

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI, SANJAY GARG, JM

आयकर अपील सं./ ITA NO. 741 to 743/Chd/2018
निर्धारण वर्ष / Assessment Year : 2009-10 to 2011-12

Asst. Commissioner of Income Tax, Panchkula Circle, Panchkula	बनाम	M/s Haryana Power Generation Corp. Ltd. Sector-06, Panchkula
स्थायी लेखा सं./PAN NO: AABCH4536J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 1476 to 1477/Chd/2018
निर्धारण वर्ष / Assessment Year : 2013-14 to 2014-15

Asst. Commissioner of Income Tax, Panchkula Circle, Panchkula	बनाम	M/s Haryana Power Generation Corp. Ltd. Sector-06, Panchkula
स्थायी लेखा सं./PAN NO: AABCH4536J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 431 & 452/Chd/2019
निर्धारण वर्ष / Assessment Year : 2015-16 & 2012-13

DCIT, Circle Bay No. 41-43, Aayakar Bhawan Sector-2, Panchkula	बनाम	M/s Haryana Power Generation Corp. Ltd. C-7, Urja Bhawan, Sector-6 Panchkula, Haryana
स्थायी लेखा सं./PAN NO: AABCH4536J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Harish Nayyar, Advocate
राजस्व की ओर से/ Revenue by : Shri Krishan Kumar, CIT
Smt. Poonam Sharma, JCIT (ITA No. 1477/Chd/2018)

सुनवाई की तारीख/Date of Hearing : 14/11/2019
उद्घोषणा की तारीख/Date of Pronouncement : 18/11/2019

आदेश/Order

PER BENCH:

These appeals have been filed by the Department against the separate orders of the Ld. CIT(A), Panchkula as per following details:

Appeal Number & Assessment Year	Date of CIT/ CIT(A) order	Office of CIT/ CIT(A)
ITA No. 741/Chd/2018 A.Y. 2009-10	05/03/2018	CIT(A), Panchkula
ITA No. 742/ASR/2018 A.Y. 2010-11	06/03/2018	CIT(A), Panchkula
ITA No. 743/Chd/2018 A.Y. 2014-15	06/03/2018	CIT(A), Panchkula
ITA No. 1476/Chd/2018 A.Y. 2013-14	24/09/2018	CIT(A), Panchkula
ITA No. 1477/Chd/2018 A.Y. 2014-15	24/09/2018	CIT(A), Panchkula
ITA No. 431/Chd/2019 A.Y. 2015-16	22/01/2019	CIT(A), Panchkula
ITA No. 452/Chd/2019 A.Y. 2012-13	06/03/2018	CIT(A)-2, Gurgaon

2. Since the issues involved are common and the appeals were heard together so these are being disposed off by way of this consolidated order for the sake of convenience and brevity.

3. At the first instance we will deal with the appeal in ITA No. 741/Chd/2018 for the Assessment Year 2009-10.

Following grounds have been raised in this appeal:

1. Whether on the facts and circumstances of the case the Ld. CIT(A) has erred to allow the appeal of the assessee and to delete the addition of Rs. 21,67,62,978/- made account of fuel related losses by holding the same being legitimately claimed by the assessee .
2. Whether on the facts and circumstances of the case the Ld. CIT(A) has erred to allow the appeal of the assessee and to delete the addition of Rs. 4,97,25,987/-made on account of renovation and modernization of projects which is incorrect as the said expenditure is capital in nature and the benefit is spread over the years and therefore, not allowable expenditure to the assessee.
3. It is prayed that the order of the Ld. CIT(A) be set-aside and that of the A.O. be restored.
4. The appellant craves leave to add or amend the grounds of appeal before the appeal is heard and disposed off.

4. Vide Ground No. 1 the grievance of the Department relates to the deletion of addition of Rs. 21,67,62,978/- made by the A.O. on account of fuel related losses.

5. The facts related to this issue in brief are that the assessee filed return of income on 30/09/2009 declaring losses at Rs. 114,11,92,656/- which was revised on 21/03/2011 declaring losses at Rs. 1,20,04,22,518, the same was processed under section 143(1) of the Income Tax Act (here-in-after referred as "Act"). Later on the case was selected for scrutiny.

6. During the course of assessment proceedings the A.O. noticed that the assessee had claimed fuel related losses at Rs. 43,35,25,957/- as per the Schedule 18 of the P&L Account. He was of the view that the said losses appeared to be excessive and unreasonable, and asked the assessee to explain as under:

- (i) How the fuel loss was calculated. Whether any weighment was done at the receipt side.
- (ii) Whether any transit insurance was done in respect of coal
- (iii) Whether any FIR was lodged in respect of loss
- (iv) What steps have been taken by the corporation to avoid such loss.
- (v) Whether any claim was filed with the Railway Authorities.
- (vi) Whether the deduction was made from the seller party, if not, reasons thereof.

7. In response, the assessee vide written submission dt. 07/12/2011 submitted as under:

- "1. Coal loss was calculated on the basis of weighment made at Panipat Thermal Power Station weighbridges installed in CHP-I, CHP-II & CHP-III.*
- 2. No FIR were lodged by this office and no transit insurance was got done.*
- 3. The regular correspondence is being made with Railway authorities and other concerned authorities for minimizing transit losses. However, since the coal is transported from far of places and therefore it is impossible to avoid transit loss.*
- 4. No claim was filed with Railway authorities.*
- 5. The coal is handed over by the coal company at the time of dispatch from the loading end and is a loss during transit of coal and hence question of deduction of fuel loss from the bills of supplier does not arise."*

7.1 The A.O. thereafter asked the assessee to furnish the evidence on the basis of which the said loss was claimed.

7.2 In response the assessee vide written submission dt. 20/12/2011 submitted as under:

"Further to the personal attendance of the undersigned and submissions made earlier and explanation given regarding fuel related coal losses by the concerned representative of the assessee, we bring out as under for your kind consideration and taking necessary action in the matter:

FTPS is getting coal from subsidiaries coal companies of Coal India Limited. The assessee is getting supply of coal from far off places. The coal generally travels the distance of 1100 KM to 1350KM before it is unloaded at the place of the assessee. The difference in weight of coal at loading point viz-a viz. unloading point is called transit losses. The main reason of transit losses are as under:

1. Evaporation of surface moisture
2. Windage losses during transportation

The documentary evidences in respect of transit losses such as invoice of the supplier depicting quantity of coal supplied by the supplier and weighbridges slips depicting quantity received by the assessee and working in respect of transit losses for the coal

loss in transit are enclosed for our kind reference."

7.3 However the A.O. did not find merit in the submissions of the assessee and disallowed 50% of the losses claimed by the Assessee amounting to Rs. 21,67,62,978/- by observing in para 2.4 of the assessment order dt. 29/12/2011 as under:

" (i) The assessee has not deducted the loss on account of weight of coal from the seller party.

(ii) The assessee has not filed any claim for the loss of coal with the Railway authorities.

(iii) Any independent evidence which can be said to be reliable and cogent has not been supplied rather reliance has been placed on the self serving weighing slips.

To sum up, the initial burden on proof on the assessee has not been discharged which could satisfy a prudent person such as insurance claim, claim from Railways being a consumer of transport services and claim with the suppliers. However keeping in view the loss on account of humidity during transit can alone be the cause of reduction in weight during transit, therefore being reasonable and practical approach, the loss due to evaporation/transit loss is allowed at 50% i.e. 21,67,62,978/- of the total loss claimed. Thus, balance 50% of loss claimed i.e. 21,67,62,978/- is disallowed and added to the returned income."

8. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under:

"As regards fuel related losses, the appellant corporation is getting coal from subsidiaries coal companies of Coal India Limited. The appellant is getting supply of coal from far off places. The coal generally travels the distance of 1100 KM to 1350 KM before it is unloaded at the works of the appellant. The difference in weight of coal at loading point viz.-a-viz. unloading point is called transit losses. The main reason of transit losses are as under:-

1. Evaporation of surface moisture
2. Windage losses during transportation

HPGCL has coal based Thermal Power Stations located in State of Haryana for generation of electricity. Coal and Oil is used as raw material for generation of electricity. The major content of Raw Material is Coal. HPGCL is purchasing coal through the subsidiaries of Coal India Ltd. Coal India Ltd is a Govt. Public Sector Undertaking. The subsidiaries of Coal India Limited transfer the title of goods to HPGCL after loading of coal in Railway wagons and its weighment.

It is submitted that the transit losses to the tune of Rs.43,35,25,957/- occurred during course of carrying out the business and that these losses are not capital in nature. It is highlighted these losses occurred on account of natural process and were beyond control of the appellant and in the given circumstances there was no possibility for the appellant to prevent, recoup or reduce these losses. Out of the total loss of Rs.43,35,25,957/- recorded in the books of accounts, a sum of Rs.21,67,62,978/- being 50% of the loss recorded in the books was disallowed. The contention and basis of making addition of Rs.21,67,62,978/- are rebutted point-wise, hereunder:

1. LOSS OF COAL DURING TRANSIT NOT INSURABLE

It is submitted that as per policy of Insurance companies, losses of coal occurring on account of evaporation of surface moisture and windage during course of transportation is not insurable. A copy of letter of Senior Branch Manager, New India Assurance Company Limited, Panchkula, wherein it has been stated out that losses occurring during course of transport on account of pilferage and lost quantity in respect of coal cannot be insured, is enclosed. We may state that information in this regard was sought from other similar State Govt. Undertakings/ Corporations (engaged in business of generation of power), namely Kota TPS, Suratgarh TPS, GGSS TPS Ropar, GND TPS Bathinda, & GHTPS Lehra Mohabbat, who also affirmed that there is no scheme to cover under transit insurance by any Insurance Company.

Since no insurance company is offering such an insurance cover, the stock of coal could not be covered by an insurance policy.

2. TRANSPORT AT RAILWAY RISK (RR)- FREIGHT CHARGES OF RAILWAYS WOULD HAVE BEEN MUCH MORE

It is submitted that Indian Railways offers following two options to the parties seeking the services of Railways for transport of coal. One option is to transport the goods at owner's risk and other is to transport at Railway's risk. The rate and tariff charged by Railways for

transport of coal in both these options varies substantially. A tabulation of the tariff under both the options is as under:-

Option-I	Normal rate of tariff at OR (Owner's risk)
Option-II	20% surcharge on normal rate at RR(railway's risk)

A copy of Indian Railways tariff chart is enclosed herewith for your kind reference.

The appellant availed of option I, i.e. normal rate of tariff i.e. Transport of coal at its own risk, as the cost of insuring under this option was much lower. It is stated that had the appellant opted for transport of the coal at the risk of Indian Railway by resorting to option II, freight charges payable for transit of coal would have been higher by 20% of the amount payable under Option I.

3. LOSS SUFFERED BY THE APPELLANT DURING COURSE OF CARRYING OUT ITS BUSINESS ACTIVITIES ALLOWABLE AS DEDUCTION-PROVISIONS OF SECTION 37(1) OF THE ACT.

It may also be relevant to point here that the fuel related losses recorded by appellant (coal loss during transit) have occurred during the course of carrying out its business activity. The correctness, legitimacy and genuineness of loss cannot be doubted as the books of accounts of the appellant are subject to audit by statutory auditors appointed under section 619(3) of the Companies Act and are also subject to audit by Comptroller and Auditor General of India. The losses appearing in the books of accounts have been duly verified by the auditors and no adverse inference has been drawn in this regard.

It may be relevant to state here that since these losses (fuel related losses) have occurred during course of carrying out the business activities and are neither in the nature of personal expenditure, nor capital expenditure, the same are allowable under the provisions of section 37(1) of the Act.

In view of above, observations made by the AO in the order of assessment which are the basis of making this disallowance and the point wise reply to the observations of the AO, in a tabular form are addressed hereunder :-

Sr. No.	Observations of Assessing Officer in Order of assessment	Reply to the Observations
1.	How the fuel loss was calculated? Whether there is any weighment was done at the receipt side.	FTPS has installed weigh bridges in the plant for weighment of coal on receipt of Rake and regular weighments were carried out. The amount of loss was calculated for the proportion of quantity lost, which was arrived after calculating the difference between weighment of particular rake made at time of loading over weighment of particular rake at the time of unloading.
2.	Whether any transit insurance was done in respect of coal.	It is a loss making process and as such no insurance companies come forward to

		make transit insurance, refer our submissions at para 1.0 above.
3.	Whether any FIR was lodged in respect of loss.	The coal is transported in open wagons and on account of exposure of coal to environment of open wagons, coal is received less. Evaporation of surface moisture and windage losses takes place as transportation process takes 3 to 4 days. Thus there is physical loss of coal. Since the loss is on account of natural process, no person could be held responsible. Therefore FIR could not be lodged.
4.	What steps have been taken by the corporation to avoid such loss.	The loss can be avoided only if coal is transported through covered wagons. But in such event, loading and unloading is not possible through mechanical means. Manual loading and unloading costs more and also takes more time. This also results in additional cost on account of heavy demurrage as only unloading of 59 wagons in 7 hours takes place. In this way the cost of demurrage could have been more than loss occurred in transportation of coal in open wagons
5.	Whether any claim was filed with the Railway authority.	As discussed above, the claim can only be filed with Railway authorities when the coal is transported at Railways risk. If this option could have exercised by the Appellant, freight charges payable for transit of coal would have been higher than the loss suffered by the Appellant. Thus to avoid extra loss, the coal was transported at owners risk and hence claim could not be filed with the Railway Authorities.
6.	Whether the deduction was made from the seller party, if not reason thereof.	When the booking of rakes is made at owner's risk then the deduction from seller cannot be made. If the rakes would have been booked at seller's risk then 20% extra cost was to be paid which would have been quite higher than the loss occurred in booking of rakes at owner risk. Thus to avoid extra loss, the coal was transported at owners risk and hence claim could not be filed with seller.

To sum up, it is submitted as hereunder:

1. The appellant is procuring coal from collieries, which are located at distant places (almost about 1100 Kms to 1350 kms from the thermal power plants). Loss

on account of evaporation of surface moisture, windage loss takes place during transportation in the normal course are beyond the control of the appellant.

II. Insurance cover on these Transit losses is not offered by insurance companies and therefore the appellant does not have any choice other than to bear losses at its own.

III. Freight charges for coverage of this loss by railway authorities, as per clause (12) appearing in the Goods Tarrif of Railways are much higher than the amount of loss actually suffered by the appellant.

IV. The accounts of the appellant are subject to audit under various laws and the genuineness and legitimacy of transactions (loss suffered by the appellant) cannot be doubted/ challenged.

V. The losses recorded in the books of accounts have occurred during course of carrying out business activities are related to its business and are allowable expenditure under the provisions of section 37(1) of the Act. The losses are verifiable and have been deduced from basic record/ documents in possession of the appellant.

VI. Amount to the extent of 50% of the total loss has been disallowed by the Assessing Officer on adhoc basis without assigning any specific reasons. "

9. Ld. CIT(A) issued the show cause letter dt. 05/07/2016 regarding disallowance on account of fuel related losses to the assessee which read as under:

"Reference is invited to the ground of appeal on the disallowance on account of fuel related losses claimed in the P&L account. On perusal of submissions made for A.Y. 2009-10, it is noticed that the fuel related transit losses have been excessively claimed as compared to the allowable 0.8% transit losses for coal in terms of tariff regulations issued by Central Electricity Regulatory Commission(CERC). Further, similar information related to transit losses for coal for A.Ys. 2010-11 and 2011-12 have not been provided. The submission of such information is required for adjudication of the ground of appeal. Therefore, in view of the excessive claim of fuel related transit losses, an opportunity is provided to explain with evidences that why the transit losses for coal should not be restricted to 0.8% in A.Ys. 2009-10 to 2011-12. "

9.1 In response the assessee furnished the written submissions which read as under:

"1) As regards the show cause as to why the transit losses of coal recorded at 2.31% by the appellant corporation may not be restricted to 0.8%, we state as under which alongwith out detailed submissions dated 08.12.2015 supported by documentary evidence may be taken into consideration while deciding the matter: Functions of HERC

As per the Electricity Act, 2003, the main functions of the Commission viz. a viz. the appellant corporation is to :

a) Determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be within the state:

Provided that where open access has been permitted to a category of consumers u/s 42, the state commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

b) Regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from, other sources through agreements for purchase of power for distribution and supply within the state;

c) Facilitate intrastate transmission and wheeling of electricity;

d) Issue of licenses to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the state;

e) Promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution license;

f) Adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

g) Levy fee for the purposes of this Act;

h) Specify State Grid Cod consistent with the Grid Code specified under clause (h) of sub section (1) of section 79;

i) Specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

j) Fix the trading margin in the intra-State trading of electricity, if considered, necessary; and

k) Discharge such other functions as may be assigned to it under this Act.

The commission is also required to advise the State Government on all or any of the following matters, namely:-

i) Promotion of competition, efficiency and economy in activities of the electricity industry;

ii) Promotion of investment in electricity industry;

iii) Reorganization and restructuring of electricity industry in the State;

iv) Matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government.

Apart from the above, the functions of the commission as per the Haryana Electricity Reform Act, 1997 that are in harmony with the Electricity Act, 2003 are the following :-

a) To regulate the working of the licensees and to promote their working in an efficient, economical and equitable manner;

b) To promote efficiency, economy and safety in the use of the electricity in the State including and in particular in regard to quality, continuity and reliability of service and enable all reasonable demands for electricity to be met;

c) To regulate the purchase, distribution, supply and utilization of electricity, the quality of service, the tariff and charges payable keeping in view both the interest of the consumer as well as the consideration that the supply and

distribution cannot be maintained unless the charges for the electricity supplied are adequately levied and duly collected;

d) To promote competitiveness and progressively involve the participation of private sector, while ensuring fair deal to the customers;

e) To collect data and forecast on the demand for and use of electricity and to require the licensees to collect such data and forecast;

f) To require licensees to formulate perspective plans and schemes in coordination with others for the promotions o generation, transmission, distribution and supply of electricity;

g) To set appropriate code of conduct and standards for the electricity industry in the State;

h) To regulate the assets, properties and interest in properties concerning or related to the electricity industry in the State;

i) To undertake all incidental or ancillary things.

Perusal of the above details reveals that the main purpose for which regulatory commission was set up was to exercise control on the functioning of the electricity companies in India by keeping surveillance on various factors like increase in cost of production of electricity, line losses, pilferage and other such related issues. For this purpose, the tariff fixed by electricity producing companies were subject to scrutiny by the electricity regulatory commission who examined expenditure incurred by these companies as regards their chargeability to cost of electricity calculated by these manufactures. While doing so, the factors relating to increase in efficiency and decrease in avoidable expenditure were taken into consideration. The electricity regulatory commission however did not check validity or commented on the validity, genuineness or correctness of the expenses incurred by the electricity generating companies.

Perusal of the functions as stated above also reveals that the commission is a statutory authority whose main role is to ensure efficiency, cost effectiveness and adequate supply of power etc. to the general public in the State. In furtherance of its object it fixes the tariff to be charged for retail, wholesale and bulk supply etc. while fixing the tariff and allowing transit losses/various other expenditure, it takes into consideration the expenses incurred by the corporation and then arrives at the rate of electricity, which ultimately is to be borne by the general public. HERC for the purpose of bringing more efficiency and economy as a practice resists the losses suffered by the power sector companies so that the general public may be benefitted in the form of low price and adequate supply of power.

The expenses not considered for the purpose of fixing the tariff remain unrecovered from the consumers and as a result of this most of the PSUs in power sectors are at huge losses.

The expenses disallowed by CERC/HERC therefore cannot be yardstick/basis for assessing the income of the appellant under income tax act by making disallowance of the expenses incurred by these companies while carrying out its business activities. It is emphasized that expenses are disallowed by HERC only for limited purposes of fixing the tariff and the purpose of increasing the cost effectiveness of electricity generating companies so that the efficiency of these government companies is maximized and the benefit of the same is passed on to the consumers in form of lower tariff. By questioning the genuineness of expenses actually incurred or holding that the expenses incurred by the electricity

companies are excessive can in no manner lead to the conclusion that these expenses are not in the nature of business expenses and are not to be taken into account for the purpose of determining the taxable income under the provision of Income Tax Act.

It may also be relevant to mention here that in the case of appellant even HERC has allowed transit loss of coal @ 2% in the case of Panipat Thermal Power Plant and @ 2.5% in the case of Faridabad Thermal Power Plant for the year under question.

In light of the above submissions made in response to the notice dated 05.07.2016 and also in written submission filed vide letter dated 08.12.2015, it is prayed that parameter in regard to transit loss for coal adopted by CERC @ 0.8% may not be applied while considering the ground relating to addition of Rs.21,67,62,978/-.

2) We also reiterate here under submissions made during the course of earlier hearing, which also fortify that transit loss of coal suffered by the appellant is genuine, legitimate and was beyond control of the appellant:

i) Transit loss of coal is not insurable.

ii) Had the appellant opted for transport of coal at the risk of Indian Railways, freight charges payable for transit of coal would have been higher by 20% of the amount of freight paid by the appellant, which would have been much higher than the coal related loss suffered by the appellant.

iii) The correctness, legitimacy and genuineness of loss has already been verified by the statutory auditors appointed u/s 619(3) the Companies Act and also by Comptroller and Auditor General of India.

3) It is further submitted that transit losses of coal are being suffered by the appellant since the date of inception and these losses have been in the range of 3.06% to 6.58% in the past i.e. much more than the transit loss of coal suffered by the appellant during the year under question. It may be relevant to mention here that these transit losses were duly allowed by the AO while completing assessment proceedings/reassessment proceedings upto the F.Y. 2007-08 (A.Y. 2008-09) and no disallowance in this regard was ever made by AO.

Since, no disallowance in respect of transit loss of coal suffered by the appellant was made in the earlier years, transit losses for coal during the year under consideration also deserves to be allowed, keeping in view the principle of consistency and natural justice. "

10. The Ld. CIT(A) after considering the submissions of the assessee observed that coal was transported by road mode from coal mines to loading railway sidings and then lifted into open rail wagons for transport to power plants and that the damaged wagons with cracks/gaps may cause significant quantum of enroute spillage over long distances. He further observed that losses in transportation came from the uncovered moving of coal using trucks & railways where wind and agitation could have caused significant coal dust emission losses and that the weight loss also occurred due to evaporation of moisture

from coal while it was being transported across long distances and moisture loss was more in washed coal. He also observed that as the wagons in coal rakes were uncovered they were also subjected to rain as well as pilferage. Thus the transit losses varied due to factors such as metrological condition, moisture content, washed / unwashed coal, travel forces etc.

10.1 The Ld. CIT(A) observed that the Railway transit insurance was expensive and that although escorting services have come up in private sector which provided, trained escorts to ensure safe transit of coal by providing tarpaulin covering to cover rake wagon for safety of material from pilferage and rain / wind, checking open doors of wagons, keep record of adjustment of weighment (under load & overload) for load adjustment, ensuring that no cargo was left in wagons during unloading, however those services also involved additional costs.

10.2 Ld. CIT(A) was of the view that the assessee had specifically addressed the adverse observations of A.O. regarding transit insurance, recovery of loss claim from seller / railways etc. He also observed that the disallowance of coal loss was made by the A.O. by considering the loss to be excessive and unreasonable but no enquiry had been undertaken by him to find out the correct loss of coal on transit and that the disallowance was made on estimate basis @ 50% of loss claimed by considering only loss due to evaporation of moisture and ignoring the windage loss etc. Ld. CIT(A) pointed out that the Power Companies incurred actual transit loss of coal at a value higher than the specified normative transit loss of 0.8% as specified under the General Tariff Regulations of CERC and that the various Power Companies regularly sought relaxation of norm and higher allowance of transit loss of coal as per actual. He also pointed out that the State Commissions and CERC have exercised power to relax the norms when the Power Companies had established reasons and circumstances for exercising the relaxation. Thus 0.8% transit loss was a target loss

but actual claim of Power Companies were always more due to factors beyond their control.

10.3 The Ld. CIT(A) observed out that in the assessee's case for the year under consideration, the HERC on representation by the assessee had allowed transit loss @ 2% for PTPS and @2.5% for FTPS as against 2.3% average loss claimed. He also pointed out that the CERC/HERC had set standards for the electricity industry to promote efficiency, economy & competitiveness and to regulate the tariff in view of both interest of consumer as well as the consideration that supply & distribution could not be maintained unless adequate charges for electricity supply were adequately levied and duly collected and that while setting normative loss the Regulatory commission had not commented on validity, genuineness or correctness of loss figures incurred by generating companies. Ld. CIT(A) observed that HERC resisted the losses suffered so that general public/consumers may be benefited and more efficiency & economy was exercised by Power Companies. He also observed that most of the Public Sector undertakings in Power sector were at huge loss because expenses not considered for fixing of tariff remained unrecovered from consumer. He therefore accepted this submission of the assessee that the expenses disallowed by CERC/HERC were only for the limited purpose of fixing the tariff and promoting efficiency of those companies and could not be the basis of assessing income of assessee under the Income Tax Act, by making the disallowance of actual expenses incurred while carrying out its business activities when the expenses were genuine and even if considered excessive for fixation of tariff purposes.

10.4 Ld. CIT(A) mentioned that the transit loss of coal recorded by the assessee over the years were as under:

F.Y.	A.Y.	Actual transit loss of coal suffered by the appellant (in %)	Allowed by HERC(in %)

2001-2002	2002-2003	6.58%	
2002-2003	2003-2004	6.48%	
2003-2004	2004-2005	4.19%	
2004-2005	2005-2006	4.23%	3.00%
2005-2006	2006-2007	4.79%	3.00%
2006-2007	2007-2008	3.06%	2.50%
2007-2008	2008-2009	6.00%	PTPS 2 % and FTFS 2.5%
2008-2009	2009-2010	2.31%	PTPS 2% and FTFS 2.5%
2009-2010	2010-2011	4.00%	1.50%
2010-2011	2011-2012	7.30%	1.00%

10.5 Ld. CIT(A) observed that the transit loss of coal claimed by the assessee was a loss incurred every year and was arising / incidental to carrying out transport of coal required as fuel for power generation in the normal course of business of power generation carried out by the assessee and was not in the nature of capital expenses/or accidental or exceptional in nature and that the loss was real and of revenue nature. According to the Ld. CIT(A) the coal loss varied from year to year as it was dependent on various factors such as weather conditions, moisture contents, travel forces etc., which were variable from time to time and that there was no prospect of recovery from coal companies / Railways as transit of coal was not insurable.

10.6 Ld CIT(A) pointed out that the assessee had submitted the details of nature of loss and method of computation of loss to the A.O. as well as before him which had been verified and examined. He also pointed out that coal loss had been computed on the basis of weighment of various rakes at the time of loading of coal in the railway wagons and final weighment made at weighbridges installed at the power plant upon unloading and the amount of loss was arrived at after calculating the difference between weighment of a particular rake made at the time of loading over weighment at the time of unloading. The Ld. CIT(A) mentioned that the difference in weight of coal which was called the transit loss was recorded first in the SMB Register, thereafter in the stock register and the books of accounts under the head "fuel related losses", and that the record in respect of fuel related losses suffered by "Panipat Unit" of

the assessee corporation was examined by the A.O. while completing the assessment proceedings for the A.Y. 2009-10 and no adverse comments / discrepancies as regards to the records maintained by the assessee for fuel losses was observed by the A.O. while passing the assessment order. The Ld. CIT(A) observed that for the year under consideration any excessive quantity of coal received in any of the rakes was adjusted against short quantity of coal received in other rakes and thus net transit loss was claimed and that for the year under consideration as a whole no excess coal was received by the assessee. The Ld. CIT(A) also pointed out that the assessee was a State Government PSU and the correctness, legitimacy and genuineness of the loss had been verified by statutory auditors and also the accounts were submitted to the office of the C&AG of India.

10.7 The Ld. CIT(A) observed that the losses had been regularly suffered since the inception of the assessee corporation and duly allowed in the past upto A.Y. 2008-09 by the A.O. Thus the principle of consistency was also in favour of the assessee. He therefore held that the fuel related losses claimed by the assessee having occurred in the normal course of carrying out of its business and being legitimately claimed were allowable expenditure and the A.O. was not justified in making the addition by disallowing 50% of the expenditure. Accordingly the addition made by the A.O. was deleted.

11. Now the Department is in appeal.

12. The Ld. CIT(DR) reiterated the observations made by the A.O. and strongly supported the assessment order. He further submitted that the assessee had not filed any claim for loss of coal with Railway Authority and the loss claimed was more than the norms fixed by the HERC/CERC. Therefore the A.O. rightly made the disallowance and was fair enough for making the disallowance only to the extent of 50% of the loss claimed by the assessee. Therefore the Ld. CIT(A) was not justified in allowing the relief to the assessee.

13. In his rival submissions the Ld. Counsel for the Assessee reiterated the submissions made before the authorities below and strongly supported the impugned order passed by the Ld. CIT(A).

14. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is not in dispute that in such type of cases there always occurs some loss on account of evaporation, windage, loss due to open wagons surface, moisture loss etc., the Department up to the A.Y. 2008-09 accepted such type of losses and this was the first assessment year when the disallowance was made by the A.O. that too on estimate basis i.e; 50% of the loss claimed by the assessee but no basis was given to arrive at the figure of 50%. On the other hand the books of accounts were maintained by the assessee in regular course of business, those were duly audited by the statutory auditors and the accounts were submitted to the office of the C&AG of India wherein no specific discrepancies were pointed out relating to fuel related loss claimed by the assessee. Ld. CIT(A) discussed the transit loss of coal as recorded by the assessee over the years which had been reproduced in the former part of this order which clearly shows that the loss was occurring year to year and was not consistent i.e; there was variation in every year and even HERC had also allowed the loss but that allowance was for the limited purpose of fixing the tariff and promoting efficiency of the companies which clearly shows that in such type of business there was always transit loss of coal. In the present case the A.O. while accepting the 50% of the loss as genuine and remaining 50% as non genuine, had not given any cogent reason or basis and even in the past such losses were accepted by the Department.

15. In the present case the findings given by the Ld. CIT(A) that the coal loss varies from year to year and it was dependent on various factors such as weather condition, moisture content, travel forces etc. which were variable from time to time had not been rebutted. Moreover the transit of coal was not insurable and the assessee had claimed actual loss which was on account of

difference in weight of coal recorded first in the SMB Register, thereafter in the stock register and the books of accounts.

16. The Ld. CIT(A) categorically stated in the impugned order that the AO verified from the record related to the loss suffered by Panipat Unit of assessee corporation while completing the assessment proceedings for the year under consideration and no adverse comment / discrepancy as regards to the record maintained by the Assessee for fuel loss was observed by the AO while passing the assessment order. This observation of the Ld. CIT(A) has not been rebutted by bringing any cogent material on record. We therefore by considering the totality of the facts as discussed hereinabove do not see any valid ground to interfere with the findings of the Ld. CIT(A) and do not see any merit in this ground of the Departmental appeal.

17. As regards to the second issue relating to the deletion of addition made by the AO on account of renovation and modernization of projects. Ld. Counsel for the Assessee at the very outset stated that this issue is squarely covered in favour of the Assessee vide order dt. 16/10/2018 in ITA No. 627 to 631/Chd/2018 for the A.Y. 2004-05 to 2008-09. The copy of the said order was furnished which is placed on record.

18. In his rival submissions the Ld. CIT(DR) although supported the order of the AO but could not controvert the aforesaid contention of the Ld. Counsel for the Assessee.

19. After considering the submissions of both the parties and the material available on the records it is noticed that a similar issue having identical facts has been adjudicated by this Bench of ITAT in assessee's own case in ITA No. 627 to 631/Chd/2018 for the A.Y. 2004-05 to 2008-09 and the relevant findings have been given in para 9 of the order dt. 16/10/2018 which read as under:

9, We have heard the rival contentions and carefully gone through the orders of the authorities below. We find no merit in the present appeal. The factual findings

of the Ld. CIT(A) that the interest expenses claimed, pertained to loans taken for projects which had already been commissioned prior to the impugned year have not been controverted by the Revenue. Nor has the Revenue pointed out any infirmity in the conclusion drawn by the Ld. CIT(A), from the said factual position of the assessee, that interest expenses incurred subsequent to completion of renovation of projects was to be treated as Revenue in nature as per section 36(l)(iii) of the Act. The Revenue has also not controverted the finding of the CIT(A) that such claim has been allowed in the past too u/s 36(l)(iii) of the Act. We, therefore, see no reason to interfere in the order of the Ld. CIT(A) and uphold the same. The appeal filed by the Revenue is therefore dismissed.

So respectfully following the aforesaid referred to decision of the ITAT dated 16/10/2018 we do not see any merit in this ground of the Departmental appeal.

20. Since the issues involved are common in all the appeals of the Department under consideration, therefore, our findings given in former part of this order shall apply mutatis mutandis for all the assessment years under consideration wherein the similar issues are involved.

21. In the result, appeals of the Department are dismissed.

(Order pronounced in the open Court on 18/11/2019)

Sd/-

संजय गर्ग
(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

AG

Date: 18/11/2019

Sd/-

एन.के.सैनी,
(N.K. SAINI)

उपाध्यक्ष / VICE PRESIDENT

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File