

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं./ITA No.58/RPR/2020

(निर्धारण वर्ष / Assessment Year :2008-2009)

Chhattisgarh State Electricity Board, Through Chhattisgarh State Power Transmission Co. Limited (Earlier CG State Power Holding Co Ltd.), O/o. Executive Director Finance- CGSPTCL, Ground Floor, Vidyut Seva Bhavan, Dangania, Raipur	Vs	ACIT-1(1), Raipur
PAN No. : AABCC 7876 Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri Madhur Agrawal, Adv. & Shri Praveen Khandelwal, CA
राजस्व की ओर से /Revenue by	:	Shri Debashish Lahiri, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	05/01/2023
घोषणा की तारीख/Date of Pronouncement	:	27/03/2023

आदेश / O R D E R

Per Arun Khodpia, AM:

This appeal is filed by the assessee against the order passed by the CIT(A)-II, Raipur, dated 31.12.2019 for the assessment year 2008-2009, on the following grounds:-

- 1.1 *That on the facts and in the circumstances of the case and in law, the CIT (A) erred in disallowing deduction of Rs. 190,00,27,686/- claimed u/s 80IA(4)(iv)(c) of the Act.*
- 1.2 *That the CIT (A) erred in not following the decision of ITAT passed in the case of appellant itself for the AY 2007-08, wherein the deduction u/s 80IA(4)(iv) has been allowed.*
2. *That on the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the disallowances of Rs. 74,05,37,325/- made by the assessing officer on account of repairs & maintenance of plant & machinery on lump sum/ estimated basis.*
3. *That the CIT(A) erred in not following the decision of ITAT, Mumbai in the case of appellant itself for the AY 2005-06 and 2004-05, wherein the lump sum addition of repair and maintenance has been deleted by the Hon'ble Tribunal.*

- 3.1 That the CIT (A) erred in treating the expenditure of Rs. 1,15,64,588/- incurred on repair and replacement of Circuit Breakers as capital expenditure.
- 3.2 That the CIT (A) erred in treating the expenditure of Rs. 7,21,13,684/- incurred on repair and replacement of turbine rotor as capital expenditure.
- 3.3 That the CIT (A) erred in treating the expenditure of Rs. 20,68,134/- incurred on repair and replacement spider assembly as capital expenditure.
- 3.4 That the CIT (A) erred in treating the expenditure of Rs. 1,37,19,081/- incurred on repair and replacement spider grinding elements as capital expenditure.
- 3.5 That the CIT(A) erred in treating the expenditure of Rs. 33,10,811/- incurred on repair and replacement impeller assembly as capital expenditure.
- 3.6 That the CIT(A) erred in treating the expenditure of Rs. 37,42,274/- incurred on repair and replacement of shaft of ID fan as capital expenditure.
- 3.7 That the CIT(A) erred in treating the expenditure of Rs. 50,43,105/- incurred on repair and maintenance of work of reclamation of ash bund as capital expenditure.
- 3.8 That the CIT(A) erred in treating the expenditure of Rs. 58,06,336/- incurred on repair and maintenance of ash bund as capital expenditure.
- 3.9 That the CIT(A) erred in treating the expenditure of Rs. 7,30,66,604/- incurred on repair and maintenance of ash bund as capital expenditure.
- 3.10 That the CIT(A) erred in treating the expenditure of Rs. 1,36,19,687/- incurred on repair and replacement of economizer element as capital expenditure.
- 3.11 That the CIT(A) erred in treating the expenditure of Rs. 5,90,68,941/- incurred on repair and replacement of raw coal feeder as capital expenditure.
- 3.12 That the CIT(A) erred in treating the expenditure of Rs. 2,06,78,145/- incurred on repair and replacement of tubes of condenser as capital expenditure.
- 3.13 That the CIT(A) erred in treating the expenditure of Rs. 1,00,80,000/- incurred on repair and replacement of heat ignition system as capital expenditure.
- 3.14 That the CIT(A) erred in treating the expenditure of Rs. 18,96,861/- incurred on repair and replacement of current measuring transformer as capital expenditure.
- 3.15 That the CIT(A) erred in treating the expenditure of Rs. 1,24,85,846/- incurred on repair and replacement of elements installed at waste heat recovery system as capital expenditure.
- 3.16 That the CIT(A) erred in treating the expenditure of Rs. 72,72,000/- incurred on repair and replacement of control panels installed in power station as capital expenditure.
- 3.17 That the CIT(A) erred in treating the expenditure of Rs. 7,11,79,780/- incurred on repair and replacement of tubes installed at waste heat recovery system as capital expenditure.

