

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**KOLKATA BENCH “A”, KOLKATA**  
**BEFORE SH. J.SUDHAKAR REDDY, ACCOUNTANT MEMBER &**  
**SH. S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.1184/KOL/2017**  
**(ASSESSMENT YEAR-2012-13)**

Balmer Lawrie & Co.Ltd., 21, Netaji Subhas Road, Kolkata-700001. PAN-AABCB0984E	<b>vs</b>	Pr.CIT-2, Aaykar Bhavan, 3 <sup>rd</sup> Floor, P-7, Chowringhee Square, Kolkata-700069.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>Appellant by</b>		Sh. D.S.Damle, FCA
<b>Respondent by</b>		Sh. P.K.Srihari, CIT DR
<b>Date of Hearing</b>		09.10.2018
<b>Date of Pronouncement</b>		19.12.2018

**ORDER**

**PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

This appeal filed by the assessee against the order dated 27.03.2017 passed by Pr. CIT-2, Kolkata u/s 263 of the Income Tax Act, 1961 (in short “Act”) for AY 2012-13.

2. The sum and substance of section 263 order is brought out by the Pr.CIT in his order as under:-

*“However, the reply of the assessee is not acceptable regarding the other issue of sum of Rs.300.00 Lakh which was spent towards corporate social responsibility and was allowed by A.O. as deduction. Explanation 2 to Section 37(1) is clarifactory in nature and therefore the said provision is also applicable for A.Y. 2012-13. I, therefore, hold that the assessment order passed by A.O. is erroneous and prejudicial to the interest of revenue in this respect. The assessment order is therefore set aside and A.O. is directed to complete assessment order after making disallowance of Rs.300.00 Lakh on account of corporate social responsibility.”*

3. After hearing rival contentions, we find that the AO has passed the assessment order on 17.02.2015 and whereas the Explanation 2 to section 37(1) was brought out in the statute by the amendment to the Finance Act, 2014 w.e.f. 01.04.2015. The case of the Revenue is that this explanation 2 section 37 though brought w.e.f. 01.04.2015 is clarifactory and applied to

AY. 2012-13. The assessee's case is that all the details were filed before the AO and after considering the same, the expenditure incurred by the assessee were corporate social responsibility was allowed. The assessee relies on the decision of Kolkata Bench of the Tribunal in the case of *M/s. Misrilall Mines Pvt.Ltd. Vs DCIT in ITA No.738/Kol/2017* vide order dated 15.06.2018 for the proposition that the Explanation (2) to section 37 is not retrospective in nature. Ld.DR relies on the decision of Kolkata Bench of the Tribunal in the case of *Veena Kanoria vs ITO [2003] 85 ITD 95 (Calcutta)* and submits that the Explanation in question is clarificatory and hence, retrospective in nature.

4. We find that the Kolkata Bench of the Tribunal in the case of *M/s. Misrilall Mines Pt.Ltd.* (supra) at para 5 held as follows:-

*5. "We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the expenditure on peripheral development in question was incurred by the assessee as a part of corporate social responsibility as per the scheme framed under the Companies Act. As submitted by the learned counsel for the assessee, the said expenditure was actually incurred by the assessee during the year under consideration and it was not a creation of reserve by debit to the profit and loss account as alleged by the A.O. while treating the same as appropriation of profits. As a matter of fact, such expenditure on peripheral development as a part of CSR was incurred by the assessee even in the earlier years and the same was allowed by the A.O. even in the assessment made under section 143(3) vide an order dated 31.03.2014 for A.Y. 2012-13. As regards the observation of the A.O. that the expenditure incurred for construction of schools, electrification of schools etc., it is submitted on behalf of the assessee before the Ld. CIT(A) as well as before the Tribunal that the said expenditure cannot be treated as capital in nature as neither the ownership of the school belonged to the assessee nor it had any control over the running of school. The said expenditure for construction of a block by way of addition to the school building located in a village in the vicinity of mines was incurred for the benefit of its workers and general public. As regards the reliance of the Assessing Officer placed on Explanation 2 to Section 37 of the Income Tax Act, the Raipur Bench of this Tribunal has held in the case of *Jindal Power Ltd.* (supra) that the said explanation inserted by the Finance Act, 2014 with effect from 01.04.2015 is not retrospective. Keeping in view all these aspects of the matter, we are of the view that the action of the A.O. in disallowing the claim of the assessee for peripheral development expenditure as a part of CSR was not well founded and the Ld. CIT(A) was not justified in confirming the said disallowance. We, therefore, delete the said disallowance and allow this appeal of the assessee."*

5. The order relied on by the Ld.DR in the case of Veena Kanoria (supra) is not applicable to the facts of the case. In view of the direct decision in the case of Misrilall Mines Pvt.Ltd. (supra), we upheld the contention of the Ld. Counsel for the assessee that the amendment in question is not clarificatory in nature and hence, not retrospective. Thus, there is no error in the order passed by the AO which violates the provision u/s 263 of the Act by the Pr.CIT. Therefore, we quash this order and allow the appeal of the assessee.

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

**Order pronounced in the open court on 19.12.2018.**

**Sd/-**

**(J.SUDHAKAR REDDY)  
ACCOUNTANT MEMBER**

*Date:- 19.12.2018*

*\*Amit Kumar\**

Copy forwarded to:

1. Appellant- Balmer Lawrie & Co.Ltd., 21, Netaji Subhas Road, Kolkata-700001.
2. Respondent- Pr.CIT-2, Aaykar Bhavan, 3<sup>rd</sup> Floor, P-7, Chowringhee Square, Kolkata-700069.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

**Sd/-**

**(S.S.VISWANETHRA RAVI)  
JUDICIAL MEMBER**

By order

AR/H.O.O  
ITAT, KOLKATA