

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Kolkata Bench, Kolkata**  
**(Bench – “C”)**

**BEFORE SHRI ABY. T. VARKEY, JUDICIAL MEMBER AND**  
**SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

I.T.A. No.872/Kol/2014  
Assessment year 2008-09

Coal India Ltd. [PAN : AABCC3929J] (Appellant)	-Vs-	D.C.I.T, Cir – 5, Kolkata  (Respondent)
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For the Appellant	Shri Akash Mansinka & Vivek Ruia, AR
For the Respondent	Shri Goulen Hangshing, AR.
<b>Date of Hearing</b>	25.05.2017
<b>Date of Pronouncement</b>	07.06.2017

**ORDER**

Per M. BALAGANESH, AM

This appeal by assessee is arising out of order of CIT(A)-VI, Kolkata vide Appeal No.135/13-14/CIT(A)-VI/Cir-5/Kol dated 12.02.2014 against the order of the assessment framed by D.C.I.T., Cir-5, Kolkata under Section 147/143(3) of the Income Tax Act for Assessment Year 2008-09 vide his order dated 25.03.2013.

2. The first issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in confirming the addition made by the Ld. AO on account of interest of

Rs.6305.24 Lakhs earned on amount contributed by subsidiaries towards the shifting and rehabilitation fund. In this regard, a small historic background of the issue under consideration would be pertinent:

*“Mining areas in Jharia and Raniganj coal fields, within the lease hold of Bharat Coking Coal Limited are faced with problems of Fire and subsidence due to the century old history of mining in these coal fields. These problems have been receiving attention of all concerned from time to time and the mitigation measures have been taken on case to case basis at different times.*

*The problem of danger of subsidence of surface land over mine workings standing on small stocks vis-à-vis danger to habitations have attracted the attention of authorities concerned technical organizations and institutions from time to time. MMGI of India formed the first subsidence committee in 1922. The second subsidence committee was formed by the same institute, which submitted its report in 1937, recommending remedial measures to minimize the danger due to mine subsidence. A few more committees were set up to examine the problem and areas where danger due to subsidence was apparent. One such committee was "Baraka Subsidence Committee in 1957", which submitted its report on the danger subsidence of G.T Road and residential building in Barakar town. In 1953 two separate reports were submitted by the erstwhile NCDC entitled "Fire, Subsidence and Problems relating to Mine Workings in Underground ". In 1964, Director, CMRS, Dhanbad submitted a report entitled "Report on the Study of Coal Fires, subsidence and Problems Relating to Mine Workings."*

*The Govt. of India, Ministry of Energy (Department of Coal), constituted a committee under the Chairmanship of Mr. S.P. Gugnani, Joint Secretary, Dept. of Coal on 5th January, 1976, to examine the whole question of safety in the nationalized coal mines. The Committee (Gugnani Committee - 1976) also decided to examine the question of safety of surface dwellers arising out of underground workings. The committee constituted a sub-committee with Sri S. Bagchi as convenor on 11.03.76 to make an in-depth study of the problems of subsidence and fire in coal mining areas and suggest solutions for the same. The committee submitted a report in 1979. The committee observed that the gigantic and multifarious subsidence problems in Jharia Coalfield was caused due to existence of old workings with full height extraction and wide galleries, multi-seam and multi-section development under shallow depths, existence of developed seams under extracted lower seam with stowing etc. There are many towns, villages, rivers, jores, roads, railway line etc., in Jharia Coalfield which are standing over small pillars, stocks reported to be water logged. If, by any chance, this water drains away it may cause subsidence. In addition, fire is also active in some areas, causing danger to*

*the surface structure. In many mines, size of pillars, which were left below the surface structures as a protective measure, is not known because of non-availability of off-set plans of abandoned workings. The committee recommended the following eight (8) main measures to control danger due to subsidence depending upon conditions prevailing in individual mines of BCCL.*

- a. Vacating and / or dismantling the surface structures over the goaved out or unstable workings - 30 collieries.*
- b. Stabilisation of underground workings by packing or with suitable support system – 45 collieries.*
- c. Division of road, railway line, jore etc. and shifting of buildings and other infrastructures from unstable workings - 8 collieries.*
- d. Keeping the unstable workings under observation by measuring surface movement and assessing stability of workings by investigation -15 collieries.*
- e. Stopping further extension or extraction of mine workings or further construction of structure on the surface - 4 collieries.*
- f. Preparation, procurement and updating of mine plans to determine the extent of instability- 4 collieries.*
- g. Controlling underground fire effectively to prevent surface subsidence and breathing of air through subsided area - 8 collieries.*
- h. Assessing the danger of inundation to the workings due to surface or underground collapse - 3 collieries.*

*The committee also recommended the formation of Area Development Authorities by the concerned State Governments by 1981 so that these could regulate the construction of structures over coal bearing areas to deal with the problems of subsidence on a permanent footing.*

*The long history of mining in these coal fields have led to increase in the number of sites prone to danger of safety due to fire and subsidence. Recurrent problems of fire and subsidence in these two coal fields and their spurt in 1996 required identification of subsidence and fire prone areas so that measures could be taken to tackle them. CMRI was engaged by BCCL for identification of such inhabited areas within the leasehold of BCCL. Subsequently, DGMS also identified a number of inhabited areas, which require attention due to problems of fire and subsidence.*

*It has been felt right from the beginning of this decade that a comprehensive action plan needs to be prepared for dealing with the problems of fire and subsidence in these two*

coalfields. As a recourse to this, a project entitled "Jharia Mine Fire Control Technical Assistance Project" was funded by the World Bank under the Development Credit Agreement in April 1993. M/s. GAI/MET-CHEM Joint Venture, USA/ Canada were engaged for "Development of Fire Fighting Programme in JCF" (a part of the total project, the other part being preparation of Environmental management Plan for JCF). The consultants submitted their study report in 1996, identifying a number of fire projects with their estimated capital requirement.

In December 1996, Govt. of India constituted a high Power Committee under the Chairmanship of Secretary, Ministry of Coal with other members from the Govt. of Bihar & West Bengal, Planning Commission, DGMS, Ministry of labour, Chairman CIL, CMDs of ECL, BCCL& CMPDI with director(Tech), Ministry of Coal as member Secretary to review the problems of fire & subsidence in Jharia and Raniganj coal fields and suggest measures to deal with problems of existing habitation on subsidence/ fire prone areas. The Committee was also asked to suggest areas for resettlement mechanism for evacuation and resettlement of affected population and Institutional arrangement to prevent new habitation in fire and subsidence prone areas. Subsequently, Ministry of Coal directed CMDI to study in depth problems of subsidence and fire in BCCL and ECL, and submit its report. As the fire problem was already studied under World Bank funding, two separate projects relating to subsidence and rehabilitation problems were funded by Ministry of Coal, under Coal S&T Grant as EMSC projects. The projects were as follows:

<b>SL No.</b>	<b>Name of the Project</b>	<b>Sanctioned Capital</b>
1	Generation of data and identification of subsidence prone areas and its segregation into controllable and uncontrollable areas in the lease hold of BCCL (Phase-I)	Rs. 25.84 lakhs
2	Technological Measures for control of subsidence where feasible, assessment of evacuation and resettlement needs where subsidence control is not feasible and assessment of fund requirement for both in the leasehold of BCCL (Phase-II)	Rs. 48.33 lakhs

The study in respect of the first project as mentioned above (Phase - I) was completed in February April / August '98 and the report submitted in three volumes. The second project as mentioned above (Phase - II) has been prepared in two parts, one dealing with the technological measures for control of subsidence where feasible and the other dealing with rehabilitation and re-settlement needs for the areas where subsidence control is not feasible. These reports were submitted in January 1999.

*The Standing Sub-committee of SSRC on Environment and Ecology directed CMPDI in its XVIth meeting held at CIL, Calcutta on 30.06.98 to prepare a Master Plan for dealing with the problems of fire, subsidence and rehabilitation in the leasehold of BCCL, considering the fire control measures areas to be stabilised, areas requiring rehabilitation including the phased requirement of funds for the same.*

*Accordingly, three separate Draft Master Plan for "Dealing with Fire Subsidence Control of "Inhabited Areas", and "Rehabilitation of Uncontrollable In-habited Areas" was prepared in the month of February 1999. The drafts were discussed at CMPDI (HQ), Ranchi on 12.03.1999 and BCCL on 16.03.1999. Thereafter, the final report entitled "Master Plan for dealing with fire Subsidence and Rehabilitation in the Leasehold of BCCL" submitted in March '99 incorporating the views expressed in the above meetings. The three reports mentioned above viz., World Bank funded report for "Development of Fire Fighting Programme in JCF" and coal S&T Grant funded EMSC projects, namely, "Generation of data and identification of subsidence prone areas and its segregation into controllable and uncontrollable areas in the leasehold of BCCL (Phase-I)" and Technological measures for control of subsidence where feasible, evacuation and resettlement needs where subsidence control is not feasible and assessment of fund requirement for both in the leasehold of BCCL (Phase-II)" formed the basis for preparation of the Master Plan prepared in 1999.*

2.1. In the light of the aforesaid historical background, during the previous year relevant to Assessment Year 2004-05, the appellant in its written submission stated as under:

*"...the Board of Directors of the company pursuant to a decision taken by the Ministry of Coal, Government of India has set up a rehabilitation fund for the purpose of shifting and rehabilitation, dealing with fire and stabilization of the areas under ECL and BCCL, being two subsidiaries of the company. According to the said decision, the Board of directors of the company has directed its subsidiaries (except ECL and BCCL) to contribute to the fund an amount equivalent to Rs. 6/- per tonne of coal realized by each of the said subsidiaries. The said fund is to be maintained by the company under the account head "Rehabilitation Fund" and is to be made available for rehabilitation of ECL and BCCL in accordance with the action plan suggested by the Ministry of Coal as stated above."*

3. The Ld. AO. treated the interest earned on such funds as taxable income in the hands of the assessee. It was argued that the addition has been framed without understanding the purpose of creation of fund/legal ownership of money lying with the

fund etc. It was specifically stated that in respect of 'shifting and rehabilitation funds', contribution by subsidiaries along with interest earned on such funds does not belong to the assessee. The assessee company is merely the custodian of such fund. It was also stated that in the earlier years, the Ld. AO had treated the contribution received from subsidiary as income from the assessee and the same was deleted by the Ld. CIT(A) for A.Y. 2007-08. It was also argued that it is well settled law that to treat any amount as an income, one should have the legal right to receive the same and also one will have all the authority to expend the money as per her/his wishes. In the instant case, the money (contribution and interest thereon) received by the company will be used as per the directions of the concerned Ministries and the Company had no control to use the money. The Company is merely acting as a custodian of such money and is required to release the same as per the directions of the concerned Ministries. However, the assets generated from such money cannot be treated as assets of the assessee company. Pending utilisation of the funds, the money was kept in the bank account which has resulted into interest income.

4. The ld. CIT(A), however, did not pay heed to the contentions of the assessee and confirmed the addition by observing as under:

*"This is also a recurring issue in the appellant's case and also came up in appeal no. 179/CIT(A)-VI/Wd-6(2)/2011-12 in the immediately preceding year i.e A.Y. 2009-10. In para No. 14 & 15 of his order dated 12.12.2012 my predecessor has discussed the contention made by the appellant in detail and has rejected the same, stating as under:-*

*14. I have carefully considered the observations of the Assessing Officer in the assessment order, and submissions of the appellant. As per appellant the Ministry of Coal, Government of India set up a rehabilitation fund for the*

*purpose of shifting and rehabilitation, dealing with fire and stabilisation of the areas under ECL and BCCL, being two subsidiaries of the company. The Board of Directors of the appellant company pursuant to this decision directed its subsidiaries (except ECL and BCCL) to contribute to the fund an amount equivalent to Rs 6/- per tonne of coal realised by each of the said subsidiaries. The said fund is to be maintained by the appellant under the account head "Rehabilitation Fund" and is to be made available for rehabilitation of ECL and BCCL in accordance with the action plan suggested by the Ministry of Coal. The appellant otherwise had no legal right to receive the money from its subsidiary companies & the money received by the company has to be used as per the direction of Coal Ministry and the company had no control to use this money. As per the appellant, the company is merely acting as a custodian of such money and is required to release the money as per the direction of concerned Ministry and therefore the sum of Rs 9723.28 lacs on account of interest cannot be treated as its income.*

*15. It is held that the Ministry of Coal, Government of India, New Delhi has instructed to create the funds not in its sovereign capacity but only as a controlling and guiding authority as is usually done by the apex body of the companies. The funds have been collected not as per or under any specific law or Act of the Government of India or a State Government approved by the legislature or any subordinate authority thereto but only as per the decision of the Board of Directors of the appellant. The amount and method of collecting funds vested with the appellant through the Board of Directors of the appellant. The fund is in the custody of the appellant who may have internal control system to spend it as per the instructions of the superior/guiding body. The income has been generated and no person is paying taxes although the money is not in the name of Govt. of India. The income earned has to be taxed as per the income tax law if otherwise exempted under the Income Tax Law. There is no specific exemption provided to the appellant on this income by Law. In the case-of the assessee, it has earned interest of Rs.9723.28 lakhs but the tax has neither been paid by the assessee nor by any other entity and the fund does not belong to Govt. of India as al sovereign person. Since the assessee is showing the fund in its balance sheet & final accounts and is custodian; since the fund has earned income it has to be offered for the purpose of tax under the Income Tax Act, 1961. The Interest earned on the "Rehabilitation Fund" and 'amounting to Rs.9723.28 lakhs is upheld as income of the appellant under the head "Income from Other Sources" since no taxes have been paid by the appellant on the receipt of amount of the rehabilitation fund, the rehabilitation fund is not the part of the business assets and the appellant has not treated-the receipt of rehabilitation fund as part of its business activity and has earned: only interest only form fixed deposit-of the rehabilitation fund amount. Therefore, the addition made by the Assessing-Officer on account of Interest earned on rehabilitation fund amounting to RS.9723.28 lakhs is upheld. This ground of appeal is dismissed.*

*During the year under the present appeal, the factual position remains the same and the contentions made by the appellant are also same. Therefore, I have no reason to differ from the considered view taken by me Ld.predecessor. The addition of Rs 9527.85 lacs is, accordingly, **confirmed.**”*

5. Aggrieved the assessee is in appeal in before us on the following grounds:

- 2(a) *That on the facts and circumstances of the case, the CIT (Appeals) has erred in confirming the addition made by the assessing officer on account of interest of Rs.6305.24 lakhs earned on amount contributed by subsidiaries towards the shifting and rehabilitation fund.*
- 2(b) *That the finding of the CIT(Appeals) is contrary to the facts and circumstances of the case.*

6. The Ld. AR stated that this issue is covered in favour of the assessee in its own case by the order of this tribunal in ITA No. 358/Kol/2013 (for AY 2009-10) ; ITA No. 252/Kol/2014 (for AY 2010-11) dated 5.4.2017. In response to this, the Ld. DR vehemently relied on the findings of the Ld. CIT(A).

7. We have heard the rival submissions. We find that the issue under dispute is squarely covered by the order of this tribunal supra wherein it was held as under:-

*15. We have heard the rival submissions. The facts stated hereinabove remained undisputed and hence the same are not re-iterated for the sake of brevity, with regard to the purpose of creation of 'shifting and rehabilitation funds' and collection of moneys by the assessee from its subsidiaries. We find that the assessee does not have any control over the utilisation of the said funds as per its own wish and is merely acting only as a custodian of the funds by retaining it in its books and earned interest income thereon. The entire fund, including interest is to be utilised in the manner directed/ordered by the concerned Ministries of the Government of India. Hence it could be safely concluded that the assessee has got no control in any manner, whatsoever, over the funds collected by it and interest income thereon. Hence we find lot of force in the arguments of the Ld. AR that the interest income cannot be construed as income of the assessee so as to fall under the ambit of taxation. We also find that COD had not authorised the Revenue to prefer further appeal before this Tribunal against the order of the Ld. CIT(A) for*

*deletion of the principal component of the amount received by the assessee from its subsidiaries towards 'shifting and rehabilitation fund', strengthens the stand of the assessee that the monies received does not belong to the assessee and the assessee is merely acting as a post office for collection and onward distribution of the same as per the directions of the Central Government. We find that similar issue had come up before this Tribunal in the case of DCIT, Circle-2, Kolkata vs. M/s West Bengal State Electricity Transmission Co. Ltd. in ITA No. 1822/Kol/2012 for A.Y. 2009-10, order dt. 30.10/2014, wherein the question raised before this Tribunal and the decision rendered thereon is as under:-*

*2. First issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made by Assessing Officer on account of interest income. For this, Revenue has raised following grounds No.1 and 2:-*

*“(1). Whether on the facts and the circumstances of the case, the Ld. CIT(A)-I, Kolkata has erred in both law and facts in observing that interest income did not belong to the assessee company ?*

*(2). Whether on the facts and the circumstances of the case, the Ld. CIT(A)-I, Kolkata has erred in both law and facts in deleting the addition on ac. Of interest Rs.3,46,97,166/- to the total income of the assessee without showing any reasons thereof.”*

*7. We have heard rival contentions and gone through the facts and circumstances of the case. We find from the facts of the case that this Interest of Rs.3,46,97,166/- did not belong to the assessee nor it was an income in the hands of SLDC and the said income should not be considered in the assessment of the assessee. It is a fact that the Income arising out of the Investments made out of the Balance of UI charges, actually belonged to WBERC which was a Commission formed by the Government and consequently such interest being the income of the Government, there should not arise any taxability thereof. However, the Assessing officer observed that according to him SLDC was merely the custodian of the account and allegedly it did not have any proprietary rights to the funds or incidental incomes generated there from. The Assessing Officer also stated that deposits had been made from the funds of the assessee and not of SLDC and the funds did not form parts of the account of the SLDC at all. The Assessing Officer went on to hold that the assessee's PAN had correctly been utilized for the maintenance of the Account. The Assessing Officer also stated that in his Order that the accounts have been opened in terms of the scheme formulated by the West Bengal Electricity Regulatory Commission (WBERC) and it was that body which directed the levy of UI charges as well as any other such payments. He further mentioned that since the funds had not been transferred to WBERC as such, the income incidental to the deposit should not form part of the income of WBERC. The Assessing Officer held that the funds deposited were allegedly unquestionably the funds of the assessee. On the basis of these observations, the Assessing Officer held that the assessee's accounting treatment was unacceptable to him and he added the Interest of Rs.3,46,97,166/-to the total*

*income of the assessee. But we find that the Interest of Rs.3,46,97,166 had arisen out of the investment made out of balance of UI charges which belonged to WBERC which was a Commission formed by the Government and consequently that interest income was actually an income in the hands of the Government. Since the interest income was an income of the Government, there could not arise any taxability thereof. It is also a fact that the relevant deposits had been made under the PAN of the assessee since at the relevant time no separate body had been created for the maintenance of the UI Accounts. We find that on 21-10-2011 a Trust under the name and style of 'SLDC-UI FUND-WBSETCL" was created in accordance with the WBERC Regulation for the purpose of management of the Fund created through collection of UI charges and interest earned from the investment made out of the said UI Chares and the Trust does not have the ownership on the moneys lying in the Fund and for all the times to come it is the WBERC which is the owner of the Fund of the Trust. We further find that neither any asset or any income earned out of the UI account could ever be considered as any income in the hands of the assessee. The moneys lying in the UI account always belonged to the Government, viz. under the name of WBERC. It was only for the convenience in the matter of making investment in deposits of UI balances that the PAN of the assessee had been utilized. However, just because of utilization of PAN resulting in showing the TDS in Form No.26AS, could not be considered as any alleged income in the hands of the assessee. The Assessing Officer was repeatedly requested by the assessee to go through the relevant documents explaining how UI charges were being recovered, utilisation of UI charges and investments required to be made. In view of the above facts of the case, we are of the considered view that this interest income of Rs.3,46,97,166/- belongs to WBERC and not of the assessee. Accordingly, CIT(A) has rightly deleted the addition, and we confirm the same. This issue of Revenue's appeal is dismissed.*

*In view of the aforesaid findings and respectfully following the judicial precedent relied upon hereinabove, we have no hesitation in directing the Ld. AO to delete the addition made in the sum of Rs.9723.28 Lakhs earned on account of interest on amount contributed by subsidiaries towards shifting and rehabilitation fund. Accordingly, the grounds no. 1(a) & 1(b) raised by the assessee are allowed.*

Respectfully following the aforesaid order of this tribunal in assessee's own case, we decide this issue in favour of the assessee. Accordingly the Grounds 2(a) and 2(b) raised by the assessee are allowed.

8. Since the issues are decided in favour of the assessee on merits, we do not deem it fit to address the technical objection raised by the assessee vide Grounds 1(a) and 1(b) on the validity of reassessment proceedings.

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

**Order pronounced in the Court on 07.06.2017.**

**Sd/-**

**[A.T.Varkey]**  
Judicial Member

**Dated :07.06.2017**  
**{RS SPS}**

**Sd/-**

**[M. Balaganesh]**  
Accountant Member

Copy of the order forwarded to:

1. Appellant/Assessee –M/s Coal India Ltd., Coal Bhawan, 10, N.S. Road, Kolkata-700001
2. Revenue – D.C.I.T, Kolkata, Cir-5, Kolkata.
3. CIT(A)- Kolkata.
4. CIT – , Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head of Office, DDO, Kolkata Benches, Kolkata.