

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
[Before Shri Rajpal Yadav, Vice-President(KZ) & Shri Rajesh Kumar, Accountant Member]

**I.T.A. No. 11/Kol/2021**  
**Assessment Year : 2008-09**

ACIT, Circle-2, Asansol	Vs.	Eastern Coalfield Ltd. (PAN: AAACE 7590 E)
Appellant		Respondent

Date of Hearing	29.03.2022
Date of Pronouncement	18.04.2022
For the Appellant	Shri Arvind Agrwal’s staff Shri Anand Shaw
For the Respondent	Smt. Sucheta Chattopadhyay Roy, CITDR

**ORDER**

**Per Shri Rajpal Yadav, Vice-President:**

The Revenue is in appeal before the Tribunal against the order of Ld. CIT(A) dated 19.02.2020 passed in AY 2008-09.

2. We note that there is a delay of 270 days in filing this appeal due to current pandemic Covid-19. After going through the application for condonation of delay, we are of the opinion that the cause for delay was reasonable, so we condone the delay and proceed to hear the appeal.

3. The grounds of appeal taken by the revenue are as under:

*1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in giving relief of Rs. 34,07,60,000/- by holding that this amount is only the cumulative figure of “provisions for various liability” of earlier years while in accordance with the Ld. CIT(A)’s direction in his previous order, it did not fit into any of two criteria framed by him.*

*2. The appellant craves leave to make any amend, addition, alteration, modification etc. of the ground either before the appellate proceedings, or in the course of appellate proceedings.*

4. There is a long history to the dispute. The original return was filed on 29.09.2008 disclosing Nil income. The assessment order was passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) on 31.12.2010 at a total income of Rs. 88,94,67,16,239/-, however after adjusting with the brought forward losses and unabsorbed depreciation then income was taken at Nil. Thereafter an assessment order was passed u/s 143(3) read with Section 147 on 28.03.2014. Dispute travelled in appeal before the Ld. CIT(A) who has partly allowed the appeal of the assessee vide order dated 31.10.2014. The AO has passed the impugned assessment order i.e. the order given effect on 04.12.2014. It read as under:

APPELLATE ORDER TO THE SUPERINTENDENT

In pursuant to the appellate order u/s. 250/143(3) of the I.T. Act, 1961 passed by Ld. CIT(A), Asansol on 31.10.2014 vide Appeal No. 470/CIT(A)/Asl/Cir-2/Asl/10-11, the total income of the assessee is modified as under –

Assessed income as per order u/s.154/143(3) dated 28/03/2014	₹ 13,00,61,93,359/-
Less: Relief as per appellate order vide No. 470/CIT(A)/Asl/Cir-2/Asl/10-11 dated 31.10.2014 on ground of:	
a) Disallowance of Interest :	₹29,12,000
b) Disallowance of prior/prepaid expenses:	₹12,91,94,000
c) Disallowance on provision of	
(i) Stores & spares: ₹40,48,98,000	
(ii) Workshop Job: ₹17,55,000	₹40,66,53,000
d) Free issue of Coal:	₹14,58,45,000
e) Disallowances on depreciation of:	
(i) Discarded Assets: ₹2,75,43,000	
(ii) Asset not belonged to company: ₹3,33,48,000	
(iii) Social overhead : ₹5,96,87,000	₹12,05,78,000
f) Disallowances of Provision:	
(i) for F.B.T. : ₹13,95,43,000	
(ii) actuarial Gratuity: ₹11,66,42,01,000	
(iii) Leave encashment: ₹1,23,39,79,000	₹13,03,77,23,000
g) Environmental Expenses:	₹1,08,53,000
h) Hire Charges:	₹10,52,98,000
i) Stock of Non-vendible Coal:	₹20,17,42,508
j) Grants of Sports & Recreation:	₹ 51,71,000
	₹14,16,59,69,508,
	₹ 1,15,97,76,149/
<b>Revised Net Loss :</b>	<b>₹1,15,97,76,150/-</b>

[R/O.]

5. Dissatisfied with this order, the assessee went in appeal before the First Appellate Authority. The Ld. First Appellate Authority has allowed the appeal of the assessee. In order to appreciate the facts more scientifically, we deem it appropriate to take note the finding of the Ld. CIT(A) because it contains the direction of the Ld. CIT(A) issued in order dated 31.10.2014 which has to be given effect by the AO. Thereafter it contains the submissions of the assessee as well as finding of the Ld. CIT(A). The relevant part read as under:

*“1.1. The direction given by Ld.CIT(A) at page no. 7 of the appeal order dt.31/10/2014 is reproduced for ready reference ;-*

*“..... Addition Rs. 13,37,84,84,83,000/-,*

*The submission of appellant is that provisions for Fringe benefit Tax has already been added back and others are not claimed in Profit and Loss Account or has been added back. I find from computation statements that adjustment are made to income determined in profit and loss account. These are aspects that can be mechanically verified i.e. Whether (a) not debited to Profit and Loss Account (b) added back in computation statements to come to a conclusion. The ground is disposed of directing A.O. to call for books of accounts/financial statements and verify, whether the 9 items disallowed by A.O. falls into either of category (a) not debited to P/L Account or (b) added back in computation statement. Those additions found not fitting into either of two category stands confirmed and those not stands. No adverse decision shall be taken by A.O. without granting assessee of being heard. With this direction ground 7 is disposed off. It is treated as partly allowed.....”*

*1.2 It appears that Ld A. O. has made addition of Rs 1,33,37, 84,83,000/- in the original Asst, order dt. .31/12/2010 on the basis of figures of provisions appearing in schedule L of the Balance Sheet at page no 125 of the Audited balance sheet holding that provisions of any nature is not allowable item hence deserves to be disallowed. Perusal of order dt. 04/12/2014 under appeal shall reveal that Ld AO. allowed part relief of Rs 13,03,77,23,000/- out of total addition of Rs 13,37,84,84,83,000 /-, resulting in Non allowance of Rs 34,07,60,000/-, in the appeal effect order. No reason has been given in the said order by Ld. A.O. It is most humbly submitted that disallowance of expenses can be made only if the same is claimed and which is not allowable under the provisions of IT. Act,1961. Perusal of the enclosed profit and loss account and schedule 15 of the profit and loss account shall reveal that provisions of Rs 1246.57 lacs claimed as expenses have been voluntarily added by Ld AO. in. the computation of taxable income as made in the assessment order. No amounts of other provisions which are not allowable have been claimed as expenses. Therefore, no addition on this ground was called for. Copies of audited/profit and loss-account, Copy of original Asst, order dt. 31.12.2010, copy of Appeal order dt. 31.10.2014 and computation of taxable income etc. are enclosed herewith for your kind perusal.*

*In view of the above submission, Your Honour is requested to delete the addition of Rs. 34, 07, 60,000/-, retained in the appeal effect order dt 04/12/2014. And direct Ld. A.O. to allow*

*relief of Rs. 13337, 84, 83,000/- instead of Rs. 13,03,77,23,000/- allowed by him in appeal effect order dt.04.12.2014”*

*Reply of the assessee along with documents filed is considered. From the verification of the records it is seen that the appellant had debited “provisions” of Rs 1246 .57 lakhs in the Profit and Loss account for the year ended 31-3-2008. In the computation of income , the appellant had added back this amount of Rs 1246.57 . However, the AO in his order u/s 143(3) dated 31-12-2010 added back an amount of Rs 13,37,84,83,000 in the computation of income under the head provisions”. It is seen that the amount of Rs 13,37,84,83,000 is appearing in the balance sheet as on 31-3-2008 under the head “provisions” in Schedule L. The amount of Rs. 13,37,84,83,000 appearing in the balance sheet is the cumulative figure of ‘provisions’ of all the earlier years. It is only the amount of “provision” that has been debited in the profit and loss account during the current year, which is liable to be added back and the amount of provision debited in the profit and loss account was Rs 1246.57 lakhs. However, the appellant had already on it’s, own added' back the same in the income in it’s computation of taxable income. The CIT ( A) vide his order dated 31.10.2014 directed the AO to make necessary verifications, as per directions, and allow the provisions.*

*The submission of assessee that the amount of provisions debited in profit and loss account have been fully added in assessment order is found to be correct and the AO should reduce the amount of Rs. 13,37,84,83,000/- form the assessed income. However, the AO vide his order u/s 250/154/143(3) dated 4-12-2014 had reduced provisions of Rs.13,03,77,23,000 instead of Rs 13,37,84,83,000 from the assessed income. From where the AO has obtained this figure of Rs 13,03,77,23,000 in unascertainable. In view of this, the AO is directed to further reduce the difference of Rs 13,03,77,23,000/- and Rs. 13,37, 84,83,000/- i.e. Rs 34,07,60,000/- from the assessed income. Hence, appeal is allowed.*

*Ground No. 3 and 4 are with regard to non allowance of credit for TDS and grant of interest u/s 244A. In this regard, the appellant has stated that credit for TDS along with interest u/s 244A had been allowed by the AO. Vide order dt.04.04.2017 and wishes to withdraw these grounds of appeal. Hence, these grounds appeal do not sustain.*

*Thus the appeal is allowed as above.”*

6. In the appeal before us the grievance of the revenue is that the Ld. CIT(A) has erred in deleting the amount of Rs. 34,07,60,000/-.

7. We have perused the order giving effect of the AO which is extracted supra. This order is totally silent. It has been passed without assistance of the assessee whereas the Ld. CIT(A) has directed the AO to provide an opportunity of hearing to the assessee. The second reason is that according to the assessee, it had made provision of Rs. 1246.57 Lakh in the profit & loss account whereas the AO has disallowed the provision of Rs. 13,03,77,23,000/-. According to the Ld. First Appellate Authority, this order giving effect has been passed without verifying the correct figures and therefore the Ld. First Appellate Authority has rightly modified it by allowing the

appeal of the assessee. We do not find any error in the order of the Ld. CIT(A). Accordingly the appeal of the revenue is dismissed.

8. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 18<sup>th</sup> April, 2022

Sd/-  
(Rajesh Kumar)  
Accountant Member

Sd/-  
(Rajpal Yadav)  
Vice-President

Dated: 18<sup>th</sup> April, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- ACIT, Circle-2, Asansol
2. Respondent – Eastern Coalfield Ltd., O/o, Chairman-cum-Managing Director, Sanctoria Dishergarh, West Burdwan-713333.
3. The CIT(A)-Asansol
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata