



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

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

ITA No.73/CTK/2012

Assessment Year : 2008-09

ITA No.325/CTK/2013

Assessment Year : 2009-2010

ITA No.421/CTK/2013 & 301/CTK/2014

Assessment Years : 2010-11 & 2011-12

ITA No.447/CTK/2015

Assessment Year : 2013-14

ITA No.264/CTK/2017 & ITA No.278/CTK/2015

Assessment Years: 2014-15 & 2012-13

Mahanadi Coalfields Ltd., Jagriti Vihar, Burla, Sambalpur	Vs.	DCIT, Circle -2(1), Sambalpur.
PAN/GIR No.AABCM 5188 P		
(Appellant)	..	(Respondent)

Assessee by : Shri S.S.Poddar, AR
Revenue by : Shri M.K.Gautam, CIT DR

Date of Hearing : 17/8/ 2022

Date of Pronouncement : 17/8/2022

ORDER

Per Bench

These are appeals filed by the assessee against the separate orders of the CIT(A), Cuttack in Appeal No.0289/2010-11 for the assessment year

2008-09, dtd. 14.12.2011, I.T.Appeal No. 0755/11-12 for A.Y.. 2009-10 dtd.11.3.2013, I.T.Appeal No. 0401/12-13 for A.Y.. 2010-11 dtd. 24.5.2013, I.T.Appeal No. 0557/13-14 for A.Y.. 2009-10 dtd. 9.5.2014, I.T.Appeal No. 0468/14-15 for A.Y.. 2009-10 dtd.31.3.2015, I.T.Appeal No.0196/2015-16 dated 5.8.2015 & I.T.Appeal No.0737/15-16 dated 3.3.2017, respectively.

2. The appeals of the assessee had been originally disposed of by an order dated 3.1.2018. As the main grounds had not been adjudicated, the assessee had filed M.As and the appeals had been recalled in M.A.Nos.23, 20, 21 to 22, 17, 18 & 19 dated 17.6.2022 for the specific purpose of adjudicating ground No.3.10 for the A.Y. 2008-09, No.3.5 for A.Y. 2009-10, No.3.4 for A.Y. 2010-11, ground No.3.2 for A.Y. 2011-12 and 2012-13 and No.3.1 for A.Ys 2013-14 and 2014-15.

3. Shri S.S.Poddar, Id A.R. appeared on behalf of the assessee and Shri M.K.Gautam, Id CIT DR appeared on behalf of the revenue.

4. It was the submission by Id AR that the assessee is a public sector undertaking, which is in the business of mining and extraction of coal. It was the submission that the assessee is a 100% subsidiary of Coal of India Limited. The assessee takes land on lease from the Government of Odisha for the purpose of mining and extraction of coal. For the purpose of taking land on lease, the assessee has to pay upfront lease premium in lumpsum

for the period of lease of about 20 years. It was the submission that over and above upfront lease premium paid in lumpsum by the assessee, the assessee has to pay nominal token rent for the land taken on lease every year and the same is claimed and allowed as revenue expenditure. It was the submission that the land taken on lease for the purpose of mining is not transferable, cannot be sublet nor used for any other purposes other than mining of coal. It was the further submission that as per the agreement, the assessee has to restore the land to its original condition on the expiry of the lease period and the said land reverts back to the Government of Odisha. In some cases, there have also been renewal of the lease and on such renewal, fresh upfront lease premium is to be paid in lumpsum. It was the submission that the assessee had claimed said expenditure being the upfront lease premium paid in lumpsum as a revenue expenditure. The Assessing Officer while completing the assessment did not allow the same as revenue expenditure and held to be same as capital expenditure. It was the submission that the Assessing Officer after holding the same as capital expenditure, did not grant the assessee amortization of the expenditure over the period of lease nor grant the depreciation in respect of capital assets that has been created on account of the disallowance. Ld A.R. submitted that the issue was covered by the decision of the Co-ordinate Bench of this Tribunal in the case of DCIT vs M/s. Altrade Minerals Pvt Ltd in ITA No.457 & 458/CTK/2014 for A.Y. 2009-10 & 2010-11 order dated

25.4.2017, wherein, the Co-ordinate Bench has held that the upfront lease for taking the land and building on lease for the period of 20 years for the purpose of setting up new unit was a revenue expenditure. He also placed reliance on the decision of Hon'ble Gujrat High Court in the case of DCIT vs Sun Pharmaceutical Ind Ltd, 329 ITR 479 (Guj), wherein also, the Hon'ble High Court has held that the lumpsum lease rent paid is a revenue expenditure. It was the prayer that the assessee may be granted the expenditure as revenue expenditure.

5. In reply, Id CIT DR drew our attention to the order of the Id CIT(A), wherein, while adjudicating the issue, the Id CIT(A) has categorically held that similar disallowance on charge to profit and loss account on leasehold land for the lease period expired of the appellant for the assessment year 1999-2000, 2000-01, 2001-02 & 2002-03 have been confirmed by the ITAT, Cuttack in ITA No.275/CTK/2004 to 276/CTK/2004 for the assessment year 1999-2000 & 2000-2001 and in ITA No.750/CTK/2004 and ITA No.97/CTK/2006 for the assessment year 2002-03 order dated 2.1.2008, wherein, the stand of the AO that the expenditure is a capital expenditure has been upheld. It was the submission that in assessee's own case, the Co-ordinate Bench of this Tribunal has held that the lumpsum payment of the upfront lease premium is a capital expenditure and same was liable to be upheld. Ld CIT DR further placed reliance on the decision of Hon'ble supreme Court in the case of Aditya Minerals Pvt Ltd vs CIT (1999) 106

Taxman 337 (SC), wherein, the Hon'ble Supreme Court has categorically held that "it is true that if a capital sum is arrived at and payment is made every year by chalking out the capital amount in various installments, the payment does not lose its character as a capital payment if the sum determined was capital in nature". He further relied upon the decision of Hon'ble Madras High Court in the case of Enterprising Enterprises vs DCIT (2004) 268 ITR 95 (Mad), wherein, it has been held that the assessee firm had taken a quarry on lease for a period of ten years for excavation of granites, it was held that the proportionate lease rent paid by the assessee was a capital expenditure. It was the submission that the said decision of Hon'ble Madras High Court has been upheld by the Hon'ble Supreme Court in (1999) 106 Taxman 337 (SC), wherein, it has been held that where the entire amount of lease is paid in one time or in instalments, it would be a capital expenditure. It was the submission that in these circumstances, the findings of the AO and that of the Id CIT(A) confirming the said expenditure as capital expenditure is liable to be upheld.

6. In reply, Id AR submitted that if the said expenditure is to be held as capital expenditure then in view of the Circular issued by CBDT in Circular No.09/2014 dated 23.4.2014, which had been issued in respect of the treatment of expenditure incurred for development of roads/highways in BOT agreement under the Income tax Act, 1961, applying the same principles as also the principles laid down by the Hon'ble Supreme Court in

the case of Madras Industrial Investment Corporation Ltd vs CIT, 225 ITR 802 (SC), the Revenue may be directed to allow the amortization of the said expenditure over the period of lease equally.

7. Ld CIT DR vehemently supported the order of the Id CIT(A).

8. We have considered the rival submissions. At the outset, it is clear that the issue whether the said expenditure being the upfront lease premium is a capital expenditure or revenue expenditure has been decided against the assessee by the Co-ordinate Bench of this Tribunal in assessee's own case referred (supra). Consequently, the said expenditure is liable to be treated as capital expenditure only and stand of the AO and Id CIT(A) stands upheld. Coming to the arguments of Id AR that said expenditure having been incurred for the purpose of business and if the same is to be treated as capital expenditure, a capital asset has got created and the depreciation or amortization is to be granted once such expenditures are treated as a capital expenditure. The said expenditure goes to the balance sheet as creation of asset most specifically an "intangible asset". Once the asset is created in the balance sheet, the option is to grant depreciation on the same. The allowance of depreciation unfortunately has been held against the assessee in assessee's own case in the earlier years. Thus, what is now happened that the intangible asset has accumulated even though the asset has expired in the form of expiry of the lease period. Thus, the balance sheet of the assessee would carry an asset which no

more exists for the purpose of Income tax Act. This would clearly not show the true and correct picture of the affairs of the company. When the lease period expires and the land reverts to the State Government, the asset has got extinguished. Such asset cannot be left without giving it the valid treatment under accounting principles. Obviously, such value of the capitalized asset cannot be adjusted to the capital of the assessee company as the asset would not exist once the lease expires. The option here would be to write off the value of the asset on the extinguishment of the asset being the expiry of the lease. However, considering the fact that the Id A.R. has specifically claimed for the benefit of amortization by applying the principles laid down by the CBDT in its Circular No.9 of 2014 dated 23.4.2014, the AO is directed to grant the assessee amortization of the said expenditure representing the lumpsum amount of upfront lease premium over the period of lease period in respect of each lease. The amortization is to be granted equally for each of the year during the lease period. Accordingly, ground taken by the assessee in each of the assessment year stands partly allowed.

9. In the result, appeals of the assessee stand partly allowed.

Order dictated and pronounced in the open court on 17/8/2022.

Sd/-

sd/-

(Arun Khodpia)
ACCOUNTANT MEMBER

(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 17/8/2022

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Mahanadi Coalfields Ltd.,
Jagriti Vihar, Burla, Sambalpur

2. The Respondent. DCIT, Circle -2(1),
Sambalpur.
3. The CIT(A)-, Cuttack
4. Pr.CIT-, Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack