

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

BEFORE SHRI A.T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.572/Kol/2019

(निर्धारणवर्षs / Assessment Year: 2014-15)

DCIT, Circle-3(1), Kolkata	Vs.	Shri Ramesh Prasad Sao 91A/1, Avani Signature, Park Street, 2nd Floor, Kolkata-700016
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. :ALAPS 8363 F		
(Appellant)	..	(Respondent)

Appellant by : Shri Supriyo Pal, JCIT, Sr. DR

Respondent by : Shri Miraj D Shah, A/R

सुनवाईकीतारीख/ Date of Hearing : 17/12//2019

घोषणाकीतारीख/Date of Pronouncement : 16/03/2020

आदेश / O R D E R

Per Dr. A. L. Saini, AM:

The captioned appeal filed by the Revenue, pertaining to assessment year 2014-15, is directed against the order passed by the Commissioner of Income Tax (Appeal)-1, Kolkata, in appeal no. 11180/CIT(A)-1/Kol/Circle-3(1)/2016-17, 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 29/12/2016.

2. The grounds of appeal raised by the revenue are as under:

1. The ld. CIT(A) has erred in law in deleting the addition of Rs. 4,22,38,097/- made by the Assessing Officer on account of periphery Development Expenses which in any case is more than 5% of net profit as deemed contribution towards

Periphery Development Expenses of the concerned district as per verification from the chairman and collector of Periphery Development society. As per mining provisions, Periphery Development Expenses are incurred on the nearby people of mining region and the assessee could not furnish and establish that these expenses are related to business activity as per the mining provisions.

2. The ld. CIT(A) has erred in judging the Sec. 37(1) in its full applicability.

3. The appellant craves leave to make any addition, alteration or modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings.

3. Brief facts qua the issue are that the assessee company filed its return of income showing total income of Rs. 65,42,92,990/-. The assessee was engaged in the business of Mining of Iron Ore & Manganese ore. The assessee's case was selected for complete scrutiny through CASS. During the scrutiny proceedings the Assessing Officer noticed that assessee debited in its profit and loss account of Rs.4,22,38,097/- under the head 'periphery development expenses'. The Assessing Officer observed that assessee has incurred said expenses more than 5% of its net profit. The Assessing Officer was of the view that as per letter No-288/PDS dated 16th august, 2008 issued by the collector & Chairman, Periphery Development Society, Keonjhar, all mining house have to pay 5% of their net profit as contribution towards periphery development of the concerned District. The assessee had net profit during the assessment year at Rs. 63,83,50,648/- whose 5% become as $63,83,50,648 \times 5\% = 3,19,17,532/-$. But assessee has debited in profit and loss account amounting Rs.4,22,38,097/-. Therefore, as per Assessing Officer, there was excess claim of Rs 1,03,20,564/- (Rs.4,22,38,097 - Rs.3,19,17,532) as a Periphery Development expenses in profit and loss account. The Assessing Officer issued a show cause notice to the assessee to explain the excess amount of Rs. 1,03,20,564/- (Rs.4,22,38,097 –Rs. 3,19,17,532).

In response to the show cause notice, the assessee did not furnish any reason why that expenses claimed excess of 5% of net profit. However, the assessee furnished ledger copy of the said expenses before the Assessing Officer. As per the ledger copy of the expenses another fact was noticed by Assessing Officer that as per

mining provision periphery development expenses is an expense that would be expenses on the territorial jurisdiction of the mining in lieu of excretion of mineral. The periphery development expenses should be incurred on the jurisdiction of the nearby mining people. However, Assessing Officer noticed from the ledger copy of periphery development expenses that most of the 85% expenses were related to Odisha Flood Relief and rest of the 15% expenses related to construction of Temple and Road. Therefore, AO noticed that excess periphery development expenses were not related to any business activity of the assessee. Therefore, the total expenses of Rs. 4,22,38,097/- was disallowed and added back to the total income of the assessee.

4. On appeal, the Id. CIT(A) deleted the addition. Aggrieved by the order of Id. CIT(A) the revenue is in appeal before us.

5. The Id. DR has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity and on the other hand the Id. Counsel for the assessee has relied on the order of the Id. CIT(A).

6. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id. CIT(A) and other materials available on record. We note that the Periphery Development Expenses was nothing but a Corporate Social Responsibility (CSR) of the company which was carrying out the business of mining in Joda, Odisha. The Id. Counsel submitted that it was mandatory for the mining industry to look after the development of the area in which the mines were operating and to create employment opportunities, providing educational facilities to the children etc. The expenses incurred by the assessee were on welfare schemes only which are for malaria eradication, distribution of mosquito nets, construction of mandaps

etc. Therefore, these expenses were wholly and exclusively for the business purpose. We note that Section 135 of Companies Act, 2013 provides that any company having Net Worth of Rs.500 crores or more, or turnover of Rs. 1000 crores or more, or Net Profit of Rs.5 crores or more is required to spend 2 per cent of average net profit earned in the immediately preceding 3 financial years, for Corporate Social Responsibility (CSR).However, w.e.f. asst. year 2015-16,an explanation to section 37(1) of the I.T.Act has been added which provides that the above mentioned expenditure on CSR activities shall not be considered as expenditure incurred for the purpose of business or profession. As such, such expenditure shall not be allowed as deduction u/s 37(1) of the Act for computing income under the head Business or Profession. Therefore, the question before us is whether the CSR expenditure incurred by assessee voluntarily prior to asst. year 2015-16 are allowable business expenditure?

7. We are of the view that the CSR expenditure incurred prior to asst. Year 2015-16 are allowable business expenditure as the same are wholly and exclusively incurred for the purpose of business. The explanation to section 37 of the Act restricting the allowance of CSR expenditure is prospective in nature and has no application prior to asst. Year 2015-16.For that we rely on the judgment of the co-ordinate Bench of ITAT Raipur in the case of ACIT, Circle 1(1), Bilaspur v. Jindal Power Ltd. 70 taxmann.com 389 (Raipur Tribunal).

8. We note that the ld. CIT(A) deleted the addition observing the followings:

“7. I have gone through the order of the ld. Assessing Officer. There is no doubt that CSR activities are business expenditure. However, expenses against malaria eradication, distribution of mosquito nets etc. do not appear to be the expenditure in the case in hand as claimed by the assessee. As noted by the ld. Assessing Officer, they are towards the Orissa Flood Relief and building of temple, road etc. This expenditure is also part of the ledger account of the assessee. It is done in consultation with State Government authorities. The ld. A.R. has submitted details of vouchers incurred towards Periphearal Development Expenses. The ld. Assessing Officer has not doubted any of the vouchers or memos. He is only doubting the expenditure on account of the

provisions of Income Tax Act, 1961. He has stated that expenditure above 5% is not permitted.

8. I am afraid the stand of the Assessing Officer cannot be accepted. The Periphery Development Expenses, if incurred have to be taken as a business expenditure. The maximum that was to be explained as per the ld. Assessing Officer was 5%. He has sort of accused the assessee for spending more than 5%. This stand of the ld. Assessing Officer cannot be accepted inasmuch as how much the assessee spends legitimately is the decision of the assessee. The Revenue cannot question this expenditure as per the decision of the Apex Court in 288 ITR 1. I may clarify that the decision in Thakur Prasad Sao and sons Pvt. Ltd. was on the provisions of Sections 36 & 37 of the Income Tax Act, 1961.

9. In view of the above, I do not find any reason to hold the assessee incorrect. The assessee succeeds in Grounds of appeal no. 2, 3, & 4.”

9. We have gone through the findings of the ld. CIT(A), and do not find any infirmity in the order of the ld. CIT(A). That being so, we decline to interfere in the order passed by the ld. CIT(A), his order on this issue, is hereby accepted and the grounds of appeal raised by the revenue are dismissed.

10. In the result, the appeal of the revenue is dismissed.

Order pronounced in the Court on 16.03.2020

Sd/-
(A.T. VARKEY)
न्यायिकसदस्य / JUDICIAL MEMBER

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

दिनांक/ Date: 16/03/2020
(SB, Sr.PS)

Copy of the order forwarded to:

1. DCIT, Circle-3(1), Kolkata
2. Shri Ramesh Prasad Sao
3. C.I.T(A)-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.
4. C.I.T.- Kolkata.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches