

INCOME TAX APPELLATE TRIBUNAL  
 DELHI BENCH "D": NEW DELHI  
 BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
 AND  
 SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3310/Del/2015  
 (Assessment Year: 2011-12)

DCIT, Circle-10(2), New Delhi	Vs.	Great Eastern Energy Corporation Ltd, Signature Towers-A, 14 <sup>th</sup> Floor, South City, NH-8, Gurgaon PAN: AAACG3345F
(Appellant)		(Respondent)

ITA No. 3360/Del/2015 & 5728/Del/2016  
 (Assessment Year: 2011-12 and 2012-13)

Great Eastern Energy Corporation Ltd, Signature Towers-A, 14 <sup>th</sup> Floor, South City, NH- 8, Gurgaon PAN: AAACG3345F	Vs.	DCIT, Circle-10(2), New Delhi
(Appellant)		(Respondent)

Revenue by :	Smt Naina Soin Kapil, Sr. DR
Assessee by:	Shri Ravi Sharma, CA Ms. Rupal Garg, CA
Date of Hearing	22/08/2019
Date of pronouncement	20/11/2019

ORDER

PER PRASHANT MAHARISHI, A. M.

1. These are the three appeals pertaining to one assessee for two assessment years involving similar issues, therefore, both the

parties argued their appeals together and hence; they are disposed of by this common order.

2. For assessment year 2011 - 12 the learned Deputy Commissioner Of Income Tax, Circle - 10 (2), New Delhi (the learned Assessing Officer, AO ) as well as the assessee has preferred an appeal against the order of the learned Commissioner Of Income Tax (Appeals) - 4, New Delhi dated 12/3/2015.

3. The revenue has raised the following grounds of appeal in ITA No. 3310/Del/2015 for the Assessment Year 2011-12:-

- “1. Whether on the facts and circumstances of the case & in law, the Id. CIT(A) erred in deleting the addition of Rs. 1,78,30,516/- made on account of capitalization of share listing expenses.
2. Whether on the facts and circumstances of the case & in law, the Id. CIT(A) erred in deleting the disallowance of Rs. 12,21,402/- made on account of community Development (Donation) expenses u/s 37(1) of the I.T. Act, 1961.
3. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.”

4. The assessee has raised the following grounds of appeal in ITA No. 3360/Del/2015 for the Assessment Year 2011-12:-

- “1. That on the facts and the circumstances of the case and in law, Commissioner of Income tax (Appeals)-4, New Delhi [briefly "the CIT(A)"] has erred in upholding disallowance of Rs. 12,21,402/- out of community development expenses of Rs.24,42,804/-.
2. That on the facts and the circumstances of the case and in law, the CIT(A) did not appreciate that having found that there was commercial expediency in incurring expenses on community development, for without maintaining relationship with the villagers, the drilling operations which is the business of the Appellant could not have been carried on, there was no reason to disallow 50% of the expenses.”

5. Assessee is a company engaged in the business of exploration and production of coal bed methane's gas and compressed natural gas. It filed its return of income on 26/9/2011 declaring a loss of INR 607506849/-. Assessment u/s 143 (3) of The Income Tax Act 1961 was passed by the learned AO wherein disallowance of INR 32741784/- was made of expenses incurred by the assessee towards listing fee holding it to be capital expenditure in nature and allowing depreciation at the rate of 15% thereon, thus the balance addition of INR 27830516/- was made. Further assessee has incurred community development expenditure of Rs. 2442804/- same was also disallowed by the learned assessing officer holding that those expenses are not supported by proper vouchers but by self-made vouchers and further these expenses are incurred on the humanitarian ground and cannot be treated as business expenditure.
6. The assessee aggrieved with the order of the learned AO preferred an appeal before the learned CIT – A who deleted the addition of INR 17830516/- on account of capitalisation of share listing fees and disallowance of 50 % of total expenditure i.e. INR 1 221402/- made on account of community development donation expenses under section 37 (1) of The Income Tax Act 1961. Therefore against these two disallowance the learned assessing officer in appeal and further the assessee is in appeal against the confirmation of disallowance of INR 1 221402/- being 50 % of the community development expenditure of Rs 2442804/-.
7. We 1<sup>st</sup> take up the ITA number 3310/Del/2015 filed by the learned assessing officer where the only challenge is with respect to the deletion of the addition of INR 17830516/- made on

account of capitalization of the share listing fees. Assessee has issued GDR. This was earlier listed on AIM London Stock Exchange. For better market, capitalization assessee got it listed on Main – London stock exchange. This expenditure was incurred for that purpose. It is change of the exchange without increasing the capital base of the company. The sifting only provided a bigger platform to its global depository receipt holders to trade their holdings

8. The learned departmental representative relied very heavily on the order of the learned assessing officer and submitted that this is an expenditure, which will be providing enduring benefit to the assessee. The expenditure is directly related to the expansion of the capital base of the company. The reasons cited by the assessee that this will enhance companies profile and enable increased access to the capital markets as upheld by the learned CIT – A clearly demonstrate that this company has long-term benefit through the sifting for which listing fees are incurred. Hence, the company will have the enduring benefit. It was further submitted that the issue is squarely covered against the assessee by the decision of Hon Supreme court in Brooke Bond India and Punjab State industrial development Corp Ltd.
9. The learned authorised representative submitted that by incurring the listing expenses the capital base of the appellant was not at all affected. Appellant is shifting its GDR (global depository receipt) from AIM – London stock exchange to the main market London stock exchange. It is merely the change of the exchange without increasing the capital base of the company. The sifting only provided a bigger platform to its global depository receipt holders to trade their holdings. He therefore submitted

that there is no enduring benefit received by the assessee. The learned authorised representative further submitted that issue squarely covered by the decision of the honourable Supreme Court in case of CIT vs. General Insurance Corp 286 ITR 232 wherein the honourable Supreme Court has also considered and distinguished the decision in case of Punjab State industrial development Corp Ltd 225 ITR 792 and Brooke Bond India Ltd 225 ITR 798 for the reason that in the said cases expenditure was incurred for the purpose of increasing company share capital by the issue of fresh shares and there was in flow of fresh funds.

10. We have carefully considered the rival contention and perused the orders of the lower authorities. In the present case, the appellant has shifted its global depository receipt exchange from AIM London stock exchange to the main market London stock exchange without increasing any capital but to provide a bigger platform to global depository receipt holders to trade their holding. The learned assessing officer has not shown that there is any increase in the capital base of the assessee. The learned CIT – A has allowed the claim of the assessee relying upon the decision of the honourable Gujarat High Court in case of CIT vs. Alembic Chemical Works Co Ltd 201 ITR 250 wherein the annual listing fees paid to stock exchange was held to be admissible business deductible expenditure. The Honourable Highcourt held that in view of the CBDT Circular No. F. 10/67-65/IT ( A1) dated 26-8-1965 it is obvious that the listing fees paid to the stock exchange shall have to be allowed as revenue expenditure. The Tribunal had rightly taken the view that listing fees shall have to be paid by the company to the stock exchange every year and that no enduring benefit arises to the company by payment

of annual listing fees. Even otherwise, listing of shares in the stock exchange has high relevance so far as the public limited company is concerned. The status of the company is one in which public is substantially interested and for that purpose listing of shares in the stock exchange would assume importance so far as the public limited company is concerned. The business of the company also carries better prestige and better status when its shares are listed in the stock exchange. Such listing adds several advantages to the business carried on by the company, particularly in the matter of confidence of customers and loyalty of employees, which generate value. Thus, the expenditure on account of listing fees paid to the stock exchange could not be said to be capital expenditure, and that it shall have to be regarded as expenditure of revenue nature. Therefore, for the reasons we do not find any infirmity in the order of the learned CIT – A in deleting the above disallowance noting that there is no increase in the capital base of the assessee company. In view of this, we dismiss ground number 1 of the appeal of the learned AO.

11. Coming to the ground number 2 of the appeal is against the deletion of the disallowance of 50 % of the expenditure of Rs 24 lakh i.e. INR 1221402/- made on account of the community development donation expenses under section 37 (1) of the income tax act 1961. This also covers the ground number 1 and 2 in the appeal of the assessee.
12. Brief facts of the issue shows that the assessee company has claimed community development expenditure of Rs 2442801/-. On the perusal of the details it revealed that the expenses incurred being donation for festivals, construction of market

share in the bazaar, cash paid to various persons , for Puja, for water tanks, roads and amount expended for renovation of the roads et cetera. The learned assessing officer stated that the expenditure is not supported by proper vouchers but is booked based on the self-made vouchers. Therefore, it was held that such expenditure could not be covered by the provisions of section 37 being not wholly and exclusively incurred for the purposes of the business. The learned assessing officer noted that the intention of the assessee company for incurring this expenditure may be humanitarian but the same cannot be treated as business expenditure. Therefore, he disallowed the above expenditure. The assessee preferred an appeal before the learned CIT – A who allowed 50% of such expenditure. Therefore, both the parties are in appeal before us.

13. The learned departmental representative vehemently relied upon the order of the learned assessing officer and stated that when the assessee has booked these expenditure on the self-made vouchers and they are in the form of the donation et cetera it cannot be said that they are incurred wholly and exclusively for the purposes of the business and therefore the learned CIT – A should have confirmed the disallowance of the complete expenditure.
14. The learned authorised representative submitted that the assessee has been carrying on its drilling operations in remote areas and without maintaining healthy relationship with the inhabitants of the villages, the drilling operations that is the business of the appellant cannot be carried on efficiently. It is for this purpose that the expenditure was incurred. He submitted that applying the standard of the businessman, the

expenditure was not purely humanitarian but was motivated with commercial expediency of the business and for any assistance by the villagers which can hamper the drilling activity of the assessee the above expenditure was incurred to maintain healthy relationship with the society where the business was carried on. It was further stated that these are the corporate social responsibility expenditure also of the assessee which cannot be disallowed u/s 37 (1) of the income tax act for assessment year 2011 – 12. He further referred to the decision in case of CIT vs. Infosys technologies of the honourable Karnataka High Court reported in 360 ITR 714 prominently along with others.

15. We have carefully considered the rival contention and perused the orders of the lower authorities. The learned CIT – A in paragraph number 6.3 of his order as noted that assessee has incurred the expenditure towards community development expenses which were incurred for donation for festivals, construction of market said et cetera which were found as humanitarian in nature. He further noted that appellant has been carrying on the drilling operation in remote areas and therefore to maintain the good relations and to ensure continuing work of the assessee it is mandatory for the assessee to maintain good relationship with the villagers of the nearby places. The learned CIT – A found that these expenditure are for the purpose of the business of assessee however he noted that the entire expenditure cannot be held to as having commercial expediency with the business of the appellant as there is an element of humanitarian nature which is more akin to CSR measures, therefore he upheld the 50% disallowance thereof. On careful

consideration of the various judicial precedents placed before us we think that the issue is squarely covered in favour of the assessee by the decision of the honourable Karnataka High Court in CIT vs. Infosys technologies Ltd [2014] 43 taxmann.com 251 (Karnataka)/[2014] 223 Taxman 469 (Karnataka)/[2014] 360 ITR 714 (Karnataka)/[2014] 270 CTR 523 (Karnataka) wherein it has been held as under:-

**“25.** Therefore in the instant case, admittedly the assessee is having their establishment at Bannerghata Circle. Nearly about 500 employees are working in the said Unit. There was severe traffic congestion. Employees had to wait for longer time to reach the office. It seriously affected the business of the assessee, resulting in delay in completing the project. In order to facilitate its employees to reach their establishment safely and early, the assessee has installed traffic signals at Bannerghata Circle. However, it is the responsibility of the State and in particular, the Police Department to either install the traffic signal or control the traffic, the fact remains that in the absence of traffic signal or traffic police being positioned at Circles, the traffic congestion is a regular phenomenon. It seriously affects the free movement of public and in the instant case, the employees of the assessee. The assessee also has corporate social responsibility. In this background, in order to discharge their corporate social responsibility, which also facilitates their business if the employees were to reach the place early, they thought of incurring the expenditure for installing the traffic signal at Bannerghata Circle. This

expenditure is laid out or expended wholly and exclusively for the purpose of business. Therefore, the said expenditure incurred is allowable as deduction under Section 37(1) of the Act. That is precisely what the Tribunal has held. The said finding is in accordance with law and based of legal evidence. Therefore, no case for interference is made out. Hence the said substantial question of law is answered in favour of the assessee and against the Revenue.”

16. Even otherwise also the disallowance of CSR expenditure is provided in explanation 2 to section 37 (1) of the act w.e.f. AY 2015-16. In view of above facts we do not find any reason to uphold the disallowance to the extent of 50% of the total expenditure as per the order of the learned CIT – A. According to us, the total expenditure incurred by the assessee is wholly and exclusively incurred for the purposes of the business and is driven by business prudence. Accordingly, we allow ground number 1 and 2 of the appeal of the assessee and dismiss ground number 2 of the appeal of the learned assessing officer.
17. Accordingly, appeal of the assessee for assessment year 11 – 12 is allowed and appeal of the learned assessing officer for that assessment year is dismissed.
18. Now we come to the appeal of the assessee for assessment year 2012 – 13 against the order of the Commissioner of income tax (appeals) – 35, New Delhi dated 5/9/2016.
19. The assessee has raised the following grounds of appeal in ITA No. 5728/Del/2016 for the Assessment Year 2012-13:-
  - “1. *That on the facts and the circumstances of the case and in law, Commissioner of Income tax (Appeals)-35, New Delhi [briefly "the CIT(A)"] has erred in upholding disallowance of*

*Rs. 19,28,747/-, treating the same as not been incurred wholly and exclusively for the purpose business.*

2. *That on the facts and the circumstances of the case and in law, the CIT(A) did not appreciate that the Appellant was not a profit making company, hence relied upon order of CIT(A) in Power Finance Corporation was not applicable, moreover, expenditure on community development had nexus with the business of the Appellant.”*

20. Briefly stated the facts assessee filed its return of income on 27/9/2012 declaring loss of Rs 431571144/-. Subsequently the return was revised on 24/05/2013. The assessment u/s 143 (3) of the income tax act was passed on 27/3/2015 wherein the learned assessing officer disallowed the community development expenditure of INR 1 928737/- on the same reasoning as given in the assessment year 2011 – 12. Assessee preferred an appeal before the learned CIT – A who confirmed the disallowance. Therefore, assessee is in appeal before us.

21. The learned authorised representative submitted that the assessee has submitted the complete detail to the assessing officer vide letter dated 19/12/2014, which is placed at page number 1 to 3 of the paper book. He referred to such details and submitted that expenditure has been incurred by the assessee for certain cultural programs, construction of the well, road patch up, renovation of community hall, expenses for medical camp, advertisement and souvenirs and providing water tanks. He further submitted that as per letter dated 26/03/2015 the assessee has incurred the above expenditure wholly and exclusively for the purposes of the business. He reiterated the submissions made for assessment year 2011 – 12 for allowance of community development expenditure as CSR activities.

22. The learned departmental representative vehemently supported the orders of the lower authorities.

23. We have carefully considered the rival contentions and perused the orders of the lower authorities. The learned CIT – A has upheld the disallowance relying upon his own decision in case of Power Finance Corp Ltd. The above decision has been reproduced by the learned CIT – A in his order at page numbers four. The main reason for confirming the disallowance was that if the appellant's claim is accepted that would mean that similar expenditure would have to be allowed in case of private assessee as well. According to him, such expenditure in the case of private assessee apparently falls under donation or expenditure for charitable purpose whose deduction is covered under provisions of section 80 G of the income tax act. Therefore, he also did not follow his predecessors order allowing 50% of such claim as allowed to the assessee in assessment year 2011 – 12. Firstly for the reasons stated in allowing the claim of the assessee for assessment year 2011 – 12 in the instant order following the decision of the honourable Karnataka High Court in case of CIT vs. Infosys Ltd ( supra ) , we do not find any reason to sustain the order of the learned CIT – A upholding the above disallowance. Further the reasons given by the learned CIT – A that as the PSU are directed by Government Of India to incur certain expenditure in the form of corporate social responsibility, if such expenditure are allowed to them as deduction, then in case of private corporate assessee also the above expenditure is to be allowed. We do not find this 'just' reason for confirming the disallowance. Express provision of disallowance of the corporate social responsibility expenditure is provided under explanation – 2 of the provisions of section 37 (1) of the income tax act with effect from 1/4/2014 by The Finance (Number 2) Act, 2014.

Thus, prior to that it is clear that no such disallowance was provided in the law. As the honourable Karnataka High Court has held that such expenditure is allowable to the assessee u/s 37 (1) of the income tax act as it is wholly and exclusively incurred for the purposes of the business, we are of the view that such disallowance can only be made after 1/4/2015, if at all. Accordingly, ground number 1 and 2 of the appeal of the assessee are allowed.

24. Accordingly, ITA number 5728/del/2016 filed by the assessee for assessment year 2012 – 13 is allowed.

Pronounced in the open court on 20/11/2019.

-Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 20/11/2019  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi