IN THE INCOME TAX APPELLATE TRIBUNAL "RANCHI" BENCH, RANCHI
VIRTUAL HEARING AT KOLKATA

Before Shri Rajesh Kumar, Accountant Member and Shri Sonjoy Sarma, Judicial Member

I.T.A. Nos.265&266/Ran/2018
Assessment Years: 2013-14 & 2014-15

M/s Central Mine Planning
and Design Institute Ltd.....….....…….……Appellant
Gondwana Place, Kanke Road,
Ranchi-834008.
[PAN: AAACC7475N]

vs.

DCIT, Circle-1, Ranchi.....….…….….....…….....……..…..…..Respondent

Appearances by:
Shri Devesh Poddar, Advocate appeared on behalf of the appellant.
Shri Pranob Koley, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : July 14, 2022
Date of pronouncing the order : August 29, 2022

ORDER

Per Sonjoy Sarma, Judicial Member:

The captioned appeals are filed by the assessee pertaining to assessment year 2013-14 and 2014-15 are directed against the common order passed by Commissioner of Income Tax(Appeal), Ranchi [hereinafter referred to as 'CIT(A)'] dated 08.05.2018. The assessee is in appeal before this Tribunal raising the common grounds of appeal for both the assessment year 2013-14 and 2014-15 respectively which are as under:

"1. For that Ld. CIT(A) was not justified in confirming the addition made by Ld. A.O under the head CSR expenses.

2. For that the Ld. AO disallowed the entire amount of the expense claimed under the head "CSR expenses" treating the same not being wholly and exclusively for the business purpose. The addition made by Ld. AO U/s 37(1) is unjustified and illegal. Ld. AO while making the addition has pointed out to the provision of clause 13 of finance bill 2014. We would like to mention that this clause does not apply for the year under consideration.

3. For that the complete details with respect to the CSR expenses was filed before Ld.AO. and Ld. CIT(A). The expenses incurred under the head CSR were mainly for the development of the schools, for development of water resources treatment plant, for development of village areas, organizing health camps, construction of toilets, distribution of utility material for old age home etc. where employees of the assessee were getting benefits, as such, observation of Ld. A0 that the expenses incurred is not for the purpose of business is unjustified and illegal.

4. For that the Ld. A.O. was not justified in charging interest on the assessed income U/s 234A & 234B. Following the decision of Hon'ble Jharkhand High Court, interest U/s

234A & 234B is to be charged on the returned income. However, the income of the appellant was subject to TDS, and substantial amount of refund stands due to the assessee. As such, there was no deferment on payment of advance tax.

5. For that other grounds in detail will be argued at the time of hearing."

3. At the outset, the ld. AR for the assessee submitted that the appellant is a Central Public Sector Undertaking engaged in the business of consultancy, test, installations and constructions relating to mineral explorations, mining, alloyed engineering and environmental management training. Return of income for the assessment year 2013-14 and 2014-15 were filed on 27.09.2013 and 25.11.2014 declaring total income of Rs.89,79,08,600/- and Rs.55,65,82,050/- respectively for the assessment year 2013-14 and 2014-15. Subsequently, the case of the assessee was selected for scrutiny and notices u/s 143(2) and 142(1) were issued and on examination of the books of accounts of the assessee company, the ld. Assessing Officer disallowed the expenses of Rs.1,06,00,000/- for assessment year 2013-14 and Rs.2,01,00,000/- for assessment year 2014-15 under CSR for respective assessment years. The total income of the assessee determined for assessment year 2013-14 was at Rs.98,85,08,600/- and for assessment year 2014-15 at Rs.57,66,82,050/-.

4. Aggrieved by the orders passed by the Assessing Officer, the appellant-assessee preferred two separate appeals before the ld. CIT(A) and appeals of the assessee were dismissed by the ld. CIT(A).

5. Dissatisfied with the above orders, the assessee is in appeal before this Tribunal. The assessee raised total five grounds of appeal before us for assessment year 2013-14 and identical grounds are raised for assessment year 2014-15 also, therefore, we are going to decide the whole issues in a single order. The Ground Nos.1 & 5 raised by the appellant-assessee are general in nature, therefore, need not required to be adjudicated. Therefore, we are going to decide the Ground No.2 &3 altogether at first. The assessee's appeals are against the action of the Assessing Officer sustaining the entire amount of expenses claimed under the head "CSR expenses" treating the same not being wholly and exclusively for the business purposes.

6. We have heard rival submissions and gone through the facts and circumstances of the case. It is noted that the assessee is a public sector undertaking and its accounts are

audited by CAG. It has been brought to our notice that the expenditure were made after approval of the competent authority. Hence, such expenditure is towards the incurred expenses such as staff welfare, educational, health and recreation facility for the staff and their families, maintain suitable and decent living standard etc. It was also brought to our notice that assessee being a subsidiary of Coal India Ltd and governed by the National Coal Wages Agreement as such expenditure is also necessary in view of agreement between the management and employees union. It was clarified by the ld. AR that CSR expenses incurred by assessee is not covered by the amendment in section 37(1) of the Act and Explanation 2 to section 37(1) comes into play w.e.f. 01.04.2015 and it is not retrospective in operation. We note that the expenditure was incurred by the assessee company to comply with contractual obligation as per National Coal Wages Agreement. However, the ld. Assessing Officer has disallowed expenses of Rs.1,06,00,000/- for assessment year 2013-14 and Rs.2,01,00,000/- for assessment year 2014-15 for respective assessment year. The Assessing Officer has disallowed entire CSR expenses by pointing out to the provision of Clause 13 of Finance Bill 2014, a new Explanation is to be inserted in section 37(1) so as to clarify any expenditure incurred by an assessee, other activity relating to CSR referred to in section 135 of the Companies Act 2013 shall not be deemed to be an expenditure incurred by assessee for the purpose of business or profession and therefore, no deduction would be allowed for such an expenditure.

7. We note that the Amendment in section 37(1) of the Act has been introduced w.e.f. 01.04.2015 and does not apply on the facts of the case. Therefore, taking note of the decision of the Coordinate Bench in the case of Eastern Coalfields Ltd. vs. DCIT, Asansol in ITA Nos.985&986/Kol/2019, the Tribunal has held as under:

> *"15. Ground no. 1 of the assessee's appeal is against the action of the AO in sustaining the ad hoc disallowance of Rs.4,55,50,000/- made by the AO on account of CSR expenses.*
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> *16. We have heard rival submissions and gone through the facts and circumstances of the case. It is noted that the assessee is a Public Sector Undertaking and its accounts are audited by the CAG. It has been brought to our notice that the expenditure were made after approval of the competent authority and expenditure is towards the contribution to school and development of infrastructure for the welfare of the employees and workmen of the company. It is brought to our notice that in assessee's own case no such disallowance on CSR expenditure was made in the earlier and subsequent years. It was also brought to our notice that this expenditure is also necessary in view of the National*

Coal Wage Agreement between the management and the employees' Union. It was clarified by the Ld. AR that the CSR expenses incurred by the assessee is not covered by the amendment in section 37(1) of the Act and the Explanation 2 to section 37(1) comes into play w.e.f. 01.04.2015 and is not retrospective in operations. It was brought to our notice that the coordinate bench of this Tribunal Nagpur Bench in the case of assessee's sister concern Southern Coalfields Vs. JCIT reported in 260 ITR (AT) 1 had an occasion to adjudicate similar issue and at pages 83-85 has directed to allow such expenditure as revenue expenditure. We note that the expenditure was incurred by the assessee company to comply with the contractual obligation as per National Coal Wage Agreement which is joint by-partite committee for the coal industry dated 15.07.2005 in para 10.8 wherein it was agreed by the assessee to carry out welfare activities. We note that the assessee expended CSR expenses of Rs.9.11 cr. However, the AO has disallowed 50% of the expenditure and made an addition of Rs.4,55,50,000/- being 50% of the expenses on account of CSR. The AO has disallowed the claim on the ground that the assessee did not file ledger copy of the expenses booked under the CSR. According to the AO, in the absence of date wise expenses with detail narration, the expenses remained unverifiable and as such resorted to estimated disallowance of 50% of such expenses. According to the Ld. AR, the books of the assessee are audited by different auditors as well as the CAG. It was pointed out by the assessee that contributions made with the proper approval of the competent authority to develop proper educational infrastructure not only for the children of the workmen of the company but also for the benefit of public at large. This expenditure are made partly as staff welfare expenditure and partly as social cause as per its commitment to the society in the form of CSR activities which the assessee is duty bound to oblige as per the Companies Act, 1956. We note that the assessee is a Public Sector Undertaking and since its operational base are located in remote areas, the assessee company is under obligation to incur expenses on education, sports and recreation activities for welfare of the employees as well as to the local persons residing nearby the company. It was also pointed out that this expenditure is also for maintenance of good health on the part of the employees as well as for the general development of the locality and for facilities for medical etc. which in turn contributes to the growth of the assessee's business. We note that the expenditure claimed by the assessee is also necessary in view of the National Coal Wage Agreement entered into between the management and employees' union and also as per the Companies Act, 1956 as well as Companies Act, 2013. We note that the amendment in section 37(1) of the Act has been introduced w.e.f. 1st April, 2015 and does not apply on the facts of the case and the disabling provision as stated in Explanation 2 to section 37(1) refers only to such corporate social responsibility expenditure as u/s. 135 of the Companies Act, 2013 and as such it cannot have any application for the period not covered by the statutory provision which itself came into existence in the year 2013. And any way this disabling provision cannot be held to be retrospective in operation. Therefore, taking note of the decision of the Tribunal Nagpur Bench in southern Coal Field on this issue wherein the Tribunal held as under:

> *"We have considered the rival submissions and also perused the relevant material on record. We have also gone through the various case laws cited by the learned representatives of both the sides. It is observed that the expenditure incurred by the assessee-company for providing basic amenities like road widening, street lighting, better drinking water facilities, etc., for the residential areas in and around the company's area of operations in which mainly the workers of the assessee-company were residing, was disallowed by the Assessing Officer considering that the same has been incurred by the assessee to discharge its*

social obligation towards the community as a whole and there is no nexus between such expenditure and the business of the assessee-company. In this regard, we find that the Assessing Officer, however, ignored a very relevant and material fact that the population residing in the area which was benefited by the provision of such basic amenities mainly comprised of the workers of the assessee-company and their families. He also appears to have overlooked the fact that such basic amenities could not have been provided to the assessee's employees in isolation as the said expenditure in any case had to be incurred for the entire area as a whole. Before us, learned counsel for the assessee has contended that over 90 per cent of the population residing in that area constituted assessee's own workers and their families and it appears from the record that this fact has not been disputed by the Revenue at any stage. Moreover, in the absence of such facilities in that area, it would not have been possible for the assessee-company to get the proper work force for its operation without which it was not possible to carry on its business effectively and efficiently. The labour by itself is an important input for any type of business, more particularly for the business of the assessee company of mining operation and, therefore, the expenditure incurred mainly for the welfare of the labour force has to be treated as incurred wholly and exclusively for the purpose of its business. It is observed that the learned Commissioner of Income-tax (Appeals) has confirmed the disallowance made by the Assessing Officer on this count for lack of nexus between the said expenditure and the business of the assessee, relying heavily on the decision of the Supreme Court in the case of CIT vs. Amalgamations (P) Ltd. [1997] 226 ITR 188. A perusal of the said judgement, however, reveals that the expenditure in that case was incurred by the assessee- company on payment of managerial remuneration to the directors of the subsidiary companies and considering that the assessee-company was entitled only to the dividend from the subsidiary company as and when declared even without incurring such expenditure, the apex court held that such expenditure cannot be said to have a direct and immediate connection with the business of the assessee-company and proceeded to disallow the same. In the present case, the assessee-company has incurred the expenditure mainly for the purpose of welfare of its employees and in our opinion the same cannot be equated with the expenditure in question before the Supreme Court in the case of Amalgamations (P.) Ltd. [1997] 226 ITR 188 which was -incurred entirely in the different circumstances mentioned above.

On the other hand, in the case of CIT v. Premier Cotton Spinning Mills Ltd. (1997) 223 ITR 440 (Ker), the expenditure was incurred by the assessee on the construction of roads, digging of wells and laying pipelines for housing scheme formulated for its employees and considering the nature of such expenditure being for the welfare of its employees, the Kerala High Court held the same to be an expenditure incurred wholly and exclusively for the purpose of the assessee's business. Although the said expenditure was incurred by the assessee in that case for the housing scheme formulated exclusively for its employees, in our opinion, the ratio of the said decision can very well be applied to the present case wherein a similar expenditure has been incurred by the assessee-company mainly for the benefit of its own employees as discussed above. Moreover, it is observed that the facts involved in the case of CIT v. Rupsa Rice Mill [1976] 104 ITR 249 (Orissa) cited by learned counsel for the assessee are almost similar to the facts of the present case inasmuch as the assessee running a rice mill therein incurred an expenditure for contribution to a primary health center building located near its

mill and despite the fact that the said primary health center was meant for the benefit of public at large, the Orissa High Court allowed the said expenditure as a business expenditure considering that the same was going to result in providing treatment to the ailing workmen of the assessee also and the assessee was under an obligation to provide such benefits. In the present case, although there is nothing on record to show that such an obligation was there on the assessee-company, the incurring of such expenditure was very much warranted from the point of view of business expediency, as already mentioned. In the case of Sanghameshwar Coffee Estates Ltd. v. State of Karnataka [1986] 160 ITR 203 (Karn), the expenditure incurred by the assessee towards salary paid to the teachers of the school was held undoubtedly to be in the interest of the children of its employees and the same being a welfare measure, was allowed as business expenditure. In the case of ITAT v. B Hill and Co. (P) Ltd. [1983] 142 ITR 185 (All), the expenditure incurred on donations made to the schools with a view to provide educational facilities to the labourers and their children was considered to be for the purpose of facilitating the smooth running of the assessee's business and, therefore, was held to be an admissible business expenditure by considerations of commercial expediency. As such considering all the facts of the case and the legal position emanating from the aforesaid judicial pronouncements, we are of the considered opinion that the community development expenditure incurred by the assessee- company mainly for the welfare of its employees was an expenditure incurred wholly and exclusively for the purpose of its business by considerations of commercial expediency and the learned Commissioner of Income-tax (Appeals) was not justified in confirming the disallowance of the same made by the Assessing Officer. We, therefore, reverse the impugned order on this issue and direct the Assessing Officer to allow this expenditure."

17. Respectfully following the ratio of the coordinate bench (supra) we direct the AO to allow the claim of expenditure of assessee on account of CSR expenses."

8. We, respectfully following the ratio of the Coordinate Bench (supra), we direct the Assessing Officer to allow the claim of expenditure of assessee on account of CSR expenses. The remaining grounds are consequential in nature, therefore, need not required to be adjudicated.

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

Kolkata, the 29th August, 2022.

Sd/-	Sd/-
[Rajesh Kumar]	**[Sonjoy Sarma]**
Accountant Member	**Judicial Member**

Dated: 29.08.2022.
RS

Copy of the order forwarded to:
1. M/s Central Mine Planning
and Design Institute Ltd
2. DCIT, Circle-1, Ranchi
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches