IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री एस बालाकृष्णन, माननीय लेखा सदस्य

SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI S BALAKRISHNAN HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./**I.T.A.No.191, 192, 193, 194, 195, 196 & 197/Viz/2024**
(निर्धारण वर्ष/ **Assessment Year:2016-17, 2015-16, 2013-14, 2016-17, 2017-18, 2018-19 & 2020-21)**

Andhra Pradesh Power Generation Corporation Limited, Vijayawada. PAN: AACCA2734J	*VS.*	Deputy Commissioner of Income Tax, Circle-1(1), Vijayawada.
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

करदाताकाप्रतिनिधित्व/ Assessee Represented by	:	Shri M. Chandramouleswara Rao, CA
राजस्वकाप्रतिनिधित्व/ Department Represented by	:	Dr.Satyasai Rath, CIT-DR
सुनवाईसमाप्तहोनेकीतिथि/ Date of Conclusion of Hearing	:	22/07/2025
घोषणा की तारीख/ Date of Pronouncement	:	20/08/2025

ORDER

PER BENCH:

All the captioned appeals filed by the assessee against the respective orders of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (in short "Ld. CIT(A)"). All these

appeals are pertaining to one assessee, the facts are common and grounds are identical and similar. Therefore, all these appeals are clubbed, heard together and disposed of in this consolidated order. Appeal wise adjudication is given in the following paragraphs.

2. Firstly, we shall take up ITA No. 197/Viz/2024 (AY: 2020-21) as a lead appeal and the facts are culled out there from.

ITA No. 197/Viz/2024
(AY: 2020-21)

3. This appeal is filed by the assessee against the order of the Ld. CIT(A) in DIN & Order No. ITBA/NFAC/S/250/2023-24/1063492163(1), dated 27/03/2024 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 (in short "the Act"), dated 30/09/2022 for the AY 2020-21.

4. Brief facts of the case are that the assessee is engaged in the business of power generation and distribution in the State of Andhra Pradesh. The assessee filed its return of income on 23/12/2020 declaring a loss of Rs. 775,65,54,250/-. The return was summarily processed U/s. 143(1)(a) of the Act on 24/12/2021 determining the total loss at Rs. 767,34,29,796/-. Subsequently, the case was selected for

scrutiny under CASS and statutory notices have been issued and served on the assessee calling for the details and the assessee has furnished the details from time to time before the Ld. AO. After examining the submissions made by the assessee, the Ld. AO observed that the assessee has realized sale proceeds from Fly Ash / Ash products amounting to Rs. 171,62,18,905/-. The submission of the assessee that the assessee is governed by the Notification under the Environment Protect Act, 1986 issued by the Ministry of Environment and Forests, Government of India dated 03/11/2009 and 25/01/2016 and therefore, it cannot be considered as a revenue income of the assessee as it has to be deposited in a Environment Protection & Fly Ash Fund (EP&FF) and to be kept in a separate account. The assessee also required to file an annual implementation report to the Pollution Control Board. It was the contention of the assessee that the assessee does not have a right to utilize this fund for any business operations as it is being monitored by the Ministry of Environment and Forests, Government of India. The Ld. AO observed that the sale proceeds of Fly Ash / Ash products is part and parcel of routine business activities of the assessee and thereafter, proceeded to add an amount of Rs. 171,62,18,905/- to the total income of the assessee. Considering the submissions made by the assessee to

the Ld. AO regarding disallowance U/s. 14A of the Actwith respect to the dividend income which is exempt, earned by the assessee, the Ld. AO proceeded to disallow the amount of Rs. 10,82,12,042/- where the average value of the investment computed at Rs. 1082,12,04,267/-. Further, the Ld. AO also did not accept the submissions made by the assessee on the expenditure incurred towards water charges, Police Guard charges and made a disallowance of Rs. 20,61,81,938/- towards Water charges and Rs. 36,61,20,218/- towards Police Guard charges U/s. 40(a)(iib) of the Act. Further, relying on Explanation 2 to section 37(1) of the Act, the Ld. AO also made a disallowance of Rs. 2,30,27,863/- claimed by the assessee towards Corporate Social Responsibility (in short "CSR") expenditure. Aggrieved by the various additions made by the Ld. AO, the assessee filed an appeal before the Ld. CIT(A).

5. The assessee reiterated the similar submissions before the Ld. CIT(A), however, the Ld. CIT(A) observed that the Ld. AO erred in considering the sale proceeds from sale of Fly Ash / Ash products net of expenditure which is computed at Rs. 60,05,46,662/- and directed the Ld. AO to restrict the addition to that extent. The Ld. CIT(A) confirmed the other additions made by the Ld. AO and thereby partly allowed the

appeal of the assessee. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising the following grounds of appeal:

"1. The Appellate Order of the Ld. CIT(A) is bad, unlawful and erroneous both on facts and in law.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the action of the AO in bringing the income from the sale of Fly Ash to tax without considering the fact that the Fly Ash funds are not free funds and cannot be used for general business purposes of the appellant. He ought to have considered the fact that utilization of funds received from sale of Fly Ash is controlled by a Notification of Central Government, and such Notification binding on the appellant.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the action of the AO in invoking the provisions of section 14A disallow an amount of Rs. 10,82,12,042/- under normal provisions as well as in the computation of book profits U/s. 115JB of the Act as against the actual exempt income earned at Rs. 5,74,00,000/-. He ought to have restricted the disallowance to the amount of exempt income earned and not beyond.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in sustaining the action of AO in applying the provisions of section 40(a)(iib) of the Act on the following issues:
(i) Amount of Rs. 20,61,81,938/- paid for water supplied by AP Irrigation & CAD (PW: AC&JWS/COD) Department (Now Water Resource Department) of Andhra Pradesh State Government.
(ii) Amount of Rs. 36,61,20,218/- paid to APSPF Department of Andhra Pradesh State Government for provision of Security Guard Services. He ought to have considered the fact that, the issues considered for disallowance U/s. 40(a)(iib) of the Act are not in the nature of "royalty, license fee, Service fees, privilege fees or any other fees or charge by whatever name called and also levy by State Government is not just exclusive levy only on State Government undertaking including the Appellant undertaking.

5. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the action of the AO in disallowance of CSR expenses alleging that, such expenditure is not spent for the purpose of the business of the assessee. He ought to have considered that spending on provision of civic amenities to the residents of the neighbouring localities with foster goodwill among the public and helpful to the appellant business.

6. Such other ground or grounds that may be urged during the hearing of the appeal."

6. Ground No.1 and 6 are general in nature and therefore need no adjudication.

7. Ground No.2 relates to treating the income from sale of Fly Ash as revenue income. On this issue, Ld. AR submitted that the assessee is governed by the Notification issued by the Ministry of Environment and Forests, Government of India which is enclosed at Paper Book pages 20 to 46. He submitted that the assessee is under obligation to maintain separately the receipts from the sale of Fly Ash / Ash products which is governed by the Notification issued by the Ministry of Environment and Forests, Government of India. He submitted that these funds cannot be utilized for the business operations as per the Notification issued under the Environmental Protection Act, 1986 as it is being monitored by the Ministry of Environment and Forests. He submitted that therefore it is not included as revenue income of the assessee and it is being credited to separate fund and be utilized as per the terms of the Ministry. Further, he also submitted that the assessee for utilizing the funds for business purposes, the assessee should achieve 100% clearance of Fly Ash whereas the assessee was able to achieve average 89% of Ash utilization.

He also submitted that the funds accumulated out of the sale proceeds of Fly Ash is a Balance Sheet item and is not credited to the P & L Account including the expenditure incurred for earning such income. He therefore pleaded that no addition can be made to the total income of the assessee. The Ld. AR relied on the decision of the Hon'ble Delhi High Court in the case of Pr. Commissioner of Income Tax vs. NTPC Vidyut Vyapar Nigam Ltd in ITA No. 260/2024, dated 23rd April, 2025.

8. Per contra, the Ld. DR submitted that the sale of Fly Ash generated from the operations of the assessee is nothing but a by-product of the assessee and hence, the realization from the sale of Fly Ash is of revenue nature and shall be subjected to tax. The Notification of the Ministry of Environment and Forests relied on by the Ld. AR does not provide any exemption from the tax arising out of the receipts from the sale of Fly Ash. Since this being by-product, it is considered as revenue and was subjected to taxation. The Ld. DR also distinguished the decision relied upon by the Ld. AR,by observing that Fly Ash was sold to holding company and not to third parties and hence distinguishable. He therefore pleaded that the orders of the Ld. Revenue Authorities be upheld.

9. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities including the decisions cited by the rival parties. The case of the Ld. AO is that the assessee has received the funds from the sale of Fly Ash which is a by-product arising out of the generation of power using Coal as raw material. It was also the Ld. AO's contention that the Notification issued by the Ministry of Environment and Forests does not explicitly exempt the income from taxation. However, we find that as directed through the Notification issued by the Ministry of Environment and Forests, the amount collected from sale of Fly Ash and Fly Ash based products should be kept in a separate bank account and shall be utilized only for development of infrastructure or facilities, promotion and facilitation activities for use of Fly Ash until 100% ash utilization level are maintained. The assessee is obliged to follow the directions issued by the Ministry of Environment and Forests. Further, as submitted by the Ld. AR, the assessee has not achieved 100% Ash utilization during the impugned assessment year. According to the directions of the Ministry of Environment and Forests, the assessee has credited a sum of Rs. 56,08,49,844/- (Net of the expenditure to EPW fund during the FY 2019-20). It is also a fact that this income is not routed through the P & L

Account. The Hon'ble Delhi High Court in the case of Pr. Commissioner of Income Tax vs. NTPC Vidyut Vyapar Nigam Ltd (supra) has observed vide paras 21, 22, and 23 as under:

> *"21. It is clear from the above that there is no question of the Assessee having earned any income. The fly ash did not belong to the Assessee, but to its holding company – NTPC. The Assessee had only sold the fly ash and utilized part of the funds as mandated and made over the balance funds to NTPC.*
>
> *22. In the given facts, we do not find any infirmity with the decision of the learned ITAT that the Assessee had not earned any income on account of sale of fly ash, which was provided by NTPC. In Commissioner of Income-Tax v. New Horizon Sugar Mills Pvt. Ltd.: (2000) 244 ITR 738, the Madras High Court had upheld the decision of the learned ITAT holding that the amount set apart towards Molasses Storage Reserve Fund is required to be excluded from the total income of the assessee. The said decision was rendered bearing in mind the Molasses Control (Amendment) Order dated 06.02.1972, which required that the amount for construction of molasses storage tank was to be kept separately. The assessee had no power to spend the said amount, the same was required to be spent only in accordance with the directions issued by the Government. The appeal preferred against the said order was also dismissed by the Supreme Court, in view of the orders passed in similar matter permitting the Revenue to withdraw the appeals.*
>
> *23. In the facts of the present case as well, the Assessee was not freeto utilize the sale proceeds of fly ash as the same was required to beused for specified purposes, which as stated above, did not result in theAssessee acquiring any asset."*

10. Relying on the decision of the Hon'ble Delhi High Court in the case of Pr. CIT vs. NTPT Vidyut Vyapar Nigam Ltd (supra), we are of the considered view that the assessee was not free to utilize the sale proceeds of Fly Ash as the same is required to be used for specified purposes and hence, treated as Balance Sheet Item rightly by the

assessee and cannot be considered as revenue income in the hands of the assessee for the impugned assessment year. Thus, the Ground No.2 raised by the assessee is allowed.

11. Ground No.3 is with respect to invoking of the provisions of section 14A of the Act by disallowing an amount of Rs. 10,82,12,042/- in accordance with Rule 8D of the IT Rules, 1962. On this issue, the Ld. AR submitted that the assessee has invested a sum of Rs. 4,10,000/- (41,000 shares of Rs. 10/- each) in M/s. Andhra Pradesh Solar Power Corporation Limited (in short "APSPCL) and has received a dividend income (exempt) of Rs. 5,74,00,000/-. The Ld. AR reiterated that the other investments made by the assessee have not yielded any dividend income. He therefore pleaded that the Ld. AO has erred in considering the entire investments ie. Rs. 1082.12 Crs instead of making proportionate disallowance on the dividend earning investments. He submitted that various judicial pronouncements have held that the disallowance should be restricted to average investments from which income exempt from tax are earned and cannot be made on the entire investment on which no exempt income was earned by the assessee. He therefore pleaded that the disallowance therefore cannot exceed to Rs. 4,100/- as against the disallowance of Rs. 10.82 Crs. On this issue, the

Ld. AR relied on the decision of the Hon'ble Delhi High Court in the case of ACB India Limited (formerly M/s. Aryan Coal Beneficiaries (P) Ltd vs. ACIT in ITA 615/2014, dated 24/03/2015.

12. Per contra, the Ld. DR submitted that the assessee has earned huge dividend income and hence disallowance made by the Assessing Officer based on the overage investments is valid and pleaded for sustaining the same.

13. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities including the precedents cited by the Ld AR. It is an admitted fact that the Ld. AO has adopted average value of total investment by the assessee, for computing the disallowance u/s 14A r.w Rule 8D. The Ld. AO has invoked the provisions of section 14A r.w. Rule 8D(2)(ii) of the IT Rules by considering the entire amount of aggregate investments amount to Rs. 1082 Crs. The contention of the assessee is that the investment of Rs. 1082 Crs includes the investments on which the assessee has not earned any exempt income. Rule 8D(2) is extracted below for reference:

> ***"8D.*** *(1) ….*
> *(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:—*

(i) the amount of expenditure directly relating to income which does not form part of total income; and

(ii) an amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, ***income from which does not or shall not form part of total income:***

Provided *that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee."*

On a plain reading of the above Rule 8D(2)(ii) it can be observed that the disallowance shall be equivalent to 1% of the Annual average of the value of the investments, the income from which does not or shall not form part of the total income. In the instant case, the income is derived only from the investments made amounting to Rs. 4,10,000/- and not on the other investments. Therefore, we are of the considered view that the disallowance U/s. 14A shall be restricted to 1% of annual investment on which the assessee earned dividend income and AO is directed to compute the disallowance U/s. 14A of the Act accordingly. Thus, the Ground No.3 raised by the assessee is allowed for statistical purposes.

14. Ground No.4 relates to disallowance U/s. 40(A)(iib) of the Act. At the outset, the Ld. AR submitted that this issue is covered by the decision of the jurisdictional Bench of the Visakhapatnam in the

assessee's own case in ITA No. 101/Viz/2022 (AY 2017-18), dated 28/05/2024. He therefore pleaded that the addition shall be deleted.

