आयकर अपीलीय अधीकरण, न्यायपीठ – "B" कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
(समक्ष)Before श्री ऐ. टी. वर्की, न्यायीक सदस्य **एवं/and** डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
[Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 1636/Kol/2014
Assessment Year: 2005-06

Assistant Commissioner of Income-tax, Circle-2, Asansol.	Vs.	Eastern Coalfields Ltd. (PAN: AAACE7590E)
Appellant		Respondent

&

I.T.A. No. 1654/Kol/2014
Assessment Year: 2006-07

Eastern Coalfields Ltd.	Vs.	Assistant Commissioner of Income-tax, Circle-2, Asansol.
Appellant		Respondent

&

I.T.A. No. 1637/Kol/2014
Assessment Year: 2006-07

Assistant Commissioner of Income-tax, Circle-2, Asansol.	Vs.	Eastern Coalfields Ltd. (PAN: AAACE7590E)
Appellant		Respondent

Date of Hearing	11.05.2017
Date of Pronouncement	26.07.2017
For the Revenue	Shri Niraj Kumar, CIT, DR
For the Assessee	Shri Arvind Agarwal, Advocate

ORDER

Per Shri A.T.Varkey, JM

The ITA No. 1636/Kol/2014 filed by revenue is against the order of Ld. CIT(A), Asansol dated 10.06.2014 for AY 2005-06. The Cross appeal Nos. 1654/Kol/2014 and 1637/Kol/2014 filed by assessee and revenue respectively are against the order of Ld. CIT(A), Asansol dated 18.06.2014 for AY 2006-07. Since all the appeals have been heard together, we dispose of the same by this consolidated order for the sake of convenience.

2. First we take up ITA No. 1636/Kol/2014 (Revenue's appeal). The grounds of appeal raised by the revenue are as under:

> *"1. That the Ld. CIT(A), Asansol has erred in law that the order of reassessment is bad in law since the prescribed procedure is not followed. Accordingly cancelled the order of re-assessment made by A.O. and deleting the addition of Rs.27,82,000/- made by the AO. on account of difference in crediting in P&L account under the head sale of scrap and plant machinery.*
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> *2. That the Ld. CIT(A), Asansol has erred in law that the order of reassessment is bad in law since the prescribed procedure is not followed. Accordingly cancelled the order of re-assessment made by A.O. and deleting the addition of Rs.42,30,01 ,000/- made by the A.O. u/s 35E.*
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> *3. That the Ld. CIT(A), Asansol has erred in law that the order of reassessment is bad in law since the prescribed procedure is not followed. Accordingly cancelled the order of re-assessment made by AO. and deleting the addition of Rs.1,71 ,40,000/- made by the AO on account of disallowance under the head royalty and cess."*

3. From a perusal of the above grounds it is clear that these are grounds on merit, however, we note that the Ld. CIT(A) has upheld the legal issue raised by the assessee to allow the appeal. The Ld. CIT(A) has allowed the appeal on the ground that the AO has not disposed of the objections filed by the assessee against the decision of the AO to reopen the assessment as directed by the Hon'ble Supreme Court of India in GKN Driveshaft (India) Ltd. Vs. ITO & Ors. (2003) 259 ITR 19 (SC). The Ld. CIT(A), therefore, has held that the reopening is bad in law since the procedure as mandated by the Hon'ble Supreme Court that assessee's objection in respect to reopening has to be disposed of by speaking order has not been followed and, therefore, the Ld. CIT(A) allowed the appeal of assessee. We note that in the grounds raised before us, which has been reproduced (supra) the department has not challenged the aforesaid decision of the Ld. CIT(A), therefore, the revenue does not have any grievance of the action of the Ld. CIT(A) in allowing the appeal on the legal issue. Therefore, in any way the action of the Ld. CIT(A) in allowing the appeal is not under challenge before us. So, the grounds raised by the revenue in any way is academic, therefore, we are not inclined to adjudicate the grounds above so, the appeal of revenue is dismissed.

4. Coming to ITA No. 1637/Kol/2014 (Revenue's appeal) and ITA No. 1654/Kol/2014 (Assessee's appeal). Both revenue and assessee have filed cross appeal against the order of

Ld. CIT(A). First, we will take up the revenue's appeal. Ground no.1 of revenue assails the decision of the Ld. CIT(A) in deleting the addition of Rs.57,44,000/- made by the AO on account of grant to sports and recreation.

5. Brief facts of the case are that the assessee is a Government of India Undertaking and is a 100% subsidiary of Coal India Ltd. It is engaged in the business of coal mining. At the outset itself, the Ld. Counsel for the assessee drew our attention to the Coordinate Bench decision of the Tribunal in assessee's own case for AYs 2003-04 to 2005-06 in ITA Nos. 462 to 464/Kol/2009 dated 27.07.2016 and submitted that the decision has already been covered in favour of the assessee. He drew our attention to page no. 12 of the said order of the Tribunal wherein we note that similar ground has been raised in para 19 of the order and the Tribunal taking note of the National Coal Wage Agreement – VII, which is Joint Bipartite Committee for the Coal Industry dated 15.07.2005, in para 10.8.01 wherein it was agreed by the assessee to carry out other welfare activities and taking note of this fact vide para 23 has held in favour of the assessee as under:

> *"23. A reading of the aforesaid clause clearly reveals that the Assessee was bound to provide as part of the conditions of service to its employees, sports and recreational facilities. The grant in question is in pursuance of the aforesaid agreement. Therefore, it cannot be said that the grants given by the Assessee are not for the purpose of business of the Assessee. As an employer provision of grants to provide better conditions of service will be part of the labour cost of the Assessee and it has to be allowed as deduction. As far as the plea of the revenue that the evidence of areawise expenses were not produced, the plea of the Assessee was that the coal area is scattered over a large area and that the Assessee being a Government of India Undertaking, its accounts are subject to review by CAG and no adverse comments have been made by the CAG. This plea in our view, in the facts and circumstances of the present case was enough to disregard the findings of the AO. Taking into consideration the overall facts and circumstances of the case, we are of the view that the deduction claimed had to be allowed. The same is directed to be allowed. The relevant grounds of appeal of the Assessee are allowed. "*

6. The Ld. DR could not point out any change in facts and law pertaining to this issue so respectfully following the decision of the Coordinate Bench of the Tribunal, supra, we uphold the order of the Ld. CIT(A) and dismiss this ground of appeal raised by the revenue.

7. Ground no. 2 of the revenue is against the action of the Ld. CIT(A) in deleting the addition of Rs.78,38,000/- made by the AO on account of environment expenses. At the outset itself, the Ld. AR brought to our notice that this issue also has been covered by the

decision of the Coordinate Bench in AY 2003-04 to 2005-06 in assessee's own case, supra, wherein the Tribunal has discussed this issue at para 17 para 25. We note that similar issue has been adjudicated by the Coordinate Bench at para 24 and the Tribunal has allowed the claim of the assessee vide para 27 by holding as under:

> *"27. We have considered the rival submissions. We have perused the relevant evidence filed by the Assessee to substantiate claim of the Assessee. For AY 2003-04, these details are available at page 25 of the PB. The revenue does not dispute the fact that these expenses are incidental to the business and are revenue in nature. Similar evidence has been produced in respect of the other two AYs also. The only dispute is with regard to evidence with regard to incurring of these expenses. The plea of the Assessee has been that these are statutory levies and the payments. It can be seen from the evidence on record that the payment relates to afforestation/tree plantation & Land reclamation and Payment of statutory duty for environment clearance like Water cess & consent fees to Pollution Control Board etc. As rightly contended by the learned AR such payments cannot be disputed on the ground that there was want of proper vouchers. But for payment of these statutory dues the Assessee could not have carried on its business. In the given circumstances of the case, we are of the view that the deduction in question ought to be allowed. We direct the same to be allowed as deduction. The relevant grounds of appeal of the assessee are allowed."*

8. The Ld. DR could not point out any change in facts and law pertaining to this issue so respectfully following the decision of the Coordinate Bench of the Tribunal, supra, we uphold the order of the Ld. CIT(A) and dismiss this ground of appeal raised by the revenue.

9. Ground no. 3 of the revenue is against the action of the Ld. CIT(A) deleting the addition of Rs.2,05,86,000/- made by the AO on account of hire charges of bus and ambulance.

10. At the outset itself, the Ld. AR brought to our notice that the coordinate bench of the Tribunal has decided this issue in assessee's own case for AYs 2003-04 to 2005-06, supra, at page 20 para 24. We note that the similar issue was adjudicated by the Tribunal and the Tribunal vide para 31 has held as under:

> *"31. After considering the rival submissions we are of the view that incurring of the expenses by the Assessee cannot be disputed and in fact has not been disputed by the revenue. There appears to be only a dispute with regard to the evidence of incurring of the expenses. The details to which our attention was drawn by the learned counsel for the assessee, in our view, requires to be verified by the AO. We therefore set aside the order of the CIT(A) on this issue and remand the question of incurring of these expenses to the AO for fresh consideration, with liberty to the Assessee to let in evidence to substantiate its claim for deduction of the aforesaid expenditure. For statistical purposes the relevant grounds of appeal are treated as allowed."*

11. Since the Tribunal has set aside the order or the Ld. CIT(A) and remanded the question of incurring these expenses to the AO for fresh consideration with the liberty to assessee to adduce evidence to substantiate its claim for deduction of the aforesaid expenditure, we also set aside the order of the Ld. CIT(A) and remand the matter back to the file of AO to be decided afresh as ordered in AY 2003-04 to 2005-06. This ground of appeal of revenue is allowed for statistical purposes.

12. Ground no. 4 is against the action of the Ld. CIT(A) deleting the addition of Rs.87,88,03,000/- made by AO on account of 'Cess Equalisation Reserve' under the head 'current liability'.

13. At the outset itself, the Ld. AR brought to our notice that this issue is also examined in AY 2003-04 to 2005-06 in assessee's own case, supra, wherein this issue has been discussed at page 25 para 37. The AO has treated the amount shown as advance and deposit from customers as fictitious and made the addition. This issue has been adjudicated by the Tribunal at page 32 para 42 wherein the issue was allowed in favour of the assessee and the Tribunal vide para 42 has held as under:

> *"42. From the rival contentions it can be seen that the sum in question is advance received from the customers. The first stand of the revenue is that this is a fictitious liability. We fail to see as to how a Government of India undertaking can create a fictitious liability in its books and for what purpose. As rightly contended by the learned counsel for the Assessee, the comments of the statutory auditor are only with regard to absence of partywise details and in the event of the liability of the Assessee not existing, the same should be treated as income. The conclusion of the revenue authorities that the liability in question is fictitious based on the audit report is therefore incorrect. On the question whether the liability of the Assessee ceased to exist or not and the provisions of Sec.41 (l) of the Act are attracted or not, we are of the view that the Assessee continues to show the liability in question as existing. There is no evidence brought on record to show that the Assessee's liability has ceased to exist. In such circumstances, we are of the view that the impugned addition deserves to be deleted and the same is hereby directed to be deleted"*

The Ld. DR could not point out any change in facts and law pertaining to this issue so respectfully following the decision of the Coordinate Bench of the Tribunal, supra, we uphold the order of the Ld. CIT(A) and dismiss this ground of appeal raised by the revenue.

14. Ground no. 5 of the revenue is against the action of the Ld. CIT(A) deleting the addition of Rs.2,31,29,000/- made by the AO on account of donation made to school and club.

15. At the outset itself, the Ld. AR brought to our notice the order of the Coordinate Bench of the Tribunal "A" Bench, Delhi in the case of Northern Coal Fields Ltd. Vs. ACIT in ITA Nos. 42 & 43/Jab/2002 for AYs 1997-98 & 1998-99 wherein a similar issue was raised and the Tribunal took note of the Coordinate Bench decision of the Nagpur Bench in South Eastern Coal Field Ltd. Vs. JCIT reported in 260 ITR (AT) 1 wherein it has held as under:

> *"After examining-the rival submissions, we are of the view that the point at issue need not detain us much since we have the benefit of the decision of the Nagpur Bench of the Tribunal the case of South Eastern Coalfields Ltd. Vs. Jt. CIT reported in (2002) 260 ITR (AT) page 1 (Nagpur). The judgment in fact is a lengthy one and spans numerous pages of the report in question. In perusing the judgment we find that the facts are absolutely identical and the Nagpur Bench by a detailed discussion on facts as also the case law, allowed the entire claim, observing in the process, at page 66, as under :-*
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> > *"As a matter of fact, the impugned expenditure on account of contribution to various schools was not incurred by the assessee-company voluntarily but the same was incurred to discharge its obligation in terms of a national Coal Wage Agreement entered with the employees and as the said agreement was enforceable in law under the Indian Contract Act as well as the Industrial Disputes Act, the assessee-company was under a statutory obligation to incur the said expenditure. As such, considering all the facts of the case and keeping in view the aforesaid decisions including the decision of this Bench in the assessee's own case, we hold that the expenditure incurred by the assessee- company on account of grants made to various schools was an admissible business expenditure and the learned Commissioner of Income-tax (Appeals) was not justified in confirming the disallowance made, by the Assessing Officer on this count, His impugned order on this issue is, therefore, reversed and the Assessing Officer is directed to allow the said expenditure."*
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> *48. The aforesaid observations of the Nagpur Bench cover every type of expenditure whether it be the reimbursement of tuition fee to the students or grants to the various institutions running the schools. The Nagpur Bench has noted as a fact that the contributions to the various schools were not incurred voluntarily, but the same was incurred to discharge the obligation, which fell on the assessee in terms of a National Coal Wage Agreement entered into with the employees' unions and such an agreement was enforceable under the law both under the Indian Contract Act as also the industrial Disputes Act. Following the decision of the Nagpur Bench of the Tribunal (supra) we set aside the order passed by the Commissioner of Income tax under section 263 and restore that of the assessing officer wherein the claim already stands allowed."*

16. We note that the expenses and contributions made to various schools were not incurred by the assessee voluntarily but the same was incurred to discharge the obligation

which prevailed on the assessee in terms of the National Coal Wage Agreement as submitted in clause –

10.6.0 sub-titled Educational Facilities & Workers' Education,

10.6.1(a) the existing practice of grant in aid to Private Committee Managed Schools will continue. The Welfare Board of the Subsidiary company will regulate payment of such grants/evolve norms for such payments.

(b) Where the workers come forward with their own contribution for the running of educational institutions, matching grants will be given by the Coal Companies.

In the light of the aforesaid agreement between the assessee and the National Coal Wage Agreement entered into with the employees' Union and as such the said agreement was enforceable under the law both the Indian Contract Act as well as under the Industrial Disputes Act, respectfully following the decision of the Nagpur Bench as well as Delhi bench, confirm the decision of the Ld. CIT(A) and dismiss this ground of appeal of the revenue.

17. Ground no. 6 is against the action of the Ld. CIT(A) deleting the addition of Rs.2,32,21,000/- made by the AO on account of disallowance u/s. 40(a)(ia) of the Act. The AO without any discussion in the assessment order disallowed the interest given to Coal India Ltd. u/s. 40(a)(ia) of the Act of Rs.2,32,21,000/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to allow the same by holding as under:

> *"7.1. Ld. A.0. has not discussed the issue in the assessment order but made the addition while computing the taxable income. The appellant submits that no explanation was called by the A. O. before resorting to disallowance of such interest. As per provisions contained in section 194A(3)(iii)(f) read with Notification No. S03489(dated: 22.10.1970), a company is not required to deduct tax at source from payment of interest to another company in which all the shares are held (whether singly or taken together) by Government or the Reserve Bank of India or a corporation owned by that Bank. All shares in Coal India Limited are held by Government of India at the relevant time before 10% disinvestment of paid up equity capital as per Press Release dated: 15. 06. 2010. In view of, prescribed provisions, no tax was required to be deducted at source by the assessee and therefore section 40(a)(ia) of The Income Tax Act, 1961 cannot be invoked for disallowance of interest paid to Coal India Limited in which 100% shares are held by Government of India."*
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> *The reasons adduced is correct. The appellant is not liable to deduct tax. Considering the explanation offered by the appellant, I direct Assessing Officer to delete the addition. The ground is allowed."*

Aggrieved by the aforesaid order of the Ld. CIT(A), the revenue is before us.

18. The order of the AO per se is fragile for violation of natural justice because the assessee was not put on notice as to this disallowance made against it. The Ld. CIT(A) has taken note of section 194A(3)(iii)(f) read with Notification No. S03489 dated 22.10.1970 and that a company is not required to deduct tax at source from payment of interest to another company in which all the shares are held (whether singly or taken together) by Government or the Reserve Bank of India or a corporation owned by that Bank. Since all shares in Coal India Ltd. are held by Government of India at the relevant assessment year before 10% disinvestment of paid up equity capital as per Press Release dated 15.06.2010. In view of prescribed provisions, no tax was required to be deducted at source by the assessee and, therefore, disallowance u/s. 40(a)(ia) of the Act was not warranted and, therefore, action of the Ld. CIT(A) is upheld and this ground of appeal of revenue is dismissed.

19. Coming to the assessee's appeal. The main grievance of the assessee is against the action of the Ld. CIT(A) in not admitting and adjudicating the additional grounds adduced before him, which are reproduced by the Ld. CIT(A) in para 20 of his impugned order. The assessee's grounds of appeal are as follows:

> *"1. For that in view of facts and circumstances of the case, the Ld. Commissioner of I.Tax (Appeals), Asansol erred in law as well as in facts in not admitting and adjudicating the additional grounds adduced before him merely on the as is of surmises.*
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> *2. For that, without prejudice to the above and in view of facts and circumstances of the case, the Ld. Commissioner of I.Tax (Appeals), ought to have adjudicated the Ground of Appeal before him in favour of the appellant, as decision of Hon'ble Apex court in the case of Goetze (India) vs. C.I.T. (SC) 284 ITR 323 relied on by him, does not bar the appellate authority to consider the issue even if no revised return have been filed.*
> *3. For that, in view of the facts and circumstances of the case, Ld. CIT (Appeal) ought to have reduced the assessed income by Rs. 2,88,74,000/- as Ld. A.O., while computing the income in the assessment order, has wrongly taken the Net Profit as per P&L Account at Rs.340,53,32,000/- instead of correct figure of Rs. 337,64,58,000/-, resulting in enhancement of profit by Rs. 288,74,000/-, by not considering expenses crystallized during the relevant previous year though related to earlier year booked as prior period adjustment.*
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> *4. For that, without prejudice to the above and in view of facts and circumstances of the case, the Ld. A.O. erred on facts as well as in law in not appreciating the well settled legal issue that a person shall be assessed on real income by not taking an benefit of the mistake, ignorance and/or inadvertence of the assessee, considering the fact that assessment is being completed u/s 143(3) of the I.T. Act, 1961 after scrutiny of all the materials on the record and/or calling further information as the assessing officer may deem fit and proper."*

20. We note that the assessee had raised this additional ground before the Ld. CIT(A). However, the Ld. CIT(A) was of the view that the issues concerned do not stem from the decision of the AO and the mistake has taken place at the stage of filing of return of income and the remedy lies only as per section 139(5) of the Act. So, according to him, the grounds are not admissible. The Ld. CIT(A) notes that through the additional ground the assessee claims for reduction of income by Rs.288.74 lacs and the Ld. CIT(A) notes that the said claim of the assessee is not made in the return of income and these claims are for the first time raised before the first appellate stage before him only. Taking note of the Hon'ble Supreme Court decision in Goetz India Ltd. Vs. CIT 284 ITR 323 (SC), the Ld. CIT(A) opined that any change in the return of income can be made only by way of revised return of income and not in any other manner and, therefore, he did not admit these grounds and declined to adjudicate the additional grounds. Aggrieved by the aforesaid order of the Ld. CIT(A) the assessee is before us. We note that the Ld. CIT(A) has declined to address/adjudicate the issues raised as additional grounds on the ground that the claim of the assessee for deduction does not stem from the order of the AO. According to him, the only remedy was to file revised return of income. Since the assessee has not done so, relying on the decision of the Hon'ble Supreme Court in Goetz India Ltd. (supra), he declined to admit the additional ground raised before him.

21. First of all we observe that though the Hon'ble Supreme Court has held that any claim other than what has been claimed in the return of income, and then the AO can adjudicate the same only if revised return of income is filed before him (AO). In Goetz India Ltd. (supra) case, the assessee sought to claim a deduction by way of a letter before the AO and the deduction was disallowed by the AO on the ground that there was no provision under the Act to make amendment in the return of income by modifying the return in the assessment stage without revising the return. This view of the AO was upheld by the Tribunal and by the Hon'ble Supreme Court. The Hon'ble Supreme court in Goetz India Ltd. (supra) observed as under:

"The decision in question is that the power of the Tribunal under section 254 of the Income-tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961."

22. From the aforesaid observation itself, it is clear that the decision in Goetz India Ltd., supra by the Hon'ble Supreme Court does not impinge on the power of the appellate authorities. Moreover, in S. R. Koshti Vs. CIT (2005) 276 ITR 165 (Guj), the Hon'ble Gujarat High Court has held, inter alia, that authorities under the Act are under an obligation to act in accordance with law. The Hon'ble High Court observes that tax can be collected only as provided under the Act and that if an assessee, under a mistake, misconception or on not being properly instructed, is over assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. In the light of the aforesaid decisions of the Constitutional courts, we are inclined to admit the additional ground raised before us and remit the matter back to the file of the Ld. CIT(A) to decide in accordance to law afresh the additional grounds which stands admitted after giving opportunity of being heard to the assessee.

23. In the result, ITA No. 1636/Kol/2014 (Revenue's appeal) is dismissed, ITA No. 1637/Kol/2014 (Revenue's appeal) is partly allowed for statistical purposes and ITA No. 1654/Kol/2014 (Assessee's appeal) is allowed for statistical purposes.

Order is pronounced in the open court on 26.07.2017

Sd/-	Sd/-
(Dr. A. L. Saini)	(Aby. T. Varkey)
Accountant Member	Judicial Member

Dated : 26th July, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ACIT, Cir-2, Asansol
2. Respondent – M/s. Eastern Coalfields Ltd., Sanctoria, Post Dishergarh, Dist. Burdwan, WB.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy, By order,

Sr. Pvt. Secretary