditure comprised of viz. (i) reimbursement of salary; (ii) rent; (iii) electricity; and (iv) other office maintenance expenditure of the Government of Kerala at the site of the assessee. In our considered view as the assessee in the normal course of its business of mining rare earth minerals was continuously taking lands on lease for extraction of minerals, thus the aforesaid expenditure incurred by it pursuant to an understanding with the Government of Kerala whose intervention was involved at every stage of its mining activity, was thus clearly in the nature of a revenue expenditure that was incurred by the assessee in the course of its business and the same could not be held as being in the nature of a capital expenditure. Apart therefrom, we find from a perusal of the order of the CIT(A) that the expenses on maintenance of the Government of Kerala employees by the assessee had been in existence since long. Rather, the allowability of such expenditure was also one of the issues involved in the appeal of the assessee for A.Y. 1997-98, wherein the Tribunal while disposing off the appeal viz. ITA No. 1664/Mum/2003, dated 06.07.2007 had directed that the same was to be allowed as a deduction, observing as under:

"This is apparent from the G.O. No. 471/96/ID dated 9.5.1996 wherein it has been clearly mentioned that sanction is accorded subject to the condition that the entire establishment cost, salary, pension conditions should be met by the assessee. Admittedly, the assessee has been carrying on the business of mining at the site in Kerala for more than 20 years and such expenditure is being incurred year after year."

We further find that as observed by the CIT(A), during the year under consideration the Special Tehsildar (I.A. Kerala), vide his order dated 05.05.2009 had sanctioned 13 posts exclusively for looking after the assessee's land. Rather, it was observed by him that as per the order of the Joint Secretary to the State Government of Kerala minerals and metals department 75% of the establishment cost was to be borne by the assessee. The relevant extract of the aforesaid order is as under:

"The Establishment charges of 12 posts mentioned above shall be completely by Rare Earths Limited 75% the establishment charges of posts mentioned all be met by Kerala Minerals and Metals and Indian Rare Earths Limited as envisaged in G.O.(Rt) 1454/07/ID dated 14/11/2007."

We are of the considered view that as the aforementioned expenditure incurred by the assessee pursuant to an understanding with the State government of Kerala was in the course of its business of mining, hence the same being clearly in the nature of a revenue expenditure was to be allowed as a deduction while computing its income for the year under consideration. Apart therefrom, we find that the issue under consideration as regards the allowability of the aforesaid expenditure is squarely covered by the order passed in the assessee's own case by a coordinate bench of the ITAT "A" Bench, Mumbai

in M/s Indian Rare Earth Ltd. Vs. JCIT (Sr.-6), Mumbai [ITA No. 1664/Mum/2003; dated 06.07.2007]. We thus finding ourselves to be in agreement with the view taken by the Tribunal, thus are of the considered view that the amount of Rs. 53,09,116/- incurred by the assessee was rightly claimed as a revenue expenditure. We thus not finding any infirmity in the order of the CIT(A) wherein the latter had ordered deletion of the addition of Rs. 53,09,116/- made by the A.O, uphold his order in context of the issue under consideration. The Ground of appeal No. 2 raised by the revenue is dismissed.”

As the facts and the issue involved qua the disallowance of land acquisition expenses during the year under consideration, remains the same, as were there before the Tribunal in the assessee’s own for A.Y. 2012-13, therefore, we respectfully follow the same, and therein, uphold the order of the CIT(A) who had rightly vacated the disallowance of the land acquisition expenses of Rs.60,70,699/-. The **Ground of appeal No. (ii)** is dismissed.

10. We shall now take up the claim of the revenue that the CIT(A) had wrongly vacated the disallowance of the provision for enhanced compensation on land acquisition of Rs.2,00,821/-. As is discernible from the record, the A.O had disallowed the aforesaid expenditure, for the reason, that the same as per him was not in the nature of a revenue expenditure. On appeal, the CIT(A) following the view that was taken by his predecessor in A.Y. 2012-13, vide his order dated 29.03.2017, which thereafter had been upheld by the ITAT, Mumbai in ITA No.4526/Mum/2017, dated 30.01.2019, therein vacated the said disallowance.

11. We find that the issue qua the disallowance of the provision for enhanced compensation on land acquisition had earlier too came up before the Tribunal in the assessee’s own case for the immediately preceding year i.e A.Y. 2012-13 in ITA No.4526/Mum/2017, dated 30.01.2019. Observing, that the expenditure incurred by the assessee was in the nature of a revenue expenditure that was allowable as a deduction while computing its income, the Tribunal had upheld the view taken by the CIT(A) and had vacated the said disallowance. On a perusal of the order of the Tribunal, we find that it was therein observed as under:

“6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Insofar, the disallowance of Rs.16,41,654/- that was made by the A.O on the ground that the same pertained to the provision for enhanced compensation on land acquisition is concerned, we find that it was observed by the CIT(A) that the A.O had misconceived the facts and had wrongly made the said addition/disallowance. It was noticed by the CIT(A) that the amount of Rs.16,41,654/- booked by the assessee as a revenue expenditure comprised of viz. (i) interest on service tax on payments made to transporters (Rs.12,40,970/-); (ii) interest on Kerala State General Tax (Rs.92,637/-); and (iii) Interest on leasehold land acquisition payments (Rs.3,08,047/-). Apart therefrom, it was observed by the CIT(A) that during the year under consideration the liability to pay service tax to the transporters was to be borne by the service availer. It was noticed by him that the assessee as a service availer had paid service tax in respect of the amount paid to the transporters for movement of raw materials to its factory premises. However, as there were certain errors while computing the service tax liability on the part of the assessee, thus pursuant to the audit conducted by the service tax authorities certain additional payment became payable by the assessee. The principal amount that was paid by the assessee towards the additional liability of service tax was added to the material cost while for the interest of Rs.12,40,970/- was debited as “interest-others” in the profit and loss account. The assessee in order to fortify its aforesaid claim had placed on record the copy of the orders of the service tax department, proof of challan for making the payment and the internal note prepared for the payment that was made. The CIT(A) observed that as the payment of interest on service tax was in the nature of a revenue expenditure and had rightly been claimed by the assessee, therefore, the same was to be allowed while computing the income of the assessee. As regards the payment of Rs. 3,08,047/-, it was observed by the CIT(A) that the assessee in the course of its business would take land falling in the vicinity of its factory on short term lease for mining purpose and thereafter would hand over the same back to the owners. It was observed by the CIT(A) that as the amount of Rs.3,08,047/- paid by the assessee was towards compensation payable in respect of one such lease transaction and was paid to the State Government of Kerala which was a nodal agency for land acquisition, thus the same was clearly in the nature of a revenue expenditure and was to be allowed as a deduction while computing the income of the assessee. Apart therefrom, it was observed by the CIT(A) that as the interest paid by the assessee on account of late deposit of the amounts under the Kerala State General Tax was in the nature of a revenue expenditure, hence the same too was allowable as a deduction while computing the income of the assessee. On the basis of his aforesaid deliberations the CIT(A) deleted the addition of Rs.16,41,654/-.

7. We have deliberated at length on the issue under consideration and are in agreement with the view taken by the CIT(A) that the A.O on the basis of misconceived facts had made an addition of Rs. 16,41,654/- in the hands of the assessee. The Id. D.R had also not placed before us any such material or raised any such contention which could persuade us to conclude that the factual observations of the CIT(A) suffer from any infirmity. We thus being of the considered view that the aforesaid expenses aggregating to Rs. 16,41,654/- viz. (i). interest on service tax on transport of goods :Rs. 12,40,970/-; (ii). Interest on

Kerala State General Tax : Rs. 92,637/-; and (iii). Interest on leasehold land acquisition payments : Rs. 3,08,047/-, being in the nature of a revenue expenditures were allowable as a deduction while computing the income of the assessee, thus finding no infirmity in the order of the CIT(A) who had rightly deleted the addition of Rs.16,41,654/- made by the A.O, uphold his order. The Ground of appeal No. 1 raised by the revenue is dismissed.”

Before us, the Id. D.R had failed to point out any such material fact on the basis of which the view taken by the Tribunal in the case of the assessee for the immediately preceding year i.e A.Y 2012-13 could be held to be distinguishable qua the aforesaid issue, as against that for the year under consideration, viz. A.Y. 2013-14. Accordingly, finding no reason to take a different view, we herein respectfully follow the order passed by the coordinate bench of the Tribunal in the assessee's own case for A.Y. 2012-13 in ITA No.4526/Mum/2017, and therein, uphold the order of the CIT(A) who had rightly vacated the disallowance made by the A.O as regards the provision for enhanced compensation on land acquisition for the year under consideration. The **Ground of appeal No. (iii)** is dismissed.

12. We shall now take up the claim of the revenue that the CIT(A) had erred in vacating the disallowance of the assessee's claim for deduction of expenditure incurred on school amounting to Rs.1,32,19,675/-. As is discernible from the records, the assessee had incurred expenses pertaining to running of Atomic Energy Central School, Oscom (Orissa Sand Complex). It was the claim of the assessee before the lower authorities that they were providing funds for running of the school in an area where they were carrying out their mining operations. Also, it was submitted by the assessee that the aforesaid school catered to the wards of all the residents of that area, as well as those of the adjoining areas, and was not restricted to only the children of the employees. However, the A.O did not find favour with the aforesaid claim of the assessee, for the reason, that the school was for all the residents in the area and not restricted to the children of its employees. It was observed by the A.O, that as the employees of the

assessee company were drawing education allowance for their children from the assessee company as per the Central Government Rules, therefore, it was not tenable to allow the aforesaid expenditure as a deduction in the hands of the assessee. In sum and substance, the A.O was of the view that as the aforesaid expenditure was not incurred fully and exclusively for the purpose of the business of the assessee company, therefore, the same could not be allowed. Backed by his aforesaid deliberations, the A.O disallowed the assessee's claim for deduction of the school expenses of Rs.1,32,19,675/-. On appeal, it was observed by the CIT(A) that the aforesaid claim for deduction of the assessee, viz. school expenses was allowed by the ITAT in the assessee's own case for the immediately preceding year i.e. A.Y. 2012-13. Also, it was observed by the CIT(A), that the Tribunal while allowing the assessee's claim for deduction of the aforesaid expenditure, had noticed, that the aforesaid expenditure was being incurred by the assessee pursuant to government directives since 1990 onwards. Accordingly, the CIT(A) allowed the assessee's claim for deduction of the aforesaid expenditure that was incurred on running of Atomic Energy Central School, Oscom (Orissa Sand Complex), as a revenue expenditure.

13. We have given a thoughtful consideration to the aforesaid issue, and find, that as stated by the Id. A.R, and rightly so, the aforesaid issue as regards the allowability of the assessee's claim for deduction of the expenditure incurred on running of Atomic Energy Central School, Oscom (Orissa Sand Complex), as a revenue expenditure, is squarely covered by the order passed by the Tribunal in the assessee's own case for the immediately preceding year i.e A.Y. 2012-13 in ITA No.4526/Mum/2017, dated 30.01.2019, wherein it was observed as under:

10. We shall now advert to the disallowance of the expenditure incurred by the assessee on running and maintenance of Atomic Energy Central School Oscom, (Orissa Sand Complex) amounting to Rs.1,20,61,377/-, which had been deleted by the CIT(A). We find from a perusal of the orders of the lower authorities that the assessee had incurred expenses pertaining to running of Atomic Energy Central School Oscom (Orissa Sand Complex). It was the claim of the assessee before the A.O that they were providing funds for running of the school in the area where they were carrying out the mining

operations. Apart therefrom, it was submitted by the assessee that the aforesaid school catered to the wards of all the residents of that area as well as those of the adjoining areas and was not restricted to only the children of the employees. However, the A.O not finding favour with the said claim of the assessee disallowed the said expenses by observing that as the employees of the assessee were drawing educational allowance from the assessee as per the government rules, therefore, the aforementioned expenses incurred on running of the school was not allowable as a deduction. 11. We have deliberated at length on the issue before us and find from a perusal of the orders of lower authorities that the aforementioned school viz. Atomic Energy Central School, Oscom was being run at the place where the assessee had set up its manufacturing units viz. Chatrapur, Orissa. Rather, the assessee's major business activity of mining of Rare Earth Minerals and also processing/beneficiation of ilmenite from the mining activity was being carried out at Chatrapur, Orissa. Apart therefrom, we find from the order of the CIT(A) that the Central school established in Chatrapur, viz. Atomic Energy Central School, Orissa had been operative for over a decade and was providing education to the children of the employees of the assessee as well as the wards of the local residents and those of the adjoining areas. The expenses incurred by the assessee on running and maintenance of the aforementioned school during the year under consideration was comprised of the following:

Sr. No.	Description	Amount(Rs.)
1.	Salary	1,19,44,632.00
2.	Repair & Maintenance	1,16,745.00
	Total	1,20,61,377.00

It is further observed that the aforementioned expenses were being incurred by the assessee as per the directives of the department of atomic energy. The observations of the A.O that the aforesaid school was set up for the purpose of providing education to the employees children only had been dislodged by the CIT(A), who we find had observed that the said Central school was providing quality education not only to the children of the employees of the assessee but also to those of the local residents and the nearby areas. We find ourselves to be in agreement with the view taken by the CIT(A) that as the obligation to bear the aforesaid expenses for running the school was pursuant to a government directive, therefore, the assessee being a public sector undertaking (PSU) had to mandatorily abide by the said direction, and the expenditure incurred for maintenance of the said Central school was clearly in the nature of a revenue expenditure that was to be allowed as a deduction while computing the income of the assessee. Our aforesaid view that a PSU is required to comply with the government directive is fortified by the judgment of the Hon'ble High Court of Madras in the case of CIT Vs. Madras Refineries Ltd. (2004) 266 ITR 176 (Mad) and an order of a coordinate bench of a Tribunal in Hindustan Petroleum Corporation Vs. DCIT (2005) 96 ITD 186 (Mum). We have given a thoughtful consideration to the issue before us and are of the considered view that the aforesaid expense which had strictly been incurred by the assessee pursuant to government directive since 1990 onwards, as rightly observed by the CIT(A) was in the nature of a revenue expenditure which was to be allowed while computing the income of the assessee for the year under consideration. We thus find ourselves to be in agreement with the view taken by the CIT(A) in context of the issue under consideration, uphold the his order. The Ground of appeal No. 3 raised by the revenue is dismissed.

As the facts and the issue qua the assessee's claim for deduction of the expenditure incurred on running the Atomic Energy Central School, Oscom (Orissa Sand Complex), during the year under consideration, remains the same, as were there in its case for the immediately preceding year i.e A.Y. 2012-13, therefore, we respectfully follow the view taken by the Tribunal and uphold the order passed by the CIT(A). The **Grounds of appeal Nos. (iv) and (v)** are dismissed.

14. Resultantly, the appeal filed by the revenue is dismissed in terms of our aforesaid observations.

**ITA No. 5677/Mum/2019**  
**A.Y.2014-15**

15. Briefly stated, the assessee company had e-filed its return of income for A.Y. 2014-15 on 28.11.2014, declaring an income of Rs.57,25,56,870/-. Return of income filed by the assessee was processed as such u/s 143(1) of the Act. Assessment was thereafter framed by the A.O vide his order passed u/s 143(3), dated 20.12.2016, wherein the income of the assessee was assessed at Rs.55,95,49,300/- after making the following disallowances:

Sr. No.	Particular	Amount
1.	Disallowance of the assessee's claim for deduction of CSR expenditure/contribution.	Rs.1,73,47,296/-
2.	Disallowance of the assessee's claim for deduction of land acquisition expenses.	Rs.4,46,229/-
3.	Disallowance of the assessee's claim for a deduction of school expense	Rs.1,44,48,556/-

16. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Observing, that the issues, viz. (i) disallowance of land acquisition expenses; and (ii) disallowance of the school expenses, were the same, as were there in the case of the assessee for A.Y. 2012-13, the CIT(A) taking note of the fact that the said respective disallowances were vacated by his predecessor while disposing off the assessee's appeal for A.Y.2012-13, and his order had thereafter been

upheld by the Tribunal, thus, for the said reason deleted the said disallowances made by the A.O. Insofar the disallowance of the assessee's claim for deduction of the CSR contribution/expenses were concerned, the CIT(A) restored the issue to the file of the A.O, with a direction, to allow such village development expenditure that were incurred by the assessee at the direction of the Government authorities, whether State or Central, and for which the approval of the competent authority of the assessee company was received during the year under consideration.

17. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. As the facts and the issue involved in the present appeal, remains the same, as were there before us in the revenue's appeal in the case of the assessee for the immediately preceding year i.e A.Y. 2013-14 in ITA No.5676/Mum/2019, therefore, the view therein taken by us shall apply *mutatis mutandis* for the purpose of the disposal of the present appeal for A.Y.2014-15 in ITA 5677/Mum/2019. Accordingly, on the same terms the appeal filed by the revenue for the captioned year is dismissed.

18. Resultantly, both the appeals of the revenue i.e A.Y. 2013-14 in ITA No.5676/Mum/2019 and A.Y. 2014-15 in ITA No.5677/Mum/2019 are dismissed.

Order pronounced in the open court on 02.09.2021

Sd/-

(Shamim Yahya)  
ACCOUNTANT MEMBER

Sd/-

(Ravish Sood)  
JUDICIAL MEMBER

Mumbai;

Dated: 02.09.2021

PS: Rohit

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,  
//True Copy//

(Sr. Private Secretary)  
**ITAT, Mumbai**