

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI PRADIP KUMAR KEDIA, HON'BLE ACCOUNTANT MEMBER &
SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER**

**I.T.A. No. 05/BLPR/2012
(Asst. Year : 2008-09)**

South Eastern Coalfields
Ltd., Seepat Road, Bilaspur,
Dist. Bilaspur (C.G.)

vs.

Addl. CIT, Range-1,
Bilaspur.

PAN No. AADCS 2066 E
(Appellant)

(Respondent)

Assessee by : Shri Ajit Korde

Shri Ankit Agrawal &
Shri Vivek Ruia, CAs

Department by : Shri R.K. Singh, CIT DR

Date of hearing : 27/07/2021.

Date of pronouncement : 30/07/2021.

ORDER

PER N.K. CHOUDHRY, JUDICIAL MEMBER

This appeal has been preferred by the Assessee against the order dated 31/10/2011 impugned herein passed by the Id.CIT(A), [for short, 'Id. Commissioner], Bilaspur u/sec. 250(6) of the Income

Tax Act, 1961 (hereinafter referred to as the "Act") for the A.Y. 2008-09.

2. Though the Assessee vide application/letter dated 27/04/2019 raised an additional ground, however the same remained undisposed of while adjudicating the instant appeal on dated 06/11/2019 by the Co-ordinate Bench, therefore, this appeal was recalled vide order dated 26/07/2021 by the Bench in exercise of powers conferred in Sec. 254(2) of the Act for the limited purpose for adjudication of additional ground which is as under:-

"1E. Without prejudice to our contention that the deduction is a revenue expenditure allowable fully in A.Y. 2008-09, in view of the decision of the Hon'ble ITAT Cuttack in East India Minerals Limited vs. JCIT (ITA No.224/CTK/2012), the Assessee company should be permitted to claim the said expenditure over the limited period of the lease of land for mining."

3. At the outset, our attention was drawn by the Id. AR to the order dated 06/11/2019 by the Co-ordinate Bench wherein while adjudicating ITA No. 173/JAB/2008 for A.Y. 2004-05 in Assessee's own case at paras 27 to 29 of the order, the issue alike under consideration was decided by holding as under: -

"27. The Assessee has also filed an additional ground as ground No. 1E which is as follows:-

"1E. Without prejudice to our contention that the deduction is a revenue expenditure allowable fully in A.Y. 2008-09, in view of the decision of the Hon'ble ITAT Cuttack in East India Minerals Limited vs. JCIT (ITA No.224/CTK/2012), the Assessee company should be permitted to claim the said expenditure over the limited period of the lease of land for mining."

28. With regard to this additional ground No.1E, the Id.AR of the Assessee has placed reliance on the decision of the Co-ordinate Bench of the Tribunal Cuttack in the case of East India Minerals Limited vs. JCIT (ITA No. 224/CTK/2012) wherein the Cuttack Bench of the Tribunal has held as under:-

"7. We have heard the rival contentions of the parties and perused the material available on record. Considering the facts and circumstances of the case, we uphold the contention of the learned counsel for the Assessee for the simple reason that the denial of claim of depreciation has been made on misinterpretation of law and the applicability thereof. Explanation to Section 32(1)(ii) leans in favour of the Assessee to the extent that it is the actual action of put to use which entitles the Assessee to claim depreciation. A straight line method of claiming the writing off of lease hold rights for the period of lease cannot be denied to the Assessee for the simple reason it being intangible asset has been written off which pertains to land being a intangible asset. It is nobody's case that the land either belonged to the lessee or to the Government. This simply indicates that a depletion of the land against the payment of premium it was leased has to be claimed after capitalization thereof by the Assessee which is for the purpose of its main business. All expenses are incurred for the purpose of business and are incidental to the holding of rights were claimed u/s. 132(1)(ii) being the license to carry out the mining therefore could not be denied insofar as the Government and the lessee are in control of the asset. The definition of depreciation therefore has been misconstrued for the purpose of allowing deduction by the Assessing officer and the learned CIT(A) in holding a view on the promulgation of Section 32(1)(ii) with effect from the year 1998-99 which has been further amended w.e.f. Assessment year 2003-04. In this view of the matter, we are inclined to hold that the Assessee is entitled to depreciation as charged to the P & L account in accordance with its business exigencies. We direct accordingly.

29. We have perused the case records and given considerable thought to the submissions made by the Ld.AR of the Assessee regarding ground No.1E and we have also observed and considered the findings of the Co-ordinate Bench, Cuttack. In the interest of justice, this ground is remitted back to the file of Assessing Officer and Assessing Officer is directed to adjudicate this issue after taking into consideration the view and directions as given by the Co-ordinate Cuttack Bench of the Tribunal and as prelaw after providing reasonable opportunity of hearing to the Assessee. **Hence, additional ground No.1E raised in appeal by the Assessee is allowed for statistical purposes."**

4. Ld. DR did not controvert the claim of the Assessee and finding of the Co-ordinate Bench in the said order. As the issue decided by Co-ordinate bench is the same as raised by the assessee in this appeal, hence the result of ITA No. 173/JAB/2008 for A.Y. 2004-05 qua ground No. 1E, shall apply *mutatis mutandis* to the additional ground raised in this appeal.

5. Resultantly, the appeal of the Assessee on the additional ground {1E} stands allowed as well for statistical purpose.

Order Pronounced in open Court on this 30th day of July, 2021.

Sd/-
(PRADIP KUMAR KEDIA)
Accountant Member

sd/-
(N.K. CHOUDHRY)
Judicial Member

Dated: 30th July, 2021.

vr/-

Copy to:

1. *The Assessee - South Eastern Coalfields Ltd., Seepat Road, Bilaspur, Dist. Bilaspur (C.G.)*
2. *The Revenue – Addl. CIT, Range-1, Bilaspur.*
3. *Ld. CIT(A) , Bilaspur (CG).*
4. *CIT, Bilaspur (CG)*
5. *The D.R., Raipur.*
6. *Guard file.*

By order

Sr. Private Secretary,
ITAT, Raipur (on tour).