

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 798/JP/2018
निर्धारण वर्ष / Assessment Year :2013-14

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| M/s Barmer Lignite Mining Company Limited, Office No. 2 & 3, 7 th Floor, Man Upasana Plaza, C-44, Sardar Patel Marg, C-Scheme, Jaipur 302001. | बनाम Vs. | A.C.I.T., Circle-6, Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCB 0574 G | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

आयकर अपील सं./ITA No. 774/JP/2018
निर्धारण वर्ष / Assessment Year :2013-14

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| D.C.I.T., Circle-6, Jaipur. | बनाम Vs. | M/s Barmer Lignite Mining Corporation Ltd., Sardar Patel Marg, C-Scheme, Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCB 0574 G | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

आयकर अपील सं./ITA No. 799/JP/2018
निर्धारण वर्ष / Assessment Year :2014-15

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| M/s Barmer Lignite Mining Company Limited, Office No. 2 & 3, 7 th Floor, Man Upasana Plaza, C-44, Sardar Patel Marg, C-Scheme, Jaipur 302001. | बनाम Vs. | A.C.I.T., Circle-6, Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCB 0574 G | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

आयकर अपील सं./ ITA No. 775/JP/2018
निर्धारण वर्ष / Assessment Year :2014-15

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| D.C.I.T., Circle-6, Jaipur. | बनाम Vs. | M/s Barmer Lignite Mining Corporation Ltd., Sardar Patel Marg, C-Scheme, Jaipur. |
| स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AADCB 0574 G | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 05/02/2019
उदघोषणा की तारीख / Date of Pronouncement : 14/02/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

These are cross appeals by the assessee and the revenue against the two separate orders of Id.CIT(A)-2, Jaipur dated 23/03/2018 for the A.Ys. 2013-14 and 2014-15 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short the Act). The grounds taken by the assessee and the revenue for the A.Y. 2013-14 are as under:

Grounds of assessee's appeal

"1. On facts of the case and in law the Ld. CIT(A) erred in confirming the addition of Rs.7,34,00,000/- made by the AO by treating interest receipts, credited to capital work in progress, as taxable under the head 'income from other sources' as against the claim of assessee that the same should be reduced from expenditure incurred during construction period.

1.1 On facts of the case and in law the Ld. CIT(A) erred in not allowing the set-off of interest expense of Rs. 9,46,00,000/-

debited to the capital work in progress against the said interest receipt without appreciating the fact that there is a direct nexus of interest paid on the borrowed funds with the interest receipts.

2. *On facts of the case and in law The Ld. CIT(A) erred in confirming the action of AO in disallowing mandatory CSR expenses of Rs.2,00,00,000/- provided as per terms of environment clearance granted by the Ministry of Environment & Forests (MOEF) which were incurred wholly and exclusively for the purpose of the business.*
3. *On the facts of the case the Ld. CIT(A) erred in remanding back the issue to the file of the Ld. Assessing Officer on allowance of the amortization of surface rights claimed by the Appellant, without appreciating the fact that all the details as required for verification for allowance of the same, as directed by the Hon'ble ITAT Jaipur for AY 2012-13 in case of the Appellant, were available with the Ld. CIT(A).*
4. *On the facts of the case the Ld. CIT(A) erred in remanding back the issue to the file of the Ld. Assessing Officer on allowance of the credit of TDS on Interest Income amounting to Rs.20438/-.*
5. *The assessee craves to amend, alter and modify any of the grounds of appeal.*
6. *The appropriate cost be awarded to the assessee."*

Grounds of revenue's appeal

1. *Whether in the facts and in the circumstances of the case and in law, the Id CIT(A) was justified in allowing deduction of Rs. 5,56,27,993/- in respect of mines closure plan?*
2. *The appellant craves its right to add, amend, or alter any of the grounds on or before the hearing."*

Common identical grounds have been taken by the assessee and the revenue in the cross appeals for the A.Y. 2014-15.

2. As common grounds have been taken in both the assessment years under consideration, therefore, the appeals for both the years were heard together and now decided by this consolidated order.

3. Rival contentions have been heard and record perused.

4. The facts of the case in brief are that the assessee is a company incorporated on 19.01.2007 as a Joint Venture Company (JV) under the Companies Act, 1956 with M/s Rajasthan State Mines and Minerals Ltd. (RSMML) (a Government of Rajasthan Undertaking) and M/s Raj West Power Limited (RWPL) as shareholders (in the ratio of 51:49 voting power) to carry out lignite mining activities at Kapurdi and Jalipa at Barmer District for captive use of lignite based thermal power plant of RWPL. It is thus the subsidiary of RSMML and therefore, a Government Company. The assessee commenced its lignite mining activities from October, 2011 at Kapurdi Mines. The Government of Rajasthan (GOR) decided to allow power projects in the private sector and invited international competitive solicitations for setting up a lignite mining cum thermal power project at village Jalipa and Kapurdi, District Barmer in Rajasthan. Under an Implementation Agreement (IA) dated 29th May 2006, RWPL was allowed to set up its power plant and a separate JV

company was to be formed as a mining company for mining lignite to be supplied for the thermal power plant of RWPL.

5. During the course of scrutiny assessment for A.Y. 2013-14, the Assessing Officer made additions/disallowances as under:

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| 1. | Mine Closure charges | Rs. 5,56,27,993/- |
| 2. | Interest on deposits | Rs. 7,34,00,000/- |
| 3. | Interest on FDR | Rs. 28,56,783/- |
| 4. | CSR Expenditure | Rs. 2,00,00,000/- |
| 5. | Interest on refund | Rs. 37,672/- |
| 6. | Disallowance of amortization | Rs. 14,38,96,693/- |

6. By the impugned order, the Id CIT(A) has upheld the addition with respect to the interest receipts being taxable as income from other sources credited to the capital work in progress, disallowance of mandatory CSR expenses of Rs. 2.00 crores. However, the Id. CIT(A) has deleted the addition with respect to mine closure expenses of Rs. 5,56,27,993/-.

7. Against the above said order, both the assessee and the revenue are in further appeals before us.

8. At the outset, the Id AR of the assessee placed on record the order of the ITAT in assessee's own case and further the order of the Hon'ble Rajasthan High Court in assessee's own case for the A.Y. 2012-13 in

DBITA No. 54/2018 and M.A. order dated 08/08/2018 in D.B. Civil Misc. application No. 176/2018.

9. With regard to ground taken by the assessee for treating the interest income as income from other sources, we found that the Assessing Officer had added Rs. 7,34,00,000/- on account of interest credited to the Capital Work in Process (CWIP) in the taxable income under the head income from other source.

10. By the impugned order, the Id. CIT(A) confirmed the action of the Assessing Officer, against which the assessee is in further appeal before us.

11. As the Id. AR, the Hon'ble Rajasthan High Court in assessee's own case for the A.Y. 2012-13 vide order dated 24/7/2018 had decided the issue with regard to taxing interest receipts as income from other sources instead of reducing from expenditure incurred during construction period in favour of the assessee. He invited our attention to the similar issue raised before the Hon'ble Rajasthan High Court and after considering various judicial pronouncements of other Hon'ble High Courts, The issue was decided in assessee's favour. As the facts and circumstances during the year under consideration are same, it was submitted that respectfully following the decision of the Hon'ble

Rajasthan High Court in assessee's own case, there is no merit in taxing interest receipts as income from other sources. In view of the decision of Rajasthan High Court (supra), the interest receipt is to be reduced from the capital work in progress of Jalipa mines and therefore, no interest income could be charged to tax. Accordingly the addition of Rs. 7.34 crores confirmed by the Id. CIT(A) by holding that interest income is to be taxed as income from other sources is directed to be deleted.

12. We had carefully gone through the orders of the authorities below and found that exactly on similar issue of treating the interest income as income from other sources, the Tribunal have confirmed the action of the lower authorities for the A.Y. 2012-13. The assessee filed appeal before the Hon'ble Rajasthan High Court raising following substantial questions of law:

- i) *Whether under the facts and circumstances of the case the Id. ITAT has not legally erred in holding that the interest receipt of Rs.12,64,01,627/- in the hands of the appellant is income from other sources?*
- ii) *Whether under the facts and circumstances of the case and in law the Id. ITAT has not legally erred in disallowing the mandatory CSR expenses claimed for Rs.95,08,197/- pursuant to the terms and conditions of the environment clearance granted by Ministry of Environment and Forest?*

13. Vide order dated 24/7/2018, the Hon'ble High Court decided the issue. Thereafter vide order dated 08/08/2018 in D.B. Civil Misc. application No. 176/2018, the Hon'ble High Court has held as under:

“By way of this application, the applicant has prayed the following relief(s):-

“The present rectification application may pleased be allowed and the judgment dated 24.07.2018 be appropriately rectified/modified in view of the submissions made above.

In view of the averments made in the application, the order dated 24.07.2018 is modified in the following terms which may be read as para 7 of the judgment:-

“Taking into consideration the decision of Supreme Court in the case of Bokaro Steel Ltd. (supra) and other judgments cited supra, both the issues are answered in favour of the assessee and against the department.”

The misc. application is allowed.”

14. Exactly similar issue has been raised by the assessee with regard to the treatment of interest income, which has been held to be income from other sources by the departmental authorities. As on the similar facts the issue has already been decided by the Hon'ble Rajasthan High Court in assessee's favour as stated above, respectfully following the same, we do not find any merit in the action of the lower authorities for treating the interest income as income from other sources. We direct accordingly.

15. The issue with regard to disallowing the mandatory CSR expenses have also been decided in favour of the assessee by the order of the Hon'ble Rajasthan High Court dated 24/7/2018. The questions raised before the Hon'ble High Court as stated above, is exactly same as in the present appeal. We had gone through the decision of the Hon'ble High Court wherein we found that vide para No. 6, the Hon'ble High Court has deleted the disallowance made on account of mandatory SCR expenses. Exactly similar expenses have been disallowed by the Assessing Officer during the years under consideration. As the facts and circumstances during the years under consideration are same. Respectfully following the order of the Hon'ble High Court in assessee's own case, we do not find any merit in the disallowances made by the Assessing Officer in respect of the CSR expenses.

16. The assessee is also in appeal against the order of the Id. CIT(A) for remanding the issue to the file of the Assessing Officer on the ground of allowance of amortization of expenses on surface rights. In this regard, the Id AR of the assessee has invited our attention on the decision of the ITAT in assessee's own case for the A.Y. 2012-13 wherein the Tribunal have restored the matter with certain directions. As per Id. AR the assessee before Ld. CIT(A) has demonstrated by filing the relevant Notes to Accounts of RSMML where in Note No. 11.6 it has been

disclosed that RSMML has not treated such amount as asset & liability in its financial statement. However, since the title of land at Kapurdi mutated to RSMML, the same is shown at nominal value of Rs.1/- in the Balance Sheet. Thus, it is clear that RSMML has not claimed any expenditure in respect of the land so acquired. Therefore, the Ld. CIT(A) instead of directing the AO to follow the decision of Hon'ble ITAT should have directed the AO to allow the claim as all the facts were put on record before her.

17. We have carefully gone through the order of the Tribunal in assessee's own case for the A.Y. 2012-13 wherein we found that the issue with regard to allowing of amortization of surface rights was restored back by the Tribunal to the file of the Assessing Officer with certain directions. The ITAT in AY 2012-13 has observed that admittedly the expenditure has been incurred through RSMML but it is not clear whether the RSMML has also claimed such expenditure. Therefore, the AO was directed to verify whether RSMML has made any claim on the same expenditure which the assessee has claimed. Respectfully following the order of the Tribunal, we restore the issue back to the Assessing Officer for verifying the same in terms of the direction of the Tribunal in assessee's own case. We direct accordingly.

18. The department in its appeal is aggrieved by the decision of the Id. CIT(A) allowing the deduction in respect of mines closure expenses.

19. We had carefully gone through the orders of the authorities below and found that the Id. CIT(A) has allowed the deduction in respect of mines closure plan after following the decision of the Tribunal in assessee's own case for the A.Y. 2012-13 dated 12/10/2017.

20. We had gone through the order of the Tribunal in assessee's own case and found that this issue was dealt by the Tribunal as under:

“15. Ground no. 2, is against allowing deduction of Rs. 4,70,80,000/- in respect of mine closure expenses.

15.1 Ld. D/R supported the order of the authorities below and submitted that Ld. CIT(A) was not justified in deleting the disallowance.

15.2 On the contrary, Ld. Counsel for the assessee supported the order of the Ld. CIT(A) and submitted that this issue is squarely covered in favour of the assessee.

15.3 We have heard the rival contentions, we find that Ld. CIT(A) has decided the issue in para 3.3. of the order read as under:-

“3.3 I have considered the facts of the case, assessment order and the written submissions of the appellant. As noted, a sum of Rs. 4,70,80,000/- was debited toward min closure charges, was not allowed by the Assessing Officer, as the same had not been deposited to the mining department and only a provision had been made. The Assessing Officer, as the same had not been deposited to the mining department and only a provision had been made. The Assessing Officer further held that as per the mine closure plan the amount so

deposited in the Escrow account is interest bearing and the interest is realizable after every five years, therefore, the sum is in the nature of a deposit and not expenditure, hence was not allowable.

In the present proceeding, it has been stated that as per guidelines issued by Ministry of Coal, Government of India, it is mandatory for all coal mine owners to provide for an annual mine closure cost as per the guidelines. The liability for mine closure is an ascertained one and these expenditures have to be compulsorily incurred and are incidental to the mining activity. It was submitted that in the petition with RERC for determination of transfer price of lignite to M/s RWPL, the component of mine closure charges has been included and hence any disallowance would result in double taxation. It was further submitted that provisions for mine closure expenses and deposited for the amount in the Escrow account as an enforcement measure for financial assurance are two different events. Reliance was placed on the decision of the Jurisdictional High Court in the case of Udaipur Mine Developers Syndicate Pvt. Ltd. vs. DCIT. In the alternate, in ground no. 3, it was stated that since mine closure charges attributable to closing stock of lignite, to the extent of Rs. 72,12,891/- have been included in the value of closing stock, the same should be reduced from the mine closure charges disallowed.

Identical issue arose in case of M/s Rajasthan State Mines & Mineral Ltd. Vs. ACIT, Circle-6, Jaipur in ITA No. 144/JP/2014 and 124/JP/2014 dated 12.02.2016 and the relevant portion of the order is as follows:

“30.3 We have heard rival contentions and perused the material on record. In our view, once assessee whether private or government take on lease a mine, its closure is inevitable. A mine cannot be permitted to be exploited infinitely and indefinitely. In our view, once the mine is exploited, its closure and rehabilitation is necessary. In our view, the Ministry of Coal, Government of India had provided structured programmed/guidelines for closure of mines. In our opinion, the view expressed by the AO and Ld. CIT(A) is contrary to law and we disagree with the view of the authorities below that the liability is a contingent liability and is not ascertainable liability. The guidelines laid down by the Coal Ministry, has elaborately given the charge to quantify the liability and the manner in which the amount is required to be spent for closure of the mines and for

restoring the ecological balance and environment protection. Therefore, to say that the liability is merely a contingent and has to be arises, in our view is preposterous and without any merit. The provisions are required to be made in the books of account of the assessee. Since the amount is ascertainable and discernable to be spent on the closure of the mines, in view of the formula given by the Ministry of Coal, therefore, in our view the liability is not a contingent liability and is required to be made provision in present and is required to be spent in a future date. The judgment referred by the Ld. A/R for the assessee in the matter of Kedarnath Jute Mfg Co. Ltd. (Supra) and also in the matter of Rotork Controls India Pvt. Ltd. (Supra) are squarely applicable to the facts and circumstances of the case.

30.4 *When the above principles are applied to the facts of the present case it can be progressive or contingent mine closure plan and final mine closure plant. The assessee has operating lignite mines at Hiral, Nagor and Sonari. As a result of the mine closure plans issued by the Government of India the assessee has an present obligation to provide for the expenditure which it have to fund on closure of the mines and thus it has a present obligation as a result of the past events, it is certain that an outflow of resources would be required to settle the obligation and a reliable estimate can be made of the amount of the obligation which is mentioned din these guidelines. Therefore, according to the matching concept also when the revenue from the mining activity of these mines has been recognized in income, the co to be incurred to earn such revenue has to be provided for. In these circumstances and the legal position, even if expenditure is not actually incurred in the year under consideration but there is an obligation on the assessee to incur the expenditure of which a reliable estimate can be made has to be allowed a deduction. In the assessee's case also it is certain that assessee has to incur the expenditure on closure of mine and for which a reliable estimate has been made and therefore the provision made for mine closure expenses is allowable u/s 37(1) of the Act.*

30.5 *Further, the judgment in the matter of Bharat Earth Movers' Ltd. v. CIT, 112 Taxman 61 (SC) and Calcutta Company Ltd., 37 ITR are applicable. Besides, in the said judgment it was categorically*

held that the mines closure liability is a ascertained liability notwithstanding principle as well as the mercantile system of accounting, the liability is applicable in principle under section 37 of the Act. In view of the above, the ground of the assessee is allowed and the Assessing Officer is directed to give the benefit of deduction of Rs. 2,94,04,000/- towards mines closures expenses in the A.Y. 2010-11.

In view of the discussion as above, and the finding of the jurisdictional ITAT, on this issue, the addition made under this head is deleted. This ground of appeal is allowed.”

15.4 *Ld. CIT(A) has followed the decision of the Co-ordinate Bench rendered in the case of M/s Rajasthan Mines and Mineral Ltd. vs. ACIT in ITA No. 144/JP/2014 & 214/JP/2014 dt. 12.02.2016.*

15.5 *The Revenue has not placed any contrary binding precedents. Therefore, we do not see any reason to interfere into the finding of the Ld. CIT(A), same is hereby affirmed. This Ground of Revenue’s appeal is dismissed.”*

21. As the facts and circumstances during the year under consideration are same, respectfully following the order of the Tribunal in assessee’s own case, we do not find any reason to interfere in the order of the Id. CIT(A) deleting the disallowance in respect of mines closure plan. We direct accordingly.

22. As the facts and issues of the assessee for the A.Y. 2014-15 are identical to the facts and issues for the A.Y. 2013-14 as discussed above. Therefore, the findings of the Bench in the case for A.Y. 2013-14 shall also apply mutatis mutandis in the case for the A.Y. 2014-15.

23. In the result, both the appeals of the assessee are allowed in part whereas the appeals of the revenue are dismissed.

Order pronounced in the open court on 14th February, 2019.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 14th February, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- M/s Barmer Lignite Mining Company Limited, Jaipur.
2. प्रत्यर्थी / The Respondent- The ACIT/DCIT, Circle-6, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 798,799, 774 & 775/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar