

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos. 881, 883 & 885/H/2014 Assessment Years: 2006-07, 2007-08 & 2008-09		
Singareni Collieries Company Ltd., Kothagudem. PAN - AACVT 8873 F (Appellant)	Vs.	Asst. Commissioner of Income-tax, Circle - 1, Hyderabad. (Respondent)
Assessee by:		Shri M.V. Anil Kumar
Revenue by:		Shri Sunil Kumar Pandey & Smt. Anjala Sahu
Date of hearing:		23/03/2021
Date of pronouncement:		23/04/2021

ORDER

PER L.P. SAHU, A.M.:

These appeals filed by the assessee are directed against CIT(A), Vijayawada's common order dated 28/02/2014 for AYs 2006-07 to 2008-09 involving proceedings u/s 115WE of the Income Tax Act, 1961 ; in short "the Act". As identical facts and grounds are involved in these appeals, they were clubbed and heard together

and, therefore, a common order is passed for the sake of convenience.

2. The grounds raised in all these appeals are common, except the quantum of additions, which are as under:

"1. Your appellant submits that the CIT (A), Vijayawada, erred in law and on facts of the case in confirming the addition of Rs.6,87,69,125/- as taxable Fringe Benefits towards employees' welfare, ignoring the fact that your appellant was under a statutory obligation to provide electricity to the employees at their residential premises as per National Coal Workers' Agreement.

2. Your Appellant submits that CIT(A), Vijayawada, ought to have accepted the explanation provided by your appellant regarding the facts and circumstances and occupational hazards leading to the incurring the expenditure and deleted the addition.

3. The CIT(A) erred in law and on facts of the case in not considering the fact that providing electricity to the workers and employees is covered by explanation 1 or/and 2 of Sub-clause (E) of Sub-section 2 of section 115WB of the Income Tax Act, 1961. The CIT (A), failed to appreciate that National Coal Workers Agreement was a statutory document binding on your appellant, who is also a party to the agreement. "

3. To dispose of these appeals, we refer to the facts from AY 2006-07 and the decision taken in this year of appeal shall apply mutatis-mutandis in other appeals also.

4. Briefly the facts of the case are the assessee filed its fringe benefits in the combined return of income in form no. 2D for AY 2006-07 admitting taxable value of fringe benefits at Rs. 7,98,31,913/-, which was processed u/s 115WE(1) of the Act. Subsequently the case was selected for scrutiny as per the norms laid down by the CBDT. In response to the notice issued u/s 115WE(1) of the Act, the Accounts Officer of the assessee company furnished the information as called for.

4.1 During the course of assessment proceedings, the AO noticed that the Company had debited a sum of Rs. 19,93,00,750/- towards Power and Fuel. The AO asked the assessee company to furnish break-up of the expenses. On verification of the details, the AO noticed that the expenditure includes the payments made on account of electricity supplied to the residential quarters provided to its employees. He, therefore, asked to furnish details of electricity consumed by each residential quarter during the year and further pointed out that why the said expenditure should not be treated as perquisite in the hands of the employees. The break of the expenditure is as under:

Sl. No.	Description	FY 2005-06
A	Total electricity expenditure claimed	1993007388
B	Business Expenditure (Ac(b))	1642637453
C	Colonies and street lighting a) Street Lighting - 47777718	

	b) Colonies consumption - 350369953	398147653
1)	Colonies consumption	350369935
2)	Less: Elec. Charges recovered from employees i. Executives	4999479
3)	Less: Elec. Charges recovered from outsiders	1524831
	Net amount	343845625

4.2 The assessee vide its written submissions dated 11/02/2010 filed on 15/02/2010 stated as under:

"SCCL meets its requirement of electricity power through procurement of electricity units from AP TRANSCO and generation of electricity in its own captive power plants. Major part of the power consumption is met through purchase from AP TRANSCO while the power generated from its two small and decades old power plants each small in quantity.

Out of the power purchased and generated, a small quantity of electricity power is also supplied to the quarters/township (including " street lighting") of the company wherein employees of the company have been provided with residential accommodation. However, recovery @ 1% of the basic pay is affected from the salaries of the employees towards the value of power consumed by them in their residential quarters.

The details in respect of expenditure on electricity consumption, bifurcation of expenditure for business activities and otherwise and also bifurcation of expenditure incurred on supply of electricity to executives and non executives and amount collected from them for the A.Y.2006-07 are furnished in the Annexure.

It is further submitted that the amount of electricity provided to the employees is not a Fringe Benefit as this is a contractual obligation to the employees working in coal mines which is as per the National Coal Workers Agreement (NCWA) and this benefit is provided to mitigate the occupational hazard in coal mining.

Finally, the assessee contended that Employee's welfare U/s 115WB(E) does not include any expenditure incurrent or payment made to (1) fulfill any statutory obligation, or (2) mitigate occupational hazards according to the explanation given under sub-clause(e) of Sub-Section 2 of section 115WB of the Income Tax Act, 1961."

4.3 The AO did not accept the explanation offered by the assessee for the following reasons:

"a) The expenditure incurred by the assessee by way of providing electricity to its employees at free of cost/concessional rate is not for fulfilling statutory obligation since the agreement between the management of the assessee company and the Coal Workers Association is not statutory and only a facility provided by the company to its employees.

b) Provision of electricity at free of cost/at concessional rate does not mitigate the occupational hazards of the assessee company since the electricity provided is to the residential quarters of the employees of the company and not to the mines."

4.4 Since the assessee was unable to furnish the consumption of electricity by each residential quarter by stating that it cannot quantify and ascertain as such residential quarter was not provided with separate meters, the AO show-caused the assessee as to why such

expenditure cannot be treated as fringe benefits provided in the hands of the assessee company. The assessee company quantified the expenditure pertaining to staff towards electricity consumption to the extent of Rs. 34,38,45,625/- for the AY 2006-07. Accordingly, the same is brought to tax by the AO under fringe benefit tax in the hands of the assessee to the extent of Rs. 6,87,69,125/-.

5. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A), who dismissed the appeal of the assessee by observing as under:

"5. I have carefully gone through the order of the Assessing Officer, the submissions made by the appellant and every other material available on record. The Assessing Officer treated the free electricity provided to the residential quarters of the appellant's employees as taxable Fringe Benefit. The appellant's A.R has contended that this welfare measure is provided as a statutory obligation and also to mitigate the occupational hazards and hence it is not a Fringe Benefit as per explanation to sub-clause (E) of sub-section 2 of Section 115WB of the Act. The AO rejected the appellant's explanation stating that the National Coal Wages Agreement (NCWA), on which the appellant relied, is not statutory and only a facility provided to the employees. He further held that since the electricity was provided to the residential quarters of the employees, it is not a facility provided to mitigate the occupational hazards of the appellant's company.

5.1 During the course of appeal hearing also, the learned A.R has made the same arguments which were put forth before the AO and no further evidence /

additional. information was furnished. It is a fact that the electricity was provided to the residential quarters of the employees of the appellant and hence it cannot be said that it is provided to mitigate the occupational hazards. Further, the appellant has also failed to establish that this facility is provided under a statutory obligation. The AO after considering the details submitted by the appellant such as National Coal Wages Agreement (NCWA), on which the appellant relied, had held that it is not statutory and only a facility provided to the employees and hence, the appellant's case does not fall under explanation to sub-clause e of Sub-section 2 of Section 115WB of the Act. In these circumstances, I am in agreement with the findings of the Assessing Officer. Accordingly, the grounds of appeal raised by the appellant are rejected."

6. Before us, the Id. AR of the assessee submitted that the amount of electricity provided to the employees is not a Fringe Benefit as this is a contractual obligation to the employees working in coal mines which is as per the National Coal Workers Agreement (NCWA) and this benefit is provided to mitigate the occupational hazard in coal mining. He further submitted that Employee's welfare U/s 115WB(E) does not include any expenditure incurrent or payment made to (1) fulfill any statutory obligation, or (2) mitigate occupational hazards according to the explanation given under sub-clause(e) of Sub-Section 2 of section 115WB of the Income Tax Act, 1961.

7. The Id. DR, on the other hand relied on the orders of revenue authorities and submitted that the expenditure

incurred by the assessee by way of providing electricity to its employees at free of cost/concessional rate is not for fulfilling statutory obligation since the agreement between the management of the assessee company and the Coal Workers Association is not statutory and only a facility provided by the company to its employees.

8. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. On going through the NCWA agreement dated 12th January, 2004, vide Chapter - VIII under clause - 8.3.0 under the head "recovery of electricity charges, it is mentioned as under:

"In the Coalfield areas where the employees are provided with quarters by the Management and also electricity from the bulk supply obtained by them from the electricity boards or other agencies, the employees shall be entitled to a free consumption of 30 KWH per quarter per month on a uniform basis. For consumption beyond this limit, the employees will be required to pay at the same rate at which the Electricity Supply Undertakings charge the Coal Companies."

8.1 On going through the above agreement entered into between the representatives of Central Trade Unions with Hon'ble Minister of Coal & Mines and Secretary, Govt. of India, Department of Coal & Chairman, Coal India Ltd. on 12th January, 2004, we find that the CBDT has not been recognized the said agreement and, therefore, this agreement cannot override the income-tax Act, which is

enacted by the Parliament. The above agreement is not statutory and only a facility provided to the employees in a particular sector. In view of the above discussion, we do not find any infirmity in the orders of the CIT(A) in confirming the order of the AO wherein the AO has made an addition in the hands of the assessee towards Fringe benefit tax on account of expenditure pertaining to staff towards electricity consumption and upholding the orders of CIT(A) in all the appeals under consideration, we dismiss the grounds raised by the assessee in all the AYs under consideration.

9. In the result, all the appeals of the assessee are dismissed.

Pronounced in the open court on 23rd April, 2021.

Sd/-
(S.S. GODARA)

JUDICIAL MEMBER

Sd/-

(L. P. SAHU)

ACCOUNTANT MEMBER

Hyderabad, Dated: 23rd April, 2021.

Kv

copy to :

1	<i>The Singareni Collieries Co. Ltd., C/o. M. Anandam & Co., CAs, Flat No. 7A, Surya Towers, SD Road, Scunderabad - 500 003.</i>
2	<i>ACIT, Circle - 1, Khammam.</i>
3	<i>CIT(A), Vijayawada</i>
4	<i>CIT, Vijayawada</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>

S.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	