- 3.18 *That the CIT(A) erred in treating the expenditure of Rs. 1,12,21,545/- incurred on repair and replacement of ash bund as capital expenditure.*
- 4 *Without prejudice to above grounds of appeal, the CIT (A) ought to have considered the expenses treated as capital expenditure as per ground no. 3.1 to 3.18 for the purpose of treating the same as expenditure for expansion and renovation of plant & machinery as per provisions of u/s 80IA(4)(iv)(c) of the Act.*
- 5 *The appellant craves to add, alter or delete any of the grounds of appeal during the course of appellate proceedings.*

2. Brief facts of the case are that the assessee carries on its activities through a Board constituted under Electricity Act, 1948 and the multifarious activities, include management of manpower, infrastructure and commerce, the primary activity being generation as well as procurement of power and its transmission and distribution. The assessee is an autonomous body fully owned by the State Government and governed by Board consisting of Members. The assessee filed its return of income for assessment year 2008-09 electronically vide acknowledgement number 39793010260908 on 26/09/2008 declaring total income of Rs.52,97,52,197/-. Subsequently, the assessee revised its returned income and two revised returns of income were e-filed on 26/03/2010 vide e-filing acknowledgement number 1149243402603010 and 114949260260310 wherein a total income of Rs 40,93,31,460/- was shown in both the returns. As the case was selected for scrutiny, notice u/s 143(2) was issued on 11/09/2009 and subsequent notices were also issued for change in incumbent. In response to the notices, the assessee along with Shri Arvind Chandrakar, D.G.M. (Finance) attended from time to time and explained the return.

3. During the course of assessment proceedings, the assessee furnished copies of audit reports in Form No. 3CB, 3 CD and Form No. 10CCB, copy of audited balance sheet and annual statement of accounts alongwith schedules to the audited statements. The assessee also produced summarized statements but complete accounts were not produced giving the reasons that the accounts are distributed over head office and 10 different Regional Accounts Offices (R.A.Os.). From time to time and in compliance to the requirements notified through letter or order sheet noting the assessee furnished written submissions and also enclosed copies of accounts/statements. The claims of various expenses and other issues relating to computation of income were asked to be explained and after considering the replies and supporting documents, the AO made various additions under different heads assessing the total income of the assessee at Rs.79,80,11,309/-.

4. Against the above additions made by the AO, the assessee preferred appeal before the Id. CIT(A) and the Id. CIT(A) partly allowed the appeal of the assessee.

5. Now, the assessee is in further appeal against order of CIT(A).

6. As per the submission of the Ld. AR before us, two main issues are raised by this appeal:

- (1) *Whether profits of assessee company, as claimed are eligible for deduction u/s 80IA(4)(iv) and*
- (2) *Whether disallowances of Rs. 74,05,37,325/- made by the assessing officer and confirmed by the Ld CIT(A) on account of repairs & maintenance of plant & machinery on lump sum/ estimated basis is erroneous or not.*

Ground No 1.1 and 1.2:

7. On 1st issue with respect to availability of deduction u/s 80IA(4)(iv), Ld AR submitted that the same very issue has already been adjudicated by the coordinate bench of the ITAT, Mumbai in assessee's own case in ITA 61/BLPR/2012 for the AY 2007-08. The findings of the ITAT Mumbai were recently referred to and followed by the ITAT Raipur in ITA 18/RPR/2017 for AY 2009-10 dated 31.10.2022, wherein it has been held as under:-

Ground 2 : Deleting disallowance of Rs. 6,08,96,17,054/- by Ld CIT(A) claimed by assessee u/s 80IA(4)(iv)(c) of the IT Act 1961

12. On this issue, before us, Ld CITDR has relied on the order of Ld AO, wherein the disallowance was made based on the observation by the AO that expenditure claimed has not been incurred towards substantial renovation and modernization, hence the claim for deduction u/s 80IA(4)(iv)(c) was not allowable. It was thus the prayer that Ld CIT(A) erred in deleting the disallowance rightly made by the AO and therefore deserves to be reversed.

13. Contrary to submissions of the Ld CITDR, Ld AR of the assessee drew our attention to the order of CIT(A), wherein on this ground Ld CIT(A) has elaborately discussed and concluded that the issue is already covered by the decision of ITAT "C" bench Mumbai, in ITA No 61/BLPR/2012 for AY 2007-08 in assessee's own case. Findings of the Ld CIT(A) are reproduced here under :

I have considered the grounds of appeal, read the assessment order of the Id AO and perused the submissions of the appellant.

2.2 The assessee-company was created and came to existence with effect from 01.12.2000 vide order no. 232-233/CHM/2000 after spitting the erstwhile Madhya Pradesh State Electricity Board into two entities of the respective states following carving out of new State of Chhattigarh out of Madhya Pradesh. All the assets and the liabilities of the erstwhile board were too divided as per the Govt. of India order dated 04.11.2004. Thus the assessee is a state owned board which came into existence after split of the old Madhya Pradesh State Electricity Board which means that it is not a new entity. The appellant is a State owned Board deriving its income from generation, transmission and distribution of electricity.

The Id. Counsel appearing on the behalf of the appellant submitted that for the A. Y. 2007-08 the CIT (A) vide his order dated 15.03.2012 in appeal no. 0530/09-10 allowed the appeal on this ground. It was further submitted by the appellant that the

Hon'ble IT AT 'C' Bench, Mumbai, in ITA No. 61/BLPRI2012 for A.Y. 2007-08 has upheld the decision of the CIT (A) on this ground by holding as under:

After hearing the rival parties and perusal of relevant material placed before us including the impugned orders of authorities below, we find that the claim of the assessee was u/s 80AI(4)(iv)(c) of the Act was misunderstood by the AO and accordingly presumed the same to be a claim filed u/s 80AI(4)(iv)(b) and (c) of the Act. The Id. Counsel for the assessee brought to our attention the audit report filed in Form No. 10CCB qua the claim of the assessee u/s 80AI(4)(iv)(c) of the Act in which at serial no. 7 it has been specifically stated that the assessee's claim of the deduction u/s 80AI(4)(iv)(c) of the Act and at page 2 sr. No.17 it was also stated in the audit report of the assessee that the assessee has undertaken substantial renovation and modernization to its existing net work and transmission lines. In the said report at Sr. No. 7, it has also been mentioned that the assessee started substantial renovation of the transmission and distribution lines from A. Y 2004- 05. The total value of new plant and machinery as on 31.03.2007 was at Rs. 403,35,40,6901- in the transmission and distribution lines which was not in dispute. We find from the rival submissions of the parties that the AO has wrongly presumed the deduction u/s 80AI(4)(iv)(c) of the Act as deduction u/s 80AI(4)(iv)(b)and (c) whereas, in our opinion, the Id. CIT(A) has gone into facts of the case in detailed manner and rightly held by passing a reasoned order that the assessee was entitled to deduction u/s 80AI(4)(iv)(c) of the Act qua profit earned b, the assessee after substantial renovation and modernization of existing transmission and distribution lines which was undertaken during the period commencing from 01.04.2004 to 31.03.2010 by brushing aside the observations of the AO that the no extra profits were derived from substantial renovation. We are therefore, inclined to uphold the same by dismissing the appeal on this ground.

I find from the submission of the appellant that this ground of appeal is covered in his favour in the appellant's own case by the Hon'ble ITAT 'C' Bench Mumbai cited above. Respectfully following the decision, this ground of appeal is allowed.

14. Ld AR further drew our attention to 10CCB report of the assessee regarding its claim for deduction u/s 80IA(4)(iv)(c) for the AY 2006-07, 2007-08, 2008-09 and 2009-10 placed on page 72 to 103 of the paper book dated 07/04/2022. On perusal of these 10CCB reports for the relevant AY, it was noticed that the report 10CCB signed by a chartered accountant has a mention of claim of assessee u/s. 80IA(4)(iv)(c) at Sr No 7 of the said report and also has the mention that this claim was on account of eligibility of the assessee undertaking on account of substantial modernization and renovation of the existing transmission and distribution lines from FY 2004-05. Thus it was the submission that the assessee is are eligible enterprise or undertaking within the meaning of section 80IA(4)(iv)(c) of the Act, deduction claimed by the assessee,

disallowed by the AO has rightly been deleted by the Ld CIT(A), therefore the same is liable to be upheld.

15. *We have considered the rival contentions, perused the orders of the revenue authorities and order of the ITAT for AY 2006-07 in assessee's own case.*

16. *Admittedly, the facts and circumstances of the present case are since identical to the facts of the AY 2006-07, wherein this issue was duly dealt with and a considered opinion on the same has already been offered by the coordinate bench of this tribunal Mumbai Benches in the assessee's own case for AY 2006-07. Ld CIT(A) has appreciated the facts of case properly and decided the issue which was squarely covered by the ITAT Mumbai benches order, wherein it was held that the assessee is eligible for deduction u/s 80IA(4)(iv)(c). No new fact or submission to counter this finding was brought to our notice by the revenue, thus, respectfully following the same, we are of the considered opinion that the order of the Ld CIT(A) deleting the disallowance made by Ld AO on this issue was justified, which deserves to be upheld and we do so. Consequently appeal of revenue on this ground no 2 is dismissed.*

8. Contrary to the submission of Ld AR, Ld CITDR vehemently supported the order of authorities below and contented to uphold the same.

9. Having heard the rival contentions, perused the material available on records and the judicial pronouncements relied upon by the assessee in its own case. Admittedly, the issue raised by the assessee is duly covered by the order of ITAT Mumbai (supra) as well as the order of ITAT Raipur (supra), thus, we are of the opinion that contentions of assessee are worth merits, which are fortified by the orders referred to herein above and deserves to be concurred with. Since no new fact or decision to shatter the decision already in place for the issue under consideration have been brought out to our knowledge, we do not find any reason to disbelieve the existing judgments or to deviate with the same. Consequently, the orders of the Ld CIT(A) and Ld AO on this issue are liable to be set aside. The Ld AO is therefore directed to allow deduction u/s 80IA(4)(iv) to the assessee, in terms of our observations herein above. **In the result Ground no 1 (1.1 and 1.2) of the assessee is allowed.**

Ground no. 2, 3 (including 3.1 to 3.18) and 4

10. Regarding 2nd issue with respect to disallowances of Rs. 74,05,37,325/- on account of repairs & maintenance expenses.

11. At the outset, Ld AR submitted that this issue is also covered by the order of ITAT Mumbai in assessee's own case in ITA 1/Nag/2009 for AY 2004-05 and in ITA No. 2/Nag/2009 for AY 2005-06 both dated 20.08.2010. ITAT Mumbai in the referred appeals has adjudicated the same issue materially similar for both those years, so is for the year under consideration under this appeal, has observed and held in the order for A.Y.20074-2005 as under: -

3. The issue in appeal lies in a narrow compass of material facts. The assessee is a public sector undertaking engaged in the business of generation, transmission and distribution of electricity in the State of Chattisgarh. On 1st November 2004, the assessee filed its income tax return, for the assessment year 2004-05, disclosing an income of Rs 93,50,14,910. This income tax return was later revised, on 31st March 2006, to Rs 238,75,61,494. During the course of scrutiny assessment proceedings in respect of the said income tax return, the Assessing Officer noticed that the assessee has claimed deduction of Rs 120,51,33,738 in respect of repairs and maintenance expenses, and required the assessee to furnish head wise analysis of expenses as also to show cause as to why this expense should not be capitalized. The assessee was also required to produce the related vouchers on 22nd December 2006.

4. As to what transpired on the 22nd December, 2006, there are different versions of the assessee and the Assessing Officer. While the assessee contends, vide concerned official's affidavit dated 11th August 2010 filed before us, that as many 131 files were produced before the Assessing Officer, the Assessing Officer, in the assessment order, has taken note of only three vouchers produced before him.

5. Having noted that the assessee has only produced 'three vouchers', the Assessing Officer further observed that out of these three vouchers, one voucher of Rs 1,65,54,470 pertains to the purchase of 'power transformer, with all accessories', The Assessing Officer was of the view that this power transformer, which is used for regulating the electricity power as also for stepping up and stepping down the electricity power, gives enduring benefit, and, therefore, it cannot be allowed deduction as a revenue expenditure. The Assessing Officer also noted that another voucher of Rs 7,50,000 was for purchase of 'computer software' which is also a capital expenditure. It was thus noted by the Assessing Officer that out of three vouchers produced by the assessee, two vouchers pertain to capital expenditure! On the basis of this-sample analysis, and apparently proceeding on the basis that the results obtained in this sample analysis will hold good for the entire expenses, the Assessing Officer disallowed two third of expenditure claimed under the head 'repairs and

maintenance', He thus disallowed Rs 80,34,22,492, though he also granted depreciation' @ 20% on the expenses so disallowed on the ground that these expenses are considered' as 'capital expenditure'.

6. Aggrieved by the stand so taken by the Assessing Officer, assessee carried 'the matter in appeal before the CIT(A). It was, inter alia, submitted by the assessee that the Assessing Officer made the adhoc disallowance without specifically discussing the is.sue and without affording proper opportunity of hearing to the assessee. It was submitted that the assessee was following accounting policies as duly prescribed under the Electricity Act. It was also submitted that replacement of transformer was necessary to ensure uninterrupted power supply and for smooth and efficient functioning of the sub station. It was also submitted that transformer cannot be viewed as an independent unit, but as a part of sub station from where electricity is generated and transmitted, that the cost of transformer is insignificant vis-a-vis the cost of sub station, and that effective life of a transformer' is so short that it should only be treated as revenue expenditure. It was also emphasized that the repairs of maintenance of Rs. 120 crores . may seem rather huge in isolation, but when one considers the fact that overall asset base of the assessee is 17,500 crores, the amount of repairs and maintenance seems fairly reasonable. As regards the expenditure of Rs 7.50 lacs on software purchase, the assessee pointed out that this expense was debited to 'Fixed Assets Work In Progress' account.: and. as such. there was no question 'of disallowance as capital expenditure. When remand report was called by the CIT(A). on these submissions, the Assessing Officer reiterated the stand taken earlier .. It was also pointed out that even during the remand . proceedings, the assessee did not" appear before the Assessing Officer to furnish the requisitioned evidences. The CIT(A) rejected the submissions of the assessee. He noted that the accounting policies adopted by the assessee cannot be determinative of admissibility of deduction to the assessee, and that the submissions of the assessee are vague and self contradictory. On one hand assessee has submitted that the life span of the transformer is 4-5 years, and, on the other hand, the assessee has stated that replacement of transformer was done after 25 years. The CIT(A) also rejected assessee's submission that transformer is only a part of sub station and cannot be viewed on standalone basis, and that expenses on purchase of transformer are revenue expenses in nature .. The CIT (A) also took exception to assessee not availing the opportunities of hearing afforded by the Assessing Officer in remand proceedings. The CIT(A) did note that the expense on computer software was not even claimed as revenue expenditure, but declined any relief on the ground that the assessee has not submitted item wise components of expenses claimed under the head repairs and maintenance. The CIT(A) thus concluded that the assessee has failed to discharge the burden of proving that expenses claimed as deduction are revenue expenses in nature, and confirmed the action of the Assessing Officer. The assessee is not satisfied by the order of the CIT(A) and is in further appeal before us.

7. Shri S E Dastur, learned senior counsel for the assessee, submits that the Assessing Officer did not provide an effective opportunity of hearing to the assessee and has proceeded to finalize the assessment in a very casual manner. Our attention is invited to the file notings in proceeding sheet of the Assessing Officer which show that the assessee was given only eight days to produce all the details. Yet, when assessee appeared before the Assessing Officer, the Assessing Officer merely looked at three

vouchers and based on this. sample . study, proceeded to finalize the disallowance. Our attention is also invited to the comparative chart of repairs and maintenance expenses for the assessment years 2002-03, 2003-04 and 2004-05 which shows that the expenses in the current year are comparable with the accepted past history of the case. Our attention was also invited to the affidavit filed by the officer of the assessee company, who attended to the assessment proceedings and who has stated in the said affidavit that 131 files were produced before the Assessing Officer on the appointed day. Our attention was invited to several voucher files that the assessee had brought to the court room, and it was submitted that the assessee is ready to produce all these details before this Court or before any of the authorities below - as we may direct. Learned counsel made further submissions on merits of admissibility of claim of deduction of, cost of transformer as a revenue expenditure, but, for the reasons we will set out in a short while, it is not really necessary to take detailed note' of those submissions. Learned counsel then. submitted that the approach adopted by the Assessing Officer, which has since been approved by the CIT(A),' in quantifying the quantum of disallowance is completely erroneous. Firstly, the Assessing Officer is wrong in contending that only three vouchers were produced before him, whereas, as a matter of fact, large number of vouchers were produced before him and the Assessing Officer did not even inspect all the material before him. Secondly, it is illogical to presume that if two out of three vouchers verified by him are relatable to capital expenditure, two third of entire expenditure will be relatable to capital expenditure. Thirdly, as the undisputed factual position is, only one out of the three vouchers pertains to, what the Assessing Officer perceives ' as, capital expenditure. Learned counsel, however, fairly submits that the matter will have to be sent back to the Assessing Officer so as all the relevant details can be produced before him, and so as the question of disallowance, if any, on account of capital expenditure can be examined on merits after giving assessee a fair opportunity of hearing to the assessee.

8. Shri H J Lal, learned Commissioner- Departmental Representative, vehemently relies upon the orders of the authorities below, and submits that the assessee having failed to avail the opportunities afforded by the authorities below, does not deserve yet another opportunity of hearing before any of the authorities below. However, when his attention was invited to the manner in which disallowance has been quantified and in which the authorities below have proceeded with sweeping generalizations about nature of expenses, he submitted that he has no objection to the matter being restored to the file of the CIT(A) for fresh adjudication in the light of the submission's and details as the assessee may furnish.

9. In rejoinder, learned counsel for' the assessee once again submitted that he is willing to produce all the details requisitioned by the Assessing Officer, and that he has even brought these files to the court room so that, should we so wish, we may, inspect the same. We are once again urged to remit the matter to the file of the Assessing Officer for adjudication de novo, and for giving a fair and reasonable, opportunity of hearing to the assessee,

10. We have noted that the impugned disallowance proceeds on the basis that the assessee did not produce the requisite details before the Assessing Officer, but, as stated in 'the affidavit filed before us, the assessee's representative did produce as many as 131 files before the

Assessing Officer and the Assessing Officer did not even examine these files. The assessee had brought large number of files, which he were claimed to be containing copies of requisitioned vouchers, to our court as well. The assessee is a public sector undertaking and subjected to various audits and internal control measures. It cannot, therefore, be said that the assessee does not have any vouchers in support of the expenses claimed, or that he is not in a position to furnish the same. We have also noted that the time granted to the assessee, whether in assessment proceedings or in remand proceedings, was merely eight and seven days respectively. In these circumstances, resorting to a disallowance only on the basis of sample study of three vouchers, which is clearly an inadequate size of sample anyway - to be truly representative of all the vouchers, is totally devoid of any legally sustainable merits. In any case, the admissibility of repairs and maintenance expenses is to be examined on the merits and not on the basis of inferences. In view of these discussions, and having regard to assessee's assurance that the requisitioned details will be duly furnished before the Assessing Officer in remanded proceedings, we deem it fit and proper to remit the matter to the file of the Assessing Officer for fresh adjudication after giving a fair and reasonable opportunity of hearing to the assessee. We also direct the assessee to scrupulously comply with all the requisitions of the Assessing Officer, in a fair and reasonable manner, and not to resort to any dilatory tactics. As we are remitting the matter to the file of the Assessing Officer for fresh adjudication on merits, we refrain from making any observation on merits of the admissibility of the claim. That aspect of the matter is to be examined by the Assessing Officer in the- limits of the submissions. of the cases and on specific facts of the claims. With these observations, the matter stands restored to the file of the Assessing Officer.

12. In continuation, Ld AR relying on the aforesaid order has submitted that since the issue of Repair and maintenance expenses was duly explained to the Ld AO but he had not considered the same in light of the facts but has decided the same only on the basis of his own inferences without appreciating the merits of the facts. According to Ld AR as mentioned in the order of Ld CIT(A), the appellant has submitted to Ld AO with the complete details of all the expenses incurred on repairs and maintenance of Plant & machinery of quantum of single expense above Rs. 15 Lac, as per instruction of Ld AO, which was logical also, being the assessee has an asset base of more than Rs. 3885 Crores. The AO on the basis of those details have only derived arbitrary ratios and disallowances, without looking into the reasonability of the expense incurred. It is further submitted that; the AO did not even refer to the relevant Manual of Instructions on Commercial Accounting System based on which a conclusion was drawn by

him. Ld AO did not even state which entry he has considered as addition to fixed assets, which as improvement and which as alteration/ renovation to the fixed assets nor have assign any reason for his belief. Similar expenses were incurred by the assessee and treated as repair and maintenance expenses in earlier years. Therefore, it was the prayer of the Ld AR that, the finding of the AO and confirmation by the Ld CIT(A) on this issue were arbitrary, illegal and liable to be set aside.

13. Ld DR on the other hand supported the orders of the Ld CIT(A) and AO on the issue and reiterated the finding of the LD CIT(A) as under:

On going through the grounds of the appellant I find that as per the description of the items certain expenses are in the nature of spare parts. The same are hereby considered as allowable expenses. These are grinding element, high crome grinding element shaft of bevel wheel, parts of boiler feed pump, spares .of pump, electrodes of ESP, spares of conveyer belts, cartridge of coal mill as mentioned in grounds of appeal. The appellant will produce details of these items before the AO and expenses on these items will be allowed. Balance addition is hereby sustained.

14. It is further submitted by the Ld CITDR that the possible allowable expenditure under the head repair and maintenance were very judiciously already allowed by the LD CIT(A), thus there is no further scope for any allowance to the assessee on this count. It is thus prayed to upheld the order of the Ld CIT(A).

15. We have heard the contentions of both the parties. Perused the material placed before us. Have analysed the orders of the ITAT Mumbai (supra) in the assessee's own case. By going through the facts and legal matrix of the issue, it is observed that the Ld AO has examined only top 50 entries consisting of expenditure incurred above Rs. 15 Lacs, in aggregate for Rs. 61,70,08,468/- out of total expenditure of Rs. 179,15,46,012/- i.e., 37.35%. Ld AO found that out of expenditure of Rs.61,70,08,468/-, expenditure to the extent of Rs.

48,33,92,363/- is found fit in classification of capital expenditure. It is also the facts that the assessee has shown its inability to furnish complete details, thus Ld AO demarcated the nature of expenses based on these limited entries under capital and revenue. Ld AO also noted that from his analysis more than 75% of the expenditure claimed are not found allowable as revenue expenditure, being capital in nature. Finally, the AO had disallowed 50% of the expenditure claimed treating the same as capital expenditure. On perusal of the order of Ld CIT(A), it is very much discernible that some of the items categorised as spare parts such as grinding elements, high chrome grinding element shaft bevel wheel, parts of boiler feed pumps, spare of pumps, electrodes of ESP, spare of conveyer belts, cartridges of coal mill etc should be allowed at Repair and maintenance. From the analysis of the Ld CIT(A) and directions to the Ld AO to examine the expense incurred on spare parts and to allow the same, this itself shows that the analysis done by the AO was not foolproof or reliable in all respect. The assessee, being a Public Sector Undertaking, has already gone through the test of various Audits and was also subjected to follow accounting manual of instructions on Commercial Accounting System as well as Electricity (Supply) Annual Accounts Rules, 1985 [ESSAR], thus must be having all the vouchers to show in support of its claim. We have also seen a statement showing synopsis of repair and maintenance expense submitted by the assessee which shows that nature of expenses shown might be of revenue in nature but the same could be established only after examining and analyse the same on merits.

16. In back drop of the aforesaid discussion, respectfully following the decisions of ITAT Mumbai (supra) in assessee's own case for AY 2004-05 & 2005-06, we are of the considered opinion that the matter needs a close verification of the facts and evidences to arrive at a true fair and logical view,

thus we are inclined to remit the matter to the file of the Ld AO for fresh adjudication. Needless to say, fair / reasonable opportunity of hearing be granted to the assessee and the assessee is also required to produce all the necessary evidences / submissions to justify its claim. In the result Ground no. 2, 3 (including 3.1 to 3.18) and 4 of the assessee under this appeal are allowed for statistical purposes.

17. Ground no 5 is general in nature, does not call for any specific adjudication.

18. In the result, the appeal of assessee is partly allowed, in terms of our observations above.

Order pronounced in pursuance to the Rule 34(4) of ITAT Rules,1963 on 27/03/2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 27/03/2023

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur