

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.5589/Del./2016
Assessment Year 2012-2013

ACIT, Central Circle-17 Room No.103, 1 st Floor, Hall No.1, ARA Centre, E- 2, Jhandewalan, New Delhi.	vs.,	M/s. Spectrum Coal & Power Ltd., 18, Rao Tula Ram Marg, Vasant Enclave, New Delhi PIN 110 015. PAN AADCS9860J
(Appellant)		(Respondent)

C.O.No.172/Del./2017

Arising out of

ITA.No.5589/Del./2016 - Assessment Year 2012-2013

M/s. Spectrum Coal & Power Ltd., 18, Rao Tula Ram Marg, Vasant Enclave, New Delhi PIN 110 015. PAN AADCS9860J	vs.,	ACIT, Central Circle-17 Room No.103, 1 st Floor, Hall No.1, ARA Centre, E- 2, Jhandewalan, New Delhi.
(Cross-Objector)		(Respondent)

For Revenue :	Ms. Rachna Singh, CIT-D.R.
For Cross Objector :	Shri S.K. Tulsian, Ms. Nisha Rachna & Shri Karan Advocates.

Date of Hearing :	29.11.2017
Date of Pronouncement :	30.11.2017

ORDER**PER BHAVNESH SAINI, J.M.**

The Departmental Appeal as well as Cross Objection by assessee-company are directed against the order of the Ld. CIT(A)-27, New Delhi, dated 08th August, 2016, for the A.Y. 2012-2013.

2. Briefly, the facts of the case are that a search and seizure operation and survey operation under section 132/133A of the I.T. Act, 1961 were conducted on 12th April, 2012 in the case of the assessee-company along with others. In this case, reference for exchange of information was made by Investigation Wing. Subsequent to this, notice under section 153A of the Act was issued and assessee-company filed return of income declaring income of Rs.167,14,24,547. The A.O. issued questionnaire as well as statutory notice. The assessee-company produced the documents and accounts in support of the submissions.

2.1. The A.O. noted that during the course of search proceedings, Annexure-AA-1 was seized from the office premises of M/s. ACB (India) Ltd., Gurgaon, page-2 of this annexure is related with the assessee-company, wherein it was mentioned that the assessee-company made adjustment to reduce the excess profit of Rs.20 crores. Therefore, assessee-company was required to explain the same in view of statement of Shri Rudra Sen Sindhu for adjustment in taxable profit to the tune of Rs.20 crores in the assessment year under appeal in view of the exceptional profits of the year. It is stated in the statement that adjustment of taxable profit of Rs.20 crores which was not likely to be disclosed, is being offered as additional income in the hands of the assessee-company in the assessment year under appeal. It was submitted before A.O. that the paper contains note dated 5th April, 2012, however, last date for filing of income tax return is 30th September, 2012. As such, the company had deposited tax on this additional income and filed its return in due course. Since the addition has already been offered for taxation, therefore, it would amount to double

taxation. The A.O. further issued a show cause notice to the assessee-company to explain therein the contents of the seized paper and sought the explanation of assessee-company. The assessee-company more or less made similar addition. The A.O. however, was not satisfied with the explanation of assessee-company and noted that assessee-company has filed return of income on 16th May, 2014 at the total income of Rs.167,14,24,547 whereas the Annexure was seized during the course of search, wherein profit plan as per advance tax is Rs.140 crores and the estimated profit for the year ended March 31, 2012, is Rs.160 crores. Therefore, the assessee-company reduced the excess profit of Rs.20 crores. The A.O. also noted that assessee's company tax payment indicates that assessee-company paid advance tax of Rs.37,50,00,000 and also paid self-assessment tax of Rs.16,50,00,000 which reflects the intention of the assessee- company regarding reduction in taxable profits and its profits could not be correctly shown. The A.O. accordingly, made addition of Rs.20 crores and computed the income of the assessee-company at Rs.187,14,24,550.

3. The assessee-company challenged the addition before Ld. CIT(A). The written submissions of the assessee-company are reproduced in the appellate order in which the assessee-company reiterated the submissions made before A.O. and it was further submitted that allegation of reduction of profit is not correct. The assessee-company has shown the income correctly. The document was never acted upon. It was a mere estimate. The Ld. CIT(A) after considering the submissions of the assessee-company and material on record, found that there is nothing on record to show any transaction reducing the profit by Rs.20 crores. The assessee-company has already filed return of income showing income of Rs.167 crores. Therefore, the addition of Rs.20 crores was deleted.

4. The Revenue is in appeal challenging the deletion of addition of Rs.20 crores. However, the assessee-company filed the cross-objection mainly in support of the findings of the Ld. CIT(A).

5. The Ld. D.R. relied upon the order of the A.O. and submitted that seized paper is filed at page 358 of the paper book. The statement of Shri Rudra Sen Sindhu was recorded under section 131 of the Act on 27th July, 2012 in which he made the surrender of the amount in question. The addition is made on account of reduction of profit. The Ld. D.R. submitted that it is the duty of the parties to lead their evidence at the stage when the matter is in charge of the Income Tax Officer. Therefore, failing to produce evidence would give presumption against the assessee-company. The Ld. D.R. relied upon the decision of the Hon'ble Supreme Court in the case of Keshav Mills Ltd., vs. CIT, Bombay 56 ITR 365 and also referred to Section 114 of the Evidence Act. The Ld. D.R. in the alternative contention submitted that the matter may be remanded to Ld. CIT(A) for appraisal of the seized document.

6 The Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that document was not recovered from the possession of the

assessee-company because it was recovered from M/s. ACB (India) Ltd. It was submitted that as per the seized document, the estimated profit of year ending would be Rs.160 crores. However, the assessee-company has already declared profit of Rs.167 crore which is much higher. Therefore, no addition is required in the matter. He has submitted that no evidence of manipulation in the books of account of the assessee-company was found during the course of search. It is not a case of reduction of the profit and only adhoc addition was made which have been correctly deleted by the Ld. CIT(A).

7. We have considered the rival contentions and do not find any merit in the departmental appeal. Though the document in question was not recovered from the possession of the assessee-company, any how, it would not give rise to the addition in question. The A.O. heavily relied upon the seized document copy of which is filed at page-358 of the paper book as well as reproduced in the assessment order. According to it, the estimated profit of year ending in appeal was estimated at

Rs.160 crores. The assessee-company, as per the seized document declared Rs.140 crores as profit plan as per advance tax. Therefore, it was considered a reduction in the profit of Rs.20 crores. It is not in dispute that ultimately the assessee-company declared taxable income of Rs.160,14,24,547. The A.O. in the computation of income has taken the same figure. Therefore, even if the seized document is considered adverse in nature against the assessee-company, assessee-company has already declared more taxable income in the return so filed after the search. Therefore, there is no case of reduction of the profit in the facts and circumstances of the case. Further, A.O. has not brought any evidence on record that as against the declared income at Rs.167 crores, there is any manipulation or reduction of the profit in the books of account of the assessee-company. Therefore, the A.O. has miserably failed to support his findings for making addition of Rs.20 crores. Ld. CIT(A) therefore, correctly deleted the addition. The departmental appeal fails and is dismissed.

8. In the result, appeal of the department is dismissed.

9. The cross objection is merely filed in support of the order of the Ld. CIT(A) which is not maintainable and is accordingly dismissed.

10. In the result, cross-objection of the assessee-company is dismissed.

11. To sum-up, appeal of the department and cross-objection of the assessee-company are dismissed.

Order pronounced in the open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 30th November, 2017

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "B" Bench
6.	Guard File

//By Order//

ASST. REGISTRAR : ITAT :
DELHI BENCHES : DELHI.