



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK  
(through virtual hearing)**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER AND  
GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.62/CTK/2021**

Assessment Year : 2016-17

National Aluminium Company Limited., NALCO Bhawan, Nayapalli, Bhubaneswar.	Vs.	DCIT, Circle -1(2), Bhubaneswar
PAN/GIR No.AAACN 7449 M		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri Ved Jain, CA and Shri P. Venugopal Rao, CA  
Revenue by : Dr.Abani Kanta Nayak, CIT DR

**Date of Hearing : 30/11/2023**  
**Date of Pronouncement : 30/11/2023**

**ORDER**

Per Bench

This is an appeal filed by the assessee against the order of the Id Pr. CIT-1, Bhubaneswar u/s.263 of the Act dated 30.3.201 in Appeal No.PCIT, Bhubaneswar-1/Revision-263/100000183890/2021 for the assessment year 2016-17.

2. Shri Ved Jain, CA and Shri P. Venugopal Rao, CA appeared for the assessee and Dr. Abani Kanta Nayak, Id CIT DR for the revenue.

3. It was submitted by Id AR that the original assessment in the case of the assessee came to be completed u/s.143(3) of the Act on 28.12.2018. It was the submission that subsequently notice u/s.263 of the Act came to be issued wherein, the Pr. CIT has treated the assessment order as erroneous and prejudicial to the interest of the revenue on account of non-application of provisions of section 43B(a) in respect of payments under Mines and Minerals Development Regulation to the District Mineral Foundation (DMF) and the National Mineral Exploration Trust (NMET). It was the submission that the Pr. CIT has taken a view that the Assessing Officer has not added part of amount of Rs.19,35,18,880/- being the unpaid amount on the due date of filing of returns. It was the submission that the second issue raised by the Pr. CIT was in regard to the outstanding water charges and interest thereon to an extent of Rs.663.56 crores. The third issue raised is in regard to computation of interest liability u/s. 234B of the Act. Ld AR drew our attention to page 209 of paper book, which was the copy of the notice issued u/s.142(1) of the Act, which reads as follows:

“ **GOVERNMENT OF INDIA**  
**MINISTRY OF FINANCE**  
**INCOME TAX DEPARTMENT**  
**OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX**  
**DCIT/ACIT, CIRCLE 1(2), BBSR**

**To**  
NATIONAL ALUMINIUM COMPANY LIMITED  
P/1 NALCO BHAWAN, NAYAPALLI  
BHUBANESWAR 751013, Orissa  
India

PAN: AAACN7449M      A.Y. 2016-17      Dated 9.11.2018      Notice No. ITBA/AST/F/142(1)/2018-19/1013540816(1)

Notice under **Sub** Section (1) of Section **142** of the Income Tax Act, 1961/6090

Sir/ Madam/ M/s,

In connection with the assessment for the assessment year **2016-17** you are required to:

a) Furnish or cause to be furnished on or before **16/11/2018** at **11:00 AM** the accounts and documents specified overleaf

b) Furnish and verified in the prescribed manner under Rule 14 of IT. Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before 16/11/2018 at 11:00 AM.

c) The above mentioned evidence/information Is to be furnished online electronically In 'E-Proceeding' facility through your account in 'a-filing' website of Income Tax Department.

d) Para(s) (a) to (c) are applicable if you have *ah* account in e-filing website of Income Tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail Is not available).

e) In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.

Yours faithfully,

THAMBURAN THOZHAPILLAI AYYAMPERUMAI  
DCIT/ACIT, CIRCLE 1(2), BBSR

4. In Annexure to page 210, Id AR drew our attention to Question No.7,

9 & 10 as under:

1. From schedule DPM it is found that you have claimed additional depreciation on 15% block at Rs. 25,18,79,430/-. However, taking into account the plant & machinery acquired during the year additional depreciation comes to Rs. 13,40,94,292/-. Please furnish computation of the same. Further, you have claimed additional depreciation at Rs. 4,68,68,569/- on 100% block of asset acquired of Rs. 12,81,03,727/-. Please explain how the same is admissible under the provisions of the Act.

2. You have claimed deduction u/s 32AC of the Act. In this regard please furnish following details of assets acquired and installed.

- I. Type of asset
- ii. Date of acquisition with evidence
- iii. Date of asset put to use in the business
- iv. Deduction u/s 32AC claimed in the year of acquisition, if any .

3. From the return of income it is found that you have claimed deduction u/s 35 (2AA) of the Act. In this regard, please furnish evidence in support payment and details of payee,

4. Please furnish details of 'any other deduction' claimed at Rs. 13,45,47,781/.

5. From the return of income it is found that you have shown value of inventory at Rs. 1126,97,07,5140/- in the balance sheet and at Rs. 456,11,64,722/- in the P&L Account. In this regard please furnish following information:

SI No.	Name of items	Op stock (raw material/finished product)		Purchase/manufacture	Sale/consumption		CI stock	
		Qnt	Amount		Qnt	Amount	Qnt	Amount

6. From the 26AS it is seen that you have received income by way of 'rent'. However, the same Is not reflected in the P&L Account. Please explain.

7. Please furnish details of Rs. 123,13,00,000/- towards 'tax, duty and cess' debited to P&L Account and evidence in support of payment of the same.

8. From the return it Is found that you have claimed deduction u/s 80IA of the Act. In this regard please explain how the same is admissible under the provisions of the Act.

9. From 3CD it is found that an amount of Rs. J7,85.32,824/- is not paid on or before the due date as specified under section 43B of the Act. However. In the computation of total income you have disallowed Rs. 20,92,64,656/- only. Please explain as to why the differential amount should not be added back to the total income.

10. From 3CD it is found that you have claimed prior period expenses (net of income) at Rs. 87,90,606/-, Please explain how the same is admissible u/s 37 of the Act."

He further drew our attention to pages 224 & 225, which were details of the amount of Rs.123.13 crores towards tax duty and cess which reads as follows:

"Before the Dy. Commissioner of Income Tax Corporate Circle 1(2),Bhubaneswar.

NATIONAL ALUMINIUM COMPANY LIMITED –Asst.Year 016-17

7. Pease furnish details of Rs.13,13,00,000/- towards tax, duty and cess debited to P&L account and evidence in support of payment of the same.

In our printed account, the following major duties and taxes and cess are charged to expenditure for the financial year 2015-16, extracts placed hereunder:

Note 25: Power and fuel

Coal	1,85,27
Fuel Oil	398.22
Duty on own generation	172.68
Purchased power	1.89
Power transmission charges	<u>6.55</u>
Sub total	1,864.61
Adjustment pertaining to earlier years -	
Total :	-----
	<u>1,864.61</u>
Other manufacturing expenses:	
Royalty & cess	93.14
Water charges	4.18
Contribution to DMF & NMET	36.31
Others	<u>62.64</u>

Sub:Total

To summarise the following major head of payment of tax, duties and cess covered under section 43B of the Act is represented.

1. Electricity duty on own generation	Rs.172.68
2. Royalty	Rs. 93.14
3. Water cess	Rs.24.18
<b>Total:</b>	<b>Rs.290.00</b>

It is submitted that NALCO is one of the organization almost 100% digital payment enabled. Accordingly, it is submitted that manual/physical receipt is not available. However, we are enclosing the payment details of the payments and voucher details.

This fact is also corroborated by the Tax Auditor in the Tax audit report, where the total outstanding as at the year end –unpaid u/s.43B stands at Rs.7,95,32,84/-."

He also drew our attention to page 233 in regard to disallowance u/s.43B as follows:

"9. From 3CD, it is found that an amount of Rs.27,95,3,824/- is not paid on or before the due date as specified under section 43B of the Act. However, in the computation of total income you have disallowed Rs.20,9,64,656/- only. Please explain as to why the differential amount should not be added back to the total income.

While we appreciate the observation of discrepancy in the sum offered for disallowance by us in our own reasoning, it is humbly submitted that the contention of your good office is incorrect. We submit the item wise details of the sum as per 3CD, subsequent actual payment is placed hereunder. It may be noticed that we have offered an additional sum of Rs.1,41,80,021 for disallowance which we request to allow us."

It was the submission that consequent to reply, the assessee has offered an additional sum of Rs.1,41,80,021/- and the details of payment is at page 234 as under:

"Particulars of liabilities incurred during the year u/s.43B, Clauses (a),(c),(d), (e) and (f) of the Act.

Sl.No.	Nature of liability and relevant clause of section 43B	Amount incurred during the previous year and remaining unpaid on March 31 <sup>st</sup> Mar of the previous year under audit	Amount mentioned in co.3 paid or set off	Amount unpaid on the due date for filing return/date of tax audit report which ever is earlier	Payment detail
1	2	3	4	5	6
A	Bonus	1,11,880	-	1,11,880	
B	Gratuity	8,60,13,944	-	8,60,13,944	Net paid as on the date of signing of audit report
C	Cont. to DMF & NMET	36,31,19,689	16,96,00,809	19,35,18,880	Voucher No. and dt. 6/57089/9.3.16/57091/9.03.16, 6/57059/29.3.16, 62/57061/29.3.16, 62/215/15.4.16, 6/63/16.4.16
	Grand Total A to 1	44,92,45,513	16,96,00,809	27,96,44,704	

Less :Payment made on account of gratuity : 8,45,60,069  
Net sum that need to be disallowed : 19,50,84,635  
Sum offered for disallowance : 20,92,64,656  
Sum offered for disallowance excess : 1,41,80,021

It was the submission that in respect of issue of 43B, the issue has already been considered by the Assessing Officer and detailed reply had also been filed. It was the submission that the difference which is being claimed by the Pr. CIT in the order u/s.63 of the Act has also been considered is evident from page 234 of PB, extracted above. In respect of second issue, Id AR drew our attention to page Nos. 240 & 241 of PB , which was a further notice u/s.142(1) issued by the Assessing Officer as follows:

“

To  
The Principal Officer,  
National Aluminium Company Limited,  
NALCO Bhawan, P-1, Nayapali, Bhubaneswar

Sir,

In connection with the assessment for the A.Y.2016-17, you are required to:

(a) .....

(b) Product or cause to be produced before me at my office at the office of DCIT, Corporate Circle-1(), 3<sup>rd</sup> floor, Aayakar Bhavan, Rajaswa Vihar, Bhubaneswar-7 on 24.12.018 at 11 AM the accounts and/or documents specified overleaf:

1. Please show cause as to why Rs. 13,04,53,000/- claimed towards 'NPV mines, assets not capitalized' should not be disallowed.
2. You have debited to P&L account Rs. 93,14,00,000/- towards Royalty. From the Auditor's Report it is seen that Rs. 9,46,56,569/- has been paid before the due date for filing of return. In this regard please show cause as to why Rs.83,67,43,43 I/- should not be disallowed and added back u/s 43B of the Act
3. Please show cause as to why profit from long term investment shown at Rs.12,96,43,000/- should not be treated as income from business.
4. You have debited to P&L account Rs. 130,66,93,385/- towards leave encashment. From the Auditor's Report it is found that no amount is paid before the due date. In this regard please show cause as to why Rs.130,66,93,385/- should not be disallowed u/s 43B of the Act.
5. Please show cause as to why additional depreciation claimed should not be disallowed.
6. Please show cause as why water charges not paid before the due date should not be disallowed u/s 43B of the Act.
7. You have debited a-sum of Rs. 27.17 crores towards peripheral development expenditure in your printed annual report. Please furnish the details of expenditure and explain why the amount will not be disallowed in view of recent amendment in the Income tax Act.
- 8.. Please furnish the details of investment income booked under dividend income, long term capital gain, short term capital gain and details of disallowance claimed u/s. 14A and explain why the same shall not be disallowed keeping in view that the same is deemed to be a normal income.
9. Please furnish the details of expenditure on research and development and the details of amounts which have been charged as revenue amounting to Rs 3,79,52,459, treating the same as a normal expenditure, without any weighted deduction.
10. Please furnish the details of non-moving stores and spares claimed and written off amounting to RS 10.84 crores.
11. You have claimed deduction of Rs.93,699,348 U/s 32AC of the Act. Please show cause as to why the same should not be disallowed, please furnish details of assets acquired and installed.

12. You have claimed a Sum of Rs. 19,14,22,541 towards benefit u/s.80IA of the Income Tax Act in your revised return. You are advised to submit the details of the claim, audit report u/s.44AB, audited profit and loss and balance sheet of the independent unit against which the benefit in support of your claim.

13. Please show cause as to why Rs. 140.22 crore towards interest on disputed Govt. Dues & others should not be disallowed.

Sd/  
DCIT, Corporate Circle -1(2),  
Bhubaneswar

In reply, he drew our attention to para 6 and para 13 of the said notice. He drew our attention to pages 268 to 270 of paper book in respect of the issue of interest, which are as follows:

**NATIONAL ALUMINIUM COMPANY LIMITED: Asst. Year -2016-17**

Head of query	Our reply and submission
12. Pl. show cause as to why Rs.140.22 crore towards interest on disputed Govt. dues & other should not be disallowed.	Enclosure -13

The disputed govt dues is the sum booked towards interest on electricity duty emanating out of the principal amount of water charges due and payable to Govt. of Odisha.

**Interest on water charges**

During the year a sum of Rs.140.20 crores was provided in the books of account towards interest on disputed Government dues & others out of which a sum of Rs.1,40,20,87,630 was towards interest on disputed dues of water charges. A further break up of the sum debited under the head interest on water charges is presented as under:

Profit centre	Account Number	AY 2015-16 (Rs.)
1200 – Refinery	56202-Int-water charges	19,82,18,664.00
1300-Captive power plant	562022-Int. water charges	1,20,38,68,966.00
	562022 Total:	1,40,20,87,630.00

Principal and interest on water charges has been under dispute since the F.Y. 1999-2000 before various forums including that of the Govt. of Orissa.

During the FY 2018-19, NALCO having agreed in principle with Govt. of Odisha to settle outstanding and disputed arrived at a settlement of old water charges. In pursuance to which against the outstanding liability of Rs.839,97,95,235 a sum of Rs.785,71,04,400 was reversed and balance paid. The yearwise reversal and payment has been enclosed. In view of the reversal, since the reversal of water charges happened during March 2018, the period within which company could file a revised return no 5930900180318 dated 28.3.018, added the sum of Rs.134.69 crore reversed net after payment and paid tax on the same approximately amounting to Rs.43.25 crores.

***Summary of revised return filed is placed as under***

Head	Original Filed	Revised during Dec-17 for considering 32AC benefit.	Revised return considering the remission of Water chg.
	Rs Crore	Rs. Crore	Rs. Crore
a) Total income computed-Taxable	1,076.62	1,067.25	<b>1,201.94*</b>
b) Net Tax payable (@ 34.608)	375.55	372.18	<b>418.80</b>
c)Tax already paid			
i.Advance Tax paid	316.00	316.00	316.00
ii. TDS Credit	44.44	44.44	44.44
iii.Self Assessmt. Tax paid	15.11	15.11	15.11
iv.Self Assessmt. Tax to be paid alongwith the return.	-	-	<b>43.25</b>
Total Tax paid	375.55	375.55	<b>418.80</b>
<b>d)Tax Payable/(Refund)</b>	<b>Nil</b>	<b>(3.37)</b>	<b>Nil</b>

After considering the net remission of liability amounting to Rs.134.69 cr as an income

Since company has added the sum and paid tax thereon, it is requested not to add back the same again which may attract taxing an amount twice.

We are enclosing the following details in support of our claim.

1. Letters of settlement from Government of Odisha

2. Reversal general ledger copy, and statement of reversal of cumulative water charges.

3. Copy of Computation of Income Tax.

*\*After considering the net remission of liability amounting to ZU4.69 Cr. as an income.*

In view of the above, it is humbly submitted that no addition/ disallowance be made in respect of unpaid interest on and water charges."

It was the submission that this issue was also specifically considered by the Assessing Officer. In regard to 3<sup>rd</sup> issue being the interest calculated u/s.234B of the Act, it was the submission that same was automatic in nature. It was the submission that as the issue which has already been raised by Pr. CIT, has already been considered in depth by the Assessing Officer and the Assessing Officer has already taken a view on the issue, the provisions of section 263 cannot be invoked for forcing the opinion of the Pr. CIT over that of the Assessing Officer. It was the submission that the order u/s.263 deserves to be quashed.

4. In reply, Id CIT DR drew our attention to the order of the Pr. CIT at page 8 to submit that even after all the explanation, there was a difference of Rs.5.53 crores which has not been explained by the assessee. It was the submission that the order u/s.263 is liable to be upheld.

5. In reply, Id AR submitted that this differential amount, which is being raised by Id CIT, DR is in respect of an amount of Rs.134.69 crores, which has been offered by the assessee in its return for the assessment year 2018-19 and this was also brought out to the reply filed to the Assessing Officer in respect of the issue of interest of water charges. It was the submission that the income having already been offered to tax during the

assessment year 2018-19, there is no tax effect which makes the assessment erroneous and much less prejudicial to the interest of the revenue.

6. We have considered the rival submissions. A perusal of the voluminous paper book which has been filed by the assessee clearly shows that the issues which have been raised by the Pr. CIT are the issues which have already been considered by the Assessing Officer in the course of original assessment and the assessee has filed detailed explanations. The Assessing Officer while completing the original assessment has considered these explanations and has drawn conclusion. The order u/s.263 by the Pr.CIT is nothing but an attempt to replace the opinion of the Assessing Officer with that of the Pr. CIT. A perusal of the order of the Pr. CIT further goes on to show that even after getting reply of the assessee, the Pr. CIT has not drawn any conclusion but has treated the action of the Assessing Officer as inadequate examination and has directed the Assessing Officer to examine the issues afresh, which is impressible in an order u/s.263 of the Act. This being so, as the issue has already been examined and an opinion has been formed by the Assessing Officer, the order of the Pr. CIT u/s.263 on the identical issue and framing a different opinion is not permissible and consequently, same stands quashed.

7. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 30/11/2023.

Sd/-  
**(Girish Agrawal)**  
**ACCOUNTANT MEMBER**

sd/-  
**(George Mathan)**  
**JUDICIAL MEMBER**

Cuttack; Dated 30/11/2023  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : National Aluminium Company Limited., NALCO Bhawan, Nayapalli, Bhubaneswar
2. The Respondent:DCIT, Circle -1(2), Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr. CIT, Bhubaneswar-1
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**