

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA
(Virtual Court)**

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)

**I.T.A. No. 1358/Kol/2018
Assessment Year: 2005-16**

ACIT, Circle-2, Asansol.....Appellant

Vs.

**M/s. Eastern Coalfields Limited.....Respondent
[PAN: AAACE 7590 E]**

Appearances by:

Sh. Vijay Shankar, CIT, appeared on behalf of the Revenue.

Sh. Arvind Agrawal, Adv., appeared on behalf of the Assessee.

Date of concluding the hearing : October 14th, 2020

Date of pronouncing the order : October 22nd, 2020

ORDER

Per J. Sudhakar Reddy, AM:

This is an appeal filed by the Revenue directed against the order of the Learned Commissioner of Income Tax (Appeals), Asansol [hereinafter the "CIT(A)"], passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dated 05.03.2018 for the Assessment Year 2005-06 on the following grounds:

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A), Asansol is justified by deleting the addition made on account of disallowance of "Provision for wages & salary etc. on account of NCWA VII" amounting to Rs. 5,25,00,00,000/-, in the absence of verifiable supporting evidences.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A), Asansol is correct in applying the ratio of Hon'ble Supreme Court decision in the case of Rotork Controls P. Ltd., in so far as the facts of the assessee's case do not match with the facts of the cited case, because the assessee has not measured its provision of liability with 'substantial degree of estimation' based on concrete and detailed material facts which were not brought on record by the assessee.

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 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.

5. That the appellant craves leave to add, alter, amend, modify, substitute, delete and/or rescind all or any of the grounds of appeal on or before final hearing."

2. On ground nos. 1 & 2, which is on the issue of allowability of "the provision for wages & salary etc." on account of NCWA VII amounting to ₹525 crores, the ld. CIT(A) followed the decision of the Hon'ble ITAT, Nagpur Bench, in the case of Western Coalfields Ltd., which is one of the subsidiaries of the Coal India Ltd., in ITA No. 289 & 290/NAG/2006 and in ITA No. 261/NAG/2008 and allowed the claim of the assessee. This Bench of the Tribunal in the assessee's own case in ITA No. 1010/Kol/2015, 1015/Kol/2015, 916/Kol/2017 and 999/Kol/2017 for AYs 2009-10 and 2008-09 held as follows:

"5.1. Ground No.2 is on the allowability of provision of NCWA-VIII and executives ad hoc payments. The ld. CIT(A) at Page 11-12 Para 4.4 of his order had followed the decision of the ITAT, Nagpur Bench in the case of Western Coalfield Ltd. held as follows:

"4.4 Decision: On perusal of the assessment order, submission of the assessee, remand report given by the A.O as well as counter comment of the appellant, I find that the A.O has not considered the decision of Hon'ble ITAT Nagpur Bench rendered in the case of Western Coalfield Ltd., and another subsidiary of Coal India Ltd. in ITA No.289 and 290/Nag/2006 and ITA No.261/Nag/2006 in which the issue of disallowance on account of provision made on the basis of NCWA have been decided in favour of the assessee after considering the ratio of decision of Hon'ble Supreme Court in the case of Rotork Controls P. Ltd. vs. CIT 180 Taxman 322 (SC). The relevant portion of the decision of Hon'ble ITAT, Nagpur Bench is reproduced below:-

"The Hon'ble' Supreme Court has, in a very recent judgment, in the case of Rotork Controls P. Ltd. (supra), held that a provision to be termed as provision of liability had to be such which could be measured by using substantial degree of estimation and it was to be recognized only when (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 and if these conditions were not made, no provision could be recognized. In the present case, it is not in dispute that the concerned employees/labourers have rendered the services and the assessee has also earned income because of their efforts which has been recognized in the books of account, hence, such rendering of services is an obligating event and which is independent of the future conduct of the business of the enterprises. Further, the basis for estimation as per past history and directions issued by the holding company is also available. Hence, we hold that such provision need to be recognized in the year under consideration. It is also noted that making of such provision is also in consonance with the principle of matching of cost with the Revenue. Thus, taking into consideration the facts and applicable provisions, we hold that the impugned amount is allowable as an expenditure in the year under consideration. Accordingly, we accept this ground of the assessee."

Respectfully following the above decision of Hon'ble' ITAT, Nagpur Bench, I direct the A.O to delete the addition of Rs. 388,58,34,000/-. Thus ground No. 5 & 6 are allowed."

5.2 As the nomenclature used was "provision", the Assessing Officer was of the view that the liability in question is not crystallized. The assessee produced wage agreement arrived at with the unions in support of the claim that the liability in question is a crystallized liability."

3. Thus the issue is covered in favour of the assessee. Hence, we find no infirmity in the order of the ld. CIT(A). We affirm the same and dismiss the ground nos. 1 & 2 of the Revenue.

4. Ground nos. 3 & 4 are on the issue of addition made of Current Liabilities. The ld. CIT(A) at page nos. 14 & 15 held as follows:

"A clear finding that the liability is bogus is needed in order to make the addition. The assessee, a PSU cannot be treated at par with a person bringing unaccounted money into its books of accounts. In the continuous process of taking advances before delivery, advance against sale will always figure in the balance sheet. Moreover, there was no evidence that it is a contingent liability debited to profit and loss account. There is no evidence on record that the same is remission of liability under section 41.

From the rival contentions it can be seen that the sum in question is advance received from the customers. The first stand of the revenue is that is a fictitious liability. We fail to see as to how a Government of India undertaking can create a fictitious liability in its books and for what purpose. As rightly contended by the learned counsel for the Assessee, the comments of the statutory auditor are only with regard to absence of partywise details and in the event of the liability of the assessee not existing, the same should be treated as income. The conclusion of the revenue authorities that the liability in question is fictitious based on the audit report is therefore incorrect. On the question whether the liability of the assessee ceased to exist or not and the provisions of sec. 41(1) of the Act are attracted or not, we are of the view that the assessee continuous to show the liability in question as existing. There is no evidence brought on record to show that the assessee's liability has ceased to exist. In such circumstances, we are of the view that the impugned addition deserves to be deleted and the same is hereby directed to be deleted."

5. In our view, as the ld. CIT(A) had followed and applied the decision of the Hon'ble ITAT in the assessee's own case in ITA Nos. 462-464/Kol/2009 for the AY 2004-05 dated 27.07.2016 and deleted the addition. We find no infirmity in the order of the ld. CIT(A). Hence, we uphold the same and dismiss these two grounds of the Revenue.

6. The last ground is general in nature.

7. In the result, the appeal of the Revenue is dismissed.

Kolkata, the 22nd October, 2020.

Sd/-
 [Aby T. Varkey]
 Judicial Member

Sd/-
 [J. Sudhakar Reddy]
 Accountant Member

Dated: 22.10.2020
Bidhan

Copy of the order forwarded to:

1. **ACIT, Circle-2, Asansol.**
2. **M/s. Eastern Coalfields Limited, CMD's Office, Sanctoria, P.O.-Dishergarh, Dist.-Burdwan-713 333.**
3. CIT(A), Asansol. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches