IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD

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

Sl. No.	ITA No.	AY	Appellant	Respondent
1 to 4	801, 802, 803/ H/2014 and 519/H/2016	2006-07 , 2009-10 & 2010-11 and 2004-05	Asst./Dy. Commissioner of Income-tax, Circle – 1, Khammam	M/s Singareni Colleries Company Ltd., Khammam
5 to 11	879, 880, 882, 884, 886 & 887/H/2014 and 561/H/2016	2005-06, 2006-07, 2007-08, 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12	M/s Singareni Colleries Company Ltd., Khammam	Asst./Dy. Commissioner of Income-tax, Circle – 1, Khammam

Revenue by:	Smt. Anjala Sahu & Shri Sunil Kumar Pandey
Assessee by:	Shri M.V. Anil Kumar
Date of hearing:	23/03/2021
Date of pronouncement:	20/05/2021

O R D E R

PER L.P. Sahu, AM:

All these appeals filed by the assessee as well as revenue are directed against the CIT(A) , Vijayawada's separate orders involving proceedings u/s 143(3) of the Income Tax Act, 1961 ; in short "the Act". As the facts and grounds raised in all these appeals are identical, the same were clubbed and heard together and therefore a common order is passed for the sake of convenience.

2. In all these appeals the AO completed the assessments u/s 143(3) of the Act and made the following additions/disallowances, which form the common issues in all the appeals under consideration:

1. Disallowance of capital work-in-progress for the all the years

2. Interest accrued on loans to M/s APHMEL for AYs 2005-06 & 2006-07

3. Disallowance of deduction claimed u/s 43B

4. Disallowance of net prior period expenditure for AYs 2005-06 to 2010-11.

5. Prospecting expenditure – section 35E for AY 2007-08 to 2010-11.

6. TDS on interest on land compensation deposited in court as per court order for AY 2009-110 to 2011-12.

7. Loss due exchange fluctuation on interest on capital borrowed in forex for acquisition of machinery after such assets is put to use for AY 2009-10.

8. Restriction of depreciation on mine development to 10% as against 15% claim for AY 2011-12.

9. prior period expenditure – enhancement by CIT(A) for AY 2007-08 and 2009-10.

3. When the assessee preferred appeals before the CIT(A) the CIT(A) confirmed the some of the additions/ disallowances and deleted some of the additions/ disallowance made by the AO, against which the assessee and the revenue are in appeals before the ITAT.

4. First we take up the appeals of the assessee.

5. As Regards ground Nos. 1 to 4 regarding capital work in progress raised (in AYs 2005-06 to 2011-12), which has been raised in all the appeals under consideration, the facts as taken from AY 2005-06 are that the assessee had debited a sum of Rs. 4.24 crores towards 'assets written off' and the same was included under the head 'provisions and write off was debited to the P&L A/c. Out of the said amount, the assessee had added back a sum of Rs. 4,09,97,398/- in the income computation statement as the same did not represent an allowable deduction in arriving at the total income as per the provisions of the IT Act. The balance amount of Rs. 14,54,302/- had not been added back by the assessee in the income computation statement. In this regard it was mentioned in Col. 17(a) of the tax audit report enclosed to the return that the said balance amount represents the value of work-in-progress written off and that the same is eligible for deduction.

5.1 The AO after considering the submissions of the assessee and analysed the issue elaborately with case law, inter-alia, observed that the contentions of the assessee in this regard are treated as untenable and held that the deduction claimed for the expenditure represented by mine development work-in-progress written off due to closure of the mine is not in accordance with the and accordingly, disallowed the assessee's claim of deduction amounting to Rs. 14,54,302/-, which was confirmed by the CIT(A) when the assessee preferred an appeal before him.

5.2 The Authorised Representative (in short "AR") reiterated the submissions made before the authorities below. In addition to this before us, the ld. AR of the assessee filed written submissions, which are extracted as under:

> *"SCCL incurs Mine Development expenditure like digging tunnels, sinking mine shafts installing equipment and infra structure necessary to make coal seams in mining area accessible for extraction. The Mine Development expenditure includes salaries & wages, minor civil works, equipment, stores and spares, proportionate interest, and other allocated overheads. This expenditure is normally capitalized in the year in which a developed area of a mine starts yielding coal and depreciated as plant.*
>
> *The company has been following this procedure year after year. The company incurs this expenditure in respect of working mines for the purpose of extending their area of operation. This is done on an ongoing basis and this expenditure is parked*

separately and shown as Capital work in progress while expansion work is in progress and is not subjected to depreciation. This expenditure is capitalized or written off as revenue depending on whether the expansion yields more coal deposits for extraction or not. This expenditure is incurred for the purpose of making the coal deposits accessible and the mines economically viable.

In most of the cases mine were closed and no operations could be carried out, the capital work in progress relating to that mine development expenditure could not be capitalized. Consequently, the capital work in progress relating to the mine development expenditure incurred was written off since no asset could be created. The expenditure was basically of revenue nature and incurred wholly and exclusively for the purpose of business.

This is a continuous and ongoing process necessary to expand the area of operation in the mine. A mine is divided into districts for operational purposes, at each district expansion are envisaged periodically and development expenses stated above are incurred, for the purpose of coal mining. In case a particular mine ceases to yield coal deposits at an economically viable cost or/and needs to be closed for various safety reasons or where a new project fails to commence for any reason, then such expenditure incurred which is accounted as CWIP in the books, the same expenditure was written off as infructuous since no asset was created nor any enduring benefit was derived from that.

This method of accounting was followed since inception of the company and was accepted by the department. This is the first year in which there is a departure by the department. The details of CWIP written off and charged to revenue during various years under appeal is enclosed herewith as Annexure-I in paper book. The ld. AR of the assessee

relied on the following case law in support of assessee's case:

"1. Binani Cements Ltd., vs CIT - 380 ITR 116 (Calcutta HC).

2 CIT vs Praga Tools Ltd. - 157 ITR 282 (AP· HC).

3 Hindustan Zinc Ltd. Vs Add1.CIT -153 ITD 111· (ITAT Jaipur) head note

4 ITO vs Abdul G Nadiadwala 49 taxmann.com 581 (Mumbai Trib).

5 Jay Engineering Works Ltd Vs CIT -311 ITR405 (Delhi HC)."

Referring to the above submissions, the ld. AR of the assessee requested the Bench to delete the addition on account of CWIP written off.

5.3 The ld. DR on the other hand besides relying on the orders of revenue authorities submitted that the assessee has charged depreciation on capital work in progress. She submitted that the ld. CIT(A) had verified from the books of account that it was a capital in nature and the expenditure was incurred towards the development of mine which could be utilized for extraction of coal and it has also been created as an asset in its balance sheet and it has also claimed depreciation on it. She, therefore, submitted that the authorities below justified to treat it as a capital expenditure and has rightly disallowed.

5.4 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. We find that substance in the submissions made by the ld. AR. From the orders of the authorities below, it is clear that the assessee has debited to the capital expenditure in the P&L account in respect of those mines which are not in operation or the mines were unsuccessful for coal mines. It is also clear that the breakups were filed before the CIT(A) which has been incorporated by him in his order. We find that in most of the cases mines were closed and no operations could be carried out, the capital work in progress relating to that mine development expenditure could not be capitalized. Therefore, the capital work in progress relating to the mine development expenditure incurred was written off since no asset could be created. Any expenditure which does not bring any additional advantage to the business of the assessee is revenue expenditure. The expenditure was basically of revenue nature and incurred wholly and exclusively for the purpose of business. The assessee had also filed detailed written submissions before the CIT(A) and had relied on number of judgments. Before us, the ld. AR also relied on the judgments as quoted supra. In support of our decision, we rely on the following judgements:

5.4.1 In case of CIT Vs. Binani Cements Ltd., vs CIT - 380 ITR 116 (Calcutta HC). In ITA No. 265 OF 2009, judgment dated 23/03/2015, similar issue was decided by the Hon'ble High Court of Calcutta wherein it has held as under:

> ***"3.*** *Mr. Bajoria, learned senior advocate, appearing for the appellant submitted that the question is partly covered by the decision in CIT v. Graphite India Ltd. [1996] 221 ITR 420 (Cal.). The relevant question referred by the Tribunal to this Court in that case was whether in the facts and circumstances of that case, the Tribunal was justified in holding that the expenditure incurred for the assessee's proposed petro-chemical project was revenue expenditure and to be allowed as a deduction? This Court in answering the question, held as follows:*
>
> *"So far as question No. 4 is concerned, the Tribunal recorded the finding that the assessee spent an amount of Rs. 56,665 as project expenditure. The expenditure represented fees paid to Engineering India Ltd. in connection with the petrochemical project report. The amount was paid by the assessee in order to explore the possibility of setting up of a petro-chemical project which could provide a captive plant for manufacture of raw material at the assessee's own factory which would help the assessee in getting continuous supply of raw material even during periods of acute shortage. In fact, the project did not materialise. The ITO as well as the CIT(A), therefore, held that the expenditure was capital in nature. However, the Tribunal found that the expenditure did not result in bringing into existence any capital asset of enduring in nature. The Tribunal further found that the decision of the Calcutta High Court in the case of Hindustan Aluminium Corporation Ltd. v. CIT (1986) 55 CTR (Cal.) 237: (1986) 159 ITR 673 (Cal) was applicable and following that decision held that the expenditure was allowable as incurred wholly and exclusively for the purpose of the assessee's business. Therefore, the Tribunal deleted the disallowance. The case relied upon by the Tribunal was subsequently followed in the case of Asiatic Oxygen Ltd. v. CIT (1991) 190 ITR 328 (Cal). This Court in the said case reiterated the view taken in Hindustan Aluminium Corporation Ltd.'s case (supra).*
>
> *According to us, question No. 4 in this reference stands concluded by the aforementioned two decisions. We, accordingly, answer question No. 4 in the affirmative and in favour of the assessee and against the Revenue."*
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> ***4.*** *Mr. Bajoria further relied on two decisions of the Supreme Court being respectively the decision in CIT v. A. Gajapathy Naidu [1964] 53 ITR 114 and CIT v. Swadeshi Cotton & Flour Mills (P.) Ltd. [1964] 53*

ITR 134 (SC). In A. Gajapathy Naidu (supra) on the question of power of the ITO to relate back an income the apex Court was of the following view:

"When an ITO proceeds to include a particular income in the assessment, he should ask himself, inter alia, two questions, namely : (i) what is the system of accountancy adopted by the assessee, and (ii) if it is the mercantile system, subject to the deeming provisions, when has the right to receive accrued? If he comes to the conclusion that such a right accrued or arose to the assessee in a particular accounting year, he should include the said income in the assessment of the succeeding assessment year. No power is conferred on the ITO under the Act to relate back an income that accrued or arose in a subsequent year to another earlier year, on the ground that that income arose out of an earlier transaction. Nor is the question of reopening of accounts relevant in the matter of ascertaining when a particular income accrued or arose."

5. *In Swadeshi Cotton & Flour Mills (P.) Ltd. (supra) on a similar question the said Court held :*

"The system of reopening of accounts does not fit in with the scheme of the IT Act. As far as receipts are concerned there can be no reopening of accounts, and the position is the same in respect of expenses".

6. *Mr. R.N. Bandopadhyay, learned advocate appearing on behalf of the Revenue relying upon the decision in Delhi Tourism & TDC Ltd. v. CIT [2006] 285 ITR 114/155 Taxman 10 (Delhi) submitted that the expenditure was rightly disallowed by the learned Tribunal as it was made and related to earlier years.*

7. *We accept Mr. Bajoria's submission regarding the expenditure made for construction/acquisition of new facility subsequently abandoned at the work-in-progress stage was allowable as incurred wholly or exclusively for the purpose of assessee's business as covered by the decision in Graphite India Ltd. (supra). The issue whether such expenditure could be allowed in the relevant assessment year is however yet to be resolved.*

8. *The CIT(A) in his order had found as follows :*

"The company claimed as allowable the expenditure on this abandoned project. While it was found to be unviable, the expenditure on it was for the purpose of business. It was not claimed or allowed earlier as business expenditure because it was of capital nature entitled to depreciation after completion and on commencement of its use for business. But since that stage is not reached-no asset having come into existence-the capital-work-in-progress had to be written off as such."

9. *There was no challenge to such finding on facts before the learned Tribunal or even before us.*

10. *The decision in Delhi Tourism & TDC Ltd. (supra) is distinguishable on facts in as much as in that case the Delhi High Court had held that the electricity charges for power consumed was a known expenditure and the assessee, on the basis of average, could make a provision for that expenditure in every year of assessment even if no bill was received in a particular year of assessment.*

11. *Following the judgment in the case of A. Gajapathi Naidu (supra) the question to be asked is when did the expenditure claimed by way of deduction arise? There would have been no occasion to claim the deduction if the work-in-progress had completed its course. Because the project was abandoned the work-in-progress did not proceed any further. The decision to abandon the project was the cause for claiming the deduction. The decision was taken in the relevant year. It can therefore be safely concluded that the expenditure arose in the relevant year.*

12. *Reference in this regard may be made to the decision in the case of CIT v. Indian Mica Supply Co. (P.) Ltd. [1970] 77 ITR 20 (SC) wherein the Supreme Court in considering a claim for deduction on arrear lease rents, ascertained subsequently consequent to a compromise arrived in the suit and paid in the relevant assessment year held, inter alia, as under :*

"The Tribunal, in the present case, had clearly found that it was only as a result of the compromise that the respondent became entitled to remain in possession of the demised land. Its liability also became ascertained only at that point of time. It cannot be disputed that the respondent incurring the expenditure had acted in the interest of and for the purpose of its business. The expenditure was not laid out for any purpose other than that of carrying on the business. The deduction was properly admissible under s. 10(2)(xv) of the Act and the matter being self-evident the High Court was fully justified in declining to accede to the prayer made under s. 66(2) of the IT Act, 1922."

13. *Sec. 10(2)(xv) of the old Act corresponds to s. 37(1) of the present Act. Our above conclusion is fortified by the view expressed by the Supreme Court in the said decision. For the aforesaid reasons the question is answered in the affirmative in favour of the assessee. The appeal is thus allowed.*

5.4.2 In the case of CIT Vs. Indian Oxyge Ltd., [1996] 218 ITR 337 (SC), the Hon'ble Supreme Court has held as under:

"The Tribunal held that the certain amount paid by the assessee to the English company, in pursuance of the agreement, was a permissible deduction under section 37(1). On reference, the High Court found that the English company did not sell any information, processes and inventions to the Indian company; that under the agreement, the Indian company was not entitled to use them after the termination of this agreement; that the Indian company was prohibited from disclosing these information, processes and inventions during the currency and also after the determination of this agreement and that thought the agreement was for a period of ten years, it could be terminated earlier. The High Court, therefore, held that the Indian company had not incurred the expenditure for the purposes of bringing into existence any asset or advantage of an enduring nature and that this expenditure was not a capital but a revenue expenditure.

On appeal to the Supreme Court, held as under:

The understanding of the agreement was correct. Once it was so, the amount paid by the assessee to the British company could not be treated as capital expenditure. It was nothing but revenue expenditure and had been rightly held so by the High Court."

Respectfully following the above judgments, we set aside the order of the CIT(A) on this issue and accordingly, allow the grounds raised by the assessee on this issue in the respective AYs.

6. As regards ground Nos. 5 &6 in AYs 2005-06 and 2006-07 regarding interest receivable from APHMEL, the AO observed that in Note No. 19 of the notes forming part of the accounts, in the annual report for the FY 2004-05, it was stated that the interest receivable from M/s APHMEL on advances given against supplies amounting to Rs. 213.60 lakhs upto 31/03/2005 (previous year Rs. 150.79 lakhs) was not transacted in the books pending realization. The AO asked the assessee to explain why the accrued interest

on such advances to M/s APHMEL should not be added to the total income of the assessee, in response to the same, it was stated that the assessee company is following the cash basis of accounting in respect of interest on loans and advances to its subsidiary company M/s APHMEL. It was stated that this method of accounting is being consistently followed and the interest receivable from the subsidiary company is being accounted on a cash basis since the receipt of the interest is uncertain consequent to declaration of the subsidiary company as a sick unit by the BIFR. Further, it was stated that it could change its accounting policy from mercantile system to cash system for recognizing the interest receivable from M/s APHMEL due to the loans and advances to it becoming sticky. In this regard, the assessee relied on few case law, which were mentioned by the AO at page 7 of his order.

6.1 After considering the submissions of the assessee, the AO disallowed the assessee's claim of accrued interest by observing, inter-alia, as under:

> *"4.10 In the light of drastic improvement in the financial performance and health of the Mis APHMEL and the assessee company's assessment about its prospect for recovery of loan and interest, it can no longer be said that cash system of accounting of interest receivable from Mis APHMEL would be justified. It is pertinent to note that the subsidiary company M/s APHMEL continues to debit the interest payable to the assessee company on an accrual basis in its books of account. Continuing to*

persist with the cash system of accounting in respect of such interest even after the change in the assessee's honest assessment of the prospect of recovery of interest amounts to incorrect computation of true income of the assessee, given the fact that the all other receipts and expenses falling under the scope of income from other sources are being accounted in accordance with the mercantile system of accounting. In view of this, it is held that the interest receivable from Mis APHMEL for the previous year, computed on the basis of accrual system, needs to be included in the total income of the assessee by invoking the provisions of section 145(3) of the IT Act. The amount of such accrued interest, attributable to the instant asst. year, as mentioned in note no.19 in the notes forming part of the accounts is 62.81 lakhs. Accordingly, 'this accrued interest of Rs. 62.81 lakns (Rs.213.60 lakhs as on 31/03/05 reduced by Rs.150.79 lakhs as on 31/03/04) is added to the income of the assessee."

6.2 The CIT(A) confirmed the addition made by the AO.

6.3 Before us, the ld. AR of the assessee filed written submissions in this regard, which are extracted as under:

"The Assessing Officer has added interest accrued on Loans and Advances to APHMEL ignoring the fact that Your Appellant was following Cash basis of accounting in respect of interest on loans and advances to its Subsidiary company APHMEL. This method of accounting was consistently followed as Mis. APHMEL was a sick industrial company under BIFR, whose net worth was totally eroded and receipt of interest was uncertain. APHMEL was registered with BIFR as sick industrial company during 1992 (vide no. 627/92) due to its incurring of continuing losses.

MIS. APHMEL was registered with BIFR in the year 1992 and was declared as a sick industrial company in January 1993. BIFR passed an order in the November 2002 for winding up of the company. However, Mis APHMEL preferred an appeal against the order of the BIFR before the AAIFR and vide order dated 05/09105 the matter was remanded back to BIFR by AAIFR.

It is submitted that SCCL had modified its accounting policy to recognize interest from sticky loans and advances on actual realization basis instead of accrual basis.

The CIT (A) as well as the Assessing Officer have ignored the fact that the APHMEL was still a BIFR case and not out of BIFR, the recovery of interest beings still doubtful, ought to have allowed the method of accounting followed in this respect, consistently in the past years on cash basis and therefore the addition of the accrued interest is not warranted. It is submitted all the liabilities of a sick industrial company remain frozen, while it continues to be under scheme of rehabilitation. It is also submitted since SCCL had accounted for the interest income from APHMEL in subsequent years on receipt basis; the addition in this year would result in double taxation, which is not permitted."

We draw your kind attention to the decision in the case of CIT V s Dalmia Industries Ltd. 180 ITR 167 (Del HC) Paper book pages 56 to 58."

6.4 The Ld. DR, on the other hand, relied on the orders of revenue authorities. She submitted that the assessee has changed the method of accounting for treatment in the books of account is not correct. The APHMEL has started earning profits. She submitted that the APHMEL is showing profits from FY 2001-02 and onwards, the

winding up order passed by the BIFR in the year 2002 has been set aside by the AAIFR. It was also observed that APHMEL is booking the expenditure in its books of account. She submitted that assessee is following mercantile system of accounting in respect of other incomes and only regarding interest income, it is following cash system which is not correct and, therefore, the authorities below were justified in this regard.

6.5 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. We observe that the subsidiary company APHMEL was a sick company as declared by BIFR during January 1993 whose net worth was totally eroded and the interest receivable was also uncertain. Against the BIFR order, M/s APHMEL preferred an appeal before the AAIFR and vide order dated 05/09/2005, the matter was remanded back to BIFR by AAIFR. The AO observed that the interest should be offered as income by the assessee on the accrual basis is not correct in respect of the interest receivable from sick company if the matter is pending before the BIFR. There is no certainty in regard to the interest receivable from the sick company. We find substance on the case laws relied upon by the ld. AR on this issue. Respectfully following the judgments as quoted by the ld. AR, we delete the addition made on

this issue with a rider that the AO is free to make addition when the interest shall be received by the assessee company in the year in which it is received by the assessee. Accordingly, the grounds raised by the assessee on this issue are allowed.

7. As regards ground Nos. 7, 8 & 9 in AYs 2005-06 & 2006-07 and Grounds Nos. 5, 6 & 7 in AYs. 2007-08 to 2010-11 regarding prior period expenditure, the assessee had claimed deduction for net prior period expenditure for an amount of Rs. 2,18,20,357/- in AY 2005-06, against which, the AO computed the eligible amount to the extent of Rs. 69,20,712/- and the excess deduction claimed amounting to Rs. 1,48,99,645/- was disallowed by the AO. The CIT(A) confirmed the disallowance made by the AO on this count.

7.1 The ld. AR of the assessee filed written submissions on this issue which are reproduced as under:

> *"The Assessing officer disallowed the expenditure referred to as prior period expenditure, relating to power and fuel, welfare expenses, Interest and other miscellaneous expenditure when the same have been crystallized and determined after the cut off date for close of the financial accounts for the previous year. In the earlier years the CIT (A) as well as IT AT has allowed the prior period expenditure as deductible expenses in the subsequent year based on the method of accounting and the volume of transactions and also the fact that these expenditure have been crystallized and determined*

only after cut off date for the close of the financial year.

In the case of your Appellant the Account are subjected to audit by Statutory Auditors as well as C&AG, who, based on the method of Accounting, Accounting Standards and Accounting Policies consistently followed, have considered certain expenditures as prior period expenses for the purpose of presentation of accounts under the Companies Act, 1956, whereas for the purpose of income tax the same are allowable expenses on the crystallization basis or method of accounting.

A remand report was called for during the Appellate proceedings and the Assessing Officer after verification of expenditure had allowed part of the prior period expenses. The Assessing Officer in his remand report confirmed that the expenditure which was earlier disallowed was in fact crystallized during the year and was to be allowed as current year expenditure. The CIT(A) ignoring these facts, has enhanced the income where she should have allowed the claim as per the remand report.

We draw your kind attention to the decision of Hindustan Zinc Ltd Vs Addl. CIT 153 ITD 111 (Jaipur Trib) Head Note - Paper Book pages 16-20."

7.2 The Ld. DR, on the other hand, relied on the orders of revenue authorities and she submitted that the AO has examined this issue in detail, which is clear from his order and the same cannot be controverted by the ld. AR and the CIT(A) has upheld the action of the AO.

7.3 We have considered the rival submissions and perused the material on record as well as gone through

the orders of revenue authorities. We find that the details were filed before the AO during the course of assessment proceedings and rejecting the details, the AO made the addition. In the appellate proceedings before the CIT(A), again the details were provided and the CIT(A) has called for a remand report from the AO. The details were provided to the AO during the remand proceedings were accepted by the AO and he held that the expenditure should be allowed when it is crystalized. Accordingly, the AO was agreed as per his remand report that these prior period expenditures should be allowed in the year in which it is crystalized. Once, in the remand proceedings, the revenue accepts the plea of the assessee, then, there should not be further scope to confirm the additions made by the AO in this regard. We find substance in the submissions of the ld. AR and case laws relied in this regard quoted supra. Accordingly, we allow this ground of appeal of the assessee.

8. As regards the issue of prospecting expenditure u/s 35E raised in AYs 2007-08 to 2010-11 as ground Nos. 8 & 9 in AYs 2007-08, 2009-10 & 2010-11 and 9 & 10 grounds in AY 2008-09, the facts relating to this ground as raised in AY 2007-08 are that during the course of assessment proceedings, the AO noticed that the assessee has claimed a sum of Rs.10,27,35,885/- towards "Exploration (Prospecting) Expenditure" as

revenue expenditure and a further sum of Rs.1,24,46,020/- as capital expenditure during the year under consideration. The assessee was asked to furnish mine-wise details of prospecting expenses and why the said expenses should not be dealt in accordance with the provisions of sec. 35E of IT Act, 1961. Under the provisions of sec. 35E. the amount of expenditure spent on prospecting etc. for development of certain minerals can be amortized and deduction can be claimed over a period of 10 years beginning with the year of commercial production. Further, the amount which is eligible for deduction must have been incurred during the year of commercial production and 4 years immediately preceding the year. The expenditure on prospecting, etc. includes aborted and suspended mines also. But, it was noticed that instead of claiming deduction u/s 35E, the assessee had claimed such expenditure on prospecting, etc. as revenue expenditure.

8.1 After examining the details filed by the assessee as well as referring to the provisions of section 35E, the AO computed the disallowance u/s 35E to the tune of Rs. 3,49,19,111/- by observing as under:

> *"9 2. I have carefully gone through the submissions made by the tax payer. In the instant case, the assessee is engaged in operations relating to prospecting for, or extraction of coal from the mines. The company has incurred the expenditure of KS.11 ,51 ,81 ,916/- on account of drilling done for*

production support and general exploration expenditure. It is said that the company undertakes operation for the purposes of exploring, locating, or proving deposits of coal mineral. As specified in Section 35E any operation undertaken for the purpose of exploring, locating or proving deposits of any minerals (specified in Part A or Part B, respectively, of the Seventh Schedule) commences including operations of infructuous or abortive nature. Thus, me Act is clear and there is no ambiguity with regard to nature of expenditure to be covered under Section 35E. The definition of expenditure on prospecting operation is inclusive of operation of infructuous or abortive mines. The contention of the assessee that the expenditure incurred Oli mines which yield commercial production shall only be capitalized and expense on operation which proves to be infructuous or abortive shall be treated as revenue is not at all in accordance with the provisions of this section. The assessee company may adopt different accounting method in the books of account for a particular expense, which need not be taken as such for the purpose of Income Tax. Further, it contends that as the expenditure on general prospecting does not result in creation of any capital asset or any enduring benefit and the same is treated as revenue expenditure is also not as per the provisions of this section. The taxpayer has been claiming that there should be direct nexus between the commercial production and prospecting expenses which is not correct, in view of expenses included on infructuous or abortive operations. In fact each mine having a boundary is to be considered as a separate unit of production and all prospecting expenses in respect of new mines 'respective of commercial production or abandoned or suspended operations will be considered u/s 35E of the Income Tax Act, 1961.

5 .3 As discussed above, Section 35E does not restrict only to the successful operations of new mines but also includes expenses on operations

resulted in infructuous or abortive new mines. Further, it was mentioned that as per the accounting policy of the assessee, any expenditure incurred towards exploration unless allocable to a project under construction is revenue expenditure is not in accordance with the' provisions of Section 35E of the Income Tax Act, '1961. This is a self-serving statement. Since the company has incurred expenditure for the purpose of exploring, locating or proving deposits on new sites and such expenditure is to be dealt in accordance with the provisions of Section 35E of the Income Tax Act, 1961. Hence, the contention of the assessee to treat the expenditure incurred relating to exploring, locating or proving on infructuous or abortive operations should be treated as revenue is not acceptable. As discussed above, under the provisions of sec. 35E, the amount of expenditure spent on prospecting etc. for development of certain minerals can be amortized and deduction can be claimed over a period of 10 years in equal instalments.

5.4 After careful examination of details submitted by the assessee, the prospecting expenses relating to two new mines viz., Gundala Block -III and KTK LW, BHPL sites, the prospecting expenses relating to exploration will squarely fall under the scope of 35E of IT Act, 1961. In the case of Gundala Block -III, the taxpayer has confirmed that no mine is likely to come and operations are aborted and in the case of KTK LW, BHPL, the mine is stated to be a new one and has commenced production during the year under consideration. As per the provisions of sec. 35E, the amount which is eligible for deduction must have been incurred either during the year of commercial production or 4 years immediately preceding that year and/or the expenditure on suspended/aborted cases. As explained in detail, it is concluded that in both the cases, the prospecting expenses should be dealt in accordance with the provisions of Section 35E.

5.5 The assessee company has furnished the details such as the total meterage drilled ie., 87468.75 meters and the cost involved for prospecting, etc. is Rs. 11,51,81,906 thereby the cost per meterage comes to RS.1316.83 (115181906/ 87468.75). Thus, the total amount works out on two mines is Rs.3,49,19,206/- after allowing 1/10th of the expenses in the previous year as per section 35E. The working is given hereunder:

Mine / Block	*Meterage drilled*	*Amount*
Gundala Block III	*21,167.30*	*2,78,73,735*
Peddapalli thick seam renamed KTK LW	*8296.65*	*1,09,25,277*
	Total	*3,87,99,012*
Less: 1/10th of expenditure deduction u/s 35E		*38,79,901*
Amount disallowed		*3,49,19,111*

Thus in nut shell, the taxpayer is engaged in operations relating to prospecting for or extraction or production of, of coal and activities undertaken for development of new mines/ sites irrespective of the yield, the expenditure incurred on such operations need to be amortized over a period of 10 years in equal amounts."

8.2 The CIT(A) confirmed the disallowance.

8.3 The ld. AR of the assessee furnished written submissions on this issue, which are reproduced as under:

"*The said expenditure was normal business expenditure incurred during regular course of business for the purpose of identifying coal reserves in the existing mines, identifying presence of water, flushing out C02, Seam proving, puncturing of*

seams, dewatering, to ascertain un-worked coal patches and grades of coal available in and around existing mines. Your appellant also explained that to come under provisions of section 35E, there should be direct nexus between prospecting and commercial production during year under consideration.

General prospecting is undertaken by the exploration department from time to time for exploration of availability of coal seams in mining areas. The general prospecting is also in relation to production support in the coal producing mines. General prospecting is undertaken to identify the coal reserves in the vicinity of existing mines.

It is an undisputed fact that the Company is engaged in the business of coal mining and prospecting is an ongoing activity. At this juncture we would like to explain what exactly is prospecting - it is process of drilling holes in order to study the various levels of seams there would be mud, sand, water, rock, gases and minerals. It so happens in a open cast mine after certain level of extraction of coal, we face hard soil or rock then the prospecting department explores to arrive at the conclusion whether there are still any more mineral reserves available or not or to what extent over burden has to be removed in order to extract the coal. Even in underground mines we face similar situation wherein the prospecting department comes to playa major roll. In all these cases commercial production has already commenced and all of them are revenue yielding mines. Hence the company was consistently following the method of accounting of claiming such expenses as revenue expenses and the same was allowed year after year.

We would also like to submit that this ground has become only academic; since the company has already received allowance under section 35E in respect of additions made during various years and

also modified its accounting policy to be in sync with section 35E. ***Therefore, this ground may be treated as not pressed.***
We draw your attention to the following decisions:

1. CIT Vs Hindustan Zinc Ltd 221 CTR 631 Paper book pages 16-20 Head note

2. Hindustan Aluminium Corp Ltd Vs CIT 159 ITR 673 (Cal HC) Paper Book pages 21 to 23.

3. Northern Coalfields Ltd Vs ACIT 69 SOT 637 (Jabalpur Trib) Paper Book Pages 24 to 31

8.3 The Ld. DR, on the other hand, relied on the orders of revenue authorities.

8.4 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. At the time of hearing, the ld. AR of the assessee does not want to press this ground of appeal as requested in his written submissions filed before us, therefore, this ground is dismissed as not pressed.

9. As regards the ground relating to TDS on interest on land compensation deposited in court as per court order raised in AYs 2009-10 to 2011-12, the AO observed that the assessee company paid 'interest on land compensation as per court order' with a remark "amount deposited in courts as per Court orders". When the assessee asked to substantiate its claim for

allowance, it filed written submissions vide letter dated 09/01/2014, which is as under:

> *"In respect of disputes raised by the pattadars against the compensation offered by the SCC Ltd., the Hon'ble Courts have directed SCC Ltd., as an interim/final orders to deposit with the courts the enhanced compensation along with interest and the amount was to be deposited on or before the specified date mentioned in the orders.*
>
> *In compliance with the court orders, SCC Ltd have deposited enhanced compensation and also deposited an amount of Rs.4.75 crores towards interest on enhanced compensation in F. Y. 2010-11. Further, the amount was deposited with courts directly drawing Cheques/DDs in the name of the courts/designation of principal officer of the court in compliance with various court orders. Therefore, the amount to the tune of Rs.4.75 crores was dealt by the courts. As per the directives in the case, the courts/principal officers of the courts have directly disbursed the payments to the beneficiaries out of the deposits held by them, as per the provisions laid down in Civil Rules in practice.*
>
> *In view of the above, the amounts deposited by SCCL with the courts directly fall under para-4(a) of the Circular No: 08/2011 (F. No: 275/30/2011-IT(B), dated 14/10/2011 and do not attract TDS provisions."*

9.1 After considering the submissions of the assessee, the AO held that the contention of the assessee that the responsibility of making TDS vests with the authority distributing the compensation to the end beneficiary is not acceptable and, therefore, the interest debited to the P&L Account is disallowed by invoking provisions of

section 40(a)(ia) wherein it was stated that any amount of interest exceeding prescribed limit paid or credited without deducting tax at source or deducting tax at source but failed to remit the TDS to the Govt. account, such interest has to be disallowed.

9.2 On appeal, the CIT(A) confirmed the said addition.

9.3 Before us, the ld. AR of the assessee filed written submissions on this issue, which are as under:

> *"The Assessing Officer disallowed this amount on the ground that TDS has not been deducted ignoring the fact that the amount was deposited as per the Court Directions and Your Appellant is not aware of the persons who have to be paid at the time of deposit. Hence, the question of TDS on such payment does not arise. CIT (A) confirmed the addition accepting the contention of the Assessing Officer.*
>
> *Your Appellant once again submits that the interest on Land Compensation claimed includes interest deposited in Civil Courts in the account of respective Judges, as per respective court orders. It was explained to the Assessing Officer that the interest on land compensation was deposited in to accounts of respective Civil Court Judges based Court Orders and TDS provisions of Section 194A are not attracted to Judgment Debtors.*
>
> *We draw your kind attention to the following case laws:*
>
> *1. Madhusudan Shrikrishna Vs Emkay Exports 188 Taxman 195 (Born HC)Paper Book pages 54 to 55."*

9.4 The Ld. DR, on the other hand, relied on the orders of revenue authorities.

9.5 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The assessee has deposited the interest as per the court directions on the enhanced compensations to be paid to the pattadars. There is no doubt that the assessee was much aware in regard to the payment of interest to the pattadars, but, the assessee has not paid directly to the pattadars. From the submissions made by the assessee, it is clear that this amount has to be deposited as per the directions of the Court order. A circular has been issued by the Board in regard to the responsibility of the TDS deduction on the interest payment on compensation/enhanced compensation which is as under:

"18/05/2021 Circular No. 526, dated 05-12-1988

1055. Whether interest payments under Land A cquisition Act are covered by section 194A

1. *According to section 194A of the Income-tax Act, 1961, any person, not being an individual or HUF, who is responsible for paying to a resident any income by way of interest other than income by way of "Interest on securities" shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force. The provisions contained therein are however subject to the exceptions provided in the said section. According to the provisions of section 200 of the Income-tax Act, any person deducting any sum in*

accordance with the provisions of section194A shall pay, within the prescribed time, the sum so deducted to the credit of Central Government. If he fails to deduct tax at source or after deducting fails to pay the tax to the credit of Central Government, he shall be liable to action in accordance with the provisions of section 201. In this connection attention is also invited to the provisions of section 276B of the Income-tax Act, as substituted by the Direct Tax Laws (Amend- ment) Act, 1987 according to which if a person fails to pay to the credit of the Central Government the tax deducted at source by him, he shall be punishable with rigorous imprisonment for a term which shall be between 3 months and 7 years and with fine.

2. *It has come to notice that various State Development Authorities, the Housing Boards, Public Works Department, etc., acquire immovable property from the public for the purpose of their developmental activities. Huge amounts are disbursed on behalf of these departments as payments of compensation for land acquired including considerable amount of interest on excess compensation as per the Land Acquisition Act.The interest payment made under the Land Acquisition Act are covered by the provisions of section 194A. As a result tax will have to be deducted at source under section 194A from the interest payments made to the public under the Land Acquisition Act.*

Circular : *No. 526, dated 5-12-1988.*

JUDICIAL ANALYSIS

EXPLAINED IN - In Special Tehsildar and Land Acquisition Officer v. Dandu Saraswatamma [1994] 205 ITR 587 (AP), the Commissioner addressed a D.O. letter dated 1-3-1987 to the then Revenue Secretary requesting him to issue instructions to all the officers concerned with land acquisition to deduct income-tax on payment of interest and to follow the provisions as laid down under section 194A and other provisions of the Act. In paragraph 2 of that D.O. letter, it was stated that while paying interest, income-tax was deductible at the rates in force during that financial year with effect from 1-4-1975, if the amount exceeded Rs. 1,000.

Pursuant to those instructions, the Land Acquisition Officers, while depositing the enhanced compensation

amounts in various execution petitions filed before the Subordinate Judge, Kovvur, had deducted income-tax on the interest accrued on the compensation amount.

The Court held that the Supreme Court in Rama Bai v. CIT [1990] 181 ITR 400 held that the interest on enhanced compensation for land compulsorily acquired under the Land Acquisition Act awarded by the Court on a reference under section 18 of the Land Acquisition Act or on further appeal has to be taken to have accrued not on the date of the order of the Court granting enhanced compensation but as having accrued year after year from the date of delivery of possession of the land till the date of such order and such interest cannot be assessed to income-tax in one lump sum in the year in which the order is made. The above decision of the Supreme Court in Rama Bai's case (supra) has set at rest the conflict of decisions among some High Courts on the above issue. The effect of the decision of the Supreme Court referred to above is that on the enhanced compensation, for land compulsorily acquired under the Land Acquisition Act, awarded by the Court on a reference under section 18 of the Land Acquisition Act, interest is payable to the claimants. If so, section 194A of the Act empowers the person who is responsible for making the payment to deduct income-tax. But the direction given in the D.O. letter dated 1-3-1987, of the Commissioner of Income-tax stating that while paying interest, income-tax was deductible at the rates in force during that financial year (Emphasis supplied) with effect from 1-4-1975, if the amount exceeded.Rs. 1,000 was not and could not be valid. Such a direction did not get support from section 194A under which Department sought deduction of income-tax at source.

The proviso to section 194A of the Act empowers the assessee to receive the income by filing an affidavit or statement in writing declaring that his estimated total income assessable to tax for the assessment year next following the financial year in which the income is credited or paid will be less than the minimum liable to income-tax. The orders under revision did not disclose the break-up in each execution petition about the compensation amount awarded and the interest payable thereon. The orders also did not disclose as to when possession of the land

concerned in each execution petition was taken by the Government and the date of depositing the compensation amount. In the absence of those details, it was not possible to determine whether the individual claimants were liable to pay income-tax or not.

In view of above it was further held that Circular No. 526, dated 5-12-1988, which is on same line as D.O. stated above, will not have binding effect on Civil Court unless provisions of the Act are made applicable.

CLARIFICATION TWO

I am directed to say that it had recently come to the notice of the Board that there was no uniform practice in vogue in the matter of the deduction of tax at source from interest payments awarded by the Courts of Law in land acquisition cases. At certain places such deduction was being made by the land acquisition authority who was responsible for paying the compensation (along with interest) to the persons whose land had been acquired under the Land Acquisition Act, while at other places, such deduction was being made by the Court of Law which awarded the compensation (with interest), after the concerned authority had deposited the entire amount with the Court, for payment to the concerned parties in accordance with the decree passed by the Court. In the latter case, it is observed that certain Courts were seeking assistance of the concerned Income-tax Authorities for effecting tax-deduction at source.

2. *It has now been decided in consultation with the Ministry of Law & Justice that the responsibility for making deduction of tax at source undersection 194A of the Income-tax Act, 1961, should be that of the Collector (Land Acquisition) or any other authority empowered under the Land Acquisition Act, 1894, to acquire land for the public purpose as laid down by that Act. When the concerned parties, whose land has been acquired, go to the Court of Law, seeking higher compensation (with interest) and the Court allows their claims the concerned authority which had acquired their land, shall, while paying the compensation, deduct tax at source from the amount of interest forming part of the compensation ,and deposit the*

remaining amount with the Court of Law, for disbursement to the successful litigants. The same authority shall also issue the TDS certificates to the concerned parties in the prescribed Form 16A.

Order : *F.No. 275/109/92-IT(B), dated 21-9-1994.*
ANNEX - MINISTRY OF LAW, JUSTICE & C.A. (DEPARTMENT OF LEGAL AFFAIRS) ADVICE (B) SECTION

The question for consideration is as to who is the person responsible for deduction of tax at source for the purpose of section 204 of the Income-tax Act, 1961 in the case of payment of compensation under the Land Acquisition Act. A prima facie view was expressed by us in the matter on the assumption that Collector, Land Acquisition is the person making payment and as such he is responsible for making deduction at source in terms of section 204(iii) of the Income-tax Act. However, we had requested the Department to confirm the factual position from the Ministry of Rural Development. The Department of Rural Development have stated that the person responsible for payment of compensation under Land Acquisition Act is the Collector. In Baldeep Singh v. UOI [1993] 199 ITR 628 the Punjab and Haryana High Court held that "the Court is not the person responsible for paying any income by way of interest...As per the legal incidents, the legal person responsible for paying income by way of interest is the Land Acquisition Collector who had the money in his possession and was responsible for making the payment of that income to the petitioners....The Court is acting only as a conduit for getting the payment to the petition er in execution of a decree passed in his favour." In view of the above, we confirm the views expressed by us earlier, referred to above.
The Administrative Department have stated that while there may be no objection to TDS being made by Collector, in such cases a practical difficulty that may arise is that the Collector would be required by the court to deposit the entire amount of compensation and interest with it and if the Collector deducts tax from that amount it would be regarded as disobedience of the Court's order.

In this connection the following observation made by the Supreme Court in Lt. Col. K.D. Gupta v. UOI [1989] 46 Taxman 124 is considered very relevant :

"We see no justification to initiate any contempt proceeding against the respondents for withholding a sum of Rs. 1,20,000 out of the sum of Rs. 4 lakhs directed to be paid to the petitioner. Rs. 1,20,000 have been withheld on the plea that under Chapter XVII of the Income-tax Act, 1961 ('the Act'), the Union of India has the obligation to deduct income-tax at source. The intention of the payer in the facts of the case for withholding the amount cannot be held to be either mala fide or is there any scope to impute that the respondents intended to violate the direction of this Court."
If out of the decretal amount the Land Acquisition Officer pays the TDS amount to the Central Government and deposits only the balance amount with the Court, in view of the aforesaid ruling, the Court may not hold it as disobedience of its orders.

9.6 Later on the Board has also issued a Circular a CIRCULAR NO. 8/2011 [F.NO. 275/30/2011- IT (B)], DATED 14-10-2011 [SUPERSEDED BY CIRCULAR NO. 23/2015, DATED 28-12-2015].

9.7 In this regard, we also refer to section 145A(b) is as under:

"*Interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be in the income of the year in which it is received."*

9.8 Now coming to the case on hand, it is clear that the assessee has deposited the amount with the Court, but, it has not actually paid to the actual recipients directly i.e., pattadars. On analysis of the above cited

section and Circulars, it is clear that the assessee is not responsible for deducting tax deduction at source and assessee is also not sure that when the amount shall be paid to the actual recipients/pattadars. In our considered opinion, the addition made in this regard is not sustainable in the eyes of law and, therefore, the addition is deleted. Accordingly, grounds raised on this issue are allowed in favour of the assessee.

10. As regards the ground relating to loss due to exchange fluctuation on interest on capital borrowed in forex for acquisition of machinery, after such asset is put to use in AY 2009-10, raised in AY 2009-10 as ground No. 11, the AO observed that the assessee provided interest on the invoice price of the machinery purchased as at 31/03/2009, though the payments were made during the FY 2009-10. The AO stated that the payment is on account of capital asset purchased from Germany and the interest accruing on account of foreign exchange fluctuations towards acquisition of capital asset has to be treated as capital expenditure. In view of the above observations, the AO disallowed interest amount of Rs. 1,94,52,069/- claimed by the assessee in P&L Account treating it as capital expenditure.

10.1 On appeal, the CIT(A) confirmed the addition.

10.2 The ld. AR of the assessee filed written submissions on this issue, which are as under:

> *"During the year SCCL provided Rs.1,94,52069/- towards interest payable on deferred payment guarantee for machinery purchased from Germany in US Dollars. This was in respect of period after the machinery was put to use. The Assessing Officer treated this as capital expenditure includable in the cost of machinery. It is submitted that this issue is covered under Explanation 8 to section 43(1) of Income Tax Act and the entire interest of Rs.1,94,52069/- is allowable as revenue expenditure.*
>
> *We draw your kind attention to the following case laws:*
>
> *1. DCIT V s Core Health Care Ltd 298 ITR 194 (SC) Paper Book pages 63 to 71*
>
> *2. CIT Vs Rajaram Bandekar 202 ITR 514 (Born HC) Paper Book pages 59 to 62."*

10.3 The Ld. DR, on the other hand, relied on the orders of revenue authorities. She submitted that the CIT(A)'s order should be restored on this issue.

10.4 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. We find substance in the submissions made by the ld. AR that once capital assets are put to use thereafter interest expenditure in respect of the loan taken for purchase of the capital assets is treated as revenue expenditure as per Explanation 8 to section 43(1) of Income Tax Act. We

agree with the submissions made by the ld. AR, but, none has provided the actual date of put to use the machinery into the business of the assessee. Therefore, this issue is remitted back to the file of AO for limited purpose for verification for actual date of put to use the machinery and if the interest paid by the assessee is after the machinery put to use then the claim of the assessee is to be allowed as a revenue expenditure and if it is found otherwise, then AO will decide the issue as per *Explanation 8 to section 43(1) of Income Tax Act*. This ground is treated as allowed for statistical purposes.

11. As regards the ground relating to restriction of depreciation on mine development to 10% as against 15% claimed, as raised in AY 2011-12 as ground Nos. 9 & 10, the assessee has claimed depreciation @ 15% to the extent of Rs. 40,46,18,947/-, which was restricted by the AO to 10%, which comes to Rs. 13,48,72,982/-. The CIT(A) confirmed the same.

11.1 The ld. AR of the assessee filed written submissions on this issue, which are as under:

> *"During the year your appellant had claimed depreciation on mine development expenditure in coal mines, @15% applicable to plant and machinery. It was in respect of expenditure incurred in the mines during the course of regular mining activity, to ensure continuity of mining operations.*

It included the expenditure incurred by the assessee company on construction of retaining wall for sand stowing, Dumper Working Platform, Construction of RCC Bridges, Land levelling, Sand Stowing, Bunker Stowing, construction of Inter Seam Tunnels, Construction of Steel Bunkers, Construction of Water Dams, construction of water tankers for sand stowing, building retention wall for sand stowing, construction bunkers in mines for workers, construction of check dams in mines to prevent water gushing etc. The entire expenditure was incurred within the mines, which are categorized as plant and machinery for the purpose of depreciation. Functionally the expenditure assumes the nature of plant and machinery in the coal mines. Any expenditure incurred to develop/sustain plant and machinery would assume the same character.

As percircu1ar No. OFF-43011/22/81 dated 20.04.1981 of department of Coal, Ministry of Energy, Govt, of India expenditure incurred for the development of mine shall be capitalized and depreciated over the life of the mine. Further, as per Schedule XV of the Company's Act, Mines and shafts are eligible for charge of depreciation at the rates applicable to 'P1ant& Machinery'.

As Income Tax Act/ Rules does not provide rate of depreciation for Mines & shafts. SCCL have claimed depreciation at general rates applicable to plant and machinery, based on functionality of the expenditure incurred. The mine development expenditure incurred for bringing the mine into commercial exploitation, no civil structures or buildings are constructed. The rate adopted for the buildings cannot be applied for mine development expenses. It is more appropriate to equate mine development expenses to the general rate of plant & machinery as the expenditure incurred on mine development enables to exploit the mine commercially. The rate of depreciation adopted for mine development by SCCL considering the general

rate of 15% is as per the provisions of Income Tax Act and business expediency.

It is also submitted that the Honorable AP High Court in your appellant's own case in CIT vs Singareni Collieries Co., Ltd., 221 ITR 48 has held that coal mines were in the nature of plant and machinery eligible for investment allowance u/s 32A.

The structures functionally are a necessary part of our mining process and activity. We also refer to the decision of Hon'b1e Supreme Court in (i) CIT vs Kamataka Power Corporation (247 ITR 268 (SC», where Hon'b1e Supreme Court held:

"Power generating station building which is an integral part of assessee's generating system has to be treated as a plant, and investment allowance is allowable thereon. "
The context in which your appellant refers to the decision jurisdictional High Court in their own case and the decision of Hon'ble Supreme Court in the case of Karnataka Power Corpoation, is to first establish that mines and shafts were in nature plant in coal mining industry, as held by jurisdictional High Court and then establish that any expenditure incurred in the mines, though a civil structure, if it functionally assists or forms part of the mining process, then it would also assume the nature of plant and be eligible for same benefits as those available to plant and machinery.

Your appellant submits that Mine Development expenditure incurred by them on construction of retaining wall for sand stowing, Dumper Working Platform, Preparation of Financial Appraisal Report, Construction of RCC Bridge, Land levelling, Sand Stowing, Bunker Stowing, construction of Inter Seam Tunnels, Construction of Steel Bunkers, Construction of Water Dams, Development Expenditure and construction of Water tankers for

sand stowing expenditure is incurred in connection with functional development of mining properties that is sinking of shafts and inclines and we also further affirm that the above expenditure under Mines and Shafts is directly related to Coal Mining and incurred towards extracting coal from mines.

We draw your kind attention to the following case laws:

1. CIT V s Kamataka Power Corp. 247 ITR 268 (SC) Paper Book Pages 32 to 35

2. CIT Vs Singareni Collieries Co 221 ITR 194 (AP HC) Paper Book Pages 36 to 40

3. CIT Vs Dr B Venkata Rao 243 ITR 0081 (SC)Paper Book Pages 51 to 53

4. S K Tulsi and Sons Vs CIT 187 ITR 685 (Allahabad HC) Paper Book pages 49 to 50.

5. CIT Vs Shashi Nursing Home Ltd 269 CTR 99 (A11ahahad HC) Paper book pages 45 to 48.

6. CIT Vs Sesa Goa Ltd 271 ITR 331 (SC) Paper book pages 41 to 44.

11.3 The Ld. DR, on the other hand, relied on the orders of revenue authorities and submitted that the expenditure incurred by the assessee are in the nature of civil works which are not qualified for depreciation @ 15% as plant and machineries.

11.4 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The assessee is

engaged in the business of coal mines and he is extracting coal from open cast mines as well as underground mines. As per details submitted by the AR of the assessee during the course of assessment proceedings and appellate proceedings, it is clear that the expenditure incurred by the assessee are to be treated as 'plant and machinery'. The civil works are relating to directly for the excavation of coal. Without doing these jobs, it is difficult to extract the coal from the mines. From the details submitted, it is clear that the expenditure incurred by the assessee company on construction of retaining wall for sand stowing, Dumper Working Platform, Construction of RCC Bridges, Land levelling, Sand Stowing, Bunker Stowing, construction of Inter Seam Tunnels, Construction of Steel Bunkers, Construction of Water Dams, construction of water tankers for sand stowing, building retention wall for sand stowing, construction bunkers in mines for workers, construction of check dams in mines to prevent water gushing etc. The entire expenditure was incurred within the mines, which are categorized as plant and machinery for the purpose of depreciation. Functionally the expenditure assumes the nature of plant and machinery in the coal mines. The rate of depreciation has been prescribed as per new Appendix – I – Part – A on tangible assets. Looking at the nature of business of the assessee the mine development expenditures spent by the assessee are to be treated as

plant & machineries. There can be different type of expenditures for the different nature of business. In the Income Tax Act, the word “plant & machinery” has not been defined, but, the various courts have defiled the plant and machinery as per the conditions existed in given cases. Further on perusal of the submission of the AR of the assessee it has been observed that in assessee’s own case while granting investment allowance U/s 32A of the IT Act, similar expenditures incurred by the assessee under the head “plant and machinery” were decided in favour of the assessee and held that it was plant and machinery by the Hon’ble jurisdictional AP High Court as relied upon by the assessee. Further the assessee has relied on the decision of the Hon’ble SC in case of Karnataka Power Ltd. as quoted supra is squarely applicable to the facts of the present case. The Ld. CIT (A) has not accepted this judgement of Hon’ble SC holding that it relates to Investment Allowance U/s 32A of the Income Tax Act, 1961. Once similar expenditures have been accepted by the Hon’ble SC as quoted supra , we are of the view that the expenditures incurred by the assessee were necessary for excavation of coal from mines and shafts . In view of the above observations, we allow this ground of appeal of the assessee by holding that the assessee is entitled to charge depreciation @ 15% under the block of assets “plant and machinery”, as against 10% made by the AO .

12. As regards the issue relating to prior period expenditure – enhancement of income by CIT(A), raised as additional ground in AY 2007-08 & 2009-10, the ld. AR of the assessee filed written submissions, which are as under:

> "*a. While disposing off SCCL's appeal in ITA No.235/CIT(A)NJA/09-10 dated 28/2/14, the CIT(A), Vijayawada gave directions for enhancement of income in respect prior period expenditure allowed in assessment order dated 30/12/2009 by the Assessing Officer to the extent of Rs. 15,74,43,344/-. In fact, SCCL had claimed only RS.46,16,251/- under Prior period expenditure, in the return of Income. While quantifying the enhancement, CIT(A) by mistake included Rs.14,58,55,839/- relating to VRS expenditure which was actually reduced in their calculation of claim towards prior period expenditure. The CIT(A) also dismissed petition U/S 154 dated 24.03.2014 filed by SCCL.*
>
> *b. While disposing off SCCL's appeal in ITA No.345/CIT(A)NJA/11-12 dated 28/2/14, the CIT(A), Vijayawada gave directions for enhancement of income in respect prior period expenditure allowed in assessment order dated 30/12/2009 by the Assessing Officer to the extent of Rs.2,15,59,900/-. In fact, SCCL had claimed RS.2,77,45,302/- under Prior period expenditure, in the return of Income. While quantifying the enhancement, CIT(A) by mistake included Rs.35,30,379/- relating to prior period depreciation which was actually reduced in their calculation of claim towards prior period expenditure. The CIT(A) also dismissed petition u/s 154 dated 24.03.2014 filed by SCCL."*

12.1 We have heard both the parties and perused the material on record as well as gone through the orders of the revenue authorities. The CIT(A) has enhanced the prior period expenditures as claimed by the assessee. In this regard, in our considered opinion, we remit this matter back to the file of the AO for verification when the expenditure was crystalized. If the AO satisfied that the assessee has rightly claimed prior period expenditure and then allow the claim of the assessee following the decision taken by us in for AYs 2005-06 to 2010-11 (supra). Accordingly, the AO is directed to decide the issue in accordance with law. Thus, this ground is allowed for statistical purposes.

12.2 In the result all the appeals of the assessee are disposed of in above terms.

REVENUE APPEALS:

13. As regards the appeal of revenue in ITA No. 519/Hyd/2016 for AY 2004-05, the revenue has raised a substantive ground relating to the action of the CIT(A) in deleting the addition of Rs. 1.19 crore made by the AO towards expenditure on plantations.

14. On perusal of record, we find that the tax effect involved in this appeal is less than 50 lakhs as CBDT Circulars No.03/2018 dated 11.07.2018 and Circular

No.17 of 2019 dated 9th August, 2019, the tax limit for filing of appeal by the Revenue before the Tribunal has been fixed at Rs.50.00 lakhs. Since the tax effect in this appeal is less than Rs.50.00 lakhs, we are dismissing the same on account of low tax effect with the liberty to the Revenue to seek recall of the order, if any of these cases falls within the exceptions mentioned in the Circulars cited above.

15. In the result, Revenue's appeal is dismissed in above terms.

16. As regards the appeal of revenue in ITA No. 801/Hyd/2014 for AY 2006-07, the revenue has raised a substantial ground that the CIT(A) erred in deleting the disallowance of Rs. 3,49,71,516/-, the AO disallowed this amount u/s 40(a)(ia) of the Act with reference to the short deduction u/S 194C of Rs. 1,91,31,631/- and U/s 194J of Rs. 1,58,39,885/-. The CIT(A) deleted the said disallowance by observing as under:

> *"4.4.5. Coming to the portion of short deduction of TDS u/s.194C and 194J of the Act, there is force in the submissions made by the appellant. The Provisions of section 40(a)(ia) stipulate that "any interest, commission or brokerage [rent, royalty] fees for professional Services or fees for technical services payable to a resident, or amounts payable to a contractor or Subcontractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such*

tax has not been deducted or, after deduction has not been paid': In this case, the appellant has deducted tax but there is a short deduction of the same. Going by the Provisions of section 40(a)(la) of the Act, the Assessing Officer is not justified in making the disallowance of expenditure on account of short deduction of tax. Accordingly, the disallowance made u/s.40(a)(ia) of the Act of Rs.3,49,71,516/_ is hereby deleted."

17. Aggrieved by the order of CIT(A), the revenue is in appeal before the ITAT.

18. Before us, the ld. DR submitted that since the assessee has short deducted the TDS, the AO has rightly made the disallowance u/s 40(a)(ia) of the Act. He, therefore, contended that the CIT(A) is wrong in deleting the disallowance made by the AO.

19. The ld. AR on the other hand, relied on the order of CIT(A).

20. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The assessee has made payments which were required to be deducted tax at source as per the prescribed rate in force as per chapter XVIIB, which has been narrated by the Tax auditor in Form 3CD as per annexure - IX of the Tax audit report . On perusal of the orders of the authorities below, it is clear that the assessee has deducted TDS

on the above payments at lower rate as prescribed in the Act. The section 40(a)(ia) is applicable only in those cases where tax has not been deducted at all. But in the given case, the assessee has deducted tax at lower rate. The assessing Officer is not justified to make disallowance U/s 40(a)(ia) on the payments made and debited into the Profit & Loss Account on the ground that assessee has not deducted TDS at full rate as was in force. In support of our decision, we rely on the decision of co-ordinate bench of the Tribunal ITAT KOLKATA bench in ITA No. 665/Kol/2018 wherein similar issue has been decided in favour of the assessee which reads as under :

> *"Since all the grounds relate to the issue of disallowance under 40(a)(ia) made by the AO of an amount of Rs 1,94,47,590, the same are dealt together. During the course of assessment proceedings the AO noticed that the appellant was required to deduct TDS in respect of various expenditures under different heads but failed to comply with the provisions of the IT act in respect of TDS deduction. The AO observes that the appellant was liable to deduct TDS of Rs4,08,954 under section 194C of the Income Tax Act from the total expenditure of Rs.2,08,88,541 relating to can outwards, labour charges, car hire charges, security charges, advertisement and office decoration charges. However, deduction was made only of Rs.1,61,856 resulting in short deduction of rupees 2,47,098. Therefore, the proceeded to disallow the sum of Rs.19,95,048 under section 40(a)(ia) respect of which no TDS was deducted. During the appellate proceedings the AR of the appellant submits that TDS was deducted at a lower rate and hence provisions of section 40(a)(ia) are not applicable in respect of the appellant. Appellant's contentions were carefully analysed. It is observe that the appellant has not come up-with any evidence either before the AO or during the appellate proceedings that it has deducted the due TDS in respect of the impugned sum disallowed by the AO. It is also observed from the assessment order that having" regard to the lower deduction TDS certificates in respect of M/s Maheswari Transport Agency Private Limited and M/s Rohit Transport Organisation, the AO has given due allowance in respect of the TDS liability of the appellant.*

Therefore, the appellant's contentions that it has deducted TDS at a lower rate as per the certificates granted is bereft of any logic. As section 40(a)(ia) mandates that failure to deduct the whole or any part of the tax entails disallowance, it was mandated upon the appellant to deduct the desired TDS at the time of credit or payment of the sum. The appellant having failed to do so violated the provisions of section 194C and, therefore, the AO is duty bound to disallow the impugned sum in respect of which no TDS deduction has been made. During the appellate proceedings the AR of the appellant further submits that vide order dated 22 February 2016 the AO has given certain relief to the appellant by rectifying apparent mistake under section 154. That be so, subject to the same, in view of the discussions mentioned above the undersigned does not find any anomaly in the action of AO in disallowing the expenditure against which due TDS deduction has not been made. Appellant's grounds therefore, fail and the appeal is dismissed."

3. It is sufficiently clear from a perusal of the foregoing lower appellate discussion that this is not an instance of non-deduction of TDS per se. Learned departmental representative fails to dispute that going by the Assessing Officer's detailed discussion in pages 2 to 3 in his assessment order dated 07.01.2016, the assessee had indeed deducted TDS u/s.194C albeit at a lesser rate followed by three other head(s) of 194-H, 194-I and 194-J involving nil deduction. And also that the Assessing Officer had disallowed the impugned sum under the first head only. We observe in this factual backdrop that ***hon'ble jurisdictional high court's decision in Commissioner of Income Tax vs. S.K. Tekriwal 361 ITR (Cal)*** *holds that the impugned disallowance u/s 40(a)(ia) does not apply in a case involving short deduction of TDS. We therefore go by the very reasoning and direct the Assessing Officer to delete the impugned disallowance.*

4. This assessee's appeal is allowed."

20.1 Respectfully following the above judgement, we uphold the decision of the CIT (A) as he has rightly allowed the appeal of the assessee on the same issue. In the result the appeal of the revenue is dismissed.

21. As regards the appeals of the revenue in ITA No. 802 & 803/Hyd/2014 for AYs 2009-10 & 2010-11, the revenue has raised an identical ground in both these

appeals that the CIT(A) erred in deleting the addition of Rs. 1,59,93,000/- in AY 2009-10 and Rs. 1,45,70,000/- in AY 2010-11, the AO observed that on careful reading of the Notes submitted by the assessee company it is clear that the assessee is providing interest at certain percentage and credited to the fund account. Further, he observed that it is also a fact that the insurance premium is paid out of interest provided by the company against FBIS members. It is also a fact that every member certainly gets the amount contributed by them in addition to the interest provided by the company. Further, it is also a fact that the assessee company failed to give the bifurcation of interest to be paid to each member relevant to the year under consideration. However, the interest provided by the company towards the fund maintained for the purpose of this scheme, without deducting tax surely attracts the provisions of section 40(a)(ia) rws 194 of the Act. In view of the above observations, the AO disallowed the interest provided to the fund under this scheme of Rs. 1,59,93,000/- in AY 2009-10 and Rs. 1,45,70,000/- in AY 2010-11.

22. The assessee preferred an appeal before the CIT(A) and submitted during the appeal proceedings that FBIS scheme is that every employee contributes Rs.10/- p.m. which works out to Rs.120 per year. The interest on this amount at 6% works out to Rs.7.20.

Hence, the appellant contends that provisions of section 194A are not attracted as the amount of interest per annum is less than Rs.5,000/- per year including the accumulated balance per employee.

23. After considering the submissions of the assessee, the CIT(A) directed the AO to delete the disallowance by observing as under:

> *"4.4.4.2. I have gone through the observations of the Assessing Officer and submissions made by the appellant. As the amount of interest per annum provided by the appellant under the said scheme of Family Benefit-cum-Insurance Scheme (FBIS) is below the threshold limit as prescribed in section 194A of the Act, I am of the opinion that the Assessing Officer is not justified in disallowing the SAID expenditure u/s.40(a)(ia) of the Act. Hence, he is directed to delete the disallowance made in this regard."*

24. Before us, the ld. DR submitted that since the assessee failed to give the bifurcation of interest to be paid to each member and without deducting tax attracts the provisions of section 40(a)(ia) and the AO has properly disallowed the interest paid to members.

25. The ld. AR on the other hand, relied on the order of CIT(A).

26. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The ld. CIT(A) has

examined the issue in detail as per the documents submitted before him and observed that the threshold limit for deducting TDS as per section 194A was below the limits prescribed and therefore, he deleted the disallowance made by the AO on this count. In such cases, there is no obligation upon the payer of interest for deducting TDS as per Section 194A of the Income Tax Act. 1961 We, therefore, do not find any infirmity in the order of the CIT(A) in both the years under consideration and upholding the same, we dismiss the grounds raised by the revenue on this issue in both the years under consideration.

27. In the result, both the appeals of the revenue for AYs 2009-10 & 2010-11 are dismissed.

28. To sum up, all the appeals of the revenue are dismissed and the appeals of the assessee in ITA Nos. 879 & 880/Hyd/2014 for AYs 2005-06 & 2006-07 are allowed and appeals in ITA Nos. 882, 884, 886 & 887/Hyd/2014 and & 561/Hyd/2016 for AYs 2007-08 to 2011-12 are partly allowed for statistical purposes. A copy of this common order be placed in the respective case files.

Pronounced in the open court on May, 2021.

Sd/-	Sd/-
(S.S. GODARA)	(L.P. SAHU)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Hyderabad, dated 20th May, 2021

kv

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5	*ITAT, DR, Hyderabad.*
6	*Guard File.*