

**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH,
RAIPUR**

**BEFORE : SHRI N.S.SAINI, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICAL MEMBER**

ITA No.210/RPR/2014
(Assessment Year :2009-2010)

DCIT-1(1), Bilaspur- 495004	vs	JSPL, Kharsia Road, Raighagh(CG)
PAN No. : AABCJ 4683 J		
(Appellant)	..	Respondent

Revenue by : Shri Sanjay Kumar, DR
Assessee by : Shri Mayank Jain, AR

Date of Hearing : 12/01/2018
Date of Pronouncement 15/01/2018

आदेश / O R D E R

Per Shri N.S.Saini, AM:

This is an appeal filed by the Revenue against the order of the CIT(A), Bilaspur, dated 31.03.2014 for the assessment year 2009-2010.

2. The sole grievance of the Revenue is that the CIT(A) erred in deleting the amount to the extent of Rs.2,10,89,707/- out of disallowance of Rs.3,36,18,098/- made by the AO under the head Corporate Social Responsibility expenses.

3. Brief facts of the case are that the assessee is a domestic company, a subsidiary of Jindal Steel & Power Limited (JSPL). It derives income from power generation and mining. The company has commenced the commercial generation of thermal power from its first of the four units of 250MW each from 08.12.2007. The assessee company filed its income tax return for the year under consideration declaring

income of Rs. 95,29,85,465/-. The AO assessed the income at Rs. 98,66,03,568/-. The only addition made to the returned income is Rs.3,36,18,098/- out of disallowance of expenses under the head "Corporate Social Responsibility". The assessee company submitted before the AO that the expenses relate to construction of school building, devsthan/temple, drainage, barbed wire fencing, roads and culverts, distribution of cloths, educational schemes, etc. voluntarily. But, the AO observed that no material has been placed on record to substantiate the claim that the entire expense was incurred on purposes shown in the written reply. Particulars of villages and communities where - development activities were earned out and nature of each and every activity with the quantum of expenditure incurred thereon also *has* not been furnished. No material whatsoever has been placed in support of existence of such facts. Further, the AO observed that the South Eastern Coalfields Limited deals with the mining and extraction of coal only whereas the appellant mines the coal as well as produces the power. Similar nature of claim made by South Eastern Coalfields Limited, the government controlled company has not been allowed for last several years by the Department. The Patna Bench of the Tribunal by consolidated order in the case of Central Coalfields Ltd., Ranchi, a subsidiary of Coal India Limited, for the A.Y. 1983-84 to 1986-87, dated 18-10-2000 had confirmed the order of the CIT(Appeals) confirming the disallowance made by the AO for those years. On similar issue considering the expenses being in the nature of charity and though laudable, the AO held that the expenses cannot be

said to have been incurred for the purpose of business. Thus, the amount of Rs.3,36,18,098/- stated to have been incurred for corporate social responsibility has been disallowed by the AO and added to the returned income.

4. The assessee carried the matter before the CIT(A) and submitted his submissions on 10.12.2012, 30.04.2013 and 28.03.2014 and relied on the decisions of Nagpur Bench of the Tribunal in the case of SECL, 85 ITD 608 (Nag.) and the decision of Hon'ble Karnataka High Court in the case of Mysore Kirloskar Ltd. Vs. CIT, (1987) 166 ITR 836 (Kar) and submitted that the disallowance made by the AO should be deleted.

5. Thereafter the CIT(A) after considering the submissions filed by the AR of the assessee on the above dates, forwarded to the AO along with bills and vouchers for his report. The AO in his remand report submitted that though the claim of the assessee regarding corporate social responsibility expenses is genuine, however as per the decision of Hon'ble Karnataka High Court in the case of Wipro Ltd., the claim of the assessee is not allowable u/s.37(1) of the Act.

6. In the rejoinder, the assessee submitted that the expenses incurred by the assessee company on education activity which is related to CSR activity and should be allowed as an expenditure u/s.37 of the Act being CSR expenditure.

7. The CIT(A) after considering the submissions of the assessee and remand report from the AO, restricted the disallowance to

Rs.1,46,00,000/- and vacated the disallowance to the extent of Rs.2,10,89,707/-.

8. Against the order of CIT(A), the Revenue is in appeal before us.

9. The AR of the assessee has filed adjournment petition. Since the reason for seeking adjournment was not found plausible one, the adjournment petition filed by the assessee is rejected and the appeal was heard ex-parte *qua* the respondent-assessee.

10. Ld. DR relied on the order of Assessing Officer.

11. We have heard rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the AO disallowed Rs.3,36,18,098/- being expenses incurred by the assessee under the head Corporate Social Responsibility expenses.

12. On appeal, the CIT(A) restricted the disallowance to Rs.1,46,00,000/- and vacated the disallowance to the extent of Rs.2,10,89,707/-. While doing so, the CIT(A) held as under :-

*“ **Decision** - Submission of the Ld. AR. report of the AO and rejoinder to the report of the AO were considered carefully. **Corporate social responsibility, also called corporate conscience, corporate citizenship, social performance, or sustainable responsible business/ Responsible Business** is a form of corporate self-regulation integrated into a business model. CSR policy functions as a built-in, self-regulating mechanism whereby a business monitors and ensures its active compliance with the spirit of the law, ethical standards, and international norms. The goal of CSR is to embrace responsibility for the company's actions and encourage a positive impact through its activities on the environment, consumers, employees, communities, stakeholders and all other members of the public sphere who may also be*

considered as stakeholders. CSR is titled to aid an organization's mission as well as a guide to what the company stands for and will uphold to its consumers. Development business ethics is one of the forms of applied ethics that examines ethical principles and moral or ethical problems that can arise in a business environment. Government of India has been trying to make it mandatory to spend at least 2% of net profit on CSR, though some corporates vehemently oppose its mandatory nature, made the spending voluntary. But the debate continues. CSR is not philanthropy and CSR activities are purely voluntary. To provide companies with guidance in dealing with the above mentioned expectations, while working closely within the framework of national aspirations and policies, voluntary guidelines for CSR and their implementation have been developed. While the guidelines have been prepared for the Indian context, enterprises that have a trans-national presence would benefit from using these guidelines for their overseas operations as well. Since the guidelines are voluntary and not prepared in the nature of a prescriptive road-map, they are not intended for regulatory or contractual use. However, as per the New Companies Act, 2013 vide section 135 the Corporate Social Responsibility (CSR) has been made mandatory for companies having net worth of Rs. 500 crores or more OR having turnover of Rs. 1000 crore or more OR having net profit of Rs. 5 crores or more during any financial year, such company has to expend minimum 2% of net profit in CSR activities.

The CSR policy of the appellant company includes adoption of more than 42 villages for overall up-gradation, 10+2 co-educational O.P. Jindal School, O.P. Jindal Institute of Technology having state-of-the-art infrastructure, spread over 25 acres and AJCTE affiliated, O.P. Jindal Institute of Power Technology - CEA affiliated, diploma courses to be started from September 2008. Other initiatives include adoption of various government run ITIs in Chhattisgarh. Multi-specialty O.P. Jindal Hospital & Research Centre. The expenses incurred on water supply for perennial

availability of portable water, roads and culverts, toilets and others, water tanks, other community works, temple renovation, school building renovation etc. in the villages for up-gradation are part of implementation of CSR policies of the company. The expenses were made for the welfare of the employees as well. Similar expenses on community development and welfare 'of employees were allowed as admissible expenses by the Hon'ble ITAT Nagpur Bench, Nagpur in the case of SECL [Reported in 85 IT'D 608 (Nag.)]. The expenditure on construction of school building, contribution to school, etc. have been held as admissible business expenditure in the case of CIT Vs. Travencore Cochine Chemicals Ltd 243 1TR 284 (Ker.), Palani Andavar Mills Vs. CIT 110 ITR 284 (Ker.), Mysore Kirloskar Ltd. Vs. CIT 166 ITR 836 (Mad), CIT Vs. Rajasthan Spinning & Weaving Mills Ltd. 281 ITR 408 (Raj.), Bhatar Heavy Electrical Ltd. Vs. DCIT 98 TTJ 565 (Del), Simbholi Sugar Mills Ltd. Vs. CIT 45 ITR 125, etc.. Similarly, construction of roads and culverts for providing easier access for its workman and movement of goods are admissible expenditure u/s 37 of the Act. [Relied on CIT Vs. Coats Viyella India Ltd. (2002) 253 ITR 667 (Mad.), Sugar Factory & Oil Mills Pvt. Ltd. Vs. CIT (1980) 125ITR 293 (SC), etc.]. The expenditure under the above heads incurred by the appellant company as a good corporate citizen and as measure of gaining goodwill of the people living in and around its industries through the aforesaid activities are admissible expenditures as held in **CIT Vs. Madras Ref'** '2004) 266 ITR 170 (Mad.) and other judicial pronouncement relied upon by the Ld. AR.

In view of the above, legal propositions, guidelines and stipulation put forth by various government agencies like pollution board and local administration, the expenses under the head CSR booked in the P&L A/c was examined by the undersigned and observation made are enumerated hereunder:

(a) As per the ledger account of CSR, the total expenses is Rs.3,36,18,098/-. Out of the total expense, the appellant has made

the following payments to O.P. Jindal Samaj Kalyan Samiti on following dates:

Sl.No.	Date	Amount
1.	09-04-2008	10,00,000
2.	12-05-2008	10,00,000
	19-06-2008	5,00,000
	04-07-2008	10,00,000
	21-07-2008	6,00,000
	01-08-2008	15,00,000
	02-09-2008	5,00,000
	11-09-2008	5,00,000
	26-09-2008	10,00,000
	11-10-2008	5,00,000
	22-10-2008	5,00,000
	11-11-2008	10,00,000
	19-11-2008	10,00,000
	09-01-2009	10,00,000
	04-02-2009	10,00,000
	10-02-2009	5,00,000
	02-03-2009	10,00,000
	17-03-2009	5,00,000
	Total	1,46,00,000

(b) Thus, out of Rs. 3,36,18,098/- under CSR, the appellant paid Rs.1,46,00,000/- to O.P. Jindal Samaj Kalyan Samiti and balance of Rs.1,90,18,098/- was expended directly by the appellant company towards CSR. Following items debited to CSR A/c are found to be not in the nature of CSR and hence, found to be not admissible u/s 37(1) of the Act.

S.NO.	Date	Description	Amount
1.	12-01-2009	Amount paid to Dyananjay Singh towards Sashastra Sena Flag Day dated 07-12-2005	5,000
2.	30-01-2009	Amount paid to Triloktoma Toppo towards Tirath Yatra at Tirupati Balaji Temple	20,000
3.	30-01-2009	Amount paid to Lalit Guupta towards Tirath Yatra at Tirupati Balaji Temple	20,000
4.	30-01-2009	Amount paid to Girdhari Sidar towards Tirath Yatra at Tirupati Balaji Temple	20,000

5.	30-01-2009	Amount paid to Hem Sagar Gupta towards Tirath Yatra at Tirupata Balaji Temple	20.000
6.	30-01-2009	Amount paid to Jogeshwar Nishad towards Tirath Yatra at Tiriipata Balaji Temple	20,000
7.	24-02-2009	Amount paid to Jagannath Harishchandramal for purchase of marriage gifts for Judge of Civil Court, Raigarh	26,810
8.	18-03-2009	Amount paid to Deepa Studio towards photography and album charges on the occasion of Naveenji's Birth Day	1400
9.	18-03-2009	Amount paid to Jaiswal Display and Video Services towards banner charges on account of Naveenji's Birth Day	720
10.	18-03-2009	Amount paid to Gajendra Kumar Singh towards purchase of sweets on the occasion of Naveenji's Birth Day	8000
11.	1R-03-2009	Amount paid to Khem Prasad Paikra for higher charges of vehicles on occasion of Naveenji's Birth Day	1372
12.	18-03-2009	Amount paid to Krishna Nursery toward purchase of bouquet and flower on occasion of Naveenji's Birth Day	1660
		Total	1,44,962

(c) The appellant company has made contribution to the trust, but it has maintained details of expenses made by the trust in its books of account and claimed the expenses under CSR. It is stated that expenses can be broadly classified into two categories i.e. CSR details like borewell works, boundary wall, construction of building, community stage, drinking water facility, road and school building construction, etc. given in Annexure A to R of the written submission totaling to Rs. 2,12,34,669/- and CSR details relating to O.P. Jindal Samaj Kalyaa Samiti in Annexure 1 to 15 of the written submission totaling to Rs.1,23,83,429/-. The summary of expenses under CSR through O.P. Jindal Sarnaj Kalyan Samiti is given hereunder:

INDEX
M/S JINDAL POWER LTD.
AT.:- TAMNAR, POST:- TAMNAR. DISTT. RAIGARH (CG.)
(DETAILS OF CSR EXPENDITURE FOR THE F.-Y. 2008-09)

Sr. No.	Nature of Programme	Amount	TDS	Annexure No.
1.	Scholarship & Stipend	523,600	N.A	1
2	School Teachers remuneration	742,052	N.A	2
3	Welfare Camp & Function	387,254	N.A	3
4	Remuneration Charges	13,500	N.A	4
5	Training Self help Group	157,100	N.A	5
6	Training Lac Cultivation	73,000	N.A	6
7	Training Fishery	682,284	N.A	7
8	Training Tailoring	33,873	N.A	8
9	Construction of Borewell/Ringwell	40,905	N.A	9
10	Health CAMP-Operation Camp	77,118	N.A	10
11	Salary & Wages-Staff	5,091,072	186720	11
12	Salary & Wages-School	2,103,765	57045	12
13	Financial assistance Health	260,000	N.A.	13
14	Financial assistance social activities	2,121,943	15407	14
15	Medical Camp Family Planning	75,963	N.A.	15
	Total	12,383,429	259,172	

d) In this context, it is pertinent to reproduce the Income and Expenditure A/c of O.P.Jindal Samaj Kalyan Samiti for AY.2009-10.

O.P. JINDAL SAJAM KALYAN SAMITI
AT/PO TAMNAR, DISTRICT, RAIGARH (C.G.)

INCOME & EXPENDITURE ACCOUNT
FOR THE YEAR ENDED ON 31-03-2009

EXPENDITURE	AMOUNT (In Rs.)	INCOME	AMOUNT(In Rs.)
Welfare Expenses		Contribution	
Education Activity	3225733.00	Contribution received –JPL	14600000.00
Health Activity	563232.00	Member's Contribution	36000.00
Sports Promotion Activity	3250.00		
Women's Empowerment Activity	916788.00		
Social Welfare Activity	1276159.00	Interest Received from Bank	39001.00
Sanitation Activity	48985.00		
Community Development-Infrastructure	569148.00		
Financial Assistance Activity	2254525.00		
Stipend to Social Worker	5090596.00		
Functions & Celebration	420951.00		
Fooding Exp.	2999.00		
Printing Stationery	320.00		
Conveyance & Travelling Exp.	69566.00		
Telephone Expenses	7429.00		
Staff Recruitment Expenses	7429.00		
Insurance Expenses	5205.00		
Bank Charges	4565.00		
Audit Fees	5000.00		
Fees & Taxes	2300.00		
Miscellaneous Expenses	67958.00		
Surplus (Excess of Income Over Expenses)			
Transferred to Balance Sheet	119692.00		
Total	14,675,001.00	Total	14,675.00

(e) Out of total receipts of Rs.1,46,75,001/-, the trust received Rs.1,46,00,000/- as contribution from the appellant company. Shri Naveeu Jindal, Director and shareholder of the appellant company is one of the authors/founders of the trust in the name of father late O.P. Jindal. The trust applied Rs.1,45,55,309/- for charitable purposes. Perusal of expenses of the trust in its books of account and expenses of the trust recorded in the books of account of the appellant company, it appears that even the head of expenses are different, leaving aside difference in total expenditure booked by the trust and expenditure booked by the appellant company under CSR. The difference could not be reconciled in any proceedings under the Act. Facts available on record indicate that the trust is owned and controlled by the appellant company. The purpose of contribution to the trust appears to be not more than for altruistic consideration, apart from reducing the tax liability. A donation made to a charitable trust may make the appellant company entitled to relief u/s 80G of the Act, subject to fulfillment of requirements of said section, but it cannot get deduction u/s 37(1) without proving any direct nexus or business expediency as onus in this respect lies on it.

In view of the above facts and circumstances of the case, it is held that the expenses under CSR incurred by the appellant company as per the details given in Annexure A to R is admissible u/s.37(1) of the Act to the extent of Rs.2,10,89,707/- [Rs.2,12,34,669 – Rs.1,44,962] and other part of the CSR expenses i.e. Rs.1,23,83,429/- being not direct expenses but part of contribution of Rs.1,46,00,000/- made to the trust, it is held as inadmissible u/s.37 of the Act.

3. In the result, the appeal is partly allowed.”

13. Ld. DR could not point out any specific error in the above quoted decision of the CIT(A). He could not controvert the finding of CIT(A) by bringing any cogent materials on record that the details given in Annexures-A to R is admissible u/s.37(1) of the Act to the extent of

Rs.2,10,89,707/- . Hence, we find no good reason to interfere with the order of CIT(A), which is confirmed and the ground of appeal of Revenue is dismissed.

14. In the result, appeal filed by Revenue is dismissed.

Order pronounced in the open court on this 15/01/2018.

Sd/-
(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Raipur; दिनांक Dated 15/01/2018

प्र.कु.मि/PKM, Senior Private Secretary

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Raipur / DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
Income Tax Appellate Tribunal, Raipur