

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI S.S.GODARA, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1357/Kol/2018

(निर्धारणवर्ष / Assessment Year: 2004-05)

ACIT, Circle-2, Asansol	Vs.	M/s Eastern Coalfields Ltd.
		CMD's Office, Sanctoria, P.O.- Dishergarh, Dist. Burdwan-71333
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAACE 7590 E		
(Appellant)	..	(Respondent)

Appellant by : Shri Radhey Shyam, CIT DR and Shri
Shankar Halder, JCIT, Sr. DR

Respondent by : None

सुनवाईकीतारीख/ Date of Hearing : 16/04/2019

घोषणाकीतारीख/Date of Pronouncement : 15/05/2018

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the Revenue, pertaining to assessment year 2004-05 is directed against the order passed by the Commissioner of Income Tax (Appeal)-Asansol, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the Act) dated 29.12.2006.

2. The ground nos. 3 and 4 raised by the Revenue are as follows:

3. Whether on the facts and circumstances of the case and in law, the ld. CIT(A), Asansol is justified in deleting the addition made on account of disallowance of "Current Liabilities" amounting to Rs. 1,22,06,16,000/- merely by relying on the presumption that the assessee, being a PSU, cannot create a fictitious liability in the books.

4. *Whether on the facts and circumstances of the case and in law, the ld. CIT(A), Asansol is justified in allowing the liability on a theoretical basis in the absence of party-wise details which were not submitted by the assessee before the Assessing Officer.*

3. At the time of hearing none appeared on behalf of assessee in spite of issuance of notice for hearing more than one occasion and Ld. Departmental Representative(DR), was present for the appellant Revenue. In the absence of any appearance by the assessee, the appeal is being disposed of *ex parte qua* the assessee, after hearing Ld. DR for the Revenue on merits in terms of Rule 24 of the Income Tax Appellate, Tribunal, Rules, 1963.

4. We have heard the ld DR for the Revenue and perused the material available on record. We note that ld. CIT(A) did not examine party-wise details of liability. We note that the ld. CIT(A) did not discuss the assessee's case on merits based on the material available before him. The ld. DR for the Revenue furnished before us written submission, which are reproduced below:

"In this case, the A.O. has originally passed an order dated 29.12.2006 wherein provisions under the heads 'Employees Remuneration & Benefit' and 'Arrear Salary and Wages' were claimed in the Profit & Loss A/c. The A.O. made disallowance Rs.28557.50 lacs on two grounds.

1. That the claim of the appellant, that the provisions were duly paid, was not verifiable in absence of any supporting documents.

2. That the provision made under the heads were not verifiable, therefore it was a fictitious liability.

The Hon'ble ITAT has directed the CIT (A) vide its order dated 27.07.2016 to decide this ground of Appeal after a fresh opportunity given to the appellant.

The CIT(A) has allowed this claim of the appellant by following the decision Hon'ble Supreme Court in case of Rotork Controls Pvt. Ltd. Vs CIT {180 Taxmann 322 (SC)} on the ground that:

i. The enterprise had a present obligation as a result of a past event;

ii. It was probable that an outflow of resource will be required to settle the obligation;

iii. Reliable estimate could be made of the amount of obligation then such provision was definitely to be recognized in the books of account.

Here, it is pertinent to mention that the AO has not disallowed the provisions on the ground of uncertain liability. The A.O. has disallowed the part of aforesaid

provision on the ground that subsequent payment made by the appellants is not verifiable neither any supporting evidence has been submitted.

The ld. CIT(A) has grossly ignored the finding of the A.O. that no evidence was produced as to whom the provisions were made to pay. The ld. CIT(A) should have examined the genuinity of the claim after ascertaining all the evidences of the appellant's claim.

As the ld. CIT(A) failed to do so, the issue raised by Assessing Officer, has not been addressed. Therefore, the matter requires to be restored back to ld. CIT(A) for examination of claim made by the appellant in the light of the payments and evidences.”

Therefore, we deem it fit and proper to set aside the order of the ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the Revenue is treated as allowed.

5. In the result, the appeal of the revenue is treated to be allowed for statistical purposes.

Order pronounced in the Court on 15.05.2019

Sd/-
(S.S.GODARA)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

दिनांक/ Date: 15/05/2019
(SB, Sr.PS)

Copy of the order forwarded to:

1. ACIT, Circle-2, Asansol
2. M/s Eastern Coalfields Ltd.
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches