

आयकर अपीलिय अधीकरण, न्यायपीठ –“C” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**  
 [Before Shri A. T. Varkey, JM and Shri Manish Borad, AM]

**I.T.A. No.243/Kol/2020**  
**Assessment Year: 2014-15**

<b>DCIT, Circle-5(2), Kolkata</b>	Vs.	<b>M/s The Thiess Mines (India) Pvt. Ltd.</b> (PAN:AACCT3570B)
Appellant		Respondent

Date of Hearing (Virtual)	16.09.2021
Date of Pronouncement	26.10.2021
For the Appellant	Shri Supriyo Pal, Addl. CIT
For the Respondent	Shri Raghunathan Sampath, AR

**ORDER**

**Per Shri A. T. Varkey, JM:**

This appeal has been preferred by the Revenue against the order of the Ld. CIT(A)-18, Kolkata dated 13.09.2019 for A.Y 2014-15.

2. Though the Revenue has preferred three grounds of appeal, we note that the Ground No.3 is general ground so it needs to be dismissed.

3. Coming to the Ground No.2, the Ld. AR drew our attention to the fact that this ground i.e. against the allowing adjustment of carry forward business losses with current year income from other sources, does not emanate from the impugned order of the Ld. CIT(A). According to the Ld. AR, this must have been cut paste exercise of the department. The Ld. DR could not controvert to the submission of the Ld. AR and therefore, this Ground No.2 of the Revenue stands dismissed.

4. Coming to the only ground remaining i.e. against the action of the Ld. CIT(A) in allowing expenses related to project of NTPC which according to the A.O was incurred prior to setting up of the business.

5. Brief facts of the case as noted by the A.O are that the assessee was engaged in the business of providing mining services. The A.O noted that in A.Y 2011-12, the assessee was awarded a contract for mine development and operation for the Pakri Barwadih Coal Project in Jharkhand from National Thermal Power Corporation Limited (*hereinafter* 'NTPC') for mining of coal. The A.O issued show-cause notice to the assessee as to why the expenses claimed in the Profit & Loss A/c should not be treated as pre-operative expenses and capitalized. Pursuant to the SCN, the assessee brought to the notice of the A.O that the issue of set up of business has been decided in favour of the assessee by the Ld. CIT(Appeals)-18 vide his order dated 19<sup>th</sup> August 2016 for A.Y 2012-13. It was pointed out by the A.O that the Ld. CIT(A) has held that not only has the business of the assessee been set up but the same had also commenced and furnished a copy of the order of the Ld. CIT(A) dated 19<sup>th</sup> August 2016 for A.Y 2012-13. However, the A.O did not agree and he was of the opinion that the assessee company cannot be said to have commenced this business activity and held that the expenses claimed are pre-operative and thus was not considered as revenue expenses.

6. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) and challenged the action of the A.O in not allowing pre-operative expenses as revenue expenditure. The Ld. CIT(A) gave partial relief to the assessee by holding as under:

“6.6 Therefore, in view of the facts of the case and the supporting judicial precedents, it is construed that since the appellant had set up office and already recruited employees for providing services to its clients the business of the appellant had already commenced. Hence, all the expenses exclusively related to the running of the business of the Company are revenue in nature and hence allowable. However, so far as NTPC awarded project is concerned, it was still in its pre operational stage. The project awarded by the NTPC had not started its business. Hence, all the expenses related to the project should have been capitalized. Appellant had capitalized only construction work but claimed other expenses as revenue expenses, which is not correct. Appellant had received 23,44,133/- as advance for executing the project. If appellant wants to claim revenue expenditure then on the basis of principle of matching revenue, appellant should also offer Income out of Rs.23,44,133/-. However, this has not been done. Hence all expenses related to the project should be capitalized. In the previous assessment years for 2012-13 and assessment year 2013-14, the CIT(A) has taken the view that the expenses which are directly related to the project work have to be capitalized. The appellant apparently accepted such capitalization of the expenses related to project work. This is evident from the order of the Hon'ble ITAT, Kolkata wherein the cross objections filed by the appellant for assessment years 2012-13 and 2013-14 were not pressed

before the Hon'ble ITAT, Kolkata. Therefore, I don't find any compelling reason to differ from the decision of the earlier first appellate authorities. Therefore, I will proceed to identify the expenses which are directly related to project work that requires to be capitalized. Perusal of the Profit & Loss A/c and the subsequent de tails submitted by the appellant shows that the following expenses are exclusively related to the project awarded by the NTPC:

Sl. No.	Particulars	Amount (Rs.)
1	Legal expenses	53,49,119
2	Community welfare expenses	92,24,535
3	Employee benefits cost	8,60,72,020

i) Out of the above expenses, the entire legal expenses incurred amounting to Rs. 53,49,119/- requires to be disallowed.

ii) Out of the community expenses of Rs.92.24 535/-. It is observed that Rs.79,87,741/- as per the details of community expenses(Annexure) has been spent in and around the area where the mining project was to Commence.

iii) As regards cost of salaries, the same for year under consideration was Rs.8,60,72,020/-. In this regard, when the appellant was asked to provide the details of employees working directly towards the NTPC project the appellant has produced the details of the employees and the salary paid which is around Rs.3,22,06,253/-. Out of the total cost of Rs.8,60,72,020/- an amount of Rs.3,22,06,253/- requires to be capitalized and the balance needs to be allowed as revenue expenditure.

6.7 In view of the above discussion, legal expenses of Rs.53,49,119/-, community expenses of Rs.79,87,741/- and salary expenses of Rs.3,22,06,253/- are held to be capital in nature as the same are related to setting up of the project. The AO is directed to rework the revenue expenses to be allowed keeping the above observations in mind. Subject to above, the ground no.2 is partly allowed.”

7. Aggrieved by the aforesaid action of the Ld. CIT(A) of partial relief to the assessee on this issue, the Revenue is before us and we note that the assessee has not preferred any cross-appeal or cross-objection against the partial confirmation of order made by the Ld. CIT(A). And after hearing both parties and perusal of records, it was brought to our notice by the Ld. AR of the assessee that the Tribunal has already upheld the action of the Ld. CIT(A) on identical issue for A.Y 2012-13 and A.Y 2013-14 in ITA No.2163/Kol/2016 and ITA No.485/Kol/2016 order dated 15.11.2018. We note that in the assessee's own case, the Tribunal upheld the view of the Ld. CIT(A) for A.Y 2012-13 and A.Y 2013-14, and held that assessee has set up its business. And further the Tribunal did not interfere with the partial confirmation of the disallowance made by AO regarding the claim of pre-operative expenses as revenue expenditure viz, *legal and professional expenses, community welfare expenses, environmental*

*expenses, project expenses, salaries which were directly attributable to the project of NTPC and the said expenses to be capitalized.* And it is further noted that the Tribunal confirmed the action of Ld. CIT(A) allowing other expenditure claims as revenue expenditure which were exclusively related to the running of the business. Thus, we note that for A.Y 2012-13 and A.Y 2013-14, so far as the expenditure related to the NTPC project was concerned, the Ld. CIT(A) held it to be expenses related to pre-operative stage and disallowed it as revenue expenditure and directed it to be capitalized, which action of Ld. CIT(A) has been upheld by the Tribunal (supra). And we note that in those appeals, the assessee has not pressed the C.O. which was challenging the action of the Ld. CIT(A) directing the capitalization of expenditure related to expenditure incurred in respect of NTPC project. So the action of Ld CIT(A) to that extent got crystallized.

8. In the light of the aforesaid discussion, we confirm the impugned action of the Ld. CIT(A) in giving partial relief to the assessee on the issue agitated by the Revenue, since we are bound by the decision of the Coordinate Bench in assessee's own case for A.Y 2012-13 and 2013-14.

9. In the result, the appeal of the Revenue stands dismissed.

Order is pronounced in the open court on 26<sup>th</sup> October, 2021.

Sd/-  
(Manish Borad)  
Accountant Member

Sd/-  
(A. T. Varkey)  
Judicial Member

Dated: 26.10.2021

RS

Copy of the order forwarded to:

1. Appellant- DCIT, Circle-5(2), Kolkata.
2. Respondent- M/s The Thiess Mines (India) Pvt. Ltd., 5B, RDB Boulevard, Block-EP&GP, Sector-V, Salt Lake, Kolkata-700091.
3. The CIT(A)- , Kolkata
4. CIT- , Kolkata

5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO  
ITAT, Kolkata Benches, Kolkata