15. Per contra, the Ld. DR relied on the orders of the Ld. Revenue Authorities.

16. We have heard both the sides and perused the orders of the Ld. Revenue Authorities and the material available on record as well as the decision of the ITAT, Visakhapatnam relied on by the Ld. AR. It is an admitted fact that in the instant case, the assessee has made payments of Rs. 20,61,81,938/- towards Water charges and paid Rs. 36,61,20,218/- towards Police Guard charges. An identical issue was raised by the assessee in ITA No. 101/Viz/2022 (supra) in the assessee's own case for the AY 2017-18 and the jurisdictional Bench, ITAT, Visakhapatnam has taken a view which reads as follows:

> *"5. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities as well as the written submissions made by the assessee. In the instant case, the assessee has made payments towards water charges amounting to Rs. 18.23 Crs and water cess amounting to Rs. 16.34 Crs. Further, the assessee also paid Rs. 35.95 Crs towards Police Guard charges. It was the contention of the Ld. AR that the cost of water is paid to the State Government and the water cess is paid to the Central Government. There is a merit in the argument of the Ld. AR that the assessee is not exclusively enjoying the supply of water by the Irrigation and Water Resources Department of the State Government whereas the water has been supplied to various Government Undertakings and Private Organizations as per the rates fixed by the Government and hence there is no exclusivity to the assessee for the purpose of invoking the disallowance*

U/s. 40(a)(iib) of the Act. It is further noticed that the Ld. Pr. CIT has erroneously considered the cost of water as 'royalty' paid to the State Government. Explanation-2 to section 9(1)(vi) defines the expression 'royalty' and in our opinion the water charges are paid by the assessee cannot be considered as royalty as per the definition. Further, section 40(a)(iib) of the Act is extracted herein below for reference:

"Sec. 40(a)(iib) any amount—

(A) paid by way of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge, by whatever name called, which is levied exclusively on; or

(B) which is appropriated, directly or indirectly, from,

a State Government undertaking by the State Government.

Explanation.—For the purposes of this sub-clause, a State Government undertaking includes—

(i) a corporation established by or under any Act of the State Government;

(ii) a company in which more than fifty per cent of the paid-up equity share capital is held by the State Government;

(iii) a company in which more than fifty per cent of the paid-up equity share capital is held by the entity referred to in clause (i) or clause (ii) (whether singly or taken together);

(iv) a company or corporation in which the State Government has the right to appoint the majority of the directors or to control the management or policy decisions, directly or indirectly, including by virtue of its shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

(v) an authority, a board or an institution or a body established or constituted by or under any Act of the State Government or owned or controlled by the State Government;"

On a plain reading of section 40(a)(iib)(A) of the Act clearly states amount levied exclusively on the assessee shall be subjected to deduction U/s. 40(a)(iib) of the Act. However, in the instant case, we find that water charges was not levied exclusively on the assessee and hence we find that the Ld. Pr. CIT has erroneously invoked the provisions of section 40(a)(iib) of the Act. Further, from the submissions of the Ld. AR we find regarding the payment of Guard Charges by the assessee to Andhra Pradesh Special Protection Force is not exclusively provided to the assessee but also to other industrial undertakings, temples, banks and Public Sector Undertakings as evidenced by the letter submitted by the assessee in page No. 72 of the paper book. Hence, we are of the opinion that the principle of

exclusivity has been wrongly interpreted by the Ld. Pr. CIT on the payments made to the Andhra Pradesh Special Protection Force. The case relied on by the Ld. DR ie., Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd (supra) is with respect to electricity duty paid and cannot be applied to the instant case. The Hon'ble Supreme Court in para 14 of its decision in the case of Kerala State Beverages Manufacturing & Marketing Corporation Ltd (supra) has held that the aspect of 'exclusivity' U/s. 40(a)(iib) has to be viewed from the nature of undertaking on which levy is imposed and not on the number of undertakings on which the levy is imposed and concluded that there is an exclusive levy on the State Government undertakings. Therefore, the reliance placed by the Ld. DR in the decision of the Hon'ble High Court of Kerala in the case of Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd (supra) has been overruled by the Hon'ble Supreme Court and hence cannot be applied to the instant case. In the light of the aforesaid discussions, we are of the considered opinion that the Ld. Pr. CIT has erred in invoking the provisions of section 263 of the Act in the mater of disallowance of water charges and water cess and Police Protection charges by invoking the provisions of section 40(a)(iib) of the Act is not valid and we therefore have no hesitation to quash the order passed by the Ld. Pr. CIT U/s. 263 of the Act. Thus, Grounds No.2, 3, 4 & 5 raised by the assessee are allowed."

17. Following the principle of consistency, the Ground No.4 raised by the assessee is allowed.

18. Ground No.5 relates to disallowance of Corporate Social Responsibility (CSR) expenditure amounting to Rs. 2.30 Crs. The Ld. AR submitted that the company has incurred expenditure to comply with the provisions of section 135 of the Companies Act 2013. He further pleaded that this expenditure should be allowed U/s. 35AC of the Act as it is not allowable as an expenditure U/s. 37(1) of the Act.

19. Per contra, the Ld. DR relied on the orders of the Ld. Revenue Authorities.

20. We have heard both the sides and perused the orders of the Ld. Revenue Authorities as well as the material available on record. The Ld. CIT(A) in para 9.2 of his order has held as under:

> *"9.2 upon careful examination of the facts of the case, I am of the opinion that the AO's observation is well-founded. It is evident from the records that the appellant has claimed Corporate Social Responsibility (CSR) expenses U/s. 35AC of the Act read with Rule 11K(i)(a), (f), (j) of the IT Rules, 1962. However, it is important to note that as per the provisiosn of subsection 7 of section 35AC of the Act, no deduction under this section shall be allowed for any assessment year commencing on or after the 1st day of April 2018, ie., for AY 2018-19 and onwards. In the present case, the appellant has claimed CSR expenses under the aforementioned Rule, which is not applicable for AY 2020-21. So in view of the aforesaid facts I am not in a position to take a divergent view from the finding of the AO. Hence, the action taken by the AO on both the issues appears to be in order. Accordingly, I uphold the disallowance of Rs. 2,30,27,863/- towards CSR expenses made by the AO. Therefore, Ground No.7 raised by the appellant are hereby dismissed."*

21. We find that the Ld. CIT(A) has rightly adjudicated the matter in accordance with the Amendment from the AY 2018-19 and therefore, we find no infirmity in the order of the Ld. CIT(A) and hence this Ground No.5 raised by the assessee is dismissed.

22. In the result, appeal of the assessee is partly allowed for statistical purposes as indicated herein above.

ITA No. 191/Viz/2024
(AY: 2016-17)

23. This appeal filed by the assessee is against the order of the Ld CIT(A)-NFAC, Delhi vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1063492769(1), dated 27/03/2024 arising out of the order passed U/s. 143(3) of the Act, dated 31/12/2018 for the AY 2016-17.

24. In this appeal, the assessee has raised the following grounds of appeal:

> *"1. The appellant order of the Ld. CIT(A) is bad, unlawful and erroneous both on facts and in law.*
> *2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the action of the AO in bringing the income from the sale of Fly Ash to tax without considering the fact that the Fly Ash funds are not free funds and cannot be used for general business purposes of the appellant. He ought to have considered the fact that utilization of funds received from sale of Fly Ash is controlled by a Notification of Central Government, and such Notification binding on the appellant.*
> *3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the action of AO in bringing to tax, the amount of liquidated damages recovered from works contractors towards delays in adhering to the schedules and which are pending for decision of the management. He ought to have considered the fact that, such liquidated damages retained from capital works contractors are to be treated as capital receipts or current liability.*
> *4. Such other ground or grounds that may be urged during the hearing of the appeal."*

25. Grounds No. 1 and 4 are general in nature and therefore need no adjudication.

26. Ground No.2 is identical to that of the Ground No.2 raised by the assessee in its appeal in ITA No. 197/Viz/2024 (AY: 2020-21) which is

adjudicated in the above Paragraph Nos. 9 & 10 of this order. Since, there is no change in the facts and circumstances of the case, our decision given on the similar issue in the AY 2020-21 *mutatis mutandis* applies to that extent of the issue raised by the assessee in AY 2016-17 vide Ground No.2. Accordingly, Ground No.2 raised by the assessee is allowed.

27. Ground No.3 relates to the liquidated damages recovered from works contractors. On this issue, the Ld. AR relied on the decision of the ITAT, Vizag Bench in the assessee's own case in ITA No. 252/Viz/2019 (AY: 2014-15), dated 15/12/2022 which is placed in the paper book pages 115 to 137. He therefore, pleaded that the same may be followed.

28. Per contra, the Ld. DR relied on the orders of the Ld. Revenue Authorities.

29. We have heard both the sides and perused the orders of the Ld. Revenue Authorities as well as the material available on the record and the decision of the ITAT, Vizag Bench relied on by the Ld. AR. We find that, this Bench of the Tribunal in the assessee's own case in ITA No. 252/Viz/2019 (supra) has adjudicated the identical issue for the AY 2013-14 by observing as under:

"7. With respect to Ground No.3(vi) regarding liquidated damages collected from the contractors for Rs. 286.26 Crs, we find from the submissions of the Ld. AR that during the previous assessment year ie., 2013-14, the Ld. CIT(A) has remitted back the matter with respect to the treatment of the liquidated damages as capital or revenue to the file of the Ld. AO. During the impugned assessment year also the Ld AR submitted that the liquidated damages is like a running current account and collected from various contractors if there is a delay in the execution of the projects on behalf of the assessee. The submission of the Ld. AR is that these liquidated damages may either become refundable to the contractors at a subsequent date as per the terms of the contract subject to the conditions laid down by the assessee. Accordingly, the Ld. AR in paper book pages 249 to 254 has provided the details of Liquidated damages withheld from various parties. The Ld. AR also submitted in the paper book that these liquidated damages were refunded in a subsequent period as given in page 255 to 299 of the paper book. The arguments of the Ld. AR that these cannot be treated as a revenue receipt is one way as the assessee deducts the liquidated damages from the cost payable to the contractors and thereby reducing the project cost. Therefore, considering these submissions of the Ld. AR, we are inclined to remit the matter back to the file of the Ld. AO to verify whether liquidated damages have been reduced from the cost of the project in the relevant assessment year or in the subsequent assessment years and pass necessary orders in accordance with law after providing a reasonable opportunity of being heard to the assessee."

30. Following the principles of consistency, we remit the matter back to the file of the Ld. AO to verify whether the liquidated damages have been reduced from the cost of the project in the relevant assessment year or in the subsequent assessment yeas after providing one more opportunity of being heard to the assessee and decide the case on merits in accordance with law. Accordingly, the Ground No.3 raised by the assessee is allowed for statistical purposes.

31. In the result, appeal of the assessee is partly allowed for statistical purposes as indicated herein above.

ITA No. 192/Viz/2024
(AY: 2015-16)

32. This appeal filed by the assessee is against the order of the Ld. CIT(A) vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1063492470(1), dated 27/03/2024 arising out of the order passed U/s. 143(3) r.w.s 263 of the Act, dated 31/03/2022 for the AY 2015-16.

33. In this appeal, the assessee has raised the following grounds of appeal:

> *"1. The appellate order of the Ld. CIT(A) is bad, unlawful and erroneous both on facts and in law.*
> *2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the action of the AO to apply the provisions of section 40(a)(iib) of the Act on the following issue: Amount paid of Rs. 20,61,81,938/- as per GOMs No. 39, dated 02/04/2002 for water supplied by AP irrigation & CAD (PW: QC&IWS/COD) Department (Now Water Resource Department of Andhra Pradesh State Government. He ought to have considered the fact that, the issues considered for disallowance U/s. 40(a)(iib) of the Act are not in the nature of "royalty, license fee, service fees, privilege fees or any other fees or charge by whatever name called" and also such levy by state Government is not just exclusive levy only on State Government undertaking including the appellant undertaking.*
> *3. On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in sustaining the action of the AO in disallowance of CSR expenses alleging that, such expenditure is not spent for the purposes of the business of the assessee. He ought to have considered that spending on provision of civic amenities to the residents of the neighboring localities with foster goodwill among public and helpful to the appellant business.*
> *4. Such other ground or grounds that may be urged during the hearing of the appeal."*

34. Grounds No.1 and 4 are general in nature and therefore they need no adjudication.

35. Ground No.2 relates to disallowance U/s. 40(a)(iib) of the Act. This issue is identical to that of the issue raised by the assessee in its Ground No.4 for the AY 2020-21 which is adjudicated vide Paragraph No.16 of this order. Since there is no change in the facts and circumstances of the case for both the years, our decision given while adjudicating the issue involved in Ground No.4 for the AY 2020-21*mutatis mutandis* applies to the extent of the issue raised in Ground No.2 of the assessee's appeal for the AY 2015-16. Accordingly, Ground No.2 raised by the assessee is allowed.

36. Ground No.3 relates to disallowance of CSR expenditure amounting to Rs. 1,01,65,521/-. On this issue, the Ld AR submitted that the assessee has incurred this expenditure towards "NTR Sujala Sravanthi Pathakam" which is an initiative of the Government of Andhra Pradesh to provide drinking water to the villages in the vicinity. He submitted that this expenditure is incurred for the purpose of business in order to provide water requirements for the residents of the locality where the business is situated. On this issue, he relied on the decision of the

Hon'ble Madras High Court in the case of CIT vs. Madras Refineries Ltd reported in [2000] 266 ITR 170 (Madras).

37. Per contra, the Ld. DR submitted that the Explantion-2 to section 37(1) of the Act was introduced from 01/04/2015 and the expenditure incurred in order to comply with the CSR and hence cannot be allowed as expenditure. He therefore pleaded that the orders of the Ld. Revenue Authorities be upheld.

38. We have heard both the sides and perused the orders of the Ld. Revenue Authorities as well as the material available on record. It is an admitted fact that the assessee has incurred its CSR expenditure of Rs. 1,01,65,521/- to provide twenty liters of water @ Rs. 2/- under "NTR Sujala Sravanthi Scheme." The assessee contributed to this expenditure towards providing safe drinking water to the habitations in YSR District and for the NTR Sujala Sravanthi Scheme. The Hon'ble High Court of Madras in the case of CIT vs. Madras Refineries Ltd (supra) opined as follows:

> *"5. The concept of business is not static. It has evolved over a period of time to include within its fold the concrete expression of care and concern for the society at large and the people of the locality in which the business is located in particular. Being known as a good*

corporate citizen brings goodwill of the local community, as also with the regulatory agencies and the society at large, thereby creating an atmosphere in which the business can succeed in a greater measure with the aid of such goodwill. Monies spent for bringing drinking water as also for establishing or improving the school meant for the residents of the locality in which the business is situated cannot be regarded as being wholly outside the ambit of the business concerns of the assessee, especially where the undertaking owned by the assessee is one which is to some extent a polluting industry."

39. The Hon'ble High Court of Madras has held that the drinking water facility by the company for good and welfare of the surrounding villages would be regarded as identified business expenditure where the undertaking owned by the assessee is one of the polluting industries. Considering the similarity in the instant case, andrespectfully following the decision of the Hon'ble Madras High Court in the case of CIT vs. Madras Refineries Ltd (supra), we are of the considered view that this expenditure shall be allowable as the business expenditure of the assessee during the impugned assessment year and we therefore, direct the Ld. AO to delete the addition in the impugned assessment year. Accordingly, Ground No.3 raised by the assessee is allowed.

40. In the result, appeal of the assessee is allowed.

ITA No. 193/Viz/2024
(AY: 2013-14)

41. This appeal filed by the assessee is against the order of the Ld. CIT(A) vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1063491817(1), dated 27/03/2024 arising out of the order passed U/s. 147 of the Act, dated 28/03/2022 for the AY 2013-14.

42. The assessee has raised the following grounds of appeal:

> *"1. The Appellate Order of the Ld. CIT(A) is bad, unlawful and erroneous both on facts and in law.*
> *2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the action of the AO in bringing the income from the sale of Fly Ash to tax without considering the fact that the Fly Ash funds are not free funds and cannot be used for general business purposes of the appellant. He ought to have considered the fact that utilization of funds received from sale of Fly Ash is controlled by a Notification of Central Government, dated 03/11/2009 and dated 25/01/2016 and such Notification binding on the appellant.*
> *3. Such other ground or grounds that may be urged during the hearing of the appeal."*

43. Grounds No. 1 and 3 are general in nature and therefore they need no adjudication.

44. Ground No.2 relates to the taxability of income from sale of Fly Ash. This Ground is identical to that of the Ground No.2 raised by the assessee in its appeal for the AY 2020-21. Since there is no change in the facts and circumstances of the case, our decision given on the identical issue in the assessee's case for the AY 2020-21, which is adjudicated

vide paragraph Nos. 9 & 10 of this order, mutatis mutandis applies to the issue raised in Ground No.2 of the assessee's appeal for the AY 2013-14 also. Accordingly, Ground No.2 raised by the assessee is allowed.

45. In the result, appeal filed by the assessee is allowed.

ITA No.194/Viz/2024
(AY: 2016-17)

46. This appeal filed by the assessee is against the order of the Ld CIT(A)-NFAC, Delhi vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1063492965(1), dated 27/03/2024 arising out of the order passed U/s. 154 of the Act, dated 15/03/2023 for the AY 2016-17.

47. In this appeal, the assessee has raised the following grounds of appeal:

> *"1. The appellant order of the Ld. CIT(A) is bad, unlawful and erroneous both on facts and in law.*
> *2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the action of the AO in declining to rectify the Assessment Order and in invoking the provisions of section 154 to rectify the order to disallow payments made for supply of water and for payment made to APSPF Department for security guard services U/s. 40(a)(iib) of the Act. He ought to have considered that section 154 cannot be invoked in the case of the issues of debatable nature.*
> *3. On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in sustaining the assessment order to the extent of invoking the provisions of section 40(a)(iib) of the Act to the*

payments which are not in the nature of "royalty, license fee or charge by whatever name called and further such supply of water as per GOMs No. 39 dated 02/04/2002 and provision of Police Security Guard services and collecting for such supplies / services are not "exclusive only to the State Government undertakings including the present appellant.

4. Such other ground or grounds that may be urged during the hearing of the appeal."

48. Grounds No. 1 and 4 are general in nature and therefore they need no adjudication.

49. Ground No.2 & 3 relate to disallowance U/s. 40(a)(iib) of the Act. This issue is identical to that of the issue raised by the assessee in its Ground No.4 for the AY 2020-21 which is adjudicated vide Paragraph No.16 of this order. Since there is no change in the facts and circumstances of the case for both the years, our decision given while adjudicating the issue involved in Ground No.4 for the AY 2020-21 *mutatis mutandis* applies to the extent of the issue raised in Grounds No.2& 3 of the assessee's appeal for the AY 2016-17. Accordingly, Grounds No.2& 3 raised by the assessee are allowed.

50. In the result, appeal of the assessee is allowed.

ITA No. 195/Viz/2024
(AY: 2017-18)

51. This appeal filed by the assessee is directed against the order of the Ld. CIT(A) vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1063492605(1), dated 27/03/2024 arising out of the order passed U/s. 143(3) r.w.s 263 of the Act, dated 31/03/2023 for the AY 2017-18.

52. In this appeal, the assessee has raised the following grounds of appeal:

> *"1. The appellate order of the Ld. CIT(A) is bad, unlawful and erroneous both on facts and in law.*
> *2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the action of AO in applying the provisions of section 40(a)(iib) of the Act on the following issues:*
> *(i) Amount of Rs. 34,57,48,140/- paid for water supplied by AP Irrigation & CAD (PW: AC&JWS/COD) Department (Now Water Resource Department) of Andhra Pradesh State Government.*
> *(ii) Amount of Rs. 35,94,33,899/- paid to APSPF Department of Andhra Pradesh State Government for provision of Security Guard Services. He ought to have considered the fact that, the issues considered for disallowance U/s. 40(a)(iib) of the Act are not in the nature of "royalty, license fee, Service fees, privilege fees or any other fees or charge by whatever name called and also such levy by State Government is not just exclusive levy only on State Government undertaking including the Appellant undertaking.*
> *3. Such other ground or grounds that may be urged during the hearing of the appeal."*

53. The Ground Nos. 1 and 3 are general in nature and therefore they need no separate adjudication.

54. Ground No.2 relates to disallowance U/s. 40(a)(iib) of the Act. This issue is identical to that of the issue raised by the assessee in its Ground No.4 for the AY 2020-21 which is adjudicated vide Paragraph No. 16 of this order. Since there is no change in the facts and circumstances of the case for both the years, our decision given while adjudicating the issue involved in Ground No.4 for the AY 2020-21 *mutatis mutandis* applies to the extent of the issue raised in Ground No.2 of the assessee's appeal for the AY 2017-18. Accordingly, Ground No.2 raised by the assessee is allowed.

55. In the result, appeal filed by the assessee is allowed.

ITA No. 196/Viz/2024
(AY: 2018-19)

56. This appeal filed by the assessee is against the order of the Ld. CIT(A) vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1063493138(1), dated 27/03/2024 arising out of the order passed U/s. 143(3) of the Act, dated 06/08/2021 for the AY 2018-19.

57. In this appeal, the assessee has raised the following grounds of appeal:

"1. The Appellate Order of the Ld. CIT(A) is bad, unlawful and erroneous both on facts and in law.
2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the action of the AO in bringing the income from the sale of Fly Ash to tax without considering the fact that the Fly Ash funds are not free funds and cannot be used for general business purposes of the appellant. He ought to have considered the fact that utilization of funds received from sale of Fly Ash is controlled by a Notification of Central Government, dated 03/11/2009 and dated 25/01/2016 and such Notifications are binding on the appellant.
3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the action of AO in bringing to tax, the amount of liquidated damages recovered from works contractors towards delays in adhering to the schedules and which are pending for decision of the management. He ought to have considered the fact that, such liquidated damages retained from capital works contractors are to be treated as capital receipts or current liability.
4. Such other ground or grounds that may be urged during the hearing of the appeal."

58. Grounds No.1 and 4 are general in nature and they need no separate adjudication.

59. Ground No.2 relates to the taxability of income from sale of Fly Ash. This Ground is identical to that of the Ground No.2 raised by the assessee in its appeal for the AY 2020-21. Since there is no change in the facts and circumstances of the case, our decision given on the identical issue in the assessee's case for the AY 2020-21, which is adjudicated vide paragraph Nos. 9 & 10 of this order, *mutatis mutandis* applies to the issue raised in Ground No.2 of the assessee's appeal for the AY 2018-19 also. Accordingly, Ground No.2 raised by the assessee is allowed.

60. Ground No.3 relates to the liquidated damages recovered from works contractors towards damages recovered from works contractors. This Ground is identical to that of the Ground No.3 raised by the assessee in its appeal ITA No. 191/Viz/ 2024 for the AY 2016-17. Since there is no change in the facts and circumstances of the case, our decision given on the identical issue in the assessee's case in ITA No. 191/Viz/2024 for the AY 2016-17, which is adjudicated vide paragraph nos. 29 & 30 of this order, *mutatis mutandis* applies to the issue raised in Ground No.3 of the assessee's appeal for the AY 2018-19 also. Accordingly, Ground No.3 raised by the assessee is allowed for statistical purposes.

61. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20th August, 2025.

Sd/- **(रवीश सूद)** **(RAVISH SOOD)** **न्यायिक सदस्य/JUDICIAL MEMBER**	**Sd/-** **(**एस बालाकृष्णन**)** **(S BALAKRISHNAN)** **लेखा सदस्य/ACCOUNTANT MEMBER**

Visakhapatnam, dated 20.08.2025
OKK/sps

आदेशकीप्रतिलिपिअग्रेषित/ **Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	Andhra Pradesh Power Generation Corporation Limited, 3rd Floor, O/o. Managing Director, APGENCO, Vidyutsoudha, Gunadala, Vijayawada, Andhra Pradesh-520004.
2.	राजस्व/ The Revenue	:	Deputy Commissioner of Income Tax, Circle-1(1), 2nd Floor, Central Revenue Buildings, MG Road, Vijatyawada-520002, Andhra Pradesh.
3.	The Principal Commissioner of Income Tax,		
4.	विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण.DR,ITAT, Visakhapatnam/		
5.	The Commissioner of Income Tax		
6.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam.