

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

आयकर अपील सं./ITA No.349/CTK/2015
(निर्धारण वर्ष / Assessment Year :2010-2011)

M/s Kalinga Mining Corporation, Samanta Niwas, Seikh Bazar, Cuttack-753008	Vs.	JCIT, Rage-2, Shelter Chhak, Cuttack-753008
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABFK 4556 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Ambika Prasad Mohanty, AR
राजस्व की ओर से /Revenue by : Shri Kunal Singh,CITDR

सुनवाई की तारीख / **Date of Hearing** : **08/08/2017**
घोषणा की तारीख/**Date of Pronouncement** **09/08/2017**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

The assessee has filed an appeal against the order of CIT(A), Cuttack, passed in ITAppeal No.22/2013-14, dated 19.06.2015, u/s.143(3) of the Income Tax Act, wherein the assessee has raised the following grounds of appeal :-

- 1) *That, the payment of Rs.18 crores being made in accordance with the direction of the Hon'ble Sole Arbitrator Mr. Y.K.Sabarwal, Retd. Chief Justice of India and in conformity with the standard accounting principle should have been allowed in full.*
- 2) *That, under the facts and in the circumstances of the case the Id. CIT(A) is wrong in fact as well as in law in allowing only a part of the payments made towards arbitration award and the payments being made as per mercantile system of accounting adopted by the appellant should have been allowed in full.*
- 3) *That, the liability of Rs.18 crores towards arbitration award being determined and crystallized during the year was debited to the profit and loss account hence the same should have been allowed in full irrespective of the fact that a part of it remained as liability in the balance sheet ending for the concerned accounting period and the Id.CIT(A) has without giving any reason disallowed the payments kept as liability in the balance sheet which is wrong and erroneous. Hence the same should be allowed.*

- 4) *That, the donation of Rs.1,51,308/- and Rs.16,222/- in mining account and profit & loss account respectively are paid to different institutions and local bodies for the smooth running of the business and very much a necessary part of the day to day business activities and hence the Id. CIT(A) considering the practical business expediency should have allowed the same.*

2. Brief facts of the case are that the assessee firm is engaged in the business of mining ore and filed the return of income on 26.09.2010 with total income of Rs.28,45,69,850/-. Subsequently case was selected for scrutiny under CASS and notices u/s.143(2) & 142(1) of the Act were issued. In compliance, Id. AR of the assessee appeared and case was discussed. Ld. AO after perusal of the financial statements found that the assessee has claimed expenses of Rs.18 crores paid to M/s Arvind Construction Co. (P) Ltd., New Delhi as per the order of the Arbitral Tribunal as there was an agreement with assessee firm with M/s Arvind Construction Co. P. Ltd. on 14.3.1991 for excavating the mining ore but due to some dispute between the parties, the matter was referred to Hon'ble Supreme Court of India and in pursuance to the judgment of the Hon'ble Supreme Court, dated 17.5.2007 in Civil Appeal No.2707 of 2007 arising out of SLP(C)3924 of 2007, the sole Arbitrator was appointed and the dispute was settled and the Arbitrator considered the claims and counter claims of the claimants and the assessee and finally the Arbitration Tribunal accepted compromise petition dated 11.11.2009 and passed the order on 19.11.2009 accepting the terms and conditions mentioned in the common compromise petition. Ld. AO dealt on the specific claims of determination of the claim amount at page 3 to 5 of the order and also this amount of Rs.18 crores was also paid in the financial

year 2009-2010 and assessee has deducted TDS whereas the AO after perusing the arbitration award and also financial statement was of the opinion that this claim pertains to year upto 27.1.2007, therefore, the assessee is not entitled to claim deduction for the period 1.4.2009 to 31.12.2009 in the financial year 2009-2010 and after making adjustments made disallowance of Rs.12,31,62,982. Similarly the AO made disallowance of donation paid by the assessee to non-recognised persons Rs.1,51,308/- and Rs.16,222/- and was not allowed further donation of Rs.7,10,000/- was paid by the assessee towards Eastern Zone Mining Association and the same was not considered by the AO and was also disallowed with other additions and assessed total income of Rs.41,12,99,790/- and passed order u/s.143(3) of the Act, dated 31.3.2013.

3. Aggrieved by the order of the AO, the assessee has filed an appeal before the CIT(A). In the appellate proceedings Id. AR argued the grounds and reiterated the submissions made before the AO. On the disputed issue of payment of Rs.18 crores by the assessee firm to M/s ACCC (P) Ltd. towards final settlement of dues, Id. CIT(A) dealt on the submissions of the assessee and findings of the AO and came to a conclusion that assessee has paid the amount of Rs.9 crores during the said financial year and remaining Rs.9 crores was paid in the subsequent financial years and only expenditure of Rs.9 crores has to be allowed on actual payment basis. The assessee has made payment of Rs.9 crores as confirmed by the recipient M/s Arvind Construction (P)O Ltd. vide Cheque

dated 18.11.2009 and the remaining amount of Rs.9 crores was paid on 5.1.2010 & 1.4.2010. Ld. CIT(A) considering the fact that the payment was made beyond accounting period has directed the AO to allow the actual payment of Rs.9 crores made during the assessment year and discussed at page 4 para 6 as under :-

6. *The Reasons for the Decision :*

I have carefully perused the assessment order and the submissions made by the appellant. He dispute between the appellant firm and M/s ACCL arose on 21.01.2007 and was settled by compromise petition being accepted by the Arbitration Tribunal on 19.11.2009. The Arbitration Tribunal ordered that Rs.18,00,00,000/- should be paid by the appellant firm to M/s ACCL as full and final settlement of all the dues. Since the liability crystallised in the impugned assessment year 2010-11, the claim of the appellant regarding payment of compensation as per Arbitration order should be allowed in this assessment year 2010-11. However, the quantum to be allowed is the actual payment made by the appellant firm to M/s ACCL during the accounting period from 01.04.2009 to 31.12.2009. Out of the compensation amount both the appellant firm and M/s ACCL submitted that Rs.9,00,00,000/- was paid to M/s ACCL by the appellant firm through Cheque No.307152 dated 18.11.2009. The balance amounts were paid beyond the accounting period of the firm that is from 01.04.2009 to 31.12.2009 of the appellant firm in question. The appellant firm also in its balance sheet for the accounting period as above for A.Y.2010-11 had shown in its liabilities amount of Rs.8,79,60,600/- as "payable to ACCPL as per Arbitration Award" and also some more amount payable to M/s ACCPL which totals to Rs.9,00,00,000/- approximately. The AO is directed to allow only the actual payment of Rs.9,00,00,000/- during the impugned assessment year.

On the second disputed issue of donations of Rs.1,51,308/- made to the non-recognised persons and Rs.16,222/- disallowed by the AO, Ld. CIT(A) found that the assessee could not relate the business expenditure and its nexus with activities and confirmed the addition, whereas in respect of addition of donation of Rs.7,10,000/- towards mining activities, Ld CIT(A) has observed that the said amount was paid to mining association and allowed the claim of Rs.7,10,000/- and partly allowed the appeal of the assessee.

4. Aggrieved with the order of CIT(A), the assessee has filed further appeal before the Tribunal.

5. Before us, Id. AR of the assessee submitted that the CIT(A) has erred in not allowing the deduction in remaining Rs.9 crores and also observed that same was not paid during the year and the fact remains the assessee is a partnership firm and follows the mercantile system of accounting and also the amount is subject to the TDS in the financial year 2009-10 and therefore, prayed for allowing the appeal. Contra, Id. DR relied on the order of CIT(A).

6. We heard the submissions and perused the material on record. Prima facie, the Id. AR's contention that the amount of Rs.9 crores was allowed by the CIT(A) and remaining Rs.9 crores was sustained on the ground that the payment was made in the subsequent assessment year and the Id. AR also submitted that in the subsequent assessment year this claim was not allowed by the revenue and drew our attention to page 5 of the CIT(A) order where the assessee has deducted TDS on Rs.9 crores and disclosed in the balance sheet as on 31.3.2010 under the liabilities Rs.8,79,60,600/- payable to M/s ACCPL as per arbitration award. We on perusal of the assessment order found that the AO has not disputed method of accounting applied by the assessee being mercantile, referred at column 8 page 1 of assessment order. We are of the substantive view that the arbitration award has been crystallised in the financial year 2009-2010, therefore, the assessee firm has claimed the deduction. We find that the Id. CIT(A) has allowed the deduction of the

expenditure of Rs.9 crores but the remaining Rs.9 crores the Id. CIT(A) has confirmed the action of the AO and observed that it was not paid during the said financial year. Prima facie, the accounting method adopted by the assessee firm is mercantile accounting system being on accrual basis hence, the assessee has claimed in the profit and loss account and deducted TDS and also disclosed liability in the balance sheet as on 31.3.2010 as payable and satisfies accounting concepts. Accordingly, we in the interest of justice direct the AO to allow the deduction of Rs.9 crores which was sustained by the Id. CIT(A) in his order and allow the ground of appeal of the assessee.

7. On the second disputed issue of donation of Rs.1,51,308/- made to the non-recognised persons and Rs.16,222/- to others. The Id. AR of assessee could not substantiate the claim with any evidence and information of non-recognised persons and others even before us, whereas the Id. DR relied on findings and order of CIT(A). We considered the apparent facts and submissions are of the opinion that the assessee's claim cannot be allowed. Accordingly, we are not inclined to interfere with the order of CIT(A) in confirming the addition and we dismiss this ground of appeal of the assessee.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on this 09/08/2017.

Sd/-

(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated

प्र. कु. मि/PKM, Senior Private Secretary

Sd/-

(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

09/08/2017

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

1. अपीलार्थी / The Appellant-
M/s Kalinga Mining Corporation,
Samanta Niwas, Seikh Bazar,
Cuttack-753008
2. प्रत्यर्थी / The Respondent-
JCIT, Rage-2, Shelter Chhak,
Cuttack-753008
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