

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.2017/Kol/2018
Assessment Year: 2014-15

M/s Bengal Emta Coal Mines Ltd.....Appellant
5B, Nandalal Basu Sarani,
Kolkata-700071.
[PAN: AABCB2949R]

vs.

DCIT, Central Circle-3(1), Kolkata.....Respondent

I.T.A. No.2028/Kol/2018
Assessment Year: 2014-15

M/s Panem Coal Mines Ltd.....Appellant
5B, Nandalal Basu Sarani,
Kolkata-700071.
[PAN: AACCP6935E]

vs.

DCIT, Central Circle-3(1), Kolkata.....Respondent

I.T.A. No.2029/Kol/2018
Assessment Year: 2014-15

M/s DVC Emta Coal Mines Ltd.....Appellant
5B, Nandalal Basu Sarani,
Kolkata-700071.
[PAN: AACCD3075F]

vs.

DCIT, Central Circle-3(1), Kolkata.....Respondent

Appearances by:

Shri Sandip Khemka, AR, appeared on behalf of the appellant.

Shri Gaurav Kanaujia, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : September 15, 2022

Date of pronouncing the order : September 23, 2022

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the different assessee's agitating against the assessment order passed by the Assessing Officer pursuant to the directions of

the Dispute Resolution Panel (DRP) in respect of transfer pricing adjustments made by the Transfer Pricing Officer in respect of specified domestic transactions made by the assesseees with their Associate Enterprises (AEs).

2. At the outset, the Id. Counsel for the assessee has brought our attention to the following legal ground taken by the assessee:

“2. Since Finance Act 2017 omitted section 92BA(1) the impugned transactions are outside the definition of specified domestic transaction, therefore the order passed by the Hon’ble Assessing Officer be annulled.”

3. The Id. Counsel, therefore, has submitted that since the clause (i) of section 92BA stood omitted vide Finance Act 2017 and that the effect of the said omission would be that the said clause never existed on statute, therefore, the transactions done by the assessee with their AEs would not fall within the definition and scope of specified transaction and, therefore, the provision of section 92CA would not be applicable in the case of the assessee. That in view of this, the order of the Transfer Pricing Officer and pursuant to that, the directions of the DRP were not sustainable and that the assessment of the assessee is required to be done under normal provisions. The Id. Counsel for the assessee, in this respect, has relied upon the decision in the own cases of the assesseees for assessment year 2013-14 decided vide common order of the Tribunal dated 01.05.2019 with the lead case in the case of M/s DVC Emta Coal Mines Ltd. vs. ACIT in ITA No.2430/Kol/2017, wherein, the Tribunal after considering the above submission has concluded as under:

“5. Respectfully following the aforesaid order of the Tribunal, we note that in the instant case, by the Finance Act, 2017, clause (i) of section 92BA has been omitted w.e.f. 01.04.2017. The legal effect of a provision being omitted by subsequent amendment, then it would be deemed that clause (i) was never been on the statute book. While omitting the clause (i) of section 92BA, we note that nothing was specified whether the proceeding initiated or action taken on this continue. Therefore, the proceeding initiated or action taken under that clause would not survive at all. In the light of this legal position, the cognizance taken by the AO under section 92BA(i) and reference made to TPO under section 92CA is invalid and bad in law. Therefore, the consequential order passed by the TPO and DRP is also not sustainable in the eyes of law. Therefore, the legal effect is when this clause (i) is omitted from the statute it has to be taken as though there is no

clause (i) since its inception. And when looked from that angle, the AO should have framed the assessment as in normal course after making necessary enquiries of particular claim of expenditure in accordance with law. But this exercise could not happen on account of provisions of [section 92BA](#) clause (i) of the Act. Therefore, since this clause (i) has been omitted from the statute by virtue of the aforesaid amendments, the AO is required to adjudicate the issue of claim of expenditures in accordance with law after affording opportunity of being heard to the assessee. We therefore set aside the orders of the AO and the DRP and restore the matter back to the AO with the direction to re-adjudicate the issue of claim of expenditure incurred in respect of which payment has been made or is to be made to person referred to in clause (b) of sub [section 2](#) of [section 40A](#) of the Act. Accordingly, since we have restored the matter to the AO, we find no justification to deal with the other issues on merit. Accordingly, appeal of the assessee stand allowed for statistical purposes. Therefore, all the appeals of assessee are allowed for statistical purposes.”

4. The ld. DR could not rebut that the issue is squarely covered by the decision of the Coordinate Bench of the Tribunal dated 01.05.2019 (supra).

5. In view of this, the impugned order of the Assessing Officer and DRP are set aside and the matter is restored back to the file of the Assessing Officer with the direction to re-adjudicate the issue of claim of expenditure incurred in respect of which payment has been made or is to be made to person referred to in clause (b) of sub-section 2 of section 40A of the Act. Accordingly, the appeals of the assesseees are treated as allowed for statistical purposes.

6. In the result, the appeals of the assesseees are treated as allowed for statistical purposes.

Kolkata, the 23rd September, 2022.

Sd/-

[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 23.09.2022.

RS

I.T.A. No.2017/Kol/2018
M/s Bengal Emta Coal Mines Ltd
I.T.A. No.2028/Kol/2018
M/s Panem Coal Mines Ltd
I.T.A. No.2028/Kol/2018
M/s DVC Emta Coal Mines Ltd

Copy of the order forwarded to:

1. (i) M/s Bengal Emta Coal Mines Ltd
- (ii) M/s Panem Coal Mines Ltd
- (iii) M/s DVC Emta Coal Mines Ltd
2. DCIT, Central Circle-3(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches