IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK

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

ITA No.152/CTK/2015: Asst. Year: 2008-2009
ITA No.116 /CTK/2016: Asst.Year: 2009-2010
ITA No.407 /CTK/2015: Asst.Year: 2009-2010
ITA No.158/CTK/2014: Asst. Year: 2010-2011
ITA No.153/CTK/.2015: Asst.Year: 2011-2012
ITA No.117/CTK/2016: Asst.Year: 2012-2013

ACIT, Circle -2(2), Aayakar Bhavan, Rajaswa Vihar, Bhubaneswar	Vs.	Tata Sponge Iron Limited, VBileipada, Joda, Dist: Keonjhar
PAN/GIR No.		
(Appellant)	..	(**Respondent**)

115/CTK/2015: Asst. Year: 2008-09
C.O.No.18/CTK/2015(In ITA No.152/CTK/2015): A.Y. 2008-09
ITA No.416/CTK/2015: Asst. Year: 2009-10
ITA No.103/CTK/2016: Asst.Year- 2009-10
ITA No.149/CTK/2014: Assessment Year : 2010-11
C.O.No.32/CTK/2014 (in ITA No.158/CTK/14) A.Y: 2010-11
ITA No.117/CTK/2015: Asst. Year: 2011-12
C.O.No.19/CTK/2015 (in ITA No.153/CTK/2015) : AY: 2011-12
ITA No.104/CTK/2016: Asst.Year: 2012-13
ITA No.168/CTK/2017: Asst.Year: 2013-14
ITA No.169/CTK/2017: Asst.Year: 2014-15

Tata Sponge Iron Limited, VBileipada, Joda, Dist: Keonjhar.	Vs.	ACIT, Circle -2(2), Aayakar Bhavan, Rajaswa Vihar, Bhubaneswar.
PAN/GIR No.		
(Appellant)	..	(**Respondent**)

Assessee by : Shri A.KSabat & Shri B.K.Mahapatra, ARs
Revenue by : Shri M.K.Gautam, CIT (DR)

Date of Hearing : 4/7/ 2022

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Date of Pronouncement : 4/7/2022

O R D E R

Per Bench

These are cross appeals for the assessment years 2008-09 to 2012-13 against the orders of the ld CIT(A) and the assessee has also filed appeals for the assessment years 2013-14 & 2014-15, respectively. Besides, the assessee has filed cross objections against the appeals filed by the revenue for the assessment years 2008-09, 2009-10 & 2010-11, respectively.

First, We take up the appeal of the revenue in ITA No.152/CTK/2015 for A.YT. 2008-09.

2. This is an appeal filed by the revenue against the order of the ld CIT(A) -2, Bhubaneswar dated 20.1.2015 for the assessment year 2008-09 in the matter of assessment u/s.143(3)/147 of the Act.

3. The first issue is in regard to treatment of replacement of Gear Boxes in respect of Surface Furnace Kiln operated by the assessee.

4. It was submitted by ld CIT DR that in the course of assessment proceedings, the Assessing Officer had disallowed the claim of the assessee in respect of repairs totaling to Rs.1,30,31,061/-. It was the submission that out of the said amount, the main expenditure was in respect of Gear Boxes in respect of Surface Furnace Kiln operated by the assessee for the

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purpose of conversion of iron ore into sponge iron. It was the submission that the replacement of the Gear Boxes had been treated by the AO as a capital expenditure. It was fairly agreed by ld CIT DR that the Assessing Officer had not granted the assessee the depreciation on the capitalized amount in respect of Gear Boxes. It was the submission of ld CIT DR that he had no objection if the assessee is granted depreciation on the Gear Boxes. It was the submission that the repairs to the Gear Boxes which is a plant and machinery could be considered under either section 37(1) or under section 31(1) of the Act. Under section 31(1) of the Act, for the repairs to be a current repair, it was compulsory for the assessee to show when the machinery was installed and how many times, the machinery had been repaired, being the frequency of the repair. If the frequency was higher, admittedly, it could be a current repair. It was further submitted that there was also a condition u/s.31(1) of the Act that the expenditure should not be in the nature of capital expenditure. Should the repairs and replacement result any enduring benefit to the assessee or result in increase in production, then the said expenditure is liable to be treated as a capital expenditure insofar as the enduring benefit had arisen to the assessee. The claim u/s.37(1) of the Act is residuary claim insofar as the opening word of section 37(1) of the Act says in respect of such expenditure which are not allowable u/s.30 to 36 of the Act. It was the submission that revenue expenditures are minor expenditure in regard to

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repairs to the plant and machinery. In the assessee's case, the assessee has claimed more than Rs.1 crore in replacement of two Gear Boxes. The said expenditure clearly is a huge amount. This replacement of the gear boxes clearly gave an enduring benefit to the assessee and the assessee has not replaced such gear boxes nor done any repairs to the Kiln in immediate past nor in the immediate future. It was the submission that this is a clearly replacement of the gear boxes and does not fall within the conditions prescribed u/s.31(1) of the Act as a current repairs. The said replacement of the gear boxes must be understood that it is not a repair and, therefore, it is not a minor expenditure but clearly a replacement of a component of the furnace kiln and this gave the assessee enduring benefit insofar as the machinery being Kiln could be used for a much longer period and consequently could not be considered as a revenue expenditure. It was further submitted that the ld CIT(A) had in para 12(e) at page 31 has given a finding that the Assessing Officer has made no effort to secure the validity of his opinion that the replacement of gear boxes represented a whole replacement of standalone machinery that would create enduring additional value or increase the earning capacity of the appellant. It was the submission that it is not the duty of the AO to prove the negative. The duty is cast on the assessee, who has claimed the expenditure to prove that the expenditure claimed is a revenue expenditure or current repairs. Failure on the part of the assessee would result in the expenditure being treated as a

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capital expenditure in such cases. Ld CIT DR placed reliance on the decision of Co-ordinate Bench of Bangalore Tribunal in the case of DCIT vs Printers (Mysore) Pvt Ltd., (2013) 33 taxmann.com 140(Bang), wherein, it has been held in para 7.2 as follows:

> 7.2 Taking into account the facts and circumstances of the case as discussed above and the judicial decisions cited supra, we are of the considered opinion that there is no doubt that the expenditure of the assessee in this case is capital in nature and there is sufficient judicial precedent to support this view. In the case of *Travancore Cochin Chemicals Ltd.* v. *CIT* [1997] 2 SCC 20, it was held that expenditure is of capital nature when it amounts to an enduring advantage for the business and repair is different from bringing a new asset for the business. Further, in the case of *Lakshmiji Sugar Mills (P) Co.* v. *CIT* AIR 1972 SC 59 it was held by the Hon'ble Apex Court that bringing into existence a new asset or an enduring benefit for the assessee amounts to capital expenditure. It is clear that the expenditure of the assessee in this case is not revenue in nature and thus cannot be claimed as a deduction under section 37 of the Act. When we apply these tests to the present case of the assessee, according to us, the answer is that the expenditure in question incurred is clearly capital in nature and cannot be treated as 'current repairs'. It is a matter of record that the machine in question, which was purchased in the year 1981-82, would not have worked at all without the said repairs being carried out. The machinery had, thus, outlined its utility and huge expenditure was incurred by replacing many vital parts and components in order to render it functional. In any case, the expenditure was undoubtedly for the purpose of securing a benefit of enduring nature. Even if technically a new asset had not come into existence or the capacity of the overhauled/renovated/restored machine after reconditioning was not enhanced, the undisputed fact is that after prolonged use, this machinery required extensive repairs in order to get it into a working condition. We are, therefore, of the view that the expenditure of Rs. 173.44 lakhs incurred for subsequent reconditioning that was carried out had resulted in imparting useful life into a hitherto old and unfit machinery thereby resulting in a benefit of enduring nature being obtained by the assessee. This benefit of enduring nature would clearly fall in the capital field."

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5. It was the submission that the replacement of gear boxes resulted in improving useful life of hitherto an old and unfit machinery thereby resulting in a benefit of enduring nature being obtained by the assessee. It was the submission that the said expenditure has rightly been held by the Assessing Officer to be in the capital field. He relied upon the decision of Hon'ble Delhi High Court in the case of Modi Spinning & Weaving Mills Co Ltd., vs CIT, (1993) 200 ITR 433 (Delhi) , wherein, it has been held that the amount spent for carrying out repairs which were long overdue, the said expenditure was not incurred under current repairs. The Hon'ble Delhi High Court did not consider the expenditure u/s.37(1) of the Act as such claim was not before the Hon'ble Court insofar as the issue had not been discussed either by the Assessing officer or by the ld CIT(A) or the Tribunal in that case. It was further submitted that the findings of the Assessing Officer in respect of capitalization of the expenditure claimed by the assessee in respect of replacements of gear boxes was liable to be upheld and the findings of the ld CIT(A) reversed.

6. In reply, ld AR submitted that Surface Furnace Kiln was installed somewhere in 1991 and the cost at that point of time was nearly Rs.90 crores. Subsequently, in 2001 and 2003, two more new kilns were installed by the assessee at a substantial higher cost. It was the submission that what was replaced was not one gear box but two gear boxes. It was the submission that the expenditure on the replacement of two gear boxes

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were claimed under current repairs. It was the further submission that the issue is being raised in the revenue's appeal and, therefore, the assessee has also raised alternative claim that if the said claim of expenditure is not allowable under current repairs u/s.31(1) of the Act, it should be allowed u/s.37(1) of the Act as revenue expenditure. It was submitted by ld AR that the details of replacement of gear box in the past years prior to the relevant assessment being 2008-09 was not immediately available but the same gear boxes have been again replaced during the assessment year 2012-13 i.e. within a period of four years. It was the submission that the gear boxes though a critical part of the Furnace Kiln, but the replacement to the kiln is a minor part. It was the submission that the complete kiln was installed in 1991 costing about Rs.90 crores and the replacement of cost of two gear boxes during the assessment year 2008-09 was only Rs.1 crore or Rs.50 lakhs each. It was the submission that the actual of the replacement was barely 1/8th of the total cost of the Kiln. It was the submission that no enduring benefit was derived in assessee's case and the expenditure was liable to be allowed u/s.31(1) itself as a current repairs.

7. It was the submission that in the case of Printer (Mysore) Pvt Ltd (supra), the machinery was not in use and it was to bring the old machinery into operation that the expenditure had been incurred. The original machinery had actually outlived its utility and the expenditure was incurred by replacing many of the vital parts in order to render it functional. In

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assessee's case the assessee's Kiln was fully operational and due to damage of the gear boxes, for continuous running of the machinery, the same had to be replaced.

8. In the case of Modi Spinning & Weaving Mills Co Ltd. (supra), it was the submission that the repairs was in respect of building, which were long overdue and it was not done and all of a sudden, the repairs were done and, therefore, it was not treated under current repairs.

9. Ld AR also relied upon the decision of Hon'ble Patna High Court in the case of CIT vs N.P.Singh (1994) 77 Taxman 340 (Pat), wherein, the Hon'ble High Court has held that the expenditure incurred for new gear boxes fitted to its steamer was for better conduct and improvement of existing business and did not result in benefit of an enduring nature and, consequently, it was revenue expenditure. It was the submission that in assessee's case, the new gear boxes fitted did not result any better conduct or improvement to the existing business but it was for the purpose of continuing usage to the already existing machinery, which was under use itself. It was a plain and simple repair to plant and machinery which had to be done because old gear boxes had failed. It is not an improve gear box, no improvement has been done and no enduring benefit has also come into existence. He further relied upon the decision of Hon'ble Rajasthan High Court in the case of CIT vs Udaipur Distillery Co Ltd., 268 ITR 451 (Raj), wherein, the Hon'ble High Court has held that where if an item is purchased

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for installing a new instrument independently of any existing plant, it may amount to acquisition of a new capital asset. On the other hand, if it is purchased to be used for running of existing plant and machinery for its more efficient and smooth running, it may amount to be a revenue expenditure. It was the submission that in assessee's case, the gear boxes replaced were not of new instrument installed independently at the existing plant nor did the replacement of the gear boxes result in more efficient and smooth running. It was the submission that the Surface Furnace Kiln had broken down due to break down of gear box. It was the submission that this was similar to the replacement of a damaged gear box in a car/vehicle and no new asset came into existence nor was enduring benefit derived. It was submitted that the order of the ld CIT(A) allowing the expenditure as a revenue expenditure is liable to be upheld.

10. We have considered the rival submissions. Admittedly, the gear boxes replaced are critical equipment in a Surface Kiln. The Surface Furnace Kiln was a functional one and the replacement of gear boxes is only replacement of a damaged part of the machinery. Many a time on account of wear and tear machinery parts break down. Therefore, the number of times, the machine has been repaired or replaced especially in a mechanical and electrical equipment cannot be a criterion for deciding whether it is current repairs or not. No business man would like to replace the already smooth functioning part of a machinery just because its time is up. Yes,

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for its proper running timely maintenance would be required that maintains the longevity of the life of the machinery. In the present case, two gear boxes are replaced because they have broken down and it has affected the functioning of Furnace Kiln. In order to bring the Furnace Kiln back into operation after break down, immediate replacement of the gear boxes have been done. The fact that spare gear boxes are maintained by the assessee itself shows that the gear box does get damaged in use. It is not case that the replacement of the gear boxes was long over due but was being replaced by the assessee when it broke down and replacement of spares was put in place. Thus, it is clear that the expenditure incurred by the assessee on the replacement of gear boxes are of current repairs.

11. As argued by ld CIT DR, the term current repairs and term capital expenditure have not been defined in the Act. The Hon'ble Supreme Court in the case of matter of CIT v. **Saravana Spin**ning Mills P. Ltd. (2007) 293 ITR 201 (SC) has held that whether the expenditure falls within the term current repairs u/s.31(1) of the Act or revenue expenditure u/s.3791) of the Act would depend upon the facts and circumstances of each case. Here, the facts clearly show that the Furnace Kiln was fully operational and the gear box failed and were replaced. The whole of plant and machinery being Furnace Kiln was not replaced but only current repairs in the form of replacement of broken and damaged gear box and, therefore, same is allowable u/s.31(1) of the Act as current repairs. In the circumstances, the

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findings of the ld CIT(A) on this issue stand upheld and ground of the revenue is dismissed.

12. The next issue relates to deletion of Rs.1,33,26,353/- under the head "disallowance of expenses on railway siding".

13. Ld CIT DR submitted that the Assessing Officer had disallowed the assessee's claim of expenditure on Railway Siding and had treated the same as capital in nature. It was the submission that the issue has admittedly been held in favour of the assessee by the Co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 1998-99. It was the further submission that the issue has to be kept alive insofar as the issue is pending before the Hon'ble Jurisdictional High Court of Orissa. It was the submission that the assessee was a principal beneficiary of the railway siding. The railway had to close the siding if it was not profitable. The fact that the railway had continued to keep the siding open clearly shows that the assessee had good use of the siding. The siding was constructed by the assessee admittedly on the railway land. The assessee is deriving enduring benefit from the use of this siding and the assessee has not been able to show as to whether any other person had the benefit of using the said siding on the railway land constructed by the assessee. It was the submission that the expenditure in respect of railway siding should not be allowed as revenue expenditure but was clearly a capital expenditure. It was the submission that the ld CIT(A) had deleted the

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disallowance by following the decision of the Co-ordinate Bench of this Tribunal in assessee;s own case for the assessment year 1998-99. It was the submission that the order of the ld CIT(A) was liable to reversed and that of the AO restored.

14. In reply, ld AR drew our attention to the order of the Co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 1998-99 in ITA No.246/CTK/2002 dated 28.4.2004, wherein, in paras, 12, 13 & 14, it has been held as follows:

> "12. In this case, the allowability of an expenditure as a revenue or capital is not be judged from the method of accounting adopted by the assessee but it is to be judged as per the provisions of the income tax Act. This is not the case of the revenue that every year the assessee was incurring such type of expenses which has not been capitalised in the books of account as per the method of accounting regularly followed by it, but in the year under consideration, the assessee had deviated from the od accounting for claiming these expenses as revenue expenses. The AO has unnecessarily given so much stress on the method of accounting which is not relevant at all for allowing or disallowing such expenses under the income tax Act. We could have accepted the stand of the AO for compelling the assessee for not deviating from the method of accounting regularly followed by it, if there is any deviation on such method .. However, we find that there is no deviation from the accounting treatment given by the assessee in earlier years which is in contrast to the treatment given during the year under consideration. In the instant case, the A.O. has proceeded on the assumption that tangible asset was created, but as per our considered view neither tangible nor intangible asset was created but the expenditure was incurred for getting advantage of long-term nature which was not in the capital field. The Hon'ble Supreme Court in the case of Empire Jute Company Limited (124 ITR 1) has observed that there may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, nonetheless, be on revenue account and the test of enduring nature acquired by an assessee that brings the case within the principle laid

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down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application on this case. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future.

13. While applying the principle laid down by the Hon'ble Supreme Court, we find that in the instant case, even though there is an advantage of enduring benefit, but at the very same time we also find that this addition is not in the capital field but was merely meant for bringing advantage in facilitating the assessee's trade operation and enabling the management and conduct of the business to be carried on more efficiently and profitably while leaving fixed capital untouched. There is plethoria of judgments in support of the proposition that accenting entry is not decisive for considering the assessee's claim under the Income Tax Act which is a separate code in itself. Thus the Accountancy is not sine-qua-non in determining the taxability or otherwise of an income or deducibility or otherwise of any item of expenditure. As the assessee-company has no right/title on the railway siding, it was to write off the expenditure on constructing the railay siding over a period of five years. As per the guidance note issued by the ICAI, where the capital expenditure is not represented by assets, the company has the option of disclosing the same as capital expenditure or capitalize the expenditure alongwith other assets to be written off over a period of five years and the assessee-company had chosen the later option. The expenditure in question has been undoubtedly incurred not in relation to assets owned by the Company or to acquire any new asset, but in order to facilitate movement of materials for the business operation of the assessee. The expenditure in question, therefore, did not result in acquisition of capital assets. What is material to consider is the nature of advantage in a commercial sense. In the instant case, the advantage obtained by the assessee consisted in facilitating the assessee's business operation or enabling the management and conduct of the assessee's business to be carried on more efficiently and more profitably while leaving the fixed capital untouched. Thus the expenditure are on the revenue account even though the same may endure for a long period. Thus the test of enduring benefit is not a conclusive test and it cannot be applied

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> blindly and mechanically without regard to the particular facts and circumstances of the case.
>
> 14. In view of the above, we can safely conclude that in the instant case the expenditure had been incurred by the assessee-company only to run its business more efficiently and advantageously and it was not in relation to assets owned by the company or to acquire any new asset but in order to ficilitate movement of materials for the business operation of the assessee-company. Thus the expenditure did not result in acquisition of capital asset and hence, by no stretch of imagination be treated as expenditure for creation of an asset of enduring nature."

15. It was the submission that the said decision is reported in 90 ITD 138.

16. We have considered the rival submissions. As it is noticed that the issue in respect of expenditure on Railway siding has already been adjudicated in favour of the assessee in assessee's own case for the assessment year 1998-99 and as no new facts have been brought by the revenue to dislodge the findings of the ld CIT(A),wherein, he has followed the decision of the Tribunal in allowing the claim of the assessee, therefore, respectfully following the decision of the Co-ordinate bench in assessee's case (supra), the findings of the ld CIT(A) on this issue stands upheld and the ground of the revenue is dismissed.

17. The next issue is in regard to the deletion of addition of Rs.4,53,552/- under the head " disallowance on plantation & garden expenses".

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18. Ld CIT DR submitted that the issue of plantation and garden expenditure was held against the assessee in an order of the Tribunal in assessee's own case for the assessment year 2006-07 in ITA No.138/CTK./2010 order dated 12.8.2011, wherein, the Co-ordinate Bench of this Tribunal has held as follows:

> "11. Now coming to the other issue of disallowance of Rs.11,19,048 being expenses under the head Garden, Park, Lake and Vegetable, undisputedly the assessee has incurred this amount for maintaining the garden, park, lake and garden expenses and growing vegetables directly. The facts made out by the Departmental Authorities are that the sale proceeds of vegetable grown was not brought to account by the assessee. Therefore, the Departmental Authorities have disallowed the same, which in our view rightly. Hence, we are of the considered view that the action taken by the Departmental Authorities is not at all unjustified on the facts and circumstances of the case.
>
> 12. For the reasons discussed above, we uphold the order of the learned CIT(A) and dismiss the appeal of the assessee having found the issues raised by the assessee to be devoid of merits."

18. It was the submission of ld AR that the amount of Rs.4,53,552/- in the revenue's appeal in respect of plantation & garden expenses had two components, i.e. an amount of Rs.3,47,360/- was in the nature of solar light and UPS and an amount of Rs.1,02,292/- was in the nature of sports activities and Puja conducted by the assessee company. It was the submission that it was wrongly mentioned in the nomenclature as plantation and garden expenditure.

20. It was the submission that if the assessee has made the claim under the wrong head , it should not be given benefit to the assessee and the

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issue has been held against the assessee by the Co-ordinate Bench in assessee's own case, therefore, the issue was liable to be held against the assessee.

21. In reply, ld AR submitted that the amount spent on solar light and UPS were not installed in the factory premises of the assessee but was installed on the outside of the factory premises so that it will be convenient for the inhabitants of the nearby local villages. It was submitted that the solar lights were installed for the benefit of the employees of the assessee company insofar as there was no street light in the area and thus this light helps them come to the factory in the night time to discharge their duties in the factory. It was the submission that the permanent employees of the assessee company were accommodated inside the factory premises itself. These lights were installed for adhoc and temporary employees such as gardeners and cleaners, etc. It was the submission that the factory premises being in remote location, the lighting outside the premises during dark was absolutely necessity. It was the further submission that the amount of Rs.1,02,292/- representing the sports activities, which were conducted by the assessee as also puja expenses were not incurred in any temple inside the factory premises of the assessee. But it was in fact incurred in different temples situated nearby the factory premises to maintain good public relation with the local villagers. It was the submission that the assessee being a company with large carbon emissions and had

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high pollution level, it was absolutely necessary for the smooth functioning to keep villagers also in good relationship, therefore, the expenditure was liable to be allowed.

22. We have considered the rival submissions. Admittedly, the expenditure in respect of solar light and UPS as also the puja expenses are in the nature of local welfare measures so as to avoid any impediments to the smooth functioning of the assessee's business. These are liable to be allowed as business expenditure under the revenue field. The wrong nomenclature given to the same has been considered by the ld CIT(A) when he has deleted the addition. This being so, we find no error in the order of the ld CIT(A) on this issue and same stands confirmed. Consequently, this ground of the revenue stands dismissed.

23. The next issue relates to deletion of addition of Rs.19,38,42,000/- under the head "disallowance u/s.40(a)(ia) r.w.s 195".

24. It was submitted by ld CIT DR that in the course of assessment, the Assessing Officer had invoked the provisions of section 40(a)(ia) of the Act in respect of import of raw materials worth Rs.1854.90 lakhs, imports of components, stores and spares worth Rs.10.66 lakhs and others Rs.50.01 lakhs. It was the submission that the payments had been made to non-residents without deduction of tax u/s.195 of the Act. It was the submission that the assessee has claimed that said expenditures were in respect of purchases of raw materials and stores and spares. It was the

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submission that the factum remains that the payments have been made outside India and in view of the decision of Hon'ble Supreme Court in the case of Transmission Corporation of AP Limited, 239 ITR 587 (SC), that if the payer did not make an application to the AO as per the provisions of section 195(2) of the Act, TDS u/s.195 was liable to be made in respect of full amount. It was the submission that the ld CIT(A) erred in deleting the said addition made by the AO.

25. In reply, ld AR drew our attention to the decision of Hon'ble Supreme Court in the case of GE India Technology Center Pvt Ltd. Vs CIT, 327 ITR 456 (SC). It was the submission that the decision of Hon'ble Supreme Court in the case of Transmission Corporation of AP Ltd (supra) was in relation to the provisions of section 195(2) of TDS.. It was the further submission that the decision in the case of decision of the Karnataka High Court in CIT (International Taxation) v. Samsung Electronics Co. Ltd., [2010] 320 **ITR** 209 (Kar), has been overruled by the Supreme Court in GE India Technology Centre (P.) Ltd. (supra). It was the submission that the ld CIT(A) has followed the decision of Hon'ble Supreme Court in the case of GE India Technology Centre Pvt Ltd (supra). It was the submission that the findings of the ld CIT(A) is liable to be upheld.

26. We have considered the rival submissions. A perusal of the decision of Hon'ble Supreme Court in the case of GE India Technology Centre Pvt Ltd (supra) shows that the application in deducting the tax at source arises only

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when such remittance is a sum chargeable to tax under the income tax Act i.e. chargeable under **sections 4**, **5** and **9** of the **Act**.. In the present case, the expenses are in respect of purchases and same are not taxable in India. This being so, we are of the view that the findings of the ld CIT(A) in deleting the disallowance is on a right footing and does not call for any interference. Hence, this ground of appeal of the revenue stands rejected.

27. The next issue relates to deletion of addition of Rs.35,32,211/- under the head " disallowance on account of foreign travel, stay, etc.".

28. Ld CIT DR submitted that the Assessing Officer in the course of assessment proceedings had noticed that the assessee has incurred expenses in respect of foreign travel of the directors of the assessee to Singapore. The assessee had claimed said expenditure to be of business expenditure for conducting Board meeting due to strategic business plan. It was the submission that the assessee has not shown justification as to how the so called strategic business meeting brought any benefit to the assessee company. It was the submission that said strategic meeting could have been conducted in India itself and nothing stopped the assessee from conducting the said meeting here. It was the submission that the Assessing Officer has only questioned why the Board meeting has been done aborad. It was the submission that the order of the ld CIT(A) allowing the said expenditure is liable to be reversed.

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29. In reply, ld AR submitted that the condition prevalent at that point of time required the meeting to be conducted in Singapore on account of strategic issue that had to be discussed. It was the submission that the AO has not questioned the genuineness of expenditure but only questioned the location and as to why the assessee chose Singapore and not India. It was the submission that Singapore is not a holiday destination but a business destination. It was the submission that Singapore was considered because it is known for its secrecy, functional business management. It was the submission that the order of the ld CIT(A) be upheld.

30. We have considered the rival submissions. In today's world of corporate espionage, this is a very common. It cannot be said that conducting of a meeting in Singapore is wrong. Admittedly, the family of neither the Directors nor staff have accompanied with them for the Board meeting. What is strategic decision taken, is for the company and its management to understand and decide. Where the meeting should be conducted considering the level of secrecy is for the management to decide. Genuineness of the expenditure is very much available to the AO to examine but where the assessee should have meeting cannot be questioned by the AO. Whether the meeting was a Board meeting or not or whether it was free trip can be looked into. The AO does not dispute that it is a Board meeting. The AO only questioned what is the benefit that the assessee has derived by the said meeting and whether the meeting could fetch

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immediate benefit. The strategic meetings are management and policy decision. This being so, we find no error in the findings of the ld CIT(A) in deleting the addition made by the AO. This ground of revenue stands rejected.

30.1 In the result, appeal of the revenue is dismissed.

C.O. No.18/CTK/2015 of the assessee in Revenue's appeal in ITA No.152/CTK/15

31. The assessee has filed cross objection in C.O. No.18/CTK/15 against the appeal filed by the revenue in ITA No.152/ctk/15 for the assessment year 2008-09. As we have upheld the findings of the ld CIT(A) for the assessment year 2008-09 in regard to appeal filed by the revenue, the cross objection filed by the assessee in support of the order of the ld CIT(A) on the issues raised has become infructuous and is dismissed.

ITA No.115/CTK/15 for A.Y. 2008-09 –Assessee's appeal

32. This is an appeal filed by the assessee against the order of the ld CIT(A)-2, Bhubaneswar dated 20.1.2015 for the assessment year 2008-09 in the assessment under section 143(3)/147 of the Act.

30. The first issue is in respect of allowability of deduction u/s. 80-IA of the Act in respect of captive power plant put by the assessee.

33. Ld AR of the assessee submitted that the assessee has two captive power plant (CPP) I & II. It was the submission that the assessee used to

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generate the power from the CPP for the purpose of its sponge iron manufacturing process and sale of the surplus to GRIDCO. It was the submission that the issue was squarely covered by the decision of Co-ordinate Bench of this Tribunal in assessee's case for the assessment year 2006-07 in ITA No.138/CTK/2010 order dated 6.5.2022, wherein, the Co-ordinate Bench has held as follows:

> "7. We have considered the rival submissions. A perusal of the provision of Section 80IA of the Act does not show the requirement of maintenance of separate sets of books of accounts in respect of the eligible business on which the claim of Section 80IA of the Act is made. What is required is that the profit/loss attributable to the power plant should be ascertainable from the regular books of accounts maintained. In the present case, a perusal of the assessment order itself clearly shows that the same is possible insofar as the assessee filed the revised statement giving the break-up of the income and expenditure in respect of Sponge Iron operation and also the power plant. This bifurcation has not been dislodged by the AO though disregarded as he was of the view that separate books should have been maintained. A perusal of the paper book also clearly shows that the requisite audit report u/s.80IA of the Act being in the Form 10CCB has also been submitted by the assessee before the AO. This being so, we are of the view that the assessee has, on the factual matrix, complied with the requirements which have been objected to by the AO in the assessment order for the purpose of denial of deduction u/s.80IA of the Act. This being so, we are of the view that the assessee is entitled to deduction u/s.80IA of the Act as claimed. This decision, however, is subject to the direction given by the Hon'ble Jurisdictional High Court in page 4 of its order and the same is subject to the decision of the Hon'ble Supreme Court in the SLP pending before the Hon'ble Supreme Court in the case of Alembic Limited (supra). Thus, the ground Nos.2,3 & 9 of the assessee are allowed."

34. In reply, ld CIT DR submitted that the facts for the relevant assessment year are complete different from the facts for the assessment

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year 2006-07. It was the submission that the assessee's first CPP started functioning in December, 2001 and for the assessment year generated 7.5 MW of electricity. The second CPP came into operation in January, 2007 and for the assessment year generated 18.5 MW electricity. It was the submission that two CPPs were claimed as separate undertaking by the assessee itself. In view of the provisions of section 80IA(5), the netting of the same had to be considered. It was the submission that CPP-1 showed a surplus of Rs.1.41 crores and CPP-2 showed a deficit of Rs.7.69 crores. It was the submission that there was net was loss and on this ground itself, deduction u/s. 80IA was liable to be denied to the assessee. It was the further submission by ld CIT DR that the CPPs were run by using waste hot gas generated in the sponge iron manufacturing process specifically the furnace. It was the submission that no cost has been determined in respect of raw materials used by CPP being waste hot gas. It was the submission that this raw material cost must be quantified. It was also the submission that the indirect costs have not been properly allocated between the power plant and Sponge iron manufacturing activities of the assessee. It was the submission that computation of deduction u/s. 80IA was erroneous.

35. In reply, ld AR submitted that both CPP-1 & 2 are separate undertakings. The fact that surplus has been shown in CPP-1 and deficit in CPP-2 clearly showed that accounts are maintained in respect of each of the power plant. Separate 10CCB are being prepared and filed in respect of

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power plants. It was the further submission that the issue of netting had been considered by the Honble Delhi High Court in the case of Sona Koyo Steering Systems Ltd (2010) 189 Taxman 110 (Del), wherein, the Hon' ble High Court after considering the decision of Honble Supreme Court in the case of Synco Industries Ltd, reported in 299 ITR444 (SC) held that the Hon'ble Supreme Court had not at all held that while computing deduction u/s. 80-I(6), the loss of one eligible undertaking is to be set off against the profit of another eligible industrial undertaking and that the Hon'ble Supreme Court held that in computing the gross total income of the assessee, same has to be determined after adjusting the losses and that, if the gross total income of the assessee so determined turns out to be 'Nil', then the assessee would not be entitled to deduction under Chapter VI-A of the Act. The Hon'ble High Court further went on to hold that where the assessee has two units the loss of one unit cannot be set off against the profit of other unit to arrive at the computation of the quantum of deduction that is to be allowed to be assessee u/s. 80-I(1) of the Act. It was further submitted that as the assessee's power generation undertakings were two and different and separate, separate accounts had been maintained for each, loss from one unit cannot be set off against the other. It was the further submission that waste hot gas could not be given value insofar as the issue has already been considered by the Co-ordinate Bench of Delhi Bench in the case of NTPC vs ACIT, (2004) 91 ITD 101 (Del), wherein, it

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was held that admittedly, the hot gas was freely available to steam unit and if the assessee had not set up the steam unit, such hot gas would have been exposed to the open atmosphere. Consequently, no portion of expenditure incurred by the hot gas unit could be allocated to the steam unit. It was the submission that in assessee's case, similar waste was generated from the furnace operated by the assessee in its Sponge Iron manufacturing and this hot gas is in fact waste product which has no value and it cannot be stored. It is only by use of technology by the assessee, this hot gas is captured and taken to the power generation undertaking of the assessee and no value for the same can be attributed.

36. We have considered the rival submissions. Admittedly, the assessee has two units in respect of CPP, separate accounts in respect of both the units are maintained. It is supported by the fact that the surplus of electricity of each unit is separately computable. This being so, in view of the principles laid down by Honble Delhi High Court in the case of Sona Koyo Steering Systems Ltd (supra), the loss from one unit more specifically, one undertaking which is generating loss cannot be set off against the profit of other undertaking which is generating profits.

37. Coming to the issue of cost of hot gas, respectfully following the decision of Co-ordinate Bench of this Tribunal in the case of NTPC (supra), the cost of hot gas is to be taken as 'Nil' as there is no cost involved in its procurement. In regard to the issue of indirect cost of expenses, the same

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has already been considered when preparing the accounts for each of the separate industrial undertaking representing the power plants. It must be mentioned here that that the AO has also not questioned the demarcation of the indirect cost. Therefore, it is not open to the revenue to question the same. In these circumstances, we find that there is no difference in the facts as available in the assessment year 2006-07 and in the present assessment year. In these circumstances, on identical reasons, as given in assessee's case for assessment year 2006-07 in ITA No.138/CTK/10 dated 6.5.2022, which has been extracted above, the AO is directed to grant the assessee the benefit of deduction u/s. 80-IA. This deduction is however subject to the direction given by the Hon'ble Jurisdictional High Court at page 4 of the order for the assessment year 2006-07 and same is subject to the decision of Hon'ble Supreme Court in the SLP filed before the Hon'ble Supreme Court in the case of Alembic Ltd bearing SLP No.8070 of 2017,. Hence, this issue stands allowed.

38. The issue of disallowance in respect of Education Cess on dividend tax, surcharge on dividend tax, education cess on FBT, surcharge on FBT, and education cess on Income tax of Rs.91,17,211/- raised by the assessee.

39. It was submitted by ld AR that on account of retrospective amendment to the Finance Act, 2022 in section 40(a)(ii),the assessee did not want to press the ground. Ld AR has also signed in the grounds of appeal withdrawing the grounds. The authorisation to represent also

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authorises the ld AR to withdraw the grounds as required. Consequently, the findings of the ld CIT(A) on this issue stand confirmed and ground raised is allolwed to be withdrawn. Consequently, the issue is held against the assessee.

40. The next issue of disallowance of donation of Rs.40,099/- confirmed by the ld CIT(A). The ld AR has not been able to place any details of the donation made. The assessee is unable to produce the details of persons to whom the amount has been paid and reasons for payment. This being so, the findings of the ld CIT(A) stand confirmed and this ground of the assessee stands dismissed.

40.1 In the result, appeal of the assessee is partly allowed for statistical purposes.

ITA No.407/CTK/2015: Asst.year: 2009-10- Revenue's appeal

41. This is an appeal filed by the revenue against the order dated 21.7.2015 of the ld CIT(A), Cuttack in I.T.Appeal No.0215/2011-12 in the matter of assessment u/s.143(3) of the act.

42. The first issue taken by the revenue is against the deletion of addition of Rs.3,11,41,615/- on account of "Railway Siding Expenses".

43. In line with our decision on similar issue for the assessment year 2008-09 at paras 10 to 14 above, we dismiss this ground of the revenue.

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44. The next issue in regard to deletion of addition of Rs.4,99,966/- made by the AO on account of "peripheral development expenses".

45. Ld CIT DR submitted that the peripheral development expenses included repairing of community centre of Rs.88,382/-, providing Nokia handset of Rs.2,900/- to village Pradhan, distribution of sweet curd of Rs.10,000/-, sports and other expenses of Rs.18,240/-, festival in villages of Rs.40,321/-, saraswati puja contribution of Rs.25,600/-, purchase of Mosquito net of Rs.2,07,648/- and purchase of school dress of Rs.1,06,875/- totalling to Rs.4,99,966/-. It was the submission that the issue of purchase of mosquito net is covered against the assessee by the decision of this Co-ordinate bench in the case of Indrani Patnaik in ITA No.s389-390/CTK/2017 order dated 26.8.2020. It was the submission that providing Nokia Handset does not fall within the five criterions, which are allowable being communication, irrigation, agriculture, housing and health education. It was the submission that the expenses is not falling within the five categories provided, therefore, not allowable.

46. In reply, ld AR submitted that the expenditure incurred on repairing of community centre is falling within the category of housing as during natural calamity, the villagers are shifted to the community centre for their protection. Ld AR submitted that Nokia Handset was used by the village Pradhan for communication purposes. Regarding sweet curd, it was the submission that it was liable to be considered under healthcare. It was the

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submission that the expenses under sports and other expenses have been considered under the head "plantation and garden expenses" for the assessment year 2008-09. Similar was the claim of festival expenses in the village and saraswati pua. It was the submission that the expenditure on mosquito net must be considered under health as the said expenditure was incurred in controlling dengu and malaria in the nearby villages. In regard to purchase of school dress, the issue fall under the category of education.

47. We have considered the rival submissions. Regarding the issue of Nokia Handset, we are unable to agree with ld AR that the Nokia handset was given to Village Pradhan to be used for communication for the assessee. We are also unable to agree with the arguments of ld AR in respect of sweet curd as it does now show to whom the distribution was done. Regarding Mosquito net, we are unable to agree with ld AR insofar as the issue has already been considered in the case of Indrani Patnaik(supra) and held against the assessee. Coming to other expenses i.e. festival in villages, saraswati puja contribution and purchase of school dress, we are of the view that the ld CIT(A) is right in allowing the same. Hence, this ground is partly allowed.

48. The next issue relates to deletion of addition of Rs.1,21,695/- made by the AO on account of expenses u/s.14A of the Act.

49. It was submitted by ld AR that the Assessing Officer has not recorded the satisfaction before making the disallowance u/s.14A of the Act

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and in view of the decision of Hon'ble Supreme Court in the case of Maxopp Investment ltd vs CIT (2018) 91 taxmann.com 154 (SC), wherein, in para 41, the Hon'ble Supreme Court has categorically held that non-recording of satisfaction will result in cancellation of levy u/s.14A r.w Rule 8D.

50. In reply, ld CIT DR submitted that the issue should be sent back to the file of the Assessing officer for recording the satisfaction. It was the submission that in view of the decision of Hon'ble Calcutta High Court in the case of Kesoram Industries Ltd vs Pr. CIT (2022) 136 taxmann.com 210 (Calcutta), the fact that the disallowance u/s.14A has been made gives presumption that the Assessing Officer was satisfied in regard to invocation of section 14A. To the same effect, the Co-ordinate Bench of Delhi ITAT in the case of Delhi Towers Ltd vs DCIT (2017) 78 taxmann.com 56 (Del-Trib). To the same effect is the decision of Hon'ble Gujarat High Court in the case of Devarsons Industries Pvt Ltd vs ACIT(2017) 84 taxmann.com 244 (Guj). It was the submission that the disallowance u/s.14A was rightly made by the AO.

51. We have considered the rival submissions. As it is noticed that the issue of satisfaction goes to the root of the addition and as it is noticed that the Assessing Officer has not recorded the satisfaction before invoking the section 14A of the Act, respectfully following the principles laid down by the Hon'ble Supreme Court in the case of Maxopp Investment ltd(supra), the

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disallowance made by the AO u/s.14A is rightly deleted. This ground of the revenue is dismissed.

51.1 In the result, appeal of the revenue is partly allowed.

ITA No.416/CTK/2015: Asst.year: 2009-10 –Assessee's appeal

52. This is an appeal filed by the assessee against the order dated 21.7.2015 of the ld CIT(A), Cuttack in I.T.Appeal No.0215/2011-12 in the matter of assessment u/s.143(3) of the Act.

53. The first issue relates to claim of deduction u/s.80-IA of the Act of Rs.27,47,17,642/-.

54. This issue had come up for adjudication in the appeal filed by the assessee for the assessment year 2008-09 and while deciding the issue, at para 30 to 35 above, we have allowed the claim of the assessee. Following the precedent, we allow the claim of the assessee for this assessment year also. This ground stands allowed.

55. The next issue relates to disallowance of Education Cess, surcharge, etc of Rs.1,75,48,340/-.

56. This issue had come up for adjudication in the appeal filed by the assessee for the assessment year 208-09. We have held against the assessee while adjudicating the issue in paras 36 & 37 above. Consequently, this ground stands dismissed.

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57. The next issue relates to sustenance of disallowance of Rs.,12,60,672/- towards excess bonus paid over the provisions u/s.43B of the Act.

58. It was submitted by ld AR that the bonus has actually been paid before the due date of filing the return of income and payment is in excess of the provisions made. It was the submission that same may be allowed. Ld CIT DR submitted that the provision is not allowable. It was the submission that if at all bonus has been paid before due date of filing of return, the issue may be restored to the file of the AO and if the assessee is able to prove that payment has been made before due date of filing return, same may be allowed.

59. We have heard the rival submissions. As rightly pointed out by ld CIT DR the provisions is not allowable. However, considering the fact that ld AR has submitted that bonus has been paid before due date of filing of the return, this being so, this issue is restored to the file of the AO for verification as to whether any specific payment has been made in respect of bonus. To such an extent payment has not been made, the amount shown as provision is not allowable. In short, the expenditure which has been spent or payments have been made are allowable and the provision created for the same is not allowable expenditure. This issue is accordingly restored to the file of the AO. Consequently, this issue is partly allowed for statistical purposes.

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59.1 In the result, appeal of the assessee is partly allowed for statistical purposes.

ITA No.103/CTK/2016: Asst.Year- 2009-10 –Assessee's appeal.

60. The appeal is filed by the assessee against the order dated 28.10.2015 of the ld CIT(A)-3, Bhubaneswar for the assessment year 2009-10 in the matter of assessment under section 263/143(3) of the Act.

61. The only issue raised in this appeal relates to disallowance of unpaid leave salary of Rs.30,47,208/-.

62. It was submitted by ld CIT DR that the issue was to be decided in the light of the decision of Hon'ble Supreme Court in the case of Union of India vs Excide Industries Ltd. (2020) 425 ITR 1 (SC). It was the submission that the issue was similar to the issue of bonus and should be restored back to the file of the Assessing Officer for verification as to whether the payment has been made. It was submitted that if the amount has been paid then same is to be allowed. The provisions should not be given

63. In reply, ld AR opposed the order of the ld CIT(A).

64. We have considered the rival submissions. As the issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of Exide Industries Ltd. (supra), the issue is restored to the file of the AO for re-adjudication. The AO is to verify as to whether the leave salary has actually

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been paid during the year, then, same is allowable. No allowance could be given in respect of provision. Hence, this ground of the assessee is partly allowed.

65. In the result, the appeal in ITA No.103/CTK/2016 is partly allowed.

ITA No.116/CTK/2016: Asst.year-2009-10 –Revenue's appeal

66. This is an appeal filed by the revenue for the assessment year 2009-10 against the order of the ld CIT(A)-3, Bhubaneswar dated 28.12.2015 in Appeal No.0373/2015-16 in the matter of assessment u/s.263/143(3) of the Act.

67. The only issue raised by the revenue against the deletion of addition of Rs.83,13,97,000/- made by the AO on account of non-deduction of tax u/s.40(a)(ia) of the Act.

68. Similar issue had come up for adjudication in the assessment year 2008-09 in the appeal filed by the revenue and while adjudicating the issue, we have rejected the ground. In line with our decision in para 21 to 25 above, we dismiss this ground of the revenue.

69. In the result, appeal of the revenue in ITA No.116/CTK/16 for A.Y. 2009-10 stands dismissed.

ITA No.158/CTK/2014: Asst.year- 2010-11 (Revenue's appeal)

70. This is an appeal filed by the revenue against the order dated 19.2.2014 of the ld CIT(A)-II, Bhubaneswar in Appeal No.0136/2012-13 for

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the assessment year 2010-11 in the matter of assessment u/s.143(3) of the Act.

71. The first issue relates to deletion of Rs.2,03,79,075/- made by the AO on account of Railway siding expenses.

72. Similar issue had come up for adjudication in the assessment year 2008-09 in the appeal filed by the revenue. In line with our decision on similar issue for the assessment year 2008-09 at paras 10 to 14 above, we dismiss this ground of the revenue.

73. The next issue relates to deletion of addition of Rs.12,49,165/- made by the AO on account of peripheral development expenses.

74. It was the submission of ld CIT DR that the assessee has constructed school, which is not permissible for claim of deduction. Ld CIT DR drew our attention to page 168 of PB, which is annexure-5A, wherein, it is mentioned as repairing of school of Rs.1,659,975.82. He further referred to pages 171 & 172 of PB, which was break up of said expenditure, wherein, it is mentioned in the nomenclature as "construction of school at Linguthani village and at Bhagalpur.. It was the submission that as there was construction of school, the same was not allowable.

75. In reply, ld AR submitted that these are actually repairing to school building, amounting to Rs. 16 lakhs approx in respect of four schools. It was the submission that in ledger entries it is a mistake, insofar as it was

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mentioned as construction of school building. It was the submission that same was allowable u/s.35AC of the Act.

76. We have considered the rival submissions. On perusal of the expenditure incurred under the so called construction of school shows that expenditures varies between Rs.24,000/- to Rs.83,,000/- and the so called construction has been done in Linguthani village, Barkala G.P. Bhagalpur and Ramachandrapur village. Thus, the cost is incurred in respect of four schools. Obviously, this cannot be treated as construction of school but repairing to school. In the nomenclature, it could have been better termed. However, as the expenditure was in respect of repair to building, same is allowable u/s.35AC of the Act.

77. The next issue is in regard to deletion of addition of Rs.1,91,413/- on account of club expenses.

78. It was submitted by ld CIT DR that the club expenses are personal expenses and same is liable to be disallowed. It was the submission that these clubs expenses have been incurred in Jamshedpur and Bhubaneswar, whereas the office of the assessee company is at Joda and management and staff are stationed at Joda only. Therefore, the expenditure incurred on club expenses is nothing but personal expenses.

79. In reply, ld AR submitted that the assessee manufactures at Joda factory but the marketing and liasoning offices are at Jamshedpur and Bhubaneswar. The staff of the assessee have to visit Jamshedpur and

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Bhubaneswar very often and, therefore, they claimed the hotel expenses. In respect of Jamshedpur and Bhubaneswar, the assessee uses the benefit available to it with the clubs so that the expenses are reduced. It was the submission that the assessee is not a live person and, therefore, expenditure is liable to be allowed.

80. We have considered the rival submissions. Admittedly, the clubs expenses have been incurred in Jamshedpur and Bhubaneswar. It is also fact that the assessee's liasioning offices are at Jamshedpur and Bhubaneswar. Obviously, there would be staff movement between the manufacturing place and liasioning and sales office., This being so, considering the fact the assessee can have no personal expenses and these expenses relate to the employees of the assessee, therefore, same is business expenses of the assessee. In these circumstances, we find no error in the order of the ld CIT(A) and dismiss the ground of the revenue.

81. In the result, appeal of the revenue is dismissed.

ITA No.149/CTK/2014; Asst.year: 10-11 (Assessee's appeal)

82. This is an appeal filed by the assessee against the order dated 19.2.2014 of the ld CIT(A)-II, Bhubaneswar in Appeal No.0136/2012-13 for the assessment year 2010-11 in the matter of assessment u/s.143(3) of the Act.

83. The first issue relates to sustenance of disallowance of the claim of deduction of Rs.44,98,19,451/- u/s.80-IA of the Act.

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84. Similar issue had come up for adjudication in the appeal filed by the assessee for the assessment year 2009-10. While deciding the issue, in paras 30 to 35, we have allowed the claim of the assessee. Following the precedent, we allow this ground of the assessee.

85. The next issue relates to confirmation of addition of Rs.1,13,19,865/- on account of Education Cess, etc.

86. This issue has been adjudicated in the appeal filed by the assessee for the assessment year 2008-09, wherein, in paras 36 to 38, we have held against the assessee. Following the precedent, we dismiss this ground of the assessee.

87. In the result, appeal in ITA No.149/CTK/2014 for A.Y. 29010-11 is partly allowed.

C.O. No.32/CTk/2014 against Appeal No.158/CTK/2014 of the Revenue

88. The cross objection filed by the assessee is in support of the order of the ld CIT(A). As we have dismissed the appeal of the revenue, the cross objection of the assessee has become infructous and same stands dismissed.

ITA No.153/CTk/2015: Asst.Year-2011-12 (Revenue's appeal)

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89. This is an appeal filed by the revenue against the order of the ld CIT(A) –II, Bhubaneswar dated 22.1.2015 for the assessment year 2011-12 in the matter of assessment under section 143(3) of the Act.

90. The first issue relates to deletion of Rs.57,82,871/- under the head disallowance on railway siding.

91. Similar issue had come up for consideration in the assessment year 2008-09 in the appeal filed by the revenue. While adjudicating the issue in paras 10-14, we have held against the revenue. Following the precedent, we dismiss this ground of the revenue.

92. The next issue relates to deletion of addition of Rs.1,66,344/- under the head "disallowance of club expenses"

93. Similar issue had come up for adjudication in the assessment year 2010-11 and while deciding the same in para 75 to 78, we have held against the revenue. Following the precedent, we decide the issue against the revenue.

94. The next issue relates to deletion of addition of Rs.24,09,916/- under the head peripheral expenses.

95. Similar issue had come up for adjudication in the assessment year 2010-11 and while deciding the same in para 71 to 74, we have held against the revenue. Following the precedent, we decide the issue against the revenue.

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96. The issue relates to deletion of addition of Rs.2,94,07,817/- under the head "disallowance of capital expenditure".

97. It was submitted by ld CIT DR that the construction of road is not the business of the assessee. Further, the assessee has invested in the road and that road is used for bringing the coal, iron ore to the assessee's factory premises, therefore, same is liable to be capitalised treating the same as giving benefit of enduring nature.

98. Ld AR submitted that the issue stands squarely covered by the decision of Co-ordinate Bench of this Tribunal in the case of Indrani Patnaik in ITA No.389/CTK/17 and ors order dated 26.8.2020, wherein, in paras 48 to 50, the Co-ordinate bench has held as follows:"

> "48. Further from para 7.2 of the CIT(A), we observe that the ld CIT(A) has granted relief to the assessee by observing as follows:
>
> "7.2 I have considered the mater carefully. The AO has disallowed the entire expenditure under the above head observing that it is not possible to verify whether the expenditure is incidental to the business of the assessee and necessitated or justified by commercial expediency. In the course of assessment proceedings, the assessee is found to have furnished all the details relating to the expenditure incurred under the above head of Rs.3,99,28,438/-. The entire amount has been paid to M/s. Keonjhar Infrastructure Dev. Company Ltd for improvement of roads in the mines areas of the assessee. The assessee has to maintain the roads in her mines areas for the sake of her mining business. Though classified as periphery dev. Expenses, the expenditure has actually been incurred for construction and maintenance of roads in the periphery of the mines belonging to the assessee. Of course, there was no direction from the so called district committee for doing such works. But it is a fact that it very much incidental to the assessee's business to maintain the roads in and around the mines areas for smooth running of her business. It is not understood, what business expediency, the AO was looking for to allow the expenses. In this view of the matter,

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the disallowance of Rs.3,99,28,438/- under the above head is deleted."

49. In view of above, from the explanation submitted by the assessee before the AO dated 5.2.2015, it is clear that the assessee informed the name of contractor, who was paid the impugned amount for upgradation of roads in the periphery area i.e. M/s. Keonjhar Infrastructure Dev. Company Ltd. On receipt of above explanation, the AO without pointing out any defect in the quantum of expenses spent by the assessee and mode of payment adopted by the assessee for making payment and without verifying from the recipient contractor regarding receipt of payment and rendering of services towards upgradation of roads proceeded to make disallowance and addition. The AO was duty bound to issue show cause notice to the assessee and if he was not satisfied with the reply, he could have issued notice to the recipient contractor who was paid the impugned the amount regarding the work of upgradation or construction of roads on the direction of the assessee in the periphery area of the mines owned by the assessee but no such exercise had been undertaken. Therefore, the allegation made by the AO that the assessee has failed to justify the expenses without evidences/documents has no legs to stand.

50. On careful perusal of the findings of the ld CIT(A) (supra), we do not find any infirmity in his findings to interfere with the same and, accordingly, we uphold and dismiss Ground No.4 of revenue for assessment year 2012-13."

99. We have considered the rival submissions. Respectfully following the findings of the Co-ordinate Bench in the case of Indrani Patnaik (supra), we are of the view that the expenditure incurred by the assessee in regard to construction of road has been rightly allowed by the ld CIT(A) and we find no error in the findings of the ld CIT(A) on this issue. This issue of the revenue stands dismissed.

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100. The last issue relates to deletion of addition of Rs.86,46,09,938/- under the head "disallowance u/s.40(a)(ia) r.w.s 195.

101. Similar issue had come up for adjudication in the assessment year 2008-09 in the appeal filed by the revenue and while adjudicating the issue, we have rejected the ground. In line with our decision in para 21 to 25 above, we dismiss this ground of the revenue. Consequently, appeal of the revenue is dismissed.

ITA No.117/CTK/2015: AY:2011-12 (Assessee's appeal)

102. This is an appeal filed by the assessee against the order of the ld CIT(A) –II, Bhubaneswar dated 22.1.2015 for the assessment year 2011-12 in the matter of assessment under section 143(3) of the Act.

103. The first issue relates to confirmation of disallowance of deduction u/s.80-IA of Rs.40,13,98,494/-.

104. Similar issue had come up for adjudication in the appeal filed by the assessee for the assessment year 2009-10. While deciding the issue, in paras 30 to 35, we have allowed the claim of the assessee. Following the precedent, we allow this ground of the assessee.

105. The next issue relates to confirmation of addition of Rs.1,36,66,402/- on account of Education Cess, etc.

106. This issue has been adjudicated in the appeal filed by the assessee for the assessment year 2008-09, wherein, in paras 36 to 38, we have held

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against the assessee. Following the precedent, we dismiss this ground of the assessee.

107. The last issue relates to confirmation of disallowance of Rs.21,99,072/- towards provision for leave encashment u/s.43B(f) of the Act.

108. Similar issue had come up for consideration in assessee's appeal for assessment year 2009-10. In our order of even date in para 59 to 62, the issue has been restored to the file of the AO to verify as to whether the leave salary has actually been paid during the year and then to allow the same. Following the precedent, we also restore this issue to the file of the AO for re-adjudication in the light of our decision given supra. This issue is partly allowed for statistical purposes.

109. In the result, appeal in ITA No.117/CTK/15 for A.Y. 11-12 is partly allowed for statistical purposes.

C.O.No.19/CTK/15 (in ITA No.153/CTK/15)

110. The cross objection filed by the assessee is in support of the order of the ld CIT(A). As we have decided the appeal of the revenue by confirming the findings of the ld CIT(A), hence, cross objection has become infructuous and dismissed as such.

ITA No.117/CTK/2016: Asst.year: 12-13 (Revenue's appeal)

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111. This is an appeal filed by the revenue against the order of the ld CIT(A)-3, Bhubaneswar dated 28.12.2015 for the assessment year 2012-13 in the assessment under section 143(3) of the Act.

112. The first issue relates to deletion of addition of Rs.131,45,99,509/- made by the AO on account of non-deduction of tax u/s.40(a)(a) of the Act.

113. Similar issue had come up for adjudication in the assessment year 2008-09 in the appeal filed by the revenue and while adjudicating the issue, we have rejected the ground. In line with our decision in para 21 to 25 above, we dismiss this ground of the revenue.

114. The next issue relates to deletion of addition of Rs.79,21,757/- made by the AO on account of railway siding expenses".

115. Similar issue had come up for consideration in the assessment year 2008-09 in the appeal filed by the revenue. While adjudicating the issue in paras 10-14, we have held against the revenue. Following the precedent, we dismiss this ground of the revenue.

116. The last issue relates to deletion of addition of Rs.2,18,195/- made by the AO on account of club expenses.

117. Similar issue had come up for adjudication in the assessment year 2010-11 and while deciding the same in para 75 to 78, we have held

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against the revenue. Following the precedent, we decide the issue against the revenue.

118. In the result, appeal of the revenue in ITA No.117/CTK/16 for A.Y. 12-13 stands dismissed.

ITA No.104/CTK/16: Asst.year: 2012-13 (Assessee's appeal)

119. This is an appeal filed by the assessee against the order of the ld CIT(A)-3, Bhubaneswar dated 28.12.2015 for the assessment year 2012-13 in the assessment under section 143(3) of the Act.

120. The first issue raised by the assessee regarding disallowance of Education Cess, surcharge, etc of Rs.1,16,64,582/-.

121. This issue has been adjudicated in the appeal filed by the assessee for the assessment year 2008-09, wherein, in paras 36 to 38, we have held against the assessee. Following the precedent, we dismiss this ground of the assessee.

122. The next issue relates to sustenance of addition of Rs.23,91,94,516/- claimed u/s.80-IA of the Act.

123. Similar issue had come up for adjudication in the appeal filed by the assessee for the assessment year 2009-10. While deciding the issue, in

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paras 30 to 35, we have allowed the claim of the assessee. Following the precedent, we allow this ground of the assessee.

124. The last issue in regard to section 80G. This ground was not pressed by ld AR of the assessee, hence, dismissed as not pressed.

125. In the result, appeal filed by the assessee in ITA No.104/CTK/16 for A.Y. 12-13 stands partly allowed.

ITA No.168/CTK/2017: A.Y. 2013-14 (Assessee's appeal)

126. This is an appeal filed by the assessee against the order of the ld CIT(A)-1 Bhubaneswar dated 3.1.2017 for the assessment year 2013-14 in the matter of assessment under section 143(3) of the Act.

127. The first issue relates to disallowance of Education Cess, surcharge etc. of Rs.1,25,54,798/-.

128. This issue has been adjudicated in the appeal filed by the assessee for the assessment year 2008-09, wherein, in paras 36 to 38, we have held against the assessee. Following the precedent, we dismiss this ground of the assessee.

129. The next issue relates to sustenance of addition of Rs.27,26,52,253/- claimed u/s.80-IA of the Act.

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130. Similar issue had come up for adjudication in the appeal filed by the assessee for the assessment year 2009-10. While deciding the issue, in paras 30 to 35, we have allowed the claim of the assessee. Following the precedent, we allow this ground of the assessee.

131. The last issue relates to sustenance of disallowance of Rs.1,13,10,204/- u/s.14A of the Act.

132. Ld A.R. submitted that no borrowed funds were utilised for the purpose of investments. It was the submission that the assessee has received dividend income of Rs.8,25,01,459/- which has been claimed as exempt. It was also the submission that in the computation of total income, the assessee has *suo-moto* disallowed expenditure of Rs.2,05,025/- . However, the AO computed the disallowance of Rs.1,15,15,229/- u/s.14A by applying Rule 8D. It was the submission that the assessee had no objection if the issue is restored to the file of the AO to verify as to whether borrowed funds have been utilised or not. It was the submission that the assessee has shown surplus funds, which has been utilised.

133. Ld CIT DR submitted that this issue has not been considered by the Assessing Officer and the issue should be restored to the file of the AO for verification as to whether any borrowed funds have been utilised.

134. We have considered the rival submissions. Perusal of the assessment order shows that the disallowance u/s.14A is on account of two portions of dividend income, one is in regard to equity investment which is

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very old investment and second is in regard to mutual fund investments. The assessee has claimed that it has not used any interest bearing funds for making investments in mutual funds. It was the submission that no portion of the interest expenditure is liable to be disallowed. Admittedly, as submitted by ld CIT DR, the issue as to whether the borrowed funds have been utilised for the purpose of making investments have not been gone into by the AO. This being so, this issue is restored to the file of the AO for re-adjudication. No disallowance u/s.14A is to be made in respect of interest, if no interest bearing funds has been utilised by the assessee for the investment in mutual funds. However, the disallowance u/s.14A r.w.s 8D(2)(ii) is compulsory to be made insofar as the assessee has earned exempt income i.e. 0.5% of the average value of the investments as provided in Rule 8D(2)(ii). Hence, this issue partly allowed for statistical purposes.

135. In the result, appeal for the assessment year 13-14 is partly allowed for statistical purposes.

ITA No.169/CTK/17: Asst.Year-2014-15 (Assessee's appeal)

136. This is an appeal filed by the assessee against the order of the ld CIT(A)-1 Bhubaneswar dated 3.1.2017 for the assessment year 2014 -15 in the matter of assessment under section 143(3) of the Act.

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137. The first issue relates to disallowance of Education Cess, surcharge etc. of Rs.1,59,56,061/-.

138. This issue has been adjudicated in the appeal filed by the assessee for the assessment year 2008-09, wherein, in paras 36 to 38, we have held against the assessee. Following the precedent, we dismiss this ground of the assessee.

139. The next issue relates to sustenance of addition of Rs.36,59,43,253/- claimed u/s.80-IA of the Act.

140. Similar issue had come up for adjudication in the appeal filed by the assessee for the assessment year 2009-10. While deciding the issue, in paras 30 to 35, we have allowed the claim of the assessee. Following the precedent, we allow this ground of the assessee.

141. The last issue relates to sustenance of disallowance of Rs.3,26,84,054/- u/s.14A of the Act.

142. Exactly similar issue had come up for consideration in the assessment year 2013-14 and the ld AR reiterated the submissions made in that assessment year. While deciding the issue, we have restored the matter to the file of the AO for re-adjudication. Hence, following precedent, we restore the issue to the file of the AO to decide the issue in the light of our decision given in paras 131 to 134 above.

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143. In the result, appeal for the assessment year 13-14 is partly allowed for statistical purposes.

144. No other issues were advanced by the ld representatives of parties at the time of hearing.

Order dictated and pronounced in the open court on 4/7/2022.

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

Cuttack; Dated 4/7/2022
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The assessee: Tata Sponge Iron Ltd., Keonjhar
2. The revenue: ACIT, Circle-2(2), Bhubaenswar
3. The CIT(A)-, Bhubaneswar
4. Pr.CIT-, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.

//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack

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