<u>आयकर अपीलीय अधिकरण, कटक न्यायपीठ,कटक</u>

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

श्री सी.एम.गर्ग, न्यायिक सदस्य **एवं** श्री एल.पी.साहु,लेखा सदस्य के समक्ष

BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM

आयकर अपील सं./ITA No.174/CTK/2018

(**निर्धारण वर्ष /** Assessment Year : 2015 - 2016)

Mahanadi Coalfields Ltd., Jagriti Vihar, Burla, Sambalpur	Vs.	DCIT, Circle-2(1), Sambalpur
स्थायी लेखा सं./PAN No. : **AABCM 5188 P**		

(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

निर्धारिती **की ओर से** /Assessee by	:	Shri S.S.Podar, CA
राजस्व **की ओर से** /Revenue by	:	Shri S.M.Keshkamat, CITDR

सुनवाई की तारीख **/ Date of Hearing**	:	15/01/2020
घोषणा की तारीख**/Date of Pronouncement**	:	05/06/2020

<u>आदेश / O R D E R</u>

<u>Per L.P.Sahu, AM</u> :

This is an appeal filed by the assessee against order of CIT(A), Sambalpur, dated 28.03.2018 for the assessment year 2015-2016, on the following grounds of appeal :-

1. *That the assessment order U/s.143(3) passed by the Learned Assessing Officer as well as the appellate order passed by the Learned CIT(Appeals), Cuttack, to the extent prejudicial to the assessee, is unjustified, arbitrary, excessive, contrary to evidences and bad in law.*

2. *That the Learned Assessing Officer as well as CIT (Appeals) has not provided sufficient opportunity to the assessee to present its case with all evidences.*

3. *That on the facts and in the circumstances of the case the authorities below has erred in making/upholding followings additions/ disallowances in full/part:*

Sl. No	*Particulars*	*Amount (Rs. In Lakhs)*
1.	*Depreciation on Lease hold land*	*27491.00*
2.	*Valuation of closing stock of coal (due to impact of overburden removal expenditure)*	*11840.00*
3.	*CSR Expenses*	*6130.00*
4.	*CMPDIL Expenses*	*2029.00*
5.	*Addition u/s.14A*	*576.90*
6.	*Interest on Income tax refund*	*1692.00*
	TOTAL	***49758.90***

4. That the Ld. Authorities below has further erred in allowing short credit of TDS.

5. That the Learned Authorities below would have provided sufficient opportunity to the assessee to explain its case with proper evidences.

6. That the authorities below would not have made addition/disallowances on different heads of accounts as mentioned above and would have allowed all claims.

7. That the Authorities below would have allowed the total credit of TDS.

8. That the authorities below would have accepted the returned income.

9. That the appellant craves leave to add, amend or alter the aforesaid grounds of appeal before or at the time of hearing of the appeal.

2. In addition to the above grounds of appeal, the assessee has also filed additional grounds of appeal, which read as under :-

1. That the assessment order U/s.l43(3) passed by the Learned Assessing Officer as well as the appellate order passed by the Learned CIT(Appeals), Cuttack, to the extent prejudicial to the assessee, is unjustified, arbitrary, excessive, contrary to evidences and bad in law.

2. That the Learned Assessing Officer as well as CIT (Appeals) has not provided sufficient opportunity to the assessee to present its case with all evidences.

3. That on the facts and in the circumstances of the case the authorities below has erred in making/upholding followings additions/ disallowances in full/part:

3.1. Depreciation on Leasehold Land U/s. 32 (1) (ii) of the Income Tax Act, 1961 as an Intangible Assets - Rs. 27491.00 Lacs.

Additional Grounds/ Alternate claim

3.1.1. The authorities below have erred in not allowing the alternate claim of expenditure u/s. 37(1) of the Income tax Act, 1961 on the basis of actual expenditure incurred ; or

3.1.2. The authorities below have further erred in not allowing the alternate claim of expenditure u/s. 35E of the Income tax Act, 1961 as allowed in case of the other subsidiaries of CIL; or

3.1.3. The authorities below have further erred in not allowing the claim of expenditure on any other basis i.e. on the basis of lease period expired or on the basis of coal extracted during the year or any other reasonable basis U/s. 37 of the Income Tax Act, 1961.

3.1.4. That it is a fact that from this year onwards the leasehold land is shown as "OTHER LAND " and not leasehold land because it is realized by holding Company Coal India Ltd that a right for exploration is given by a Gazette Notification only by the Government with certain terms and conditions and not as a lease.

3.2. Valuation of closing stock of coal (due to impact of overburden removal expenditure) - Rs. 11840.00 Lacs .

3.3. CSR Expenses Rs. 6130.00 Lacs.

3.4. CMPDIL Expenses under section 37 of the I.T.Act, 1961. Rs. 2029.00 Lacs.

3.5. Addition u/s. 14A - Rs. 576.90 Lacs.

3.6. Interest on Income tax refund - Rs. 1692.00 Lacs.

4. That the Ld. Authorities below has further erred in allowing short credit of TDS.

5. That the Learned Authorities below would have provided sufficient opportunity to the assessee to explain its case with proper evidences.

6. That the authorities below would not have made addition/disallowances on different heads of accounts as mentioned above and would have allowed all claims.

7. That the Authorities below would have allowed the total credit of TDS.

8. That the authorities below would have accepted the returned income.

9. That the appellant craves leave to add, amend or alter the aforesaid grounds of appeal before or at the time of hearing of the appeal.

3. During the course of hearing, ld. AR of the assessee filed a letter dated 14.01.2020 stating therein that he is withdrawing the additional grounds of appeal and requested for deciding the issue on the basis of grounds of appeal taken in form 36 at the time of filing of the appeal, therefore, on the basis of this letter, we are going to decide the issue as stated in the grounds of appeal taken in Form No.36. Further the ld. AR of the assessee during the course of hearing submitted that he does not want to press the ground of appeal No.3.3 regarding CSR Expenses, accordingly, this ground is dismissed as not pressed.

4. Brief facts of the case are that the assessee is a mini-ratna company engaged in the extraction and sale of coal and filed its return of income on 27.11.2015 declaring net profit at Rs.5095,39,40,710/- derived from extraction (mining) of coal and sale thereof. The case was selected for scrutiny and statutory notices were issued and served on the assessee. Later on other statutory notices were issued to the assessee. During the course of assessment proceedings, it was seen by the AO that he has claimed Rs.274.91 crores as depreciation charges @25% for leasehold lands. Therefore, the assessee was asked to justify the claim of depreciation of land which is not depreciable asset. In this

regard, the assessee submitted his reply and submitted in detail the procedure for acquiring the leasehold rights over the land and has shown that it is a lease of the State Government and holds a right over the land for use in the manner indicated. This right is an intangible asset according to the claim. The AO during the course of assessment proceedings observed that as is apparent the intangible asset in the form of right to use the land is acquired or is available to the assessee from a date much earlier than 1st April, 1998, the claim is ab-initio inadmissible- however, in addition to this it is not a right, being similar in nature to know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights. The right to use land which is being lease right to use the land as agreed upon; cannot be equated with know-how, patents or trademarks or other business related rights etc. Further the AO observed that the land is not at depreciable assets u/s.32 of the Act whether it is lease-hold or free hold. In view of the above, the AO treated the claim of depreciation of Rs.274.91 crores as inadmissible and added to the total income.

5. Further, with regard to valuation of closing stock, the AO show-caused the assessee as to why the cost of OBR should not be included in the closing stock as the cost of OBR is part of the cost of production of coal. In response to this, the assessee vide its submission dated 19.12.2017, submitted as under :-

2.2 Vide its submission dated 19.12.2017 the assessee company stated that :

"In the matter we would like to draw your kind attention towards the fact that, as you are aware, the Assessee Company is a Subsidiary of Coal India Limited, henceforth CR,. The Assessee Company works under the direct guidance and control of CR, indirectly Ministry of Coal, Govt, of India. The CR makes Rules & Regulations which is mandatorily to be followed by all its' subsidiaries. Accordingly, as a matter of uniform accounting policy, in the year 2009-10 CIL took a decision not to take into the cost of OBR in the valuation of closing stock of Coal. And since then the Assessee is consistently following the same method of valuation of closing stock. There is no change in the method of valuation of closing stock in comparison to the method applied during the immediate preceding year. In support of our contention we would like to draw your kind attention towards clause 13 & 14 of the Form 3CD of Tax Audit Report, duly certified by the Tax Auditor. Under the facts & circumstances it does not warrant any interfere with the method of valuation as adopted by the Assessee.

However, as required by Your Honor, please find herewith enclosed statement showing valuation of closing stock including cost of OBR ***[Annexure-1].***

Further, without prejudice to the afore submission, during the course of Asst. proceedings u/s 143(3) of the Income Tax Act The Ld. Assessing Officer had enhanced the valuation of closing stock and correspondingly increased the total income by Rs. 159.12 Cr. In view of the settled law and particularly in the case of the Assessee itself, relevant to AY 2010-11 & 2012-13 the Ld AO had enhanced the valuation of closing stock. But no adjustment was made in opening stock of the immediate next year. On appeal the Hon'ble CIT(A) pleased to direct the AO to give due credit for the same".

The AO noticed that the assessee has claimed Rs.2123.53 crores as overburden removal adjustments in the profit and loss account. The AO asked the assessee to explain the same and in response to which the assessee stated that it is consistently following the same method of valuation of closing stock and there has not been any change in this method during the year under consideration. The AO observed that the OBR adjustment cost as submitted by the assessee during the year is Rs.118.4 crores. As per the accounting principles & properties the plea

taken by the assessee is not accepted and OBR adjustment cost is added to the value of closing stock. Accordingly, the AO added the OBR adjustment cost of Rs.118.4 crores to the value of closing stock.

6. Further the AO noticed that the assessee has claimed Rs.61.30 crores as corporate social responsibility. The AO asked the assessee to justify the claim and in this regard, the assessee submitted his written reply which was considered by the AO. In this regard, the AO referred to Section 37(1) of the Act which was amended in respect of CSR expenses by the Finance Act, 2014 w.e.f. 01.04.2015. Accordingly, the AO disallowed the entire expenses incurred towards corporate social expenses of Rs.61.30 crores and added the same to the total income of the assessee.

7. Further on scrutiny of accounts, the AO noticed that the Central Mine Planning & Design Institute Limited (CMPDI) charges expenses to the tune of Rs.20.29crores and claimed as expenses. In this regard, the assessee was asked to justify the claim of expenditure in the profit and loss account. The assessee submitted detailed written submissions and from the submissions made by the assessee the AO observed that the submissions of the assessee is general submissions and without specifying any detail/specific services provided by the CMPDIL and concluded that the assessee company could not deliberate the services received in lieu of which professional charges were paid to the CMPDIL,

mere deduction of TDS will not justify the expenses incurred by the assessee in this regard and disallowed to the tune of Rs.20.29 crores and added to the total income of the assessee.

8. Further it was noticed by the AO that the assessee has claimed interest of Rs.129.08 crores as exempt income received and tax free bond and mutual bond. In this regard, the assessee was asked to provide the details of expenditure incurred against this income along with supporting evidences. In response to which the assessee submitted that he has not made any investment out of borrowed funds to earn income which does not form part of the total income. The investment in the alleged funds are made only out of accumulate profit and he relied on many case laws.

9. Further on scrutiny of accounts, it was noticed by the AO that the assessee has been paid Rs.16,92,76,788/- as interest by the Income Tax Department on refund amounting to Rs.694,03,47,830/- for the assessment year 2011-2012. But the same did not find place in the annual report for F.Y.2014-2015 relevant to A.Y.2015-2016. In this regard, the assessee was show caused against this written reply which reads as under :-

> *10.2 In reply to which the assessee has submitted a written submission dated 19.12.2017 that-*
>
> *"In the matter it is to be submitted that alleged amount of Rs. 694.03 Cr; including interest u/s 244A. Rs. 16.93 Cr; relevant to AY 2011-12, has been credited to the Income Tax paid under protest account. Due to the fact > that as a result of Asst. Order u/s 143(3) for the said Asst Year the*

> *Assessee had paid a sum of Rs. 761.60 Cr. including interest u/s 134B, 234C & 234D Rs. 182.68 Cr. Being dissatisfied, the Assessee preferred an Appeal before the appropriate authority and debited the amount to the Income Tax paid under protest account*"

From the above submissions of the assessee, the AO was not convinced and held that the interest received on income tax refund is income of the assessee for the relevant assessment year which should have been included in the total income of the assessee but it has not been offered by the assessee as taxable income, therefore, the added the interest on income tax refund amount as stated above to the total income of the assessee.

10. In addition to the above, the AO made various other additions and completed the assessment determining the total income of the assessee at Rs.7893.229 crores.

11. Feeling aggrieved from the CIT(A)'s order, the assessee is in appeal before the Income Tax Appellate Tribunal.

12. Ld. AR before us filed his written synopsis which reads as under:-

> *The assessee filed its Return of Income on 27.11.2015 vide acknowledgement no. 893879181271115 showing total income of Rs. 5,09,539.40 Lacs and a refund of Rs. 3131.07 Lakhs was claimed. Copy of 'Computation of Income' and ITR-V is enclosed herewith at Page No.1-3.*
>
> *The return was processed by CPC u/s, 143(1) vide intimation dated 25.12.2016 accepting the returned income. Later on, it was selected for scrutiny and the assessment U/s. 143(3) of the 1. T. Act, 1961 was completed vide order dated 31.12.2017 in which the Ld. AO assessed the total income at Rs. 789323.30 Lacs by making substantial additions/disallowances and raising a further tax demand of Rs. 196731.20 Lakhs including interest of Rs. 30349.26 Lakhs u/s, 234B.*
>
> *Subsequently, vide order u/s.154/143(3) dated 31.01.2018 the assessed income was reduced to Rs. 770211 Lakhs and demand was reduced to*

Rs. 113676.70 Lakhs due to rectification of certain mistakes apparent from the record.

Being aggrieved the assessee preferred an appeal before the C!TCA), Cuttack and the Ld. CIT(A) disposed off the appeal vide order dated 28.03.2018 giving substantial relief to the assessee.

However, the ld. CIT(A) has sustained certain additions / disallowances against which the assessee is in appeal before your honour, details of which is given below:

Sl. No.	***Particulars***	***Amount (Rs. In Lakhs)***	***Grounds of Appeal No.***	***Page No. of Asst. order***	***Page No. of CIT(A) order***	***Page No. of this Written Submission***
1.	*Insufficient opportunity*	*~*	*2*	*—*		*3*
2.	*Depreciation on Lease hold land*	*27491.00*	*3(1) Addl. ground of Appeal No.1,2,3*	*2-4*	*3-5*	*4-14*
3.	*Valuation of closing stock of coal (due to impact of overburden removal expenditure)*	*11840.00*	*3(2)*	*4-6*	*5-13*	*15-25*
4.	*CSR Expenses*	*6130.00*	*3(3)*	*5*	*17-21*	*26-27*
5.	*CMPDIL Expenses*	*2029.00*	*3(4)*	*6*	*21-23*	*28-29*
6.	*Disallowance u/s 14A*	*576.90*	*3(5)*	*21-24*	*32-36*	*30-38*
7.	*Interest on Income tax refund*	*1692.00*	*3(6)*	*25*	*36-37*	*39*

Before we commence our submission on the merits of individual matters, we wish to submit that the assessee Company is a Public Sector Undertaking (PSU), a wholly owned subsidiary of Coal India Limited (CIL), which is a Government of India enterprise. The assessee company was formed on 03-04-1992 by taking over all the assets and liabilities of Southern Eastern Coalfields Limited in the state of Orissa. As the assessee is a public sector undertaking (PSU), its accounts are subject to audit and scrutiny by Statutory Auditors and the Comptroller and Auditor General of India (CAG).

Being a wholly owned subsidiary of CIL, the booking of expenditure in the accounts is guided by Coal India Limited for all the subsidiaries by way of prescribed Accounts Manual. Hence, any expenditure booked under particular head of account has got a valid reason/justification because all such accounts head are prescribed by the holding company after due analysis, expert opinion, deliberations with all the stake holders. The assessee is a organized and large entity. The PSU maintains proper books of account and suitable evidences for all income accrued and expenses incurred. Suitable evidence depends on various factors like nature of income/payment, nature of claimant, nature of payer/payee, place of receipt/payment, amount of receipts/payment etc. In such an organization there is suitable internal check and control and Business is carried in a professional manner.

1.1. That the Ld. AO has not allowed sufficient opportunity to the assessee to present its case. The order has been passed without appreciating the facts in correct perspective. The Assessment has been completed with pre-conceived ideas and notions without giving sufficient opportunity to submit the required explanations along with supporting documents.

2.	*Depreciation on leasehold land* *Page ref. of Asst. order:2-4* *Page ref. of CIT(A) order:3-5*	*Rs.27491.00 lakhs*	*Grounds of Appeal No.3(1)*

A. FACTS:

2.1 The assessee has claimed Rs. 27491.00 Lakhs as depreciation on lease hold land under section 32(1)(ii) of the LT. Act,1961 as the mining rights are in the nature of intangible assets.

2.2 The Ld. AO has disallowed the claim of such depreciation on the ground that "it is not a right being similar in nature to know-how, patents, copyrights, trademarks, licenses, franchisees or any other business or commercial rights as per the provision made under section 32(1)(ii) of the IT Act 1961. Further the land is not a depreciable assets u/s. 32 of the I. T. Act, whether it is lease hold or free hold".

2.3 In this regard it is submitted that the lease of land is granted to the

assessee after a notification under the Coal Bearing Area (Acquisition & Development) Act, 1957 as well as Land Acquisition Act, 1944 with certain terms and conditions. One of the main conditions is prescribed under section 44A of the Land Acquisition Act which prohibits the transfer of land by lessee by way of sale, sub lease or any other means and not to use the land for any other purposes other than for which the lease is granted.

2.4 That to obtain such land on lease the lessee is required to pay one time premium to the State Govt. and certain other expenditure are also incurred in the process of acquiring such leasehold land, like registration expenses etc. These expenditure are appearing in the Schedule of Fixed Assets in the Balance Sheet as "Leasehold Land". The leasehold land is to be handed over back to the Government after expiry of the lease period in its original status by filling the void and changing the top soil to make it suitable for plantation/ vegetation.

2.5 From the aforesaid facts it certainly becomes very clear that the Company has acquired Commercial Asset i.e. minerals beneath the land for a fixed period on payment of onetime premium and lease rental annually. As the onetime premium is paid towards acquiring exploration rights of commercial assets for a fixed period; the same is charge .to Profit & Loss Account.

2.6 In this regard we invite your honour's kind attention towards the provisions of section 32 according to which depreciation was allowed on tangible assets only i.e. on Land & Building, P&M, Furniture, etc till 31.03.1998. The Finance (No.2) Act, 1998, for the first time, provided for allowance of depreciation on 'intangible assets' under the Income tax Act, 1961.

Section 32(1)(ii) of the Act provides that any know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, acquired by the assessee/ appellant on or after 1-4-1998, shall be eligible for depreciation allowance with effect from the assessment year 1999-2000. Consequently, depreciation can now be claimed on intangible assets, acquired for a price, on the satisfaction of the following conditions namely:

(a) The intangible assets are acquired by the assessee on or after 1.4.1998;

(b) Such assets are owned by him either wholly or partly; and

(c) Such assets are used by him for the purpose of his business or profession during the previous year.

The applicable rate for depreciation on intangible assets is @25%. Accordingly the assessee has claimed depreciation @25% on addition towards lease hold land made after 01.04.1998.

Such depreciation is also certified by the Statutory auditor as allowable depreciation at clause No.18 in page No. 6 of the Tax Audit Report issued U/s.44AB of the Income Tax Act, 1961. A photocopy of Tax Audit Report and Shedule of Fixed Assets is enclosed herewith at Page No .4& 11.

2.7 That the provisions of section 32(1) (ii) has been further amended w.e.f. 01.04.2002 when the explanation- 5 was inserted to the proviso which makes it mandatory on the part of the AO to allow depreciation irrespective of claim made by the assessee.

2.8 That the intangible assets include Leasehold interest, mlneral rights as exhibited in the List of Intangible Assets given by Intangible Business Ltd. reproduced in 'The Chartered Accountant' journal of the institute of Chartered Accountants of India. Copy of the same is enclosed at Page No. 125-132 of P/B -Vol-III.

B. GROUND OF ADDITION

That the relevant portion of the order of Ld. CIT(A) is reproduced below:

" I have carefully considered the written submission of the assessee and perused the documents submitted during the appeal hearing. I find that this issue has been adjudicated by the Hon'ble ITAT, Cuttack in their

consolidated order for the AYs 1999-2000 to 2002-03 dt. 02.01.2008, for the AYs 2004-05 to 2007-08 dt. 12.09.2011 and in their very recent order dated 20.03.2018 for the Ays 2010-11 to 2014-15 confirming the action of the AD to disallow depreciation claim on lease hold land. Respectfully following the decision of the Hon'ble ITAT for the above assessment years, the disallowance of Rs.2741.91 crares is hereby confirmed" .

In this regard it is respectfully submitted as under:

2.9 That the addition has been sustained by CIT (Appeals) relying on the order dt.20.03.2018 of this Hon' ble Tribunal for the AYs 2010-11 to 2014- 15. The Hon'ble Tribunal confirmed the addition vide order dt.20.03.2018 by referring to its own decision vide order dated 03.01.2018 in the case of assessee for the assessment year 2008-09. Photocopies of order dated 20/03/2018 & 03/01/2018 are placed at Page No.l0l to 165 & 186- 199 of P IB-VOL-I.

2.10 The decisions in the case of CIT Vs. Techno Shares Ltd., 225 CTR 337 (Bom) & Dabur India Ltd. Vs. ACIT, 159 TTJ 563 (Mumbai) as cited by the Ld. DR and relied by your honour for earlier years were discussed in the order dated 03.01.2018 .

2.11 That both the decision relied upon by the Ld. DR are not applicable to the fact & circumstances of the present case as discussed below:

a. CIT Vs. Techno Shares Ltd., 225 CTR 337 (Bom):

The relevant portion of the order is reproduced below:

"24. Before concluding, we wish to clarify that our present judgment is strictly confined to the right of membership conferred upon the member under the BSE membership card during the relevant assessment years. We hold that the said right of membership is a "business or commercial right" which gives a non-defaulting continuing member a right to access the Exchange and to participate therein and in that sense it is a licence or akin to licence in terms of Section 32(1)(ii) of the 1961 Act. That, such a right vests in the Exchange only on default/ demise in terms of the Rules and Bye-laws of BSE, as they stood at the relevant time. Our judgment should not be understood to mean that every business or commercial right would constitute a "licence" or a "franchise" in terms of Section 32(1)(ii) of the 1961 Act."

That the Hon'ble Apex Court has made it ample clear that this finding is in respect of BSE membership card only and every business or commercial right would not constitute a "licence" or a "franchise" in terms of Section 32(1)(ii) of the 1961 Act, which means that other business or commercial right has to be understood as per the fact & circumstances of the case. It can not be held by any stretch of imagination that apart from right of membership all other business or commercial right can not fall under the category of "license" or a

"franchise" in terms of Section 32(1)(ii) of the 1961 Act. As a matter of fact this decision of the Hon' ble Apex court has been relied upon by the Hon' ble Delhi High Court in the case of Areva T&D India Ltd vs. DCIT in arriving at a finding that Business information, contracts, records etc are "intangible assets" & eligible for depreciation U/s.32(l)(ii) of the Income Tax Act, 1961. A photocopy of the Judgment is enclosed at Page No.233-242 of the P /B-VOL-II.

It will be pertinent to take note of this relevant portion of the judgement:

"In other words, these are intangible assets by , which either the permission to carry on the business or manufacture is received or are used for the manufacture or the sale of the products manufactured. Such intangible assets directly facilitate the profit earning activity. On the other hand, the tenancy rights have no significance whatsoever either with a right to manufacture or actual manufacture of the products or their sale carrying brand name or logo etc. Tenancy rights simply provide a place at which manufacturing or administrative activity is perused. "

It is crystal clear that this decision is in respect of "Tenancy Right" only and can not be applied to present case as the assessee company has acquired Commercial Asset i.e. minerals beneath the land for a fixed

period on payment of onetime premium and lease rental annually. A photocopy of the Judgment is enclosed at Page No.170-172 of the P/B-VOL-II.

2.12 The assessee company do here by place reliance on the following judgments which are squarely applicable to the case:

2.13.1. The Hon'ble High Court of Delhi in case of Areva T&D India Ltd vs. DCIT (2012) 345 ITR 421 held that-

Applying the principle of ejusdem generis, as specified the interpreting the expression "business or commercial rights of similar nature" specified in s 32(1)(ii) of the Act, it is seen that such rights need not answer the description of 'knowhow, patents, trademarks, licenses. of franchises' but must be of similar nature as the specified assets. On a perusal of the meaning of the categories of specific intangible assets referred in s 32(1)(ii) of the Act preceding the term 'business or commercial rights of similar nature", it is seen that the aforesaid intangible assets are not of the same kind and are clearly distinct from one another. The fact that after the specified intangible assets the words "business or commercial rights of similar nature" have been additionally used, clearly demonstrated that the Legislature did not intend to provide for depreciation only in respect of specified intangible assets but also to other categories of intangible assets, which were neither feasible nor possible to exhaustively enumerate. In the circumstances, the nature of "business or commercial rights" cannot be restricted to only the

aforesaid six categories of assets; viz, knowhow, patents, trademarks, copyrights, licenses or franchises.

The nature of "business or commercial rights" can be of the same genus in which all the aforesaid six assets fall. All the above fall in the genus of intangible assets, viz, business claims; business information; business records; contracts; employees; and knowhow, are all assets, which are invaluable and result in carrying on the transmission and distribution . business by the assessee, which was hitherto being carried out by the transferor, without any interruption. The aforesaid intangible assets are, therefore, comparable to a licence to carry out the existing transmission and distribution business of the transferor.

Aforesaid intangible assets, the assessee would have had to commerce business from scratch and go through the gestation period whereas by acquiring the aforesaid business rights along with the tangible through the gestation periods whereas by acquiring the aforesaid business along with the tangible assets, the assessee got an up and running business. This view is fortified by the ratio of the decision of the Supreme Court in Techno Shares and Stocks Ltd. V. CIT, 327 ITR 323 wherein it was held that intangible assets owned by the assessee and used for the business purpose which enables the assessee to access the market and has an economic and money value is a "license" or "akin to a license" which is one of the items falling in s 32(1)(ii) of the Act and were accordingly eligible for depreciation under that Section. In view of the above, it is not necessary to decide the alternative submission made on behalf of the assessee that goodwill per se is eligible for depreciation under s32(1) (ii) of the Act. The substantial question of law is decided in the affirmative and this appeal is allowed in favour of the assessee and the against the Revenue and the impugned order is set aside.

A photocopy of the Judgment is enclosed at Page No.179-209 of the P/B-VOl-II.

2.13.2 CIT Vs. Ingersoll Rand International Ltd. (2014) 227 Taxman 176 (Kar.) (HC) (Magz.). In this case the payment of non compete fees was held to be an Intangible Asset for depreciation.

2.13.3 The Hon'ble ITAT, Delhi in the case of ONGC Videsh, vide Order dated 30.10.2009 held as under:

14. So far as claim of depreciation in case of intangible assets falling in the category of "any other business or commercial rights of similar nature" are concerned, as per our considered view, all the business or commercial rights are not by themselves assets eligible for depreciation, and that only those rights which are similar in nature with the know-how, patents, copyrights trademarks, licences etc. are eligible for claim of depreciation.

In view of principle of ejusdem generis, the expression "any other business or commercial rights" has to be read in the company of the

Page 7 ITA No. 5054/Del/2010 - A.Y. 2004-05 ITA No. 1140/Del/2011 - A.Y. 2005-06 c.o. NO.104/Del/2011 (In ITA 1140/Del/ll) A. Y. 2005-06 O.N.G.C Videsh Ltd., New Delhi preceding order .. This rule of interpretation makes an attempt to reconcile incompatibility between the specific and general words. The/first category of words like know-how, patents, copyright, etc., form a distinct genesis or category inasmuch as. all those items are specific and elucidated rights of business or commercial nature. In such circumstances, the expression 'any other business or commercial rights of similar nature' also must be in the same genesis or category with specific and elucidated identity of commercial or business nature. Therefore, in the light of the statutory provisions contained in section 32(1) (ii), the commercial rights of exploration of mineral oils, as acquired by the assessee falls under the expression of any other business or commercial rights of the nature similar to one of the category i.e. licenses as stipulated in Section 32(1)(ii). The commercial rights of exploration and licenses acquired by the assessee being in the nature of intangible assets are eligible for the claim of depreciation at the rate prescribed u/s 32(1)(ii) of the Act. The AO himself in his order had observed that as a result of entering into such an agreement i.e. PCA, the assessee company has been granted licenses by Russian government to explore and produce hydrocarbons in the agreement area. There is no dispute to the fact that assessee has incurred expenditure of Rs.1559. 09 crores for obtaining the right and license for exploration of oil. It is not possible to say that such expenditure was neither capital nor revenue in nature. If it is held to be capital, then it is obvious that what the assessee has acquired was a participating right which is in the nature of commercial right of carrying on of business of exploration and production of mineral oil.

It also cannot be said that the right so acquired was not an asset. If it is an asset being the right then it is obvious that same is commercial right, therefore in the nature of asset in the form of license. This right had been granted to the assessee by way of license and the assessee became owner of such right i.e. license to have an access and to carry on of business of exploration Page 8 ITA No. 5054/Del/2010 - A. Y. 2004-05 ITA No. 1140/Del/2011 - A. Y. 2005-06 CO. No. 104/Del/2011 (In ITA 1140/Del/ll) A.Y. 2005-06 O.N.G.C Videsh iid., New Delhi and. development of mineral oil.

Accordingly, as per our considered view such an asset fall within the category of asset falling u/s. 32(1)(ii) of the Act. Accordingly, we are inclined to agree with the learned senior counsel that the assessee had 15 acquired business and commercial right and license by making payment of Rs.1559.10 crores, which is in the nature of intangible assets entitled to claim of depreciation u/e 32(1)(ii) of the IT Act.

A photocopy of the Judgment is enclosed at Page No.ll0-119 of the P/B-VOl-I1I.

2.13.4 CIT v. Hindustan Coca Cola Beverages (P) Ltd., 331 ITR 192 (Del) where it is held that GOODWILL is an intangible asset . A photocopy of 'the judgment is enclosed at Page No.210-232 of the P/B-VOl-I1.

2.13.5 CIT Vs. MIS Bharti Teletech Ltd. (2015) 119 DTR 139 (Del.) (HC) ITA No.534 & 510/JP/2017. In this case the amount paid to acquire network and the facilities was held to be Intangible Asset. A photocopy of the judgment is enclosed at Page No.161-169 of the P/B-VOl-I1.

2.13.6 The Hon'ble High Court of Gujarat in case of DCIT vs. Sun Pharmaceuticals Ind. Ltd. (2010) 329 ITR 479 held that-

"By obtaining the land on lease the capital structure of the assessee did not undergo any change. The assessee only acquired a facility to carry on business profitably by paying nominal lease rent. In light of the aforesaid findings of fact there is no warrant for interference. Even the AO has recorded that the payment was for use of land. There is no Legal lnfirmity committed by the Tribunal. It is necessary to note that the Revenue was not even aggrieved by the aforesaid findings recorded by the Tribunal and had not even proposed a question on this issue when the tax appeal was filed as the memorandum of tax appeal reveals. Tribunal was therefore justified in holding that the lease rent paid by the assessee to GIDC was allowable as revenue expenditure. "

It is pertinent to mention here that Special Leave Petition filed against such order of Gujarat High court has been dismissed by the Hon'ble Supreme Court vide order dated 04.12.2009 reported at (2010) 325 ITR (St.) 6. Hence the order passed by Gujarat High Court attained finality.

Copy of the brders are enclosed at Page No.1-4 of P/B-VOl-lI.

2.14 last but not the least, that while delivering judgement in the case of the assessee for the earlier years this Hon'ble Tribunal has not considered its own decision in the case of East India Minerals Ltd. Vs. lCIT, Range-l, Sambalpur (ITA No.224/CTK/2012). The fact & circumstances of the case is squarely applicable to the present case. That this Hon' ble Tribunal vide its order dated 25.06.12 has held as under:

"We have heard the rival contentions of the parties and perused 'the material available on record. Considering the facts and circumstances of the case, we uphold the contention of the learned Counsel for the assessee for the simple reason that the denial of claim of depreciation has been made on misinterpretation of law and the applicability thereof.

Explanation to Section 32(1)(ii) leans in favour of the assessee to the extent that it is the actual action of put to use which entitles the assessee to claim depreciation. A straight line method of claiming the writing off of lease hold rights for the period of lease cannot be denied to the assessee for the simple reason it being intangible asset has been

written off which pertains to land being a intangible asset. It is nobody's case that the land either belonged to the lessee or to the Government. This simply indicates that a depletion of the land against the payment of premium it was eased has to be claimed after capitalization thereof by the assessee which is for the purpose of its main business. All expenses are incurred for the purpose of business and are incidental to the holding of rights were claimed u/s.32(1)(ii) being the license to carry out the mining therefore could not be denied insofar as the Government and the lessee are in control of the asset. The definition of depreciation therefore has been misconstrued for the purpose of allowing deduction by the Assessing Officer and the learned CIT(A) in holding a view on the promulgation of Section 32(1)(ii) with effect from the year 1998-99 which has been further amended w.e.f. Assessment Year 2003-04. In this view of the mater, we are inclined to hold that the assessee is entitled to depreciation as charged to the P&L account in accordance with its business exigencies.

A photocopy of the Judgment is enclosed at Page No.173-178 of the P/B-VOl-II.

2.15 That the aforesaid order dated 25/06/2012 of this Hon'ble Tribunal referred at Para-2.14 has been passed after the order was passed in the case of CIT Vs. Techno Shares L'd., 225 CTR 337 (Born) (09/09/2010) as relied upon by the ld. DR.

2.16 Lastly, as a regular process of development the holding company CIL is always in the process of improving the accounting practice in all the subsidiaries and accordingly the following issue was raised during this year :-

The company has acquired lease hold land and booked as a capital expenditure and showed it in as a fixed assets in the fixed assets schedule in accounts. One of the pre-condition of acquiring such land is that after completion of mining, such land has to be handed back to the State Govt. Reference is drawn to Sec. 44A and 44B of the Land Acquit ion Act, which prohibits transfer of such land or any part thereof by sale, mortgage etc. Hence the company doesn't have any right over these land except for the mining rights. Therefore it was opined that this needs to be shown as Mining Rights under the intangible assets.

Accordingly it was decided that so far the disclosure of the land other than "Free hold" land is concerned, committee is of the opinion that the classification of land acquired under CBA and LA either on lease or for fixed tenure and presently shown under lease hold land be changed and disclosed as "Land-others" with a foot note (reference) below Note 10. The existing accounting policy on amortization of the land will however continue.

Note to be inserted below Note 10:- Land - others also includes Land acquired under Coal Bearing Areas Act, 1957 and Land Acquisition Act 1894.

The above change in presentation of accounts in respect to leasehold land also clarifies that such asset is Intangible asset.

2.17. Therefore, your honour is requested to kindly allow the claim of depreciation on lease hold land as mining rights u/s. 32 (1) (ii) of the IT. Act, 1961.

2.18. That the assessee has submitted additional grounds of Appeal vide its letter dated 12/07/2018; copy of which is enclosed herewith at Page No. 12-13. That without prejudice to our submission above the explanation in this regard is as under:

i. That as stated above the assessee is a subsidiary of Coal India Ltd. under the administrative control of Ministry of Coal, Government of India. The core objective of formation of the enterprise is to secure availability of coal to meet the demand of different., sector of the economy. Accordingly, the company is engaged in the mining of coal as per the guidelines/directions & policies formulated by the ministry and In compliance with different applicable Laws.

ii. That the ownership of the coal bearing land vest with the Government of India and only mining right is secured for a limited period upon payment of one time premium & yearly lease rentals. The ownership of land is never transferred and as a matter of fact the land has to be returned back after the expiry of lease period. The Terms of notification is attached herewith at Page No. 14 to 18 which clearly spells otherwise at para (4) as " The Government Company shall have no power to transfer the lands to any other persons without the prior approval of the Central Government" .That the company can do the mining activities/business if and only such premium is paid to the Government of India. Hence, it is crystal clear that the payment of premium is wholly & exclusively for the purpose of business and qualifies for deduction U/s.37(1) of the Income Tax Act, 1961.

iii. Therefore, it is prayed that the amount claimed as depreciation on the cost of leasehold land shall be allowed alternatively U/s.37(1) of the Income Tax Act, 1961 or any other section deem appropriate by the Hon' ble Bench.

3	***Valuation of closing stock of coal (due to impact of overburden removal expenditure)*** ***Page ref. of Asst. order:4-6*** ***Page ref.of CIT(A) orderL5-13***	***Rs.11840.00 lakhs***	***Grounds of Appeal No.3(2)***

3.1. That the Ld. AO has made the aforesaid addition on the ground that the expenditure on overburden removal is an operating expenditure and is a part of the cost of production. OBR is a regular process in extracting the coal as accepted by the A/R in his submission as stated above. Only after removal of OBR coal can be extracted. The nature of expenditure

on OBR is essentially a part of process of manufacturing/ production of coal. The rules and regulation of CIL may be binding on MCL the assessee but not for the other mineral exploring companies. As per the accounting principles& properties the plea taken by A/R of the assessee is not accepted and the expenditure on OBR is added to the value of closing stock accordingly.

3.2. in this regard it is submitted that the Ld.AO has failed to appreciate the fact that there is no change in the valuation of closing stock during the year under consideration. The assessee is following the same method of valuation consistently over the years.

3.3. At the outset Let us appreciate the provisions of section 145A which deals with the valuation of inventory:

Sec. 145A:

Notwithstanding anything to the contrary contained in section 145,-
(a) the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head "Profits and gains of business or profession" shall be-

(i) in accordance with the method of accounting regularly employed by the assessee; and

(ii) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation. .

Explanation. -For the purposes of this section, any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment.

(b) interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed tol be the income of the year in which it is received. '.

3.4. Plain reading of section 145A stipulates two conditions i.e.

the valuation of inventory should be in accordance with the method of accounting regularly employed by the assessee; and the valuation should be further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.

3.5. In the instant case the assessee has complied with both the conditions i.e. it has valued the inventory in accordance with the method

of accounting regularly employed as because there is no change in the method' of accounting during the year.

Further, the second condition has also been satisfied by including any tax, duty cess or fee to bring the goods to the place of its location.

And the ld. AO has not brought anything on record to establish that the assessee has violated the provision of section 145A.

3.6. It may be noted here that the addition was made by the ld. AO on this account in AY 2010-11 when there was a change in respect of valuation of inventories to the extent of expenditure relating to OBR. With regard to the change effected in FY 2009-10, it is submitted that based on 'Final recommendations of Uniform Accounting Committee, 2009-10' of Coal India Ltd. vide letter no. CIL/CGM(F)/31025/969 dated 31-03-2010 issued to all subsidiaries the method of calculation of cost per ton followed in the earlier years had been changed and a improved method of valuation had been followed during that year. A copy of such letter of CIL is enclosed at page. No. 19 to 23. .

3.7. In the earlier method OBR adjustment was used to be added as a item of cost while doing the valuation of stock but after a lot of deliberation on the matter and suggestion received from various stakeholders it was decided that as the OBR accounting is done separately, including the OBR adjustment in valuation of stock is having a double effect and therefore the OBR adjustment should be knocked off from the valuation of stock so as to present a better and more accurate result of the company.

3.8. This improved system is being consistently followed in all subsequent years. Moreover, there is no change in the method of valuation' of inventory during the year as the company continues to follow the 'Lower of cost or Net realizable value' method for valuation of inventories. Only an improved and more accurate method of ascertaining cost has been adopted during the year. It was taken as a misnomer as change in accounting policy in respect of method of valuation of inventories whereas this change was nothing but an inventory error on which the company was paying tax for all the past year.

3.9. It may also be noted here that till the assessment year 1997-98 assessee company was valuing its stock at 'Net Realizable Value' as the coal was regulated by Govt. of India and the sales price was assured.

3.10. Subsequently, under de-regulation regime it was felt that the method of 'lower of cost or net realizable value' is the most appropriate method of valuation of inventories and accordingly a change in accounting policy with respect to change in method of valuation was adopted in the AY 1997-98 and the same method is being followed consistently in all subsequent years till date.

3.11. As per the AS2 issued by ICAI, costs of inventories includes all costs, i.e. purchase costs, cost of conversion and other costs for putting the inventories to its original position and location. Conversion costs include all fixed and variable costs directly linked to production of finished goods. A portion of the OBR cost (OBR Adjustment Account) included in the closing inventory of coal violates the principles stipulated in the AS2 issued by ICAI .

3.12. That it will be pertinent to analyse the purpose, objective and other important requisites for valuation of stock.

a) General:
There is nothing in the Income Tax Law which indicates that' in computation of Profit and Gains of commercial concern the stock in trade at the start of the accounting period should be taken in and that amount of the stock in trade at the end of the period should be 'taken in. It would be utterly impossible to assess profit and gains mainly on statement of receipt and payment or on the basis of turnover. It is long been recognised that the right method of assessing profit and gains is to be taken into account the value of the stock in trade at the beginning, value of the stock in trade at the end, and put all the item in the computation. Thus, for the purpose of ascertaining profit and gains the ordinary principle of commercial accounting should be applied, so long as they did not conflict with any express provisions of the relevant statutes.

b) Objective of Stock Valuation:
The object of stock valuation is correct determination of the profit and gains resulting from a year's trading. It is true result of the trading activities of that year, that must be disclosed by books (CIT Vs British Paints India Ltd. (1991) 188 ITR 44 SC). One cannot arrive at the profit of the year without taking into account the value of the stock one has at the beginning of, and at the end of, the accounting year.

c) Source of Profit & Gains:
It was let down authoritatively by Supreme Court in the case of Chain Rup SampatramVs CIT (1953) 24 ITR 481 that the source of profits and gains of a business is indubitably the business and the place of there accrual is where the business is carried on. The Supreme Court emphasizes that it is a misconception to think that any profit "arises out of the valuation of closing stock" and sites of its arising or accrual is where the valuation is made." The valuation of unsold stock at the close of an accounting period is a necessary part of the process of determining the trading result of that period, and can in no sense be regarded as the "Source" of such profit.

d)· Method of Valuation:
Section 145(1) of the 1. T. Act, provides for computation of income from business in same method of accounting regularly followed by assessee which will of course include, the method of valuing closing stock, such as;

a. Cost price method;

b. Market price method/net selling value method;

c.. Cost or market price whichever is lower; .

d. First in and First out method;

e. Last in and First out method;

f. Direct cost and uncost method etc.

e) General Principle:

It would be reasonable that stock at the relevant period should be valued at cost price. But as a concession to the tax payer, it has long been accepted that where market value is less than cost price, the lower figure can be taken for the purpose of valuation. It is the assessee who is given the choice to value his stock and even though he is not regularly valuing his stock previously, he is entitled to adopt one of the method for the purposes of the assessment. It is entirely within the discretion of the assessee who is entitled to value closing stock of any accounting year either at cost price or market value, whichever is lower (Investment Ltd. Vs CIT. 1970 77 ITR 533 (SC). The principle underlying this is to provide result for the loss which the assessee is likely to incur during the period by giving option to adopt lower of the two value. The trader is protected from being taxed in respect of profit which he did not actually earned.

The consistent practice over a number of years by the assessee can be changed if it does not accord with the principle of Income Tax Law; but not if it fairly and reasonably reflect profit of assessee's business. Such a practice as ruled by Supreme Court in the case of Chain Rup Sampatram Vs. CIT. valuing stock at cost or market price whichever is lower is a sound principle to be followed in arriving at profit for the income tax purpose.

f) Assessee's option to change the method of accounting:

The assessee is at liberty to alter regular method which he has once employed. It was clearly held in the case of Ram Kumar Kedarnath Vs. CIT. Further, it is clearly held in CIT Vs Eastern Bengal Jute Trading Co. Ltd. IR 223 that there was no malafide in changing the method. Further, the new method was regularly followed. Thus, this change should not be casual for temporary gains for temporary purposes. It must be a bonafide change modified by business consideration (1987) 167 ITR 742(AII) New Vactoria Mills Co. Ltd. Vs. CIT TC IR 231.

The recognised method of accounting followed regularly and necessarily result in proper computation of the assessee's real income even if one regular method of accounting is substituted by another regular method, the same result will follow only in, because where the assessee change

his regular method of accounting by another method and does not follow the change regularly thereafter, it must be positive on the assessee to introduce successful change in his method of accounting to exclude item of income from being included in computation of his total income. Therefore, when the assessee changes his regular method of accounting to another regular method, the question of bonafide ties for little relevance only in the year where the change in the method of accounting is introduced for the first time, the change introduce is meant to be regularly followed or not, it is in this context only with the express good faith, bonafide, occur in the observation in Judicial presence; thus, where it is found that the assessee had change his regular method of accounting by recognised method and as followed later regularly thereafter, does not open to the revenue authority to go into the question of bonafide of the introduction and continuance of change (Sangh Wheat Product Ltd. Vs CIT IR 254). The bonafide of act have to be found of facts and such finding of facts must be specific. Further, it has been clearly held in the case of CIT vs Ganga Charitable Trust Fund IR 252 indeed a bonafide assessee should not be precluded from switching over to another system of accounting which he find convenient and which would reflect real Income.

g) Method must be applied consistently:

No particular basis of valuation is suitable for all types of business, but whatever the basis adopted, it should be applied consistently. If a method has been applied consistently in the past it should not be changed unless there is good reason for the change. (Duple I Motor Bodies Limited).Bonafide change in the basis of valuation of closing stock is permissible where new method is followed thereafter regularly.

h) Change in valuation of Closing stock only:

The value of closing stock of the preceding year must be the value of the opening stock of the next year. The Change, therefore, has to be effected by adopting the new method for valuing the closing stock which will, in its turn, become the value of the opening stock of the next year. If instead, a procedure is adopted for changing the value of the opening stock, it will lead to a chain reaction of changes in the sense that the closing value of the stock of the year preceding will also have to change; and correspondingly the value of the opening stock of that year and so 'On. Whenever there is a change in the method of valuation, there is bound to be some distortion in the calculation of profit in the year in which the change take place. But if the change is brought about bona fide and is in accordance with the normally accepted accounting practice, there is no reason why such a change should not be permitted. [Melmould Corporation Vs. CIT (1993) 111 CTR (Bom) 357: (1993) 202 ITR 789 (Bom): TC2PS.8]

3.13. It is settled law that change in method of valuation of stock (which is a part of the method of accounting of anassessee) is allowable in the eye of law if the change made is bonafide and the new method adopted

is a recognized method. Reference is also drawn in this regard to the under noted Court decisions enunciating such principle -

• CIT vs Corporation Bank Ltd. [174 ITR 616, 620 (Kar.)]

The Karnataka High Court has held, following the decision of the Supreme Court in Chainrup Sampatramvs CIT [24 ITR 481 (SC)], that irrespective of the basis adopted for valuation in earlier years, the assessee had the option to change the method of valuation of closing stock at cost or market price, whichever is lower, at any time, provided the change was bona fide and followed regularly thereafter.

• CIT VS Dalmia Cement (Bharat) Ltd. [215 ITR 441, 445 (Del.)]

In this decision, the Delhi High Court has laid down the proposition that it is well settled that irrespective of the basis adopted for valuation for earlier years, the assessee has an option to change the method of valuation of closing stock provided the change is bona fide and followed regularly thereafter.

• CIT vs National &Grindlays Bank Ltd. [145 ITR 457 (Cal.)]

• CIT vs National &Grindlays Bank Ltd. [202 ITR 559 (Cal.)]

In these cases, the Calcutta High Court upheld the case of the assessee for change in method of valuation of closing stock to market price or cost price whichever is lower as the change in method adopted was bona fide as well as the changed system was being followed subsequently thereafter.

• P. Balalkrishnanvs Travancore Cochin Chemicals Ltd. [243 ITR 2847 (Ker.)]

In this case, the assessee company changed its method of valuation of stock under direction of the Accountant General of Kerala. The Kerala High Court, while upholding the change in the method of accounting held that the assessee followed the same changed method of valuation in the subsequent years. Whenever there is a change in the method of valuation, there is bound to be some distortion in the calculation of profits in the year in which the change takes place. The change adopted by the assessee was bona fide and intended to be followed in future years and it was not adopted for one assessment year only but to be consistently followed for the subsequently years. Hence, the revised method of valuation of closing stock was rightly accepted by the Tribunal.

3.14. It is further submitted that where one recognized method of accounting is changed by an assessee and another recognized method of accounting is adopted and such changed method is followed consistently in the subsequent years, even the question of bona fide loses its

importance. Reference is drawn in this regard to the decision of the Calcutta High Court in Snow White Food Products Co. Ltd. vs. CIT (No.2) [141 ITR 861 (Cal.)]wherein the Calcutta High Court has held that a recognized method of accounting followed regularly would result necessarily in a proper computation of the assessee's real income.

Even if one regular method of accounting is substituted by another regular method, the same result will follow. Only in a case where the assessee changes his regular method of accounting by another method and does not follow the change regularly thereafter, it might be possible for the assessee by introducing successive changes in his method of accounting to exclude items of his income in the computation of ,his total income. Therefore, when an assessee changes his regular method of accounting by another regular method, the question of his bonafides have little relevance. Only in the year where a change in the method of accounting is introduced for the first time, it is to be examined by the Revenue Authorities whether the change introduced is meant to be regularly followed or not. Where it is found that an assessee has changed his regular method of accounting by another recognized method and has followed the latter method regularly, it is not open to the Revenue Authorities to go into the bona fides of the introduction and continuance of the change.

3.15. It is submitted that there cannot be any doubt about the bona fide 'for change in the method of valuation because such change is made to reflect a more accurate and correct state of affairs of the company by adjusting the OBR from valuation of stock and this has been directed by CIL for all the subsidiary companies.

3.16. It may further be noted that the assessee is a public sector undertaking and its accounts are audited and scrutinised by both the Statutory Auditor and the Comptroller and Auditor General of India (CAG). The change in method of valuation of stock adopted in FY 2009-10 was duly approved by both the Statutory Auditor and CAG.

3.17. Further, as aforesaid, the changed method of valuation has been followed by the appellant company consistently in subsequent years.

3.18. We may draw the attention of your honour to the decision of the Hon'ble ITAT, Nagpur in the case of South Eastern Coalfields Ltd. vs JCIT [260 ITR 1, 101-105 (AT) (Nag.)] which is a case of another subsidiary of CIL, wherein the Tribunal has upheld the change in method of valuation of stock undertaken by the company pursuant to the policy framed by CIL in respect of all its subsidiaries. In that case the Hon'ble Tribunal held that as the change in method of valuation was made upon modification/change in accounting policy approved by the Board of Directors of CIL and the said change was made applicable not only to the assessee company but also to other subsidiary of CIL, the Assessing Officer in fact has no reason to dispute the bona fide change made by the assessee company as per the resolution passed by the Board of Directors of the holding company. In this case, the Tribunal referred to

an unreported decision passed in case of Western Coalfields Ltd., another subsidiary of CIL, wherein the Tribunal had upheld the change in method of valuation consequent upon the decision of the Board of Directors of CIL.

3.19. In any event, following the decision of the Calcutta High Court in Snow White Food Products case (Supra) it is submitted that as the assessee company as well as all the subsidiaries of CIl have been consistently following the changed method of valuation of stock in ~II the subsequent years, the question of going into the issue of bona fide by the Revenue Authorities has become irrelevant.

3.20. It has been held by the Supreme Court in Investment Ltd. vs. CIT [77 ITR 533, 537-538 (SC)] that a tax payer is free to employ, for the purpose of his trade, his own method of keeping accounts and for that purpose to value his stock-in-trade either at cost or at market price. A method of accounting adopted by the trader consistently and regularly employed may be discarded, only if in the opinion of the taxing authorities, income of the trade cannot be properly deduced there from. The valuation of stock at cost is one of the recognized methods. No inference may therefore, arise from the employment by the method of valuing stock at cost (or market value whichever is lower).

3.21. Reference is also drawn to the decision of the Supreme Court in the case of Distributors (8aroda) P. Ltd. vs. UOI [155 ITR 120, 140. (SC)] wherein the Supreme Court observed that where a decision rendered previously is found to be erroneous, such decision can be overruled subsequently. The doctrine of stare decisis should not deter the Court from overruling an earlier decision, if it is satisfied that such decision is manifestly wrong or proceeds upon a mistaken assumption in regard to the existence or continuance of a statutory provision or is contrary to another decision of the Court. In this decision, the Supreme Court quoted the observation of Jackson J. in Massachusetts vs. United States (333 US 611) : "I see no reason why I should be consciously wrong today because I was unconsciously wrong yesterday" and of lord Denning in Ostime vs. Australian Mutual Provident Society [1961] AC 459, 480 : "The doctrine of precedent does not compel your lordships to follow the wrong path until you fall over the edge of the cliff"

3.22. The assessee also relies on the judgement given in the case Cl'T vs. Atu/ Products Ltd(2002) 125 Taxmann 727 (Guj.)-where it has been observed that if the method of stock valuation is changed by the assessee and if the change is bona fide, even if the taxable income is reduced on account of such change, it is not open to the revenue to add any amount in the taxable income of the assessee which is the resultant effect of the change in method of valuation, especially when the new method which was adopted has been continuously followed in subsequent years but the revenue has not objected to the changes in subsequent years.

3.23. It is a well settled principal decided in the case of Reform Flour Mills P Ltd vs. CIT [1978] 114ITR 227(Cal.) that section .145(1) does not postulate any agreement or contract regarding the method of accounting to be employed by a tax payer. This section also does not lay any embargo on him to alter his method of accounting. An assessee can change the method of accounting unilaterally in respect of a source of income.

3.24. That the Ld. AO has made the addition of Rs.11840 Lakhs without appreciating the fact that there is no change in the method of valuation of closing stock during the year.

3.25. That the company is consistently following same accounting policies for valuation of closing sock which is widely accepted for income tax purposes and by the Accounting Standard-2 issued by the Institute of Chartered Accountants of India. As the company is following the same method of valuation of closing stock consistently and there is no change in the method of valuation of closing stock during the year, there should 'not have been any addition on account of valuation of stock.

3.26. The matter has been set-aside by this Hon'ble Tribunal in the case of the assessee for the assessment years 2010-11 to 2014-15 vide its order dated 20/03/2018 (Para No.21 at Page NO.115). A photocopy of such order is placed at Page No.l0l to 165 of P/B- VOl-I.

3.27. In view of the aforesaid it is prayed before your honour to kindly delete the aforesaid addition and allow full relief to the assessee .

5.	***CMPDI Expenses***	***Rs.2029.00 Lakhs***	***Grounds of Appeal No.3(4)***
	Page ref.of Asst Order:6 Page ref. of CIT(A) order:21-23		

5.1 The Ld. AO has disallowed this expenditure without any definite finding or reason. He has simply mentioned that-

"The Assessee company simply refers to Section 37 of the I. TAct which allows any claim relating to business not covered under Section 30 to 36. The assessee company further gave only a general description of services provided by CMPDI without giving the details of any specific services received in lieu of which professional charges were paid to CMPDI. Mere deduction of TDS will not justify the expenses. Furthermore, department is in appeal against the order of Ld CIT(A) on this issue, Hence the Claim is disallowed and added to the income. "

5.2 In this regard it is submitted that CMPDIL (Central Mines Planning & Design Institute) is another subsidiary Company of Coal India Limited

having its head-quarter at Ranchi with regional Institutes in different locations in India. They are providing various services as per Memorandum-oF-understanding (MOU) entered with MCL. The services rendered by CMPDIL can be broadly segregates as Follows:

a) Geological Exploration & Drilling

b) Project Planning & Design;

c) Engineering Services;

d) Laboratory Services;

e) Environmental Services

F) Geometrics & Remote Sensing;

g) Ventilation & Gas survey in mines;

h) Controlled Blasting;

i) Performance evaluation of new explosives;

j) Mine capacity Assessment;

k)Mine Support Design, Rock Mass Rating (RMR);
I) Measurement of Coal and OBR etc

5.3. CMPDIL is providing different types of services out of which expenditure relating to the existing revenue mines such as Ventilation and Gas testing Survey in mines, Laboratory facilities, Studies for Environmental Impact Assessment (EIA) / Environmental Management Plan (EMP), Slope Stability and Soil Conservation Studies, Back-up Engineering Services, Rain water harvesting, Land use planning, Preparation of the tender specification, evaluation of bids, assistance in finalization of contracts etc relating to existing revenue mines are being booked as "CMPDIL Expenses".

5.4 That similar additions were made by the Ld. AO during the AYs 2010-11 to 2014-15, but the same were deleted by the Ld. CIT (Appeals).

5.5. In a very recent order dated 20.03.2018 Hon'ble ITAT Cuttack Bench, Cuttack in the case of appellant itself has dismissed the departmental appeal for the assessment years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 on this issue (Para No.99 at Page No.141). Copy of the order is enclosed at Page No. 101-165 of P/B- VOl - 1.

5.6. In view of the aforesaid it is prayed before your honour to allow the claim of the assessee in full.

5.	***Disallowance u/s.14A***	***Rs.576.90 Lakhs***	***Grounds of Appeal No.3(5)***
	Page ref.of Asst Order:6 Page ref. of CIT(A) order:21-23		

6.1. The Ld. AO has added Rs.576.90 Lakhs under section 14A towards expenditure incurred against earning Exempted income by resorting to Rule 80 to compute the amount of disallowance.

6.2. The details of Tax free income earned by the assessee during the year is given in Note No. 21- OTHER INCOME to the Financial Statements attached at Page 24 and the ledger copy of Dividends received on Mutual Fund is attached at Page 25 , the details of exempted income is given hereunder:

Particulars	*Amount (Rs.in lakhs)*
Interest on 8.5% tax free Bonds	*338.00*
Interest on IRFC tax free Bonds	*7072.00*
Dividend from Mutual Fund	*5498.00*
TOTAL	*12908.00*

In this regard it is respectfully submitted as under:

a. That the assessee has not incurred any expenditure in respect to exempted income during the accounting year 2014-15. The total exempted income for the year was Rs.129.08 crore out of which Rs.74.10 crore was interest earned on Tax Free Bonds and Rs.54.98 crore was dividend from Mutual Funds. In this regard it will be pertinent to take note of the following:

i. That no investment was made during the year in Tax Free Bonds.

Such investments were made long back and no expenditure was incurred on this account. The interest on such bonds are directly credited to the account of assessee through ECS. The details of investment in Tax Free Bonds are as under:

(Rs. In Crore)

Sl. No.	*Particulars*	*Amount of Investment as at 31/03/2015*	*Amount of Investment as at 31/03/2014*
1.	*7.55% Secured Non-Convertible IRFC Tax Free*	*200.00*	*200.00*
2.	*8% Secured Non-Convertible IRFC Bond Tax Free*	*108.75*	*108.75*
3.	*7.22% Secured Non-Convertible IRFC Bond Tax Free*	*499.95*	*499.95*
4.	*7.22% Secured Redeemable REC Bond Tax free*	*150.00*	*150.00*

It is crystal clear from the aforesaid details extracted from the Note-ll-Non Current Investment to the Audited Financial Statement that there was no fresh investment during the year. Hence, no expenditure was incurred during the year in respect of Tax Free interest of Rs.7410 Lakhs from such Bonds. The relevant page of Audited Financial Statement is enclosed at Page No. 26 .

ii. Similarly, there was a investment of Rs.42 crore only in Mutual Funds during the year 2014-15 i.e. Rs.22 crore in Cahra Robeco Liquid Fund & Union KBC. In case of other Mutual Funds namely SBI Premier Liquid Fund & UTI Money Market Fund the closing balance was reduced to 101 crore & 79 crore respectively from the opening balance of 277 crore & 373 crore respectively.

The details of investment and dividend there from is as under:

(Rs. In Crore)

SI. No	*Particulars*	*Amount of Investme nt as at 31/03/15*	*Amount of Investme nt as at 31/03/14*	*Increase during the FY 2014-15*	*Dividend during FY-2014-15*
1.	*Canra Robeco Liquid Fund*	*25*	*3*	*22*	*2.78*
2.	*SBI Premier Liquid Fund*	*101*	*277*	*-176*	*31.89*
3.	*UTI Money Market Fund*	*79*	*373*	*-294*	*20.19*
4.	*Union KBC*	*20*	*-*	*20*	*0.12*
	***Total** :*	***225***	***653***	***-428***	***54.98***

It may be appreciated from the aforesaid details extracted from the Note-14-Current Investment & Note-21-0ther Income to the Audited Financial Statement that out of total tax free dividend of Rs.54.98, Rs.52.08 crore (31.89+20.19) which is 94.74% pertains to existing mutual fund i.e. SBr Premier Liquid Fund & UTI Money Market Fund in which no investment was made during the year. The balance dividend of Rs.2.90 crare pertains to other mutual fund in which investment of Rs.42 crore was made during the year. Hence, no expenditure was incurred during the year in respect of Tax Free dividend of RS.54.98 crore from such Mutual Fund. The relevant page of Audited Financial Statement is enclosed at Page No. 27.

Moreover, the investment activity as a whole is miniscule one as compared to the core business activity as well as investment & revenue of the company. The cash department at the Head Quarters, Jagruti Vihar, Burla looking after the day to day payments & banking are also looking after this investment activities also . Hence, it may be appreciated that no administrative expenditure is being incurred for investment in assets generating tax free income.

6.3. In this regard it is submitted that the Ld. AO has resorted to Rule 80 without appreciating the provisions of section and without recording any reasons for applying Rule 80.

6.4. Let us analyse the provisions of section 14A of the Income Tax Act, 1961 along with rules 80. The provision of section 14A read as under:

Section 14A.

(1) For the purpose of the computing the total income under this chapter no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act. .

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act.

6.5. Sub section 2 of section 14A clearly speaks that-
The Assessing Officer shall may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

6.6. Sub-section (2) of section 14A does not enable the Assessing Officer to apply the method prescribed by rule 80 without determining in the first instance the correctness of the claim of the assessee, having regard to the accounts of the assessee. Sub-section (2) of section 14A mandated that it is only when having regard to the accounts of the assessee, the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to income which does not form part of the total income under the Act, that he can proceed to make a determination, under the Rules;

6.7. The satisfaction envisaged by sub-section (2) of section 14A is an objective satisfaction that has to be arrived at by the Assessing Officer having regard to the accounts of the assessee. The safeguard introduced by sub- section (2) of section 14A for a fair and reasonable exercise of power by the Assessing Officer, conditioned as it is by the requirement of an objective satisfaction, must, therefore, be scrupulously observed., An objective satisfaction contemplates a notice to the assessee, an opportunity to the assessee to place on record all the relevant facts including his accounts and recording of reasons by the Assessing Officer in the event that he comes to the conclusion that he is not satisfied with the claim of the assessee.

6.S. Further, Sub section 3 speaks of a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of total income.

6.9. Sub-section (2) and (3) of section 14A were inserted by an amendment brought about by the Finance Act of 2006 with effect from April 1, 2007. Under sub-section (2), the Assessing Officer is required to determine the amount of expenditure incurred by an assessee in relation to such income which does not form part of the total income under the Act in accordance with such method as may be prescribed. Sub-section (2) was inserted so as to provide a uniform method applicable where the Assessing Officer is not satisfied with the correctness of the claim of the assessee. Parliament has provided an adequate safeguard to the invocation of the power to determine the expenditure incurred in relation to the earning of non- taxable income by adoption of the prescribed method. The invocation of the power is made conditional on the objective satisfaction of the Assessing Officer in regard to the correctness of the claim of the assessee, having regard to the accounts of the assessee. These safeguards which are implicit in the requirements of fairness and fair procedure under article 14 must be observed by the Assessing Officer when he arrives at his satisfaction under sub-section (2) of section 14A.

6.10. However in the instant case the Ld. AO has not recorded any reason for applying Rule 80 and mechanically applied the rule and computed the expenditure as per method prescribed in said rule.

6.11. For the sake of discussion, let us also analyse the Rule 80 of the Income Tax Rules, 1962. The rule read as under:

Rule BD.

(1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with-

a) the correctness of the claim of expenditure made by the assessee; or

b) the claim made by the assessee that no expenditure has been incurred in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

6.12. Sub-rule(l) of rule 80 of the Income-tax Rules, 1962 has also incorporated the essential requirements of sub-sections (2) of section 14A before the Assessing Officer proceeds to apply the method prescribed under sub-rule(2).

6.13. In view of the aforesaid your honour may appreciate that the application of rule 80 resorted to by the Ld. AO is totally unjustified, unwarranted and bad in law, especially in view of the fact that the AO

has not recorded any dissatisfaction about the correctness of the accounts of the assessee and moreover the assessee is a PSU and its accounts are subject to audit- by various Govt. agencies including CAG of India.

6.14. That in the case of Principal commissioner of Income tax vs. India Gelatine and chemicals Itd.(2015) 376 ITR 0353 (Guj) the Honorable Gujarat high court has held that-

"AO made the disallowance under Section 14A of the Act on the ground that the assessee was not able to justify that the investments made in the shares and mutual funds amounting to Rs.21,14,07,850j- was made out of the interest free funds. However, it is required to be noted that both, the learned CIT(A) as well as the learned Tribunal have categorically found on the basis of the material on record that as such the assessee was having interest free funds out of which the investment was made. Therefore Tribunal has deleted the entire disallowance of Rs.12,06,934j- made by the AO under section 14A of the Act". .

The ratio of aforesaid judgment is squarely applicable to the appellant's case as the appellant is also not having any interest bearing fund and the entire investment is made out of funds available with the appellant. Copy of the judgment is enclosed at Page No.28-32.

6.15. It may be added here that the assessee has not incurred any expenditure for earning of exempted income, hence there should not be any disallowance u/s, 14A. This view is clearly uphold by Hon'ble High Court of Punjab & Haryana in the case of . CIT Vs. Hero Cycles Limited ITA No. 331 of 2009 (0 & M). Copy of the judgment is enclosed at Page No.33-3S.

6.16. That Hon'ble Bombay High Court in the case of COMMISSIONER OF INCOME TAX vs. HDFC BANK LTD. (2014) 366 ITR 505 (Bom) has held that "Where assessee's capital, profit reserves, surplus and current account deposits were higher than the investment in tax-free securities, it would have to be presumed that investment made by the Assessee would be out of the interest-free funds available with Assessee and no disallowance was warranted u/s 14A".

6.17. That similar disallowance was made during the A.V. 2012-13 and AY 2013-14. On appeal Ld. CIT(A) Cuttack has deleted the total addition in this respect and allowed full relief to the appellant and subsequently while adjudicating the Departmental Appeal in the matter for the A Year 2012-13 and 2013-14 your honour has set-aside with a direction to the AO for verifying the borrowings and others as given in Para 129 at Page No. 155 of PB-Vol. I.

6.18 That the assesee company's Shareholder's Funds i.e. Share Capital and Reserve & Surpluses was much more than the amount of investment as on 31/03/2014 as well as 31/03/2015. The details extracted from

the Annual Report & Accounts for the financial year 2014-15 already submitted with your honour are reproduced below:

(Rs.In crore)

Sl. No.	*FY ended on*	*Shareholder's Funds*	*Borrowings*	*Total Investment- (Non-Current +Current)*	*Investment in Assets generating Tax Free Income*
1.	*31/03/15*	*4477.57*	*6.90*	*1075.38* *247.70* *1323.08*	*1183.70*
2.	*31/03/14*	*5563.42*	*9.14*	*1098.07* *675.71* *1773.78*	*1611.70*

It is clear from the above details that the assessee company's Shareholder's Funds i.e. Share Capital and Reserve & Surpluses was much more than the amount of investment as on 31/03/2014 as well as 31/03/2015. ; which substantiate that investment generating tax free income were made out of interest free fund available with the company.

6.19. That the Hon'ble Apex Court vide its order dated 02/01/2019 in the case of Commissioner of Income Tax Vs. M/s. Reliance Industries Ltd. has made it ample clear that the provisions of section 14A will be attracted only if the assessee makes investment out of borrowed funds to earn exempt income .

The relevant portion of the judgement is reproduced below:

n Insofar as the first question is concerned, the issue raises a pure question of fact. The High Court has noted the finding of the Tribunal that the interest free funds available to the assessee were sufficient to meet its investment. Hence, it could be presumed that the investments were made from the interest free funds available with the assessee. The Tribunal has also followed its own order for Assessment Year 2002-03. In view of the above findings, we find no reason to interfere with the judgment of the High Court in regard to the first question. Accordingly, the appeals are dismissed in regard to the first question. "

A photocopy of such order is enclosed at Page No.243-248 of the P / B-VOL..II

As stated above investment generating tax free income were made out of interest free fund available with the company and in accordance with the above cited judgment of Hon' ble Apex Court, the provisions of section 14A of the Income Tax Act, 1961 is not applicable to the present case.

6.20. That That the Hon'ble High Court Of Gujrat in the case of Principal Commissioner of Income-tax-IV, Ahmedabad v. Sintex Industries Ltd. [2017] held that Where assessee had its surplus fund against which minor investment was made, no question of making any disallowance of expenditure in respect of interest and administrative expenses under section 14A would arise and therefore, the ,question of any estimation of expenditure in respect of interest and administrative expenses under rule 8D would also not arise. A photocopy of the judgment is enclosed herewith at Page No.36-43. .

That subsequently the Hon'ble Apex Court vide its order dated 29/03/2018 dismissed the special leave petition filed by the Income Tax Department against the above decision of Hon' ble High Court of Gujarat. A photocopy of the judgment is enclose herewith at Page No.44.

6.21. In view of the above submission and recent judgments of Hon'ble Supreme Court, it is prayed before your honour to kindly delete the addition made by Ld. AO.

7.	**Interest on Income Tax refund**	**Rs.1692.00 lakhs**	**Grounds of Appeal No.3(6)**

7.1 The Ld. AO has added the aforesaid sum on the ground that the assessee company could not offer any reasonable explanation for not including the said amount of Interest received in his total income.

7.2 In the aforesaid matter it is to be submitted that alleged amount of Rs.694.03 Cr, including interest u/s 244A RS.16.93 Cr, relevant to AY 2011-12, has been credited in the books of account under the head Income Tax paid under protest account. Due to the fact that as a result of Asst. Order u/s 143(3) for the said AY the assessee had paid a sum of Rs, 761.60 Cr. Including interest u/s 234B, 234C & 2340 of Rs.182.68 Cr. Being dissatisfied, the assessee preferred an Appeal before the appropriate authority and debited the amount to the Income Tax paid under protest account.

7.3 That as a continuous practice the company recognizes the interest on income tax refund, once the same is finalized and no dispute is pending. In this case a rectification petition was filed to rectify mistake apparent from the record with regard to the amount of refund and interest thereon which was rectified and interest amount was revised from Rs.16.92 crore to Rs.19.84 crore during the financial year 2018-19 and accordingly the same is accounted for as income-interest on income tax refund during the financial year 2018-19 relevant to Assessment Year 2019-20. A photocopy of such order is enclosed at Page No.4S-47. The interest income on income tax refund is included under the head "Other Income" at Note-Zf to the Audited Statement of Profit & Loss. A photocopy of Audited Statement of Profit & Loss, Note-25-"Other Income", Break-up of Interest Income & Ledger Copy of "Interest from Income Tax Authority are enclosed at Page No.48-52.

> *7,4 In view of the aforesaid it is prayed before your honour to kindly delete the addition.*
>
> *Therefore, it is prayed before your honour to kindly delete all the additions / disallowances made by the Ld. AO and allow the claim of the assessee in full.*
>
> *It is further requested that incase any adverse view is contemplated on any of the issues, the assessee may be given another opportunity to present its case with further evidences and explanation.*

In addition to the above written submissions, the ld. AR of the assessee filed paper book containing three volumes.

13. On the other hand, ld. DR relied on the order of lower authorities and further submitted that in respect of depreciation the lower authorities have rightly disallowed the claim of the assessee in regard to depreciation. Further in respect of valuation of closing stock, ld. DR submitted that the cost of removable overburden should be considered while verifying the closing stock of goods because it is an integrated part of the expenses for obtaining coals which was remained unsold during the year. Further in respect of CMPDIL expenses, the ld. AR of the assessee should submit the details with specific details of expenses incurred towards professional charges as paid to the CMPDIL expenses. It is not clear from the submissions of the assessee as to whether it is relevant to the incidental expenditure of the assessee or not. Ld.DR further submitted that in respect of disallowance u/s.14A of the Act the assessee has received exempt income, therefore, Section 14A of the Act directly hits the issue. The AO has rightly calculated as per rule 8D of

Income Tax Rules, 1962. The assessee could not establish that there was no any expenses have been incurred by the assessee towards earning of the exempt income. He further submitted in respect of interest on income tax refund, it is a nature of revenue income which must have been included while calculating the taxable income of the assessee. The interest on income tax refund is paid by the income tax department only when the assessee paid more than the tax to be paid and it is taxable only in the year of receipt. It is taxable under the head income from other sources in the year of receipt. It is not affected by the system of maintaining books of accounts.

14. After considering the rival submissions of both the sides and perusing the entire material available on record along with the paper book filed by the assessee, we observe from the grounds of appeal taken by the assessee that the ground No.3 relates to the merits of the case. Therefore, we are deciding ground No.3

15. **Ground No.1 : Depreciation on lease hold land**, we find that this issue is covered by decision of the Tribunal in assessee's own case for the previous assessment year i.e. A.Y.2014-2015 in ITA Nos.264/CTK/2017, order dated 20.03.2018, wherein the Tribunal has observed as under :-

> *27. The issue common to Ground No.3.4 for the assessment year 2010-11 and Ground No.3(2) for assessment year 2011-12 relates to addition made towards charges paid for lease hold land. Ground No.3(2) for the assessment year 2012-13, Ground No.3(1) for assessment year 2013-14*

and Ground No.3(1) for assessment year 2014-15 relates to depreciation on lease hold land. These grounds are inter-connected.

28. The Assessing Officer found that the assessee company has claimed Rs.2514.44 lakhs u/s.37(1) of the Act towards charge against leasehold land for lease period exhausted. Further, the assessee also claimed alternate clam of depreciation u/s.32(1)(ii) i.e. depreciation on intangible assets. The Assessing Officer did not accept the alternate claim of the assessee and made the addition.

29. On appeal, the CIT(A) following the decision dated 12.9.2011 of the Tribunal in assessee's own case in ITA No.226,227/CTK/2009, 456,457 & 458/CTK/2010 and No.50,51,52 & 53/CTK/2011 and also referring various judicial decisions on this issue, has confirmed the addition.

30. Bothe parties conceded that the above issues are covered by the decision of this Tribunal in assessee's own case for the assessment year 2008-09 in ITA No.73/CTK/2012 order dated 3.1.2018. The findings portions are as under:

> *"45. Ld D.R. objected to the admission of additional grounds on the ground that the grounds have to be dismissed as the lease hold rights are not eligible for depreciation u/s.32(1)(ii) of the Act considering it as intangible asset. He referred to the decision of Hon'ble High Court of Bombay in the case of CIT vs. Techno Shares Stocks Ltd., 225 CTR 337 (Bom), wherein, it has been held that the depreciation under section 32 is restricted to the tangible/intangible assets which are specifically enumerated therein and depreciation is not allowable on all tangible/intangible assets. He also referred to the decision of ITAT Mumbai Benches in the case of Dabur India ltd. vs ACIT, 159 TTJ 563 (Mumbai), wherein also, it was held that the tenancy rights cannot be construed as intangible assets falling within meaning Explanation to section 32(1) and, therefore, there is no question of allowing depreciation on said rights.*
>
> *46. We find that the assessee has raised these additional grounds as per the direction of Hon'ble High Court of Orissa, Cuttack in W.P (C) No.24 of 2013 and Misc. Case No.5716 of 2013 order dated 20.3.2013. In view of above, we admit these additional grounds for our consideration.*
>
> *47. On merits also, we find force in the submission of ld D.R. that the depreciation is not allowable u/s.32(1)(iii) of the Act in respect of intangible assets, which is supported by judicial pronouncements cited above. In view of above, we dismiss these grounds filed by the assessee."*

31. In view of above, we hold that the lease hold rights are not eligible for depreciation u/s.32(1)(ii) of the Act considering it as intangible rights and, accordingly, dismiss the ground of appeal of the assessee.

Respectfully following the above observations of the Tribunal, we dismiss this ground of appeal of the assessee.

16. Ground No.2: Valuation of closing stock of coal (due to impact of overburden removal expenditure). We find that this issue is covered by decision of the Tribunal in assessee's own case for the previous assessment year i.e. A.Y.2014-2015 in ITA Nos.264/CTK/2017, order dated 20.03.2018, wherein the Tribunal has observed as under :-

> *16. The second common issue relates to confirmation of addition of Rs.31475.28 lakhs for the assessment year 2010-2011, Rs.25778.15 lakhs for the assessment year 2011-12, Rs.32242.12 lakhs for the assessment year 2012-13, Rs.24010.50 lakhs for the assessment year 2013-14 and Rs.15912.00 lakhs for the assessment year 2014-15 due to change in valuation of closing stock and overburden removal adjustment debit/credit.*
>
> *17. The Assessing Officer found from the audit report that due to the change in method of valuation of closing stock as per uniform policy of Mah anad i Coa lf ield Lt yd., Coal India Limited, the holding company, the profit for the year has been decreased by Rs.314.75 lakhs. In the assessment proceedings, the assessee has filed explanations in respect of effect of change in valuation of closing stock of coal. This explanation has been referred at page 58 of the assessment order and the assessee has relied on the judicial decisions that the method of valuation necessitated in the current financial year and the method of valuation of closing stock, whereas the Assessing Officer has dealt on the provisions of section 145(2) of the Act and observed that the change in the method of valuation is not by the statute and in the earlier years also, the assessee has adopted the same by changing the valuation of closing stock.*
>
> *18. The CIT(A) having dealt on the submissions of the assessee and judicial decisions confirmed the addition made by the Assessing Officer.*
>
> *19. Before us, ld A.R. emphasised that the change in method of valuation is based on the final recommendation of Uniform Accounting Committee, 2009-10 of Coal India Limited vide letter No.CIL/CGM(F)/31025/969 dated 31.3.2010 issued to all subsidiaries. Therefore, the method of calculation of cost per ton followed in the earlier years has been changed and an improved method of valuation has been followed during the year under consideration. Ld A.R. referred to the objectives of stock valuation of inventories and method of valuation of inventories and judicial decisions to substantiate that the*

> *action of the Assessing officer in making the addition in respect of decrease in profit cannot be accepted.*
>
> *20. Ld D.R. relied on the orders of lower authorities.*
>
> *21. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. This dispute is interconnected with the method of valuation of closing stock. Valuation of closing stock has been changed due to Uniform Accounting Policy of Coal India Limited. We found that a reference made by the Assessing Officer on the audited accounts that Reduction in value of stock is due to overall adjustment is as per the Uniform Accounting Policy adopted by the Coal India Limited. Ld A.R. demonstrated before us with a copy of letter of Uniform Accounting Committee recommendation and supported with paper book. Accordingly, we consider it appropriate to restrict our view on the method of valuation of closing stock mine-wise and the valuation of closing stock of coal are interconnected and since we have discussed on the applicability of the provisions, facts and reasons for valuation of stock centre on the first disputed issue. Therefore, we remit this disputed issue to the file of the Assessing Officer for appropriate adjudication afresh and the ground of appeal of the assessee is allowed for statistical purposes. Hence, this issue for the assessment years 2010-11 to 2014-15 is restored to the file of the Assessing officer for fresh adjudication.*

Respectfully following the above observations of the Tribunal, we remit this issue to the file of AO for fresh adjudication. This ground of appeal of the assessee is allowed for statistical purposes.

17. **Ground No.3: CSR Expenses**: Ld. AR did not press this ground, accordingly, we dismiss this ground of assessee as not pressed.

18. **Ground No.4: CMPDIL Expenses:** We find that this issue is covered by decision of the Tribunal in assessee's own case for the previous assessment year i.e. A.Y.2014-2015 in ITA Nos.264/CTK/2017, order dated 20.03.2018, wherein the Tribunal has observed as under :-

> *96. The next issue is relating to deletion of Rs.337.89 lakhs, Rs.1255.42 lakhs, Rs.1913.00 lakhs, Rs.2656.00 lakhs and Rs.2288 lakhs for the assessment years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15, respectively towards CMPDIL expenses.*

97. The brief facts of the case are that the Assessing Officer has disallowed the claim of the assessee towards CMPDIL expenses for want of necessary details. Before the CIT(A), the assessee contended that the Assessing officer has never asked for any details but disallowed the expenditure without undertaking the subject. It was submitted that the CMPDIL (Central Mines Planning & Design Institute) is another subsidiary company of Coal India Limited having its head-quarter at Ranchi with Regional Institute in different locations in India. They are providing various services as per Memorandum of undertaking entered with MCL. The CIT(A) segregated the services by CMPDIL in the impugned order and deleted the addition made by the Assessing Officer stating that the assessee has furnished the required details as called for, which is evident from order sheet entry. Hence, the revenue is in appeal before us for all the assessment years under consideration.

98. After hearing the rival submissions and perusing the orders of lower authorities, we find that the expenditure is incurred towards services rendered by CMPDIL as per MOU between the assessee and CMPDIL. We also find that similar addition was made in the case of Northern Coalfields Mah anad i Coa lf ield Lt yd., Limited and the Jabalpur Bench of this Tribunal vide order dated 5.5.2015 in ITA No.18/Jab/2014 and ITA No.55/Jab/2014 for the assessment year 2010-11 has deleted the addition by observing as under:

> *"46. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.*
>
> *47. We have noted that these expenses have been treated as capital expenses by the Assessing Officer only on the ground of the 'enduring benefit in nature' which by implication suggests that it's a preparatory work for mine development but then what such an approach overlooks is that all the mines are revenue mines and the extraction of coal, on commercial basis, has already started in these cases. Therefore, Assessing Officer's observation to the effect that "extraction of coal is a long process and the nature of work done have an enduring benefit to the assessee" could have been relevant when coal extraction process had not started but that is not the case here. We have noted that the CMPDIL (i.e. Central Mine Planning & Design Institute), a subsidiary of the Coal India Limited, is admittedly providing technical support and services to the assessee it the mining operations. It conducts mine survey in the existing mines in order to ensure that the mining is carried out in the right direction and in the optimal manner. We have also noted that it is beyond and dispute and controversy that none of the mines of the assessee is a development mine, and, as such)' the expenses of this nature cannot said to be relating to preparatory work or of capital nature for that reason. When mining itself is an ongoing activity and the mines are in the nature of revenue mines, it is illogical to proceed on the basis that the expenditure I connection with such an ongoing mining process can be treated as capital in nature as in the nature of a preparatory activity. All the eleven mines of the assessee are revenue mines, and, therefore, any expenditure incurred by the assessee on its mines can only be in respect of the revenue mines only. The observations made by the CIT(A) to the effect that there is nothing to show that these expenses are incurred in*

> *respect of revenue mines, is, therefore, wholly unwarranted and it only shows his not applying the mind to the facts of the case. While the AO disallowed the expenses that it is capital expenditure in nature, the CIT(A) upheld it on the ground that there is no material to come to the conclusion that this expenditure pertains to revenue mines. The basis on which the CIT(A) upheld the disallowance is clearly wrong. We have also noted that in the earlier assessment years, this issue has been decided in favour of the assessee and matter rests there. We have also noted that this issue has been decided, in assessee's own case for the assessment year 2008-09, in favour of the assessee by a coordinate bench of this Tribunal. Such deviations from accepted past history of the case, as canvassed before us by the revenue authorities, are made only in exceptional situation and no such case has been successfully made out before us. In view of these discussions, as also bearing in mind entirety of the case, we deem it fit and proper to direct the AO to delete this disallowance of Rs.1973.98 lakhs as well. The assessee gets the relief accordingly."*
>
> *99. Respectfully following the judicial precedence and decision of the Co-ordinate Bench of this Tribunal, we uphold the findings of the CIT(A) in deleting the addition made for all the assessment years under consideration. Thus, this ground of appeal is dismissed.*

On careful perusal of the above observations of the Tribunal, we find that the CIT(A) has granted relief with regard to addition made by the AO on account of CMPDIL expenses, which has been approved by the Tribunal by holding as above. In the instant case, the CIT(A) has confirmed addition made by the AO. In our opinion, when the Tribunal has upheld the findings of the CIT(A) thereby deleting the addition made on account of CMPDIL expenses in the assessee's own case for the immediately previous assessment year as cited above, therefore, respectfully following the decision of the Tribunal, we direct the AO to delete the addition made under the head CMPDIL expenses. This ground of appeal of the assessee is allowed.

19. **Ground No5: Addition made u/s.14A of the Act.** We find that this issue is covered by decision of the Tribunal in assessee's own case

for the previous assessment year i.e. A.Y.2014-2015 in ITA No.268/CTK/2017, order dated 20.03.2018 and while deciding the appeal of Revenue, Tribunal has observed as under :-

> *"126. The next issue relates to deletion of disallowance u/s.14A of the Act of Rs.189.74 lakhs and Rs.516.59 lakhs towards for the assessment year 2012-13 and 2013-14, respectively.*
>
> *127. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the assessee had received tax free income of Rs.18.32 crores from interest on 8.5% tax free bonds, interest on IRFC bonds and dividend from mutual fund. The Assessing officer observed that the value of assets which yielded the above income was Rs.478.53 crores as on 31.3.2012 and the expenditure towards finance cost claimed by the assessee was Rs.5.38 crores and hence, the Assessing Officer resorted to Rule 8D and calculated the disallowance u/s.14A at Rs.1.897 crores. Similarly, in the assessment year, the Assessing Officer calculated the disallowance u/s.14A of the Act at Rs.5.1659 crores.*
>
> *128. On appeal, the CIT(A) directed the Assessing Officer to delete the addition made u/s.14A of the Act for both the assessment years under consideration.*
>
> *129. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. The Assessing Officer on perusal of audit report found that the amount of deduction inadmissible in terms of section 14A in respect of expenditure incurred in relation to income which does not form part of the total income, whereas the value of assets which yielded income and not includible in the total income and calculated the disallowance u/s.14A of the Act. On appeal, the CIT(A) directed the Assessing Officer to delete the addition. We notice that sub-section(1) of section 14A provides that for the purpose of computing total income under chapter IV of the Act, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. In the present case, the Assessing Officer has not given any reason for calculating the disallowance. The assessee submitted that there were no borrowings except very old for specific purposes. The CIT(A) in the order has also stated that the Assessing Officer has not verified whether the differential amount of the asset has come from any borrowing by the assessee or it is simply the investment from the reserve & surplus. We are of the substantive view and deem it proper to restore the issue back to the file of the Assessing Officer to verify whether the assessee has Mah anad i Coa lf ield Lt yd., borrowed money or surplus from reserve & surplus amount and redecide the issue afresh as per law and after giving opportunity of hearing to the assessee. This ground of appeal of*

the revenue is allowed for statistical purpose for the assessment year 2012-13 and 2013-14, respectively."

20. The coordinate bench of the Tribunal in the case of NALCO, ITA No.106/CTK/2018, for the A.Y.2014-2015, vide order dated 23.09.2019 while deciding the issue of addition made u/s.14A of the Act, has observed as under :-

"13. We find that this issue has been decided by the Tribunal in assessee's own case for the assessment year 2010-2011 in ITA No.211/CTK/2016 along with other connected appeals, order dated 29.06.2018 for the assessment year 2013-2014, wherein the Tribunal relying its earlier order dated 27.04.2018, passed in ITA No.352/CTK/2016 for the assessment year 2010-2011 along with other connected appeals has observed as under :-

22. From the above judicial decisions, we find that the Tribunal has restored the disputed issue to the file of AO for re-examination and re-verification and apply the provisions of Section 14A r.w.rule 8D and in the instant case, the issue being similar, we find that the AO has not complied with the mandatory requirement of Section 14A (2) of the Act read with Rule 8D (1) (a) of the Rules and we respectfully follow the above judicial decision of the Tribunal and remit the disputed issue to the file of AO for re-examination and verification and to decide the issue on merits after complying the mandatory requirement of the provisions of Section 14A of the Act and this ground of appeal is allowed for statistical purposes.

14. From the orders both the authorities below, we observe that the assessee is earning income under different heads, as mentioned above. During the year, the assessee has received dividend of Rs.110,068,076/- and claimed such income as exempt income. The assessee has only made disallowance at Rs.1,20,828/- u/s.14A to earn the exempt income. The Assessing Officer has applied section 14A read with Rule 8D and disallowed the expenditure as per formula provided under rule 8D. The assessee is stated to have made no fresh investments out of borrowed funds. The Assessing Officer appears to have calculated the disallowance as per Rule 8D(2)(iii) observing that administrative expenses cannot be denied to earn exempt income. We, however, find that the Assessing Officer has considered average total investment appearing on the first day and last day of the financial year, which in our opinion is not justified. These investments may also include such investments from which no exempt income would have been earned by the assessee. As is clear from the Rule itself, the average of only such investments have to be taken into account, which yielded the income not forming part of the total income. Therefore, the AO was required to work out the average of

> *such investment, the income from which did not form part of the total income instead of total value of investment. For this view, our stand is fortified by the decision of Special Bench in the case of ACIT vs. Vireet Investment (P) Ltd., (2017) 82 Taxman.com 415 (Delhi Trib.)(SB). None of the parties before us, however, have laid any details to examine as to which of the investments have yielded such income which did not form part of the total income. We, therefore, restore the matter back to the file of the Assessing Officer for calculating the disallowance u/s. 14A read with Rule 8D afresh, in the light of observations made in the body of this order above. Accordingly, ground No.4 is allowed for statistical purposes."*

Respectfully following the above observations of the Tribunal, we restore this issue to the file of AO for fresh adjudication. This ground of appeal of the assessee is allowed for statistical purposes.

21. **Ground No.6:Interest on Income Tax Refund** : We find that the AO made addition on the ground that the assessee company failed to offer any reasonable explanation for not including the amount of interest received during the year on income tax refund. In appeal, the CIT(A) observed that interest on income tax refund is clearly taxable and confirmed the addition holding as under :-

> ***12.3*** *I have considered the matter. It is a fact the assessee has received interest of Rs.16.92 crores on income tax refund for the AY 2011-12 and the same has not been offered for taxation in the return of income. The argument of the assessee is that since interest paid u/ss.234B, 234C &. 234D is not allowable as a deduction from taxable income, interest received should also not be taxed as income. This contention of the assessee is not at all acceptable. Interest on income tax refund is clearly taxable.* ***Hence, the addition of Rs.16.92 crores made by the AO is confirmed.***

On perusal of the above findings recorded by the CIT(A), we do not see any reason to interfere with the same and accordingly, we uphold the same and dismiss this ground of appeal of the assessee.

22. **Ground No.7: Short Credit of TDS** : We restore this issue to the file of AO and after due verification if the AO finds that the assessee is eligible for credit of TDS, it should be given, otherwise, the AO is free to pass order accordingly. This ground is allowed for statistical purposes.

23. Ground Nos.8 & 9 are general in nature, therefore, same do not require any adjudication.

24. Now, a procedural issue comes before us that though the hearing of the captioned appeal was concluded on 15.01.2020, however, this order is being pronounced much after the expiry of 90 days from the date of conclusion of hearing. We find that Rule 34(5) of the Income tax Appellate Tribunal Rules, 1962, which envisages the procedure for pronouncement orders, provides as follows:

> *34(5) The pronouncement may be in any of the following manners: -*
>
> *(a) The Bench may pronounce the order immediately upon the conclusion of hearing.*
>
> *(b) in case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date of pronouncement.*
>
> *(c) In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board.*

As such, "ordinarily", the order on an appeal should be pronounced by the Bench within no more than 90 days from the date of concluding the

hearing. It is, however, important to note that the expression "ordinarily" has been used in the said rule itself. This rule was inserted as a result of directions of Hon'ble High Court in the case of Shivsagar Veg Restaurant vs ACIT (2009) 319 ITR 433 (Bom), wherein, it was, *inter alia*, observed as under:

> *"We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile (emphasis, by underlining, supplied by us now),all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment".*

In the rules so framed, as a result of these directions, the expression "ordinarily" has been inserted in the requirement to pronounce the order within a period of 90days. The question then arises whether the passing of this order, beyond ninety days, was necessitated by any "extraordinary" circumstances.

25. We also find that the aforesaid issue has been answered by a coordinate Bench of the Tribunal viz; ITAT, Mumbai 'F' Bench in DCIT, Central Circle-3(2), Mumbai vs JSW Limited & ors (ITA No.6264/Mum/18 dated 14.5.2020, wherein, it was observed as under:

> *" 9. Let us in this light revert to the prevailing situation in the country. On 24th March,2020, Hon'ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent the spread of Covid 19 epidemic, and this lockdown was extended from time to time. As a matter of fact, even before this formal nationwide lockdown, the functioning of the Income Tax Appellate Tribunal at Mumbai was*

severely restricted on account of lockdown by the Maharashtra Government, and on account of strict enforcement of health advisories with a view of checking spread of Covid 19. The epidemic situation in Mumbai being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial wok all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon'ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated 6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also afew more days prior to, and after, the lockdown by observing that "In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown". Hon'ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, "It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly", and also observed that "arrangement continued by an order dated 26th March 2020 till 30th April 2020 shall continue further till 15th June2020". It has been an unprecedented situation not only in India but all over the world. Government of India has, vide notification dated 19th February 2020, taken the stand that, the coronavirus "should be considered a case of natural calamity and FMC (i.e. force majeure clause) maybe invoked, wherever considered appropriate, following the due procedure...". The term 'force majeure' has been defined in Black's Law Dictionary, as 'an event or effect that can be neither anticipated nor controlled' When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an "ordinary" period.

10. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. The interpretation so assigned by us is not only inconsonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery

system. Undoubtedly, in the case of Otters Club Vs DIT [(2017) 392 ITR 244 (Bom)], Hon'ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon'ble Bombay High Court itself has, vide judgment dated 15th April2020, held that directed "while calculating the time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly". The extraordinary steps taken suo motu by Hon'ble jurisdictional High Court and Hon'ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words" ordinarily", in the light of the above analysis of the legal position, the period during which lockout was in force is to excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case. "

26. Respectfully following the above judicial decision of Hon'ble Bombay High Court and the Tribunal, we are of the considered view that the period during which the lockdown was in force shall stand excluded for the purpose of working out the time limit for pronouncement of orders, as envisaged in Rule 34(5) of the Appellate Tribunal Rules, 1963."

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

Order pronounced in the open court on 05/06/2020.

Sd/-	**Sd/-**
(C.M.GARG)	**(L.P.SAHU)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

कटक Cuttack; दिनांक Dated 05/06/2020

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
   Mahanadi Coalfields Ltd.,
   Jagriti Vihar, Burla, Sambalpur
2. प्रत्यर्थी / The Respondent-
   DCIT, Circle-2(1), Sambalpur
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(**Senior Private Secretary**)
आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack