IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK

BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER

ITA No.225/CTK/2015: Assessment Year : 2006-07
ITA No.255/CTK/2014: Assessment Year : 2007-08
ITA No.256/CTK/2014: Assessment Year : 2008-09
ITA No.332/CTK/2015: Assessment Year : 2009-10
ITA No.287/CTK/2016: Assessment Year : 2011-12
ITA No.32/CTK/2017: Assessment Year : 2012-13

Asst.Commissioner of Income Tax, Corporate Circle-1(2), Bhubaneswar	*Vs.*	Orissa Hydro Power Corporation Ltd., Janapath, Bhoi Nagar, Bhubaneswar.
PAN/GIR No.AAACO 2575 P		
(Appellant)	..	(**Respondent**)

ITA No.226/CTK/2015: Assessment Year : 2006-07
ITA No.179/CTK/2014: Assessment Year : 2007-08
ITA No.180/CTK/2014: Assessment Year : 2008-09
ITA No.339/CTK/2015: Assessment Year : 2009-10
ITA No.282/CTK/2016: Assessment Year : 2010-11
ITA No.283/CTK/2016: Assessment Year : 2011-12
ITA No.13/CTK/2017: Assessment Year : 2012-13
ITA No.277/CTK/2019: Assessment Year : 2013-14
ITA No.278/CTK/2019: Assessment Year : 2014-15

Orissa Hydro Power Corporation Ltd., Janapath, Bhoi Nagar, Bhubaneswar	*Vs.*	Asst.Commissioner of Income Tax, Corporate Circle-1(2), Bhubaneswar
PAN/GIR No.		
(Appellant)	..	(**Respondent**)

Assessee by : Shri Dillip Kumar Mohanty/Pradyumna Kumar Sahu/Ms Sunima Panda , ARs
Revenue by : Shri M.K.Gautam, CIT (DR)

Date of Hearing : 22/6/ 2022
Date of Pronouncement : 22/6/2022

O R D E R

Per Bench

These are appeals filed by the revenue and assessee against the separate orders of the CIT(A)-1 Bhubaneswar for the assessment years 2006-07 to 2014-15, respectively. As the various common grounds taken by both the revenue and assessee in the respective assessment years, they are clubbed together and are being disposed of by this common order for the sake of convenience.

ITA No.225/CTK/2015: A.Y. 2006-07 -Revenue's appeal

2. (i) The first ground relates to the deletion of addition of Rs.8,93,15,933/- claimed in respect of five dams being RHEP, Rangali, BHEP, Balimela, UKHPE, Barinput, HPS, Burla and UIHEP, Mukhiguda.

3. It was the submission of ld CIT DR that the Assessing Officer had categorically called for the details but the assessee was unable prove the expenses with supporting bills. It was the submission that the expenses claimed was only a provision, which had not crystalised and bills from Department of Water Resources (DoWR) were also not produced. It was the further submission that the expenses of Rs.1.5 crores in respect of BHEP, Balimela had no basis and this was also an admitted fact insofar as it was mentioned as such by the auditors in the Notes to the accounts of the

assessee for the relevant assessment year. It was the submission that if the amount had been spent, there was no requirement of providing for a provision. It was the further submission that before the ld CIT(A), the assessee took a stand that the expenditures have been incurred. It was further submitted that this was not the case and the order of the ld CIT(A) was liable to be reversed.

4. In reply, ld AR submitted that the issue is squarely covered by the decision of the Co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 2004-05 in ITA No.278/CTK/2010 dated 21.10.2011, wherein, in para 6 at page 10 to 14, the issue has been categorically discussed and allowed. It was the submission that the issue is also covered by the decision of the Co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 2005-06 in ITA No.115/CTK/2014 order dated 25.2.2020, wherein, in para 8 at page 5, following the decision of the Co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 2004-05 (supra), the issue has been held in favour of the assessee.

5. In rejoinder, ld CIT DR submitted that the issue of Rs.1.5 crores in respect of BHEP, Balimela had been specifically disallowed by the Tribunal in assessee's own case for the assessment year 2004-05 referred supra and as this settlement had been reached only on 20.6.2014, this amount, if at all, could be considered only in the assessment year 2015-16.

6. We have considered the rival submissions and perused the orders of the Co-ordinate Bench of this Tribunal in assessee's own case for then assessment years 2004-05 and 2005-06 (supra). A perusal of the order of the Tribunal for the assessment year 2004-05 in ITA No.278/CTK/2010 shows that this issue is squarely covered, wherein, the Tribunal has held as follows:

> " 6. We have heard the rival contentions and perused the material available on record. The issue with respect to accounting the receivables and providing for a liability becomes an issue whether the assessee has to account for all its business transactions. We have been apprised of the fact that the assessee was to consider receivables a claim on the respective darns but the basis of expenditure incurred it being the controlling authority for the hydro power of the State. The running and maintaining of the dam was therefore with respect to Government agencies when the sharing of expenses was decided for the power component, irrigation component and flood control component was expenditure to be borne by the Engineering Department i.e.. the assessee. The learned CIT(A) was therefore apprised of the fact that the accounting policy did not appear proper as found out by the Assessing Officer for incorporating the same as income when the same emanated from the fact that the assessee was to receive ?16.28 Crores from Water Resources Department for payment of maintenance charges. Out of the total amount of Rs.16.28 Crores the amount of Rs.4.14 Crores was receivable for this year which was not accounted for by the assessee in its books of account had been clarified as an accounting policy by the auditors. The auditors in their report had opined that the sum of *Rs.* 16.28 Crores was the sum total of the amount which as per the notification dt.7.7.1999 was to culminate into allocating the expenses with the four different units was finally adjusted against the amount allocated for this purpose by the Government of Rs. 100 Crores which the Water Resources Department had already had for adjustment was an amount of Rs.25 Crores stood adjusted and acceptable. The rest of Rs.76 Crores were adjusted beginning from 1996-97 in the year 2007-08 when the *claim* of expenditure provided for by the assessee for the Assessment Year 2004-05 indicated Rs.8,14,71,252 from operation and maintenance cost of the dams to be adjusted was to be reported to the Government of Orissa. This is why the sum of O.50 Crores, as per the past practice of the assessee to provide for in the case of Balimela Dam was considered in appropriate by the Assessing Officer but was considered otherwise by the learned CIT(A) to reduce the loss claimed by the assessee against the remaining dams which was also provided for in the books of account and

not because they were not claimed or not ascertained liabilities. Having said so, the learned Counsel's reliance on the decision of Hon'ble Apex Court in the case of Calcutta Co. Ltd v. CIT (supra) fall in place to be .considered in accordance with the accounting of the business transactions when it was not the case of the Department to disallow the same as an dispute amongst the Government agencies duly regulated by the assessee being the regulator of running and maintenance of dams as per the notification of the Government of Orissa. Similarly, the non-accounting of the receivable on the basis of not accounting for the earlier incomes which has been opined by the auditors in their report was Rs. 16.28 Crores were to be received had not been accounted for. In other words, the assessing authorities therefore only tried to deliberate on the issue without pointing out to how loss could be reduced or income should be accounted for other than what has been declared by the assessee as per the Government Undertaking Scheme of accounting receivables and payables. The learned DR has tried to put forth the observation of the learned CIT(A) only points out as a appropriation of the Government units funds without as to how such decisions could not be made on the basis of past practice. The Government organizations cannot be subjected to questioning for accounting their own funds allocation which are to crystallize in its normal course. Incurring of expenditure was not doubted and therefore, the learned Counsel for the assessee rightly pointed out that the income of Rs.4.14 Crores could be considered for addition in consequence to accepting the basic concept of having incurred expenses there against therefore could not be considered in part only. The learned CIT(A) therefore, erred in holding that the liability can only be claimed when it has been raised when Revenue recognition has already been canvassed by him in the light of the fact that the assessee has nor acknowledged that the payee will pay. Having begun with earnest in 1999 and in accordance with the agreement amongst the Government Departments, the different authorities which ultimately crystallized culminated in the disbursement of the allocated funds in the financial year 2007-08 when the sum of Rs.75 Crores was adjusted as amount received from Water Resources Department towards dam maintenance stood adjusted in the books of account therefore cannot be found erroneous on the basis of nomenclature in the account when the income tax has to be levied or income having received after allowing all the expenses incurred for earning the same. It is not the case of the Department that the Government had faulted *|n* payment of tax on the receipt of incomes which has not been accounted for in the proper manner. The contention of the learned Counsel for the assessee relying on the Apex Court's decision therefore has to be followed in its entirety to the extent that the taxing authorities have agreed to the proposition that all the maintenance cost of dams for the intervening years was when the assessee came into being was authorised by the Government of Orissa to share the expenses in proportion as mentioned by the learned CIT(A) in his order which notification has been placed by the assessee in the Paper Book was to be complied with. The auditor's clarification that the expenses of Rs.1.5

Crores has not been provided for on ascertained basis has not to be considered otherwise insofar as the learned Counsel for the assessee has submitted that the issue was adjudicated upon in the case of Balimela dam for 2000-01 when Rs.1.5 Crores to allocate to it was being claimed in this year as well on estimate basis. The same has therefore been clarified when the total expenses being the share of Balimela Dam has been subsequently adjusted as per the Water Resources Department confirmation of Rs. 75 Cotes adjustment held by the assessee against reserve and surplus. Therefore, we are of the considered belief that the fund management by the Government agencies was not the ground for I.T.Department to adjudicate earning of income or incurring of expenditure not accounted for in its entirety to be considered for taxation as has been observed by them in their orders. In this view of the matter, the ground relating to the addition of Rs. 4.14 Crores is dismissed which in consequent thereto has to be considered in the light of the fact that the disallowance of ?8.14 Crores being the expenses claimed in the P & L account are to be allowed which includes Rs.1.5 Crores provided for in the case of Balimela Dam as per past practice. This ground is therefore allowed which the learned Counsel for the assessee has rectified by furnishing the figure of Rs. 7,47,27,236 instead of Rs. 1.5 Crores in ground No.3 as rectification to be carried out."

7. In ITA No.115/CTK/2014 for the assessment year 2005-06, the Co-ordinate Bench of this Tribunal has held as follows:

" 8. After considering the submissions of the assessee and perusing the entire material available on record, we ind that during the course of assessment proceedings the assessee submitted that the provision amounts shall be adjusted against the amount receivable from Department of Water Resources (DoWR), however, the AO did not accept the explanation of the assessee and disallowed the expenditure stating that the provision claimed by the assessee is not an allowable expenditure. The CIT(A) in first appeal proceedings observed that though the expenditure have been incurred by the assessee for dam maintenance, it was kept under provision account for settlement with the government against amounts receivable from the Government. The C1T(A] relying on the decision of this Bench of the Tribunal in assessee's own case in 1TA No.278/CTK/2010, order dated 21.10.2011 allowed the provision for dam maintenance after observing as under :-

"4.2 I have considered the submission of the appellant and facts on record. In accordance with the Govt, of Odisha notification, the hydro power projects at Upper Kolab, Rengali and Upper Indravati Projects were transferred to the appellant from the government and Hirakud Power House, Burla and Balimela projects were transferred from OSEB for generation of power. The appellant was required to maintain some projects and shared the cost of maintenance with the government with respect to their utility component. Though the

> *expenditure have been incurred for dam maintenance, it was kept under provision account for settlement with the government against amounts receivable from the government. This practice of accounting has been followed consistently. Though the amount has been debited to the provision account, the same has actually been spent and awaiting settlement/adjustment with the government against the amounts receivable. The Hon'ble ITAT, Cuttack Bench under similar circumstance for the AY 2004-05 in the appellant's own case in ITA No.278/CTtk/2010 vide order dt.21.10.2011 has allowed the provision for dam maintenance. In view of the same, the addition of Rs.7,89,47,465/- made by the AO is deleted."*
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> Ld. DR before us could not bring any cogent material on record to controvert the above findings of the CIT(A). Accordingly, we do not see any good reason to interfere in the above findings recorded by the CIT(A) in this regard and we uphold the same. Thus, this ground of appeal of Revenue is dismissed."

8. It is an admitted fact that Rs.1.5 crores in respect of BHEP, Balimela has been specifically dllowed in the said order of the Tribunal (supra). This being so, the ground of the revenue stands dismissed.

9. **(ii)** The next issue relates to deletion of prior period expenses of Rs.79,31,891/-.

10. Ld CIT DR submitted that these are expenses claimed by the assessee, which crystalised in the earlier assessment years. It was the submission that the assessee has not produced bills and vouchers to prove incurrence of this expenditure.

11. In reply, ld AR submitted that the issue is squarely covered by the decision of the Co-ordinate of this Bench in assessee's own case for the assessment year 2005-06 in ITA No.115/CTK/2014 order dated 25.2.2020, wherein, in para 23, following the decision of the Co-ordinate Bench in the case of OMC in ITA No.177/CTK/2013 order dated 20.9.2017, the issue had

been sent back to the file of the Assessing Officer for examination of genuineness and crystallization of the expenses in the fincnail year under consideration. This view of ours was also taken in the case of OPGC in ITA No.554/CTK/2012 order dated 22.10.2014, wherein, in paras 41 and 42, it has been directed that the Assessing officer is to allow the expenses in the year in which the expense is crystalised. With the similar direction, the issue is restored back to the file of the Assessing Officer for re-adjudication.. The expenses claimed and which are being disallowed under the head "prior period expenses" during the relevant assessment year are to be considered and allowed in the year in which the expenses have been incurred by the assessee. This ground of the revenue is partly allowed for statistical purposes.

12. **(iii**) The next issue relates to deletion of addition of Rs.50,97,148/- made under the head " depreciation claimed on misc. assets".

13. It was submitted by ld CIT DR that the ld CIT (A) was not justified in allowing the assessee's claim of depreciation claimed on miscellaneous assets insofar as the assesse was unable to prove or specify the misc. assets on which the depreciation was being claimed.

14. In reply, ld AR submitted that the issue is squarely covered by the decision of this Tribunal in assessee's own case for the assessment year 2005-06 in ITA No.115/CTK/2014, wherein, the Co-ordinate Bench of this Tribunal has held as follows:

"11. After considering the submissions of the assessee and perusing the entire material available on record, we find that the CIT(A) while dealing with the issue, has taken into consideration of the explanation furnished by the assessee before the AO during the course of assessment proceedings to substantiate his claim. In the submissions made before the AO, the assessee stated that the miscellaneous assets as aforesaid have been considered as plant and machinery and accordingly the depreciation as provided under the I.T. Rules for the plant and machinery have been claimed by the assessee on such assets. It was also submitted by the ld. AR that during the previous year i.erelevant to the Asst. Year 2004-05, no disallowances as called for on these assets. Considering the above submissions of the assessee and the miscellaneous assets shown by the assessee during the year, has allowed depreciation of 25% as claimed by the assessee after having following observations :-

> "8. Ground No.6 relates to disallowance of claim of depreciation amounting to Rs.8,52,682/- in respect of miscellaneous assets. The assessee did not furnish the break-up of details of miscellaneous assets for the amount of Rs.14,30,009/- for which the AO disallowed the claim of depreciation @25% on such assets. In the written submission made, the appellant has stated as under:
>
> "**Depreciation on miscellaneous assets**
> The assessee in schedule -5 of its Profit & Loss Account and Balance Sheet under the head fixed assets and depreciation, claims depreciation on various heads under the Companies Act, 1956. However, while computing the total income basing on the tax audit report as annexed at Annexure -3, schedule of depreciation as per Rule -5 of the I.T. Rules, 1962 claims depreciation. In the particulars of assets subject to depreciation the items claim of the Annexure -3 of the depreciation schedule as per I.T. Rules provides claim of depreciation on miscellaneous assets. During the year, against the opening balance of Misc. assets at Rs. 1,66,29,402/-, a sum of Rs. 1430,009/- was added during the year and depreciation of Rs. 8,52,682/- was claimed on such assets calculating the depreciation at 25% of the gross block. Particulars of assets as included under the aforesaid head i.e., miscellaneous assets are as under: -
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> | | | |
> |---|---|---|
> | Books | : | Rs. 55,512.00 |
> | Tarpuline | : | Rs. 8,154.00 |
> | Water Filter | : | Rs. 2,767.00 |
> | Tools | : | Rs. 26,948.00 |
> | AMF mike speaker | : | Rs. 49,628.00 |
> | | | Rs. 143,009.00 |
>
> In course of hearing to the queries of the Ld, A.O., the assessee company appearing before the Ld. A.O. vide its written submission explained that the miscellaneous assets as aforesaid have been

> considered as plant and machinery and accordingly the depreciation as provided under the I.T. Rules for the plant and machinery have been claimed by the assessee on such assets. However, the Ld. A.O. without appreciation the explanation and observing that in absence of the break up of details of such assets not being furnished has ITA No.115 & 122/CTK/2014 9 disallowed the claim of depreciation of Rs. 8,52,682/- on such assets. In this connection, it is pertinent to state here that during the previous year i.e., relevant to the Asst. Year 2004-05, no disallowances as called for on these assets. Since presently the assessee has explained the particulars of assets and their classification under the head plant and machinery, the assessee company is entitled for depreciation as claimed. Under the circumstances the disallowance on this account are not sustainable on fact and law."
>
> In view of the above submission of the appellant, the depreciation is allowable @25% as claimed. Accordingly, the disallowance made by the AO is deleted."
>
> On perusal of the above observations of the CIT(A), we do not see any interference is called for by us in the findings recorded by the CIT(A) in this regard, to which the ld. DR could not controvert the same by bringing any cogent material on record. Accordingly, we uphold the same and dismiss this ground of appeal of the Revenue."

15. We have considered the rival submissions. As we find that this issue is squarely covered by the decision of this Tribunal in assessee's own case for the assessment year 2005-06 (supra), we find no reason to differ from the same. This ground of the revenue stands dismissed.

16. **(iv)** The next issue relates to deletion of Rs.1,04,22,509/- under the head "excess provision of guarantee commission".

17. It was submitted by ld AR that the issue is squarely covered by the decision of the Co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 2005-06 in ITA No.115/CTK/2014 (supra), wherein, in para 14, the issue has been held against the revenue.

18. In reply, ld CIT DR submitted that the addition was specifically made by the AO on the basis of statutory auditor's report itself, which claimed that the guarantee commission was being paid on a flat rate of maximum rate of the loan as against the reducing balance and this resulted understatement of profit to that extent. It was the submission that before the ld CIT(A), the assessee has relied upon the order issued by the Finance Department of State Government of Odisha dated 29.1.2018, wherein, it has been directed that the guarantee commission has to be paid on the full amount and not on the reducing amount. It was submitted that if at all, it would be considered, it could have been considered from the assessment year 2008-09.

19. Ld AR submitted that in the order dated 29.1.2008, the order referred to para 7 of Finance Department Resolution No.52214/E dtd.12.11.2002, which specified that the guarantee commission should be on the maximum amount of guarantee sanctioned irrespective of the amount outstanding as on 1st day of April of the each year till the liquidation of the loan.

20. We have considered the rival submissions. Admittedly, this issue is squarely covered by the decision of Co-ordinate Bench in assessee's case for the assessment year 2005-06 (supra). The facts remains the same and consequently, we find no reason to differ from the stand taken by the Tribunal. Respectfully following the decision of the Tribunal for the

assessment year 2005-06 (supra),this issue is held in favour of the assessee and against the revenue. This ground of the revenue stands dismissed.

21. **(v)** The next issue relates to the deletion of addition of Rs.8,00,000/- under the head " grant-in-aid".

22. It was submitted by ld CIT DR that the claim under the head " grant –in-aid" was in fact the donation paid by the assessee to Balimela College of Science & Technology, Balimela. It as the submission that the donation had no nexus with the business of the assessee and same was liable to be disallowed. It was the submission that the ld CIT(A) has deleted the addition observing that same was in the nature of welfare expenditure and also in the nature of peripheral development expenditure. It was the submission that it is erroneous and should be reversed. It was submitted that the State Government had permitted the Corporation to spend money on Peripheral development in respect of School, Irrigation, Agriculture, Communication and Health. It was the submission that the amount of donation to Balimela College of Science & Technology do not come under the permission of the Government.

23. Ld AR submitted that many of the students of the assessee organisation are studying in the said college and the college was right adjacent to the power house. In fact, it was submitted that the Principal of

the said College has categorically given in writing that 50% of the students are from the family of the assessee employees.

24. We have considered the rival submissions. A perusal of the facts of the present case clearly shows that the education is an area, where the State Government has permitted to incur the amount by the assessee. It is also an admitted fact that 50% of the students of the said College are students of the employees of the assessee. Keeping in view to boost the morale of the employees, the assessee has donated the amount of Rs.8,00,000/- in the said college. We find no error in the order of the ld CIT(A) in permitting this expenditure as revenue expenditure. This being so, this issue is held in favour of the assessee. Consequently, this ground stands dismissed.

25. **(vi)** The next issue relates to deletion of addition of Rs.17,83,377/- under the head " other misc. Expenses".

26. It was submitted by ld CIT DR that these were expenditures in respect of which, bills and vouchers had not been produced before the Assessing Officer. It was the submission that it is only on account of non-production of vouchers, expenditure was disallowed. It was the submission that the ld CIT(A) has held that no specific defect has been pointed out by the AO. It was the submission that in the absence of the vouchers, no claim can be allowed. It was the submission that the order of the ld CIT(A) on this issue is liable to be reversed.

27. In reply, ld AR submitted that the assessee's accounts are audited by the statutory auditors. It was the submission that these expenditure are in the nature of contingency expenses, welfare expenses, dead stock and entertainment expenses. It was the submission that the vouchers are available and vouchers are verified by the audit. It was the submission that the order of the ld CIT(A) be upheld.

28. We have considered the rival submissions. A perusal of the nature of expenditure shows that these are minor miscellaneous expenses incurred in the course of business activities of the assessee. It is also an admitted fact that the accounts of the assessee are subjected to multiple audit including statutory audit. This being so, we are of the view that these expenditures are in the nature of business expenditures and same is allowable. In these circumstances, we find no reason to interfere with the findings of the ld CIT(A) in granting relief to the assessee. Consequently, this ground stands dismissed.

29. In the result, appeal of the revenue is partly allowed for statistical purposes.

ITA No.255/CTK/2014: A.Y. 2007-08
ITA No.256/CTK/2014: A.Y. 2008-09
ITA No.332/CTK/2015: A.Y. 2009-10
ITA No.287/CTK/2016: AY: 2011-12

30. Ground No.1 of appeal for the assessment year 2007-08, 2008-09,2009-10, 2011-12 and only ground in A.Y. 2012-13 in revenue's appeals relates to "provision for Dam Maintenance".

31. In line with our decision while adjudicating this issue for the assessment year 2006-07 in paras 3 to 8referred supra, we dismiss this ground of the revenue for all the assessment years under consideration.

32. The next issue taken by the revenue i.e. depreciation claimed on misc. assets for the assessment year 2007-08 is similar to the issue assessment year 2006-07. In line with our decision for the assessment year 2006-07(supra) in paras 12 to 15 above, this ground stands dismissed.

33. The next issue i.e. excess provision for guarantee commission taken in Assessment year 2007-08, 2008-09,2009-10 is similar to issue taken in the assessment year 2006-07 (iv) above. In line with our decision taken in paras 16 to 20 (supra), this ground of the revenue stands dismissed.

34. The next issue i.e. prior period expenses taken in the assessment year 2007-08 is similar to the issue (ii) taken in the assessment year 2006-07 above. In line with our decision in paras 9 to 11 (supra), this issue is partly allowed for statistical purposes.

35. The next issue is with regard to cession of liability taken in the assessment year 2007-08.

36. It was the submission of the ld. CIT-DR that the assessee was unable to prove the sundry creditors before the AO. It was the submission that the ld. CIT(A) had reduced the same after verification of the details submitted before him. It was the submission that such details had not been produced before the AO. It was the prayer of the ld. CIT-DR that the order of the CIT(A) is liable to be reversed.

37. In reply, the ld. AR submitted that all the ledger accounts were before the AO. It was the prayer that it was only on the proper appraisal of the facts and the CIT(A) has deleted the addition. Therefore, ld. AR submitted that the order of the CIT(A) is liable to be confirmed.

38. We have considered rival submissions. A perusal of the facts in the case in hand clearly shows that the details have been explained before the ld. CIT(A) and after considering the facts the ld. CIT(A) has reduced the disallowance made by the AO under the cession of liability. We find no error in the order of the CIT(A) on this issue and consequently same stands upheld. Thus, this issue is held in favour of the assessee and against the revenue.

39. In the assessment year 2011-12, the revenue has challenged the deletion of addition of Rs.5,85,00,000/- made by the AO on account of understatement of profit.

40. A perusal of the order of the ld CIT(A) shows that the ld CIT(A) has in para 6.2 of his order has held as follows:

> "6.2 I have considered the facts in detail and analyzed the relevant issues involved. It is a fact that the assessee' has allowed rebate to GRIDCO on the payments made by them as per the terms of the Power Purchase Agreement, the relevant portion of which finds place in the written submission of the assessee reproduced above. GRIDCO has also disclosed such rebates in its accounts and paid tax on the same. The OERC, which is a statutory regulatory authority, has also approved such procedure of allowance of rebates to GRIDCO, The AO's contention **is** that since arrear bills remained unpaid by GRIDCO, subsequent payments made should have been adjusted first against the outstanding bills and not against current bills, thus obviating the requirement of allowance of rebates. Such contention of the AO is not at all tenable. Law is well settled that it is the businessman's prerogative and discretion to decide how he should run his business and the Income Tax Department cannot interfere in such decisions. GRIDCO is the major customer of the assessee and as per the Power Purchase Agreement entered with GRIDCO by the assessee, as approved by OERC, prompt payment rebates are allowable on payments made by GRIDCO on current bills if paid within a specified time period of presentation. The observation of the auditor was meant for the management of the Corporation and the AO cannot tax the same by holding that the assessee should not have paid the rebates. Income which has neither accrued nor been received cannot be taxed by the AO. Keeping in view the facts and circumstances of the case, the disallowance of **the** rebate allowed by the assessee to GRIDCO **and taxed by the AO'*s* understatement of income cannot be sustained. Hence, the addition of Rs.5,85,00,000/-is deleted."**

The revenue has not been able to dislodge these findings nor bring any evidence to the contrary. Consequently, the findings of the ld CIT(A) on this issue is upheld insofar as he has considered all the facts and has reached the decision in accordance with law.

ITA No.226/CTK/2015: Assessee's appeal- A.Y. 2006-07

Provision for leave encashment

41. This issue relates to confirmation of addition of Rs.1,71,90,203/- on account of leave encashment u/s.43B of the Act.

42. It was fairly agreed by both the parties that the issue is squarely covered in favour of the revenue by the decision of the Co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 2005-06 in ITA No.122/CTK/2014 order dated 25.2.2020, wherein, in paras 18 to 21, the issue has been decided by the Tribunal. The findings of the Tribunal in paras 20 to 21 are as follows:

> "20. After considering the submissions of both the sides and perusing the entire material available on record, we find that the coordinate bench of the Tribunal has already restored this very same issue to the file of AO for fresh adjudication. It is also a fact that the Hon'ble Calcutta High Court in the case of Exide Industries Ltd. Vs. Union of India, [2007] 292 ITR 470, the Hon'ble Calcutta High Court has struck down the provisions of Section 43B(f) of the Act as being arbitrary and unconscionable. Thereafter the Hon'ble Apex Court in case of Exide Industries Ltd. in SLP (Civil) 22889 of 2008 has stayed the operation of the judgment of Hon'ble Calcutta High Court. Considering the above position, the Tribunal on the similar issue in case of Ernst and Young P. Ltd.(supra) has restored the matter to the file of AO for fresh adjudication after having observations as under :-
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> > 15. At the outset, learned counsel for the assessee Shri R. N. Bajoria, senior advocate stated that the assessee-company has added a sum of Rs.1,54,71,071 on account of provision for leave encashment. According to him, this amount was added back in the computation of income filed with original return of income in pursuance to section 43B(f) of the Act. He further stated that the hon'ble Calcutta High Court in the case

of Exide Industries Ltd. v. Union of India [2007] 292 ITR 470/164 Taxman 9 stuck down the provisions of section 43B(f) of the Act as being arbitrary and ultra vires. Learned counsel for the assessee stated that the hon'ble Supreme Court has stayed the judgment of the hon'ble Calcutta High Court in the case of Exide Industries Ltd. (supra) and, therefore, he requested the Bench to set aside this issue to the file of the Assessing Officer with a direction that he will adjudicate the same as per the final judgment of the hon'ble Supreme Court in the case of Exide Industries Ltd. On this, the learned Commissioner of Income-tax Departmental representative fairly agreed that the issue can be restored back to the file of the Assessing Officer. 16. We, after hearing both side find that the hon'ble apex court in the case of CIT v. Exide Industries Ltd. [SLP (Civil) 22889 of 2008] has stayed the operation of the judgment of the hon'ble Calcutta High Court. Once this is the position, we restore back this issue to the file of the Assessing Officer to adjudicate the same afresh in terms of the decision of the hon'ble apex court in the case of Exide Industries Ltd. (supra) Accordingly, this issue of the assessee's appeal is allowed for statistical purposes. 21. Similar issue has also been decided by the coordinate bench of the Tribunal in case of NALCO Ltd. ITA No.106/CTK/2018, order dated 23.09.2019, wherein the Tribunal has restored the issue to the file of AO after observing as under :-

" During the course of assessment proceedings, the AO observed that the provision for leave encashment has not been added back to the income as per the provisions of Section 43B. Therefore, the AO relying on the decision of Hon'ble Kolkata High Court in the case of Exide Industries Ltd. 292 ITR 470 added the unpaid liabilities to the total income of the assessee. In appeal, the CIT(A) upheld the same. 10. Before us, ld. AR submitted that the issue is squarely covered by the decision of the Tribunal in assessee's own case in ITA No.211/CTK/2017, order dated 29.06.2018, and drew our attention to para 28 of the aforesaid order, wherein the Tribunal has restored the issue to the file of AO to examine and allow the claim of the assessee. The relevant observations of the Tribunal read as under :-

"28. We have heard rival submissions and perused the material available on record. We find that the Tribunal in assessee's own case for the assessment year 2010-2011 in

ITA No.352/CTK/2016 along with other appeals, order dated 27.04.2018 relying on its earlier order has restored the disputed issue to the file of AO. The observations of the Tribunal in this regard are as under :-

"31. We have heard rival submissions and perused the material on record. We found that the similar issue has been decided by the Tribunal in assessee's own case for the assessment years 2007-08 & 2008-2009 in ITA No.343 & 392/CTK/2015, order dated 23.04.2018, wherein the Tribunal has observed as under :-

"28. We have heard rival submissions and perused the material on record. The assessee has made the provision for leave encashment and the provision was not added back in the computation of income. As the ld. AR submitted that the above issue is covered by the order of the coordinate bench of the Tribunal in the case of Baitarani Gramya Bank in ITA Nos.318 & 319/CTK/2013 for assessment years 2008-09 & 2009-10, wherein the Tribunal held as under :- "19.1The DR also agreed with the submission of ld. AR of the assessee. In the circumstances of the case, we set aside the order of the CIT(A) and remit the matter to the file of the Assessing officer to re-adjudicate the issue in the light of the Hon'ble Supreme Court decision. Hence, this ground is allowed for statistical purposes. 20.In the result, appeal for the assessment year 2008-09 is partly allowed for statistical purposes."

29. We considering the ratio of the decision and the facts to the present case, remit this issue to the file of the AO to examine and allow the claim and this ground of appeal is allowed for statistical purposes."

Respectfully following the order of the Tribunal and we restore this issue to the file of AO to examine and allow the claim of the assessee and we allow this ground of appeal of the assessee for statistical purposes." We follow the reasoning of the Tribunal and accept the judicial precedence and remit the disputed issue to the file of AO to examine and allow the claim of the assessee. Accordingly, this ground of appeal is allowed for statistical purposes." Respectfully following the above observations of the Tribunal, we remit the issue to the file of AO to examine and allow the claim of the assessee. Ground No.3 is allowed for statistical purposes." Respectfully following

> the above observations of the coordinate bench of the Tribunal in the above cases cited supra, we also remit this issue to the file of AO for fresh adjudication after providing reasonable opportunity of hearing to the assessee. Thus, ground No.1 is allowed for statistical purposes."

43. We have considered the rival submissions. As it is noticed that the issue is covered in favour of the revenue in the case of the assessee in assessee's own case referred supra and also it is noticed that the issue is covered by the decision of Hon'ble Supreme Court in the case of Union of India vs Exide Industries Ltd., (2020) 116 taxmann.com 378 (SC). This issue is restored to the file of the AO for verification as to whether the payments have been made before the due date of filing the return of income by the assessee for the relevant assessment year. If the same has been paid before the due date of filing of the return, then, the expenditure is allowable and to such extent, if the payment has been made after the due date of filing the return of income, the amount is to be disallowed. Consequently, this ground of the assessee is partly allowed for statistical purposes.

Non-disclosure of dues from DoWR

44. This issue relates to confirmation of addition of Rs.49,400,000.00 on account of non-disclosure of dues from DoWR.

45. It was submitted by ld CIT DR that the issue is squarely covered against the assessee insofar as even the assessee for the assessment year 2005-06 did not press this issue before the ld CIT(A). It was the

submission that the Co-ordinate Bench of this Tribunal had in its order rejected the claim of the assessee on the ground that the assessee had conceded to the addition made by the AO before the ld CIT(A). It was the submission that the order of the ld CIT(A) on this issue is liable to be upheld.

46. Ld AR submitted that the receipts from the Department of Water Resource, Government of Odisha had been disclosed by the assessee as its income for the assessment year 2014-15. It was the submission that if the addition is to be confirmed during the relevant assessment years, the assesse may be granted the benefit of reduction of the same from the amount offered during the assessment year 2014-15 under the same head.

47. We have considered the rival submissions. Admittedly, this issue is covered against the assessee in assessee's own case for the assessment year 2005-06, wherein, the Co-ordinate Bench has held that the assessee had conceded the addition before the ld CIT(A). A perusal of the order of the ld CIT(A) for the relevant assessment year also shows that the assessee has conceded the addition. This being so, we do not find any infirmity in the findings recorded by ld CIT(A) in this regard and we uphold the same. However, as it has been categorically admitted by ld AR that said amount has been offered to taxation as income of the assessee for the assessment year 2014-15, the AO is directed to verify as to whether the amount has been offered during the assessment year 2014-15 and if it has been

offered, the same should be reduced from the income in the year 2014-15 as disclosed by the assessee. Hence, this ground is partly allowed for statistical purposes.

Prior period expenses

48. This issue raised by the assessee relates to confirmation of addition of Rs.20,269,406.00 on account of prior period expenses.

49. This issue is identical to revenue's appeal for the assessment year 2006-07 (supra). In line with our decision in that appeal in paras 9 & 10 this issue is restored to the file of the AO for readjudication. This ground is allowed for statistical purposes.

Provision towards pension fund

50. This issue relates to confirmation of addition of Rs.78,366,571.00 on account of "provision towards pension fund".

51. It was submitted by ld AR that the provision towards pension fund was calculated on actuarial basis to provide the funds at the time of retirement of the employees of the assessee. It was submitted that the amounts have been paid during the relevant assessment year in which the employees are retired and same has been reduced from the provisions during those years.

52. In reply, ld CIT DR submitted that this was only a provision and the calculation for the same has not been shown. It cannot be said that these are actuarial calculation and the continuance of the employees to the date

of retirement is not something that can be calculated. It can only be presumed. It was the submission that he had no objection if the expenditure incurred on the retirement of employees including the pension if any was allowed in the year of payment.

53. We have considered the rival submissions. Admittedly, the claim of the assessee is a provision. Though ld AR did submit that these included payments to pension fund, ld AR was unable to place any evidence before us. This being so, this issue is restored to the file of the AO for verification as to whether any specific payment has been made in respect of this provision. To such extent, the payment has been made either at the time of retirement or to any approved pension fund, same is allowable. To such an extent payment has not been made, the amount shown as provision is not allowable. In short, the expenditure which has been spent or payments have been made are allowable and the provision created for the same is not allowable expenditure. This issue is accordingly restored to the file of the AO. Consequently, this issue is partly allowed for statistical purposes.

INTEREST ACCRUED ON GRIDCO BONDS

53. It was the submission of ld CIT DR that the assessee is a Government Corporation and it has to follow the mercantile system of accounting. It was the submission that the interest on bonds had accured and it was incumbent upon the assessee to offer the same for taxation.

54. In reply, ld AR submitted that the assessee had received the interest during the assessment year 2007-08 and TDS has also been deducted in the assessment year 2007-08 and as the assessee would not get benefit of TDS in any other year, the same should be taxed in the year in which the assessee has received the amount and TDS has been deducted.

55. We have considered the rival submissions. The assessee has admittedly earned income representing the income on GRIDCO bonds during the year 2007-08. Admittedly, the benefit of TDS is available to the assessee when income is offered. The TDS has also been deducted during the assessment year 2007-08. This being so, it is directed that the income from GRIDCO bond is to be assessed in the year in which same is received by the assessee i.e. for the assessment year 2007-08. Consequently, this issue is held in favour of the assessee.

EXCESS CLAIM OF DEPRECIATION

56. It was submitted by ld AR that the issue was in respect of depreciation in regard to building which had to be scrapped. It was the submission that the building was part of block of asset and the depreciation is allowable on the block of asset. A as and when any portion of that block of assets is discarded or such asset is extinguished the WDV of that asset would be reduced from WDV of the block of assets. It was the submission that there is no reduction in the value of block of assets during the relevant

assessment year and consequently, the assessee was entitled to claim depreciation in respect of the building.

57. Ld CIT DR submitted that a building which had a WDV is Rs.9,51,320/- had become un useful should be discarded. It was the submission that the depreciation of said asset, which was not used during the relevant assessment year was liable to be disallowed.

58. We have considered the rival submissions. Once an asset has become as part of block of assets, on which depreciation has been claimed, unless such asset is removed from that block of assets, the depreciation is applicable on the WDV of the block of assets. The concept of putting to use of the asset during relevant assessment year would not apply. This being so, we are of the view that the assessee is entitled to claim depreciation.

ITA No.179/CTK/2014: AY: 2007-08
ITA No.180/ctk/2014: AY. 2008-09
ITA No.282/CTK/2016 :AY: 2010-11
ITA No.283/CTK/2016: AY: 2011-12
ITA No.13/CTK/2017: AY: 2012-13
ITA No.277/ctk/2019: ay: 2013-14
ITA No.278/CTK/2019: AY: 2014-15

60. The ground provision for leave encashment is taken in assessment years 2007-08, 2008-09, 2009-10, 2012-13, 2013-14 and 2014-15.

61. While adjudicating this ground of the assessee for the assessment year 2006-07, we have restored to the file of the AO for re-adjudication. In

line with our decision (supra) in paras 42 & 43 this ground for all the assessment year is restored to the file of the AO for re-adjudication.

61. The next issue regarding non-disclosure of dues from DoWR is taken by the assessee in assessment year 2007-08, 2008-09, 2009-10, & 2012-13.

62. While adjudicating this ground of the assessee for the assessment year 2006-07 in para 46, we have restored to the file of the AO for re-adjudication. In line with our decision (supra), this ground for all the assessment year is restored to the file of the AO for re-adjudication.

63. The next issue i.e. prior period expenses taken by the assessee in assessment years 2007-08, 2008-092009-10, 2011-12, 2012-13 and 2014-15.

64. While adjudicating this ground of the assessee for the assessment year 2006-07, we have restored to the file of the AO for re-adjudication. In line with our decision (supra) in para 48, this ground for all the assessment year is restored to the file of the AO for re-adjudication.

65. The next issue i.e. provision towards pension fund taken by the assessee for assessment year 2007-08 and 2010-11.

66. While adjudicating this ground of the assessee for the assessment year 2006-07, we have restored to the file of the AO for re-adjudication. In line with our decision (supra) in para 52, this ground for all the assessment year is restored to the file of the AO for re-adjudication

PROVISION FOR BONUS

67. In the assessment year 2007-08, the assessee has challenged the confirmation of addition in regard to provision for bonus.

68. The provision for bonus is similar to the provision for pension fund. On similar findings as given by us in respect of provisions for pension, this issue of provision for bonus is restored back to the file of the Assessing Officer for adjudication and verification. To such an extent, the bonus has been paid, the same is allowable in the year in which it has been paid and to such an extent, it is shown as provision, the disallowance is confirmed. This issue is partly allowed.

69. In assessment year 2007-08 and 2009-10, the assessee has challenged the addition in regard to investment on OPTCl.

70. It was the submission of ld AR that the AO has disallowed the assessee's investment in OPTCL treating the same as capital expenditure. It was the submission that as OPTCL was also in the business of power generation and it was in the interest of the business of the assessee that investment has been made. It was submitted that in view of the principle laid down by the Hon'ble Supreme Court in the case of S.A.Builders, 288 ITR 1 (SC) , the investment is liable to be allowed.

71. In reply, ld CIT DR submitted that this is a capital expenditure insofar as the investment has been made in the shares of the company. It was the

submission that this investment was in the joint venture by the assessee and OMC. It was the submission that investment in the said joint venture being OPTCL is capital expenditure.

72. We have considered the rival submissions. Admittedly, the assessee is in the business of power generation. OTPCL is also is in the business of power generation. For the purpose of augmenting the power availability, the assessee has made investment. This is nothing but an expansion of its business. It cannot be treated as capital expenditure. In these circumstances, we are of the view that the investment in OPTCL is revenue expenditure. This ground of the assessee is allowed.

GRATUITY

73. In the assessment year 2007-08, The next issue is in regard to gratuity payments. It was the submission of ld AR that admittedly, it was a provision for gratuity that has been made. It was his prayer that same may be allowed in the year in which the payment is made.

74. Ld CIT DR submitted that this was only a provision and should not be allowed.

75. Ld AR submitted that the provision included payments made to the employees towards gratuity and also payments to approved gratuity funds.

It was also submitted that the AO may be directed to allow the same in the year of payment.

76. We have considered the rival submissions. Identical to our findings in respect of provisions for pension and bonus, the issue of gratuity is also restored to the file of the AO for verification and to allow the expenditure on account of gratuity in the year of payment to the employees or to the specified gratuity fund. Accordingly, this issue is allowed for statistical purposes.

TDS on the contractor payment (A.Y. 2007-08

77. It was the submission of ld AR that this payment made to the contractor consisting of two portion i,.e.(i) supervisorn charges and (ii) reimbursement of expenses. It was the submission that the assessee being a Government Corporation, no TDS was liable to be made. It was the submission that the findings of the ld CIT(A) and the AO may be deleted.

78. In reply, ld CIT DR submitted that there is a requirement under the Act for the payment of deduction of TDS in respect of payment to the contractor. The assessee is not a Government. It is a Corporation and the assessee is liable to deduct TDS. Failure on the part of the assesee to deduct TDS would attract disallowance. It was the submission that the order of the ld CIT(A) is liable to be upheld.

79. It is however fairly agreed by ld CIT DR that if the assessee would be able to prove that the payment to the contractor included the reimbursement of expenses, then no TDS is liable to be made on such reimbursements.

80. We have considered the rival submissions. The assessee is attempted to place before us the details of reimbursement of expenses made to the contractors. These are admittedly fresh evidences and cannot be looked into by the Tribunal. This being so, this issue is restored to the file of the AO for re-adjudication. The AO shall grant the assessee adequate opportunity to prove that the payments to the contractors included the reimbursement of expenses. To such extent the assessee is able to prove that the payment to the contractor included the reimbursement of expenses, no TDS is liable to be made in respect of the reimbursements. In respect of supervision charges and other payments paid by the assessee to the contractors, TDS is liable to deducted and consequences of non-deduction of TDS would follow.. This issue is partly allowed for statistical purposes.

81. The next issue taken in the assessment year is provision for Dam maintenance.

82. Similar ground was taken by the revenue in their respective appeals and while adjudicating the same, we have dismissed the ground of the revenue in para 6 supra. Hence, this ground of the assessee is allowed.

83. The next issue taken in assessment year **2010-11** is in regard to TDS on the contractors which have been deducted but not paid within the due date of the filing of the return.

84. It was prayed by the ld. AR that as the payment has been made during the immediately succeeding assessment year the said expenditure may be allowed in view of the provisions of Section 40(a)(ia) of the Act.

85. In reply, ld. CIT-DR vehemently supported the order of the ld. CIT(A) and the AO on this issue.

86. We have considered rival submissions. It is noticed that the TDS has been deducted in time but paid belatedly. In view of the provisions of Section 40(a)(ia) of the Act, the AO is directed to examine the same and allow the expenditure in the year under which the TDS has been paid to the account of the Central Government in lieu of the provisions of Section 40(a)(ia)n of the Act. Under these circumstances, this issue is allowed partly for statistical purposes.

87. The next issue is in regard to interest on demand of interest tax taken in assessment year 2011-12..

88. This issue is consequential in nature and does not require any separate adjudication, Consequently, this ground of appeal stands dismissed.

89. The next issue is in regard to the peripheral development expenses taken in assessment year 2012-13, 2013-14 and 2014-15.

90. It was submitted by the ld. AR that the issue is in relation to the expenditure incurred by the assessee around the various dams which are under the control of the assessee. It was the submission that these are the expenses incurred by the assessee through the District Collector and other Government Nodal Agencies in local area. It was the prayer that the same should be considered as a part of the general welfare measures under CSR. It was the submission that the same may be allowed.

91. In reply, the ld. CIT-DR submitted that the assessee has not shown necessity for incurring the said expenditure. It was the submission that the expenditure was in the nature of charity. It was the submission that such expenses are not allowable under the Act. It was the submission that the peripheral development expenditure could be incurred only in respect of education, communication, agriculture, irrigation and health. It was the submission that the assessee has not shown under which of these heads the peripheral development expenditure has been incurred. It was the submission that the breakup of the expenditure was not provided.

92. We have considered the rival submissions. A perusal of the peripheral development expenses shows that the expenses have been incurred in respect of the construction of check dams, digging of deep bore wells, tube wells, construction of ferry boats and payments to project Director, District Rural Development Authority (DRDA). Obviously the construction of check dams is in regard to the agricultural activities as the check dams help in agricultural activities. Stock of fish is also an agricultural activity, more so, the extension of agricultural activity being pisciculture. The digging of bore wells is again connected with the agricultural activity. The ferry boat is part of the requirement of the pisciculture activity. This being so, we are of the view that the said expenditure under the peripheral development expenditure is an allowable expenditure and the AO is directed to allow the same. This ground is allowed in favour of the assessee.

93. The next issue taken by the assessee in assessment year 2014-15 is in regard to excess claim of depreciation.

94. While adjudicating similar ground taken by the assessee in assessment year2006-07 in para 58, we have held that the assessee is entitled to depreciation. Hence, in this year also, we hold that the assessee is entitled to depreciation.

95. No other issues were raised by the representatives of parties at the time of hearing.

96. In the result, appeals of the revenue as well as the assessee are partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 22/6/2022.

Sd/-	sd/-
(Arun Khodpia)	**(George Mathan)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Cuttack; Dated 22/06/2022
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Assessee: Orissa Hydro Power Corporation Ltd., Janapath, Bhoi Nagar, Bhubaneswar
2. The Revenue. Asst.Commissioner of Income Tax, Corporate Circle-1(2), Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.

//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack