आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।

IN THE INCOME TAX APPELLATE TRIBUNAL, RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

Sl. No.	ITA/CO No.	Name of Appellant	Name of Respondent	Asst. Year
1-3.	176/RPR/2008 177/RPR/2008 178/RPR/2008	The Assistant Commissioner of Income Tax, Circle-1(1), Bilaspur	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	1998-1999 1999-2000 2000-2001
4-6.	**CO** 14/RPR/2019 15/RPR/2019 16/RPR/2019	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	The Assistant Commissioner of Income Tax, Circle-1(1), Bilaspur	1998-1999 1999-2000 2000-2001
7-10.	180/RPR/2008 182/RPR/2008 183/RPR/2008 184/RPR/2008	The Assistant Commissioner of Income Tax, Circle-1(1), Bilaspur	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	2001-02 2002-03 2004-05 2004-05
11-14.	**CO** 17/RPR/2019 18/RPR/2019 19/RPR/2019 20/RPR/2019	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	The Assistant Commissioner of Income Tax, Circle-1(1), Bilaspur	2001-02 2002-03 2004-05 2004-05
15-16.	185/RPR/2008 186/RPR/2008	The Addl. Commissioner of Income Tax, Range-1, Bilaspur	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	2005-06 2006-07

17-18.	**CO** 21/RPR/2019 22/RPR/2019	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	The Addl. Commissioner of Income Tax, Range-1 Bilaspur	2005-06 2006-07
19.	30/RPR/2010	The Joint Commissioner of Income Tax, Range-1, Bilaspur	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	2007-08
20.	**CO** 23/RPR/2019	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	The Joint Commissioner of Income Tax, Range-1, Bilaspur	2007-08

Assessee by :S/Shri Ajit Korde, Advocate a/w Ankur Goel & Ankit Agrawal, CAs

Revenue by :Shri Debashish Lahiri, CIT-DR

सुनवाई की तारीख / Date of Hearing : 05.01.2023

घोषणा की तारीख / Date of Pronouncement : 23.02.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The captioned appeals filed by the revenue are directed against the respective orders passed by the CIT(Appeals), Bilaspur, which in turn arises from the respective orders passed by the A.O under Sec. 143(3) r.w.s 147 of the Income-tax Act, 1961 (in short 'the Act') for the

aforementioned assessment years. Also the assessee company is before us as a cross-objector for all the aforesaid years. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. We shall take up the appeal in ITA No.176/RPR/2008 for the assessment year 1998-99 as the lead matter and the order therein passed shall apply mutatis-mutandis to the remaining cases. The revenue has assailed the impugned order passed by the CIT(Appeals) on the following grounds of appeal before us:

> "1. That on the facts and in the circumstances of the case, the learned CIT(A) erred in law and in fact in deleting the addition which had been made by disallowing the interest capitalized for development projects amounting to Rs.1,56,77,767/-. In spite of the fact on record that during the course of assessment proceedings the A.O has found that the said amount represents the interest on the funds borrowed which were used for development of mines.
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> 2(a). That on the facts and in the circumstances of the case, the learned CIT(A) erred in law and in fact in deleting the addition amounting to Rs.27,50,500/- which has been made by disallowing the guest house expenditure, in spite of the facts on records that the assessee company failed to establish that the guest houses are being wholly and exclusively used as transit camp for the officers and the officials during their tours as claimed in the submissions.
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> (b). That in reaching the aforesaid decision, the learned CIT(A) failed to bring on record any admissible evidence justifying the same and in spite of the facts on record that the assessee was categorically asked by the A.O to give details of the tour undertaken by the officers and officials etc. who have utilized the guest house.
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> 3. That on the facts and in the circumstances of the case, the learned CIT(A) erred in law and in fact in deleting the addition amounting to Rs.51,08,050/- which has been made by disallowing the expenditure incurred on assets not belonging to company in spite of the facts on

records that the expenditure made on the renovation or maintenance of govt. roads which is not the assets of the company.

4. That on the facts and in the circumstances of the case, the learned CIT(A) erred in law and in fact in deleting the addition which had been made by disallowing on the head of social over head grant to schools and institutions amounting to Rs.4,90,84,000/- in spite of the fact on record that during the course of assessment proceedings the assessee company failed to justify the claim.

5. That on the facts and in the circumstances of the case, the learned CIT(A) erred in law and in fact in deleting the addition amounting to Rs.6,28,91,000/- which have been made by disallowing expenditure on plantation of tress and reclamation of land respectively, in spite of the facts on record that the above expenditure is a capital expenditure because the expenditure incurred under the above heads endure a permanent benefit to the assessee.

6. That on the facts and in the circumstances of the case, the learned CIT(A) erred in law and in fact in deleting the addition amounting to Rs.1,57,70,000/- which has been made by disallowing the expenditure incurred on the head other welfare expenses-LPG in spite of the facts on record that during the course of the assessment proceedings the assessee company could not explain the admissibility of the claim.

7. That on the facts and in the circumstances of the case, the learned CIT(A) erred in law and in fact in deleting the addition amounting to Rs.33.09,02,500/- which has been made by disallowing on the head of social overheads-fuel and power, in spite of the facts on records that the assessee company failed to furnish the mode of electricity charges recovered from the employees, furnish types of quarters, electric points in each type of quarter, rates of electricity per unit charged by CESB and recovered from the employees before the A.O. Further, the assesee also failed to explain that “in salary” where 1% basic salary is recovered whether term of employment mentioned it” during the course of assessment proceedings.

8.That on the facts and in the circumstances of the case, the learned CIT(A) erred in law and in fact in deleting the addition which had been made by disallowing on the head of other contractual works amounting to Rs.74,10,500/- in spite of the fact on record that the submission made by the assessee was not fully convincing and acceptable as well as the assessee failed to furnish the supporting evidence to substantiate the above expenditure.

> 9. That on the facts and in the circumstances of the case, the learned CIT(A) erred in law and in fact in deleting the addition which had been made by disallowing the contractual expenses payments made to transporters for transportation coal etc. amounting to Rs.25,40,64,757/- in spite of the fact on record that the submission made by the assessee was not fully convicting and acceptable as well as the payments made are seems to be for non-business purposes.
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> 10. That the Ld. CIT(A)'s order being erroneous, perverse and contrary to the facts on record, the same may be reversed while that of the A.O restored.
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> 11. That the appellant Assessing Officer reserves the right to amend, modify or add any of the grounds of appeal preferred."

On the other hand the assessee as a cross-objector has raised the following ground:

> "1. That on the facts and in the circumstances of the case and in law, appeal filed by the learned A.O is void ab initio for want of COD approval in view of decisions in the case of Hon'ble Bombay High Court in the case of CIT Vs. Central Bank of India (89 CCH 428) and CIT Vs. Air India Limited (95 CCH 67) and Hon'ble Jharkhand High Court in the case of Hindustan Copper Ltd. (WP 6852 of 2013) and therefore, the appeal filed by the learned A.O is liable to be quashed."

Brief Facts

3. The assessee company which is a Public Sector Undertaking (PSU), engaged in the business of development of mines and extraction of coal and sale thereof, had filed its return of income for A.Y.1998-99 on 30.11.1998, declaring an income of Rs.673,34,30,970/-. Original assessment was framed by the A.O vide his order passed u/s. 143(3) of the Act dated 30.11.2000, determining the total income of the assessee company at Rs. 859,94,51,980/-.

4. On appeal, the CIT(Appeals) scaled down the assessed income to Rs.702,43,64,510/-. Aggrieved, the department carried the matter in appeal before the Tribunal. The Tribunal vide its consolidated order dated 24.10.2005 dismissed the appeal of the revenue on a technical ground, i.e., for want of CoD approval authorizing filing of the appeal. At the same time the Tribunal gave liberty to the department to seek revival of the appeal by filing a miscellaneous application after receipt of CoD approval.

5. The case of the assessee was thereafter reopened by the A.O u/s.147 of the Act for the following reasons:-

> (i) The assessee company has been pilfering approximately 10% of Coal of good quality under the guise of reject coal/washery reject which was being sold to certain companies floated by one family viz. Sindhu Group at a throw away price of Rs.80 to 90 per M.T who in turn sold the same in the market @Rs.1600/- to Rs.1800/- per M.T.
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> (ii) The assessee company has paid to ESM Companies loading & transportation charges at a very higher rate i.e. almost 70% to 180% more than that of other (Non ESM) companies. It has also been gathered that some of the ESM companies who had completed their tenure are doing loading and transportation work as private contractors (Non ESM) at a rate which is 10% to 20% lesser than the prevailing market rate.

In compliance, the assessee company under protest filed its return of income on 13.09.2004, declaring an income of Rs.673,61,09,760/-. The copy of "reasons to believe" which had formed the very basis for reopening the concluded assessment of the assessee company were at its request made available by the A.O. On receipt of the copy of "reasons to believe" the

assessee company filed a letter dated 23.01.2006 and raised objections to the very basis on which its case was reopened u/s.147 of the Act. However, as the objections raised by the assessee company did not find favour with the A.O, therefore, he proceeded with the re-assessment proceedings and vide his order u/s. 143(3) r.w.s 147 of the Act dated 27.03.2006 reassessed its income at Rs. 802,71,96,390/- after, inter alia, making certain additions/disallowances which on appeal were partly vacated by the CIT(Appeals), as under:

Sr. No.	Particulars	Before the A.O	Relief allowed by the CIT(Appeals)	Addition confirmed by the CIT(Appeals)
1.	Interest capitalized for development of projects	Rs. 1,56,77,767/-	Rs. 1,56,77,767/-	-
2.	Guest House expenses	Rs. 27,50,500/-	Rs. 27,50,500/-	-
3.	Expenses on assets not belonging to the assessee	Rs. 1,02,16,100/-	Rs. 51,08,050/-	Rs.51,08,050/-
4.	Social overhead-Grants to school and institutions	Rs. 4,90,84,000/-	Rs. 4,90,84,000/-	
5.	Expenses on plantation & others	Rs. 6,28,91,000/-	Rs. 6,28,91,000/-	
6.	Other welfare expenses-LPG	Rs. 1,57,70,000/-	Rs. 1,57,70,000/-	
7.	Social Overheads-Power & Fuel	Rs. 33,09,02,500/-	Rs.33,09,02,500/-	
8.	Other contractual works	Rs. 74,10,500/-	Rs. 74,10,500/-	
9.	Contractual expenses-payment made to transporters for	Rs.50,81,29,514/-	Rs.25,40,64,757/-	Rs.25,40,64,757/-

	transportation of coal, coke, sand and other items			

6. The Revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

7. We shall before adverting any further cull out in a chronological manner the sequence of events involved in the present appeal, as under:

Date	Events
30.11.1998	The original return of income was filed by the assessee company for A.Y.1998-99, declaring an income of Rs.673.34 crore (approx.)
30.11.2000	Original assessment was framed by the A.O vide his order passed u/s. 143(3) of the Act, determining income of the assessee company at Rs.859.94 crore (approx.)
14.12.2001	The CIT(Appeals) scaled down the assessed income of the assessee company to Rs.702.43 crore (approx.) and partly allowed the appeal.
12.08.2004	The case of the assessee company was reopened u/s.147 of the Act.
13.09.2004	The assessee in compliance to notice u/s.148, dated 12.08.2004 filed its return of income (under protest), declaring an income of Rs.673.61 crore (approx.).
24.10.2005	The Tribunal vide its consolidated order passed in ITA No.6, 7, 8, 9, 10,27,281 and 204/JBP/2004, dismissed the appeal filed by the revenue (arising from the original assessment) on a technical ground, i.e. for want of CoD approval. However, the Tribunal in its aforesaid order had given liberty to the department to seek revival of its appeal by filing a miscellaneous application after receipt of CoD approval at a later stage.
27.03.2006	The A.O vide his order passed u/s.143(3)/147 of the Act reassessed the income of the assessee company at Rs.802.71 crore (approx.)

31.03.2008	The CIT(Appeals) vide his order passed in Appeal No.49/CIT/ABSP for A.Y.2006-07, partly allowed the appeal of the assessee against the reassessment order.
04.06.2008	The Revenue challenged the order of the CIT(Appeals) dated 31.03.2008 (arising from the reassessment order) before the ITAT, Jabalpur.
25.11.2008	The Tribunal vide its consolidated order dismissed the appeal filed by the Revenue against the CIT(Appeals) order, dated 31.03.2008, for the reason that as **it had failed to obtain clearance from High Powered Committee (COD), therefore, the appeals were not maintainable in law.**
21.10.2011	On a miscellaneous application filed by the Revenue u/s. 254(2) of the Act dated 12.10.2011, the Tribunal vide its consolidated order passed in MA Nos. 7 to 17/BLPR/2011, dated 21.10.2011 had recalled its order passed in ITA No.176/JAB/2008, dated 25.11.2008, for the reason that the Hon'ble Supreme Court in its order passed in the case of Electronics Corporation of India Ltd. v. Union of India, 238 CTR 353 (SC), had overruled its earlier decision in the case of ONGC vs. Collector of Central Excise & customs, 104 CTR 31 (SC), and, had observed that the provisions relating to obtaining of approval from CoD had outlived their utility. Accordingly, the Tribunal vide its consolidated order recalled its order passed in ITA No.176/JAB/2008.
05.11.2019	The assessee filed its cross-objections assailing the very maintainability of the appeal filed by the department for the reason that the same was filed without obtaining CoD approval.
26.07.2021	The Tribunal vide its consolidated interim order on the prayer of the assessee for condonation of delay involved in filing of the cross-objections, therein, considering the fact that the department was unable to take an official stand as to whether any application was moved before CoD for preferring the present appeal allowed a further period of 4 months for verifying the factual position and take an official stand in writing on the said aspect.
05.01.2023	The appeal of the Revenue a/w. cross objection filed by the assessee were heard and order reserved.

8. As the assessee company by filing the cross-objection has assailed the very maintainability of the appeal filed by the department, for the reason that the same had been preferred without obtaining a no-objection/approval from the "Committee on Disputes" (CoD), therefore, we shall first deal with

the same. We may herein observe that the cross-objections filed by the assessee respondent involves a delay of 4141 days. The assessee respondent vide its application dated 05.11.2019 has sought condonation of the delay involved in filing of its cross-objection, which is supported by an "affidavit" dated 28.01.2022, as under :-

> "1. That the appellant is a public sector undertaking and engaged in the business of coal mining and incidental activities.
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> 2. For the captioned AY, the learned Assessing Officer (learned AO') had passed an order dated 27 March 2006 under section 143(3)/147 of the Income Tax Act, 1961 (`the Act'). Subsequently, the matter travelled to the learned Commissioner of Income-Tax (Appeals) [CIT(A)], who adjudicated on the various issues contained therein vide his order dated 31 March 2008.
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> 3. Aggrieved by the order of CIT(A), the ld. AO filed an appeal before the Hon'ble Tribunal, without applying/receiving requisite approval of High-Powered Committee of Disputes (herein after referred as 'COD approval'), which was then necessary as per Hon'ble Supreme Court's directives in the case of ONGC vs. Collector of Central Excise (104 CTR 31).
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> 4. Considering same, the appeal filed by the Ld. AO was dismissed.
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> 5. Subsequently in the case of ECIL vs. UOI [231 CTR 353 (SC)], the Hon'ble Supreme inter-alia, stated that provisions relating to COD outlived their utility.
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> 6. Thereafter, the Id. AO filed a Miscellaneous Application before the Hon'ble Tribunal on restoration of the dismissed appeal [vide MA order dated 21 October 2011].
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> 7. Subsequently, the Hon'ble Bombay HC in the case of CIT vs Central Bank of India (89 CCH 428) and CIT vs Air India Limited (95 CCH 67) and Hon'ble Jharkhand HC in the case of Hindustan Copper Ltd vs UOI (WO 6852 of 20131 interpreted the order of the Hon'ble SC and held that necessity of obtaining approval from COD which was in practice at relevant time cannot be done away with on the ground that the Supreme Court has later held that practice needs to be discontinued.

> 8. Given the facts that the Appellant has not filed /received approval from the High-powered Committee of Disputes, the Respondent prays that the appeal filed by the learned AO shall be dismissed, without going into the merits of the case.
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> 9. The Respondent submits that the Assessee was riot in a position to file this Cross Objection earlier due to bona fide reasons of subsequent evolution/ development of law on the issue of COD considering the principles laid down by the SC judgement.
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> 10. The delay in filing the cross objection is inadvertent and unintentional and is due to above bona fide reasons, hence it is prayed that the Hon'ble Tribunal may condone the delay in filing the objections and allow the same in the interest of justice considering subsequent developments of law."

8.1 Alternatively, it was submitted by the Ld. Authorized Representative (for short 'AR') for the assessee company, that the assessee as a respondent remained well within its right to assail the very maintainability of the appeal filed by the department on a legal issue and was under no obligation to separately raise the same by filing a cross-objection. The Ld. AR in support of his aforesaid contention had relied on the judgment of the Hon'ble High Court of Bombay in the case of Peter Vaz Vs. Commissioner of Income Tax, Central Circle, Bangalore (2021) 128 taxmann.com 180 (Bom.).

8.2 Coming back to his contention that the cross-objection of the assessee company assailing the very maintainability of the appeal filed by the revenue did merit admission, it was submitted by the Ld. AR that in case the department despite absence of the mandatory approval from the Committee on Disputes was allowed to proceed with the appeal, then, the same would lead to prejudice to the assessee company. Elaborating on his aforesaid

contention, it was averred by the Ld. AR that on the one hand the assessee company, a Public Sector Undertaking, in its appeals filed with the Tribunal for some of the years could not prosecute certain grounds as the approval for raising of such grounds was declined by the CoD; while for on the other hand the department despite being negligent by dispensing with the extant mandatory procedure of obtaining approval from CoD was seeking adjudication of its appeals. It was submitted by the ld. A.R that in case the department was allowed to proceed with its appeals then it would gain by its own wrong of being negligent. In sum and substance, it was the claim of the Ld. AR that if the appeals of the department which had adopted a lackadaisical approach and failed to comply with the statutory obligation of obtaining the mandatory approval from CoD were proceeded with, then, it would stand rewarded for being negligent. The Ld. AR in order to fortify his aforesaid claim, had drawn our attention to the fact that the assessee company despite having a good case was denied approval by the CoD to prosecute the grounds of appeal on the basis of which it had sought to assail the jurisdiction of the A.O for reopening of its concluded assessments for A.Y 1998-99 to A.Y 2007-08.

8.3 The Ld. AR further submitted that pursuant to the judgment of the Hon'ble Apex Court in the case of Oil & Natural Gas Commission & Anr. Vs. Collector of Central Excise (1992) 104 CTR 31 (SC), it was a *sine-qua-non* for

the department to get approval from CoD for filing an appeal against a government entity. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that the mandatory requirement to obtain CoD approval was dispensed with only pursuant to the subsequent judgement of the Hon'ble Supreme Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (2011) 332 ITR 58 (SC) dated 17.02.2011. It was submitted by the Ld. AR that as the department had filed the present appeal on 04.06.2008 i.e. during the period when the judgment of the Hon'ble Apex Court in the case of Oil & Natural Gas Commission & Anr. Vs. Collector of Central Excise (supra) did hold the ground, therefore, the same having been filed without obtaining the mandatory approval of CoD was not maintainable and, thus, was liable to be dismissed on the said count itself.

8.4. Carrying his contention further, it was submitted by the Ld. AR that the Tribunal vide its order dated 25.11.2008 had on an earlier occasion dismissed the appeal of the revenue for the year under consideration i.e A.Y 1998-99, which in turn found its roots in the original assessment order passed u/s 143(3), dated 30.11.2000. It was submitted by the Ld. A.R that though the Tribunal vide its order dated 25.11.2008 (supra), had observed, that in absence of clearance from the High Powered Committee (HPC) the appeal filed by the department was not maintainable, but at the same time it had allowed a liberty to the department to seek revival of the same by filing

an application to the said effect after the clearance was obtained. It was averred by the ld. A.R that the department despite having earlier suffered a dismissal of its appeal against the original assessment order, had however continued with its lackadaisical approach and negligent conduct, and, while preferring the present appeal not filed any application for obtaining the necessary approval with the CoD. It was submitted by the Ld. AR that the department could not be allowed to take benefit of the decision of Hon'ble Supreme Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (2011) 332 ITR 58 (SC) dated 17.02.2011 on the basis of its own wrong. The Ld. AR in support of his aforesaid claim that a person cannot take benefit from his own wrong had relied on the following judicial pronouncements:

(i). Hon'ble Jharkhand High Court in the case of Hindustan Copper Ltd. Vs. UOI (WP 6852 of 2013)

(ii). Hon'ble High Court of Bombay in the case of CIT Vs. Central Bank of India (WP 11580 of 2013) (2015) 232 Taxman 396 (Bombay)

(iii). Hon'ble High Court of Andhra Pradesh & Telangana in the case of CIT Vs. State Bank of Hyderabad (382 ITR 499).

8.5 Adverting to the order dated 21.10.2011 that was passed by the Tribunal, wherein its earlier order dated 25th November, 2008 that was dismissed for want of CoD approval was recalled, it was submitted by the Ld. AR that as the same was an interlocutory order and there was no adjudication by the Tribunal on the merits therein involved, thus, the same

would have no bearing on the present claim of the assessee company, wherein the maintainability of the appeal filed by the revenue in itself had been assailed. The Ld. AR in support of his contention had relied on the judgment of the Hon'ble High Court of Calcutta in the case of Commissioner of Central Excise Vs. Steel Authority of India (GA 3738 of 2015, CEXA 21 of 2015 dated 15.01.2016).

8.6. The Ld. AR in order to buttress his claim that the maintainability of the appeal filed by the department could validly be challenged in the course of the present proceedings had relied on the judgment of the Hon'ble Supreme Court in the case of Jagmittar Sain Bhagat Vs. Director, Health Services (2013) 10 SCC 136 and that of the Hon'ble High Court of Bombay in the case of Mavany Brothers Vs. CIT, Panjim (2015) 62 taxmann.com 50 (Bom.). Alternatively, it was submitted by the Ld. AR, that even otherwise, as there were bonafide reasons that had led to delay in filing of the cross-objections, which, by no means could be attributed to any mala-fide conduct or a lackadaisical approach on the part of the assessee respondent, therefore, the same did merit to be condoned.

8.7. On merits, it was submitted by the Ld. AR that as per the judgment of the Hon'ble Supreme Court in the case of Oil & Natural Gas Commission & Anr. Vs. Collector of Central Excise (supra), the department while filing the present appeals remained under a statutory obligation to have obtained

the approval of the CoD. It was submitted by him that as the judgement of the Hon'ble Supreme Court in the Electronics Corporation of India Ltd. Vs. Union of India & Ors. (2011) 332 ITR 58 (SC) dated 17.02.2011 was not available at the time of filing of the present appeal by the department, therefore, it would not by any means assist the case of the department. Carrying further his aforesaid contention, it was averred by the Ld. AR that the careless conduct of the department could safely be gathered from the fact that despite having suffered dismissal of its appeal vide an earlier order of the Tribunal dated 25.11.2008 against the original assessment order for the year under consideration i.e A.Y 1998-99, the department had continued with its lackadaisical approach and even in the present appeal not obtained the mandatory approval from the CoD. The Ld. AR in support of his contention that the necessity for obtaining approval from the CoD, which was in practice at the relevant point of time, could not have been done away with on the ground that the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (2011) 332 ITR 58 (SC) dated 17.02.2011, had held, that the said practice had outlived and was required to be discontinued, relied on the judgement of the Hon'ble High Court of Bombay in the case of CIT Vs. Central Bank of India (WP 11580 of 2013) (2015) 232 Taxman 396 (Bom) and that of the Hon'ble High Court of Jharkhand in the case of Hindustan Copper Ltd. Vs. UOI (WP 6852 of 2013) dated 13.03.2014.

8.8. Referring to the aforesaid judicial pronouncements, it was submitted by the Ld. AR that the Hon'ble High Courts, had observed, that the necessity of obtaining approval from the COD, which at the relevant time was in practice could not be done away with on the ground that the Hon'ble Apex Court had subsequently in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) held that the practice having outlived was required to be discontinued. It was submitted by the Ld. AR that the Hon'ble High Courts considering the fact that the department had not been vigilant in further applying or obtaining CoD clearances in the respective cases before them, had observed, that it could not be allowed to take advantage of the judgment in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra). Also support was drawn by the Ld. AR from the judgment of the Hon'ble High Court of Andhra Pradesh & Telangana in the case of Commissioner of Income Tax Vs. State Bank of Hyderabad (2016) 382 ITR 499 (Andhra Pradesh & Telangana). On the basis of his aforesaid contentions, it was the claim of the Ld. AR that not only the department which as per the judgment of the Hon'ble Supreme Court in Oil & Natural Gas Commission & Anr. Vs. Collector of Central Excise (supra) was obligated to have obtained the approval of CoD at the time of preferring the present appeal had failed to do so, but it had even thereafter allowed the said jurisdictional mistake on its part to perpetuate. On the basis of his aforesaid

contentions it was the claim of the Ld. AR that the appeal filed by the revenue was liable to be dismissed as not maintainable.

8.9. Alternatively, the Ld. AR on merits assailed the additions/ disallowances made by the A.O and placed his contentions as regards the same. Our attention was drawn by the Ld. AR towards a consolidated "Chart" that was compiled as regards the respective grounds of appeal.

9. Per contra, it was submitted by the Ld. Departmental Representative (for short 'DR') that pursuant to the judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) dated 17.02.2011 no obligation was cast upon the department to obtain the CoD approval. Our attention was drawn by the Ld. AR to the judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (2011) 332 ITR 58 (SC). Elaborating on his aforesaid contention, it was submitted by the Ld. DR that as the Hon'ble Apex Court in clear words had recalled its earlier orders that were passed in the case of Oil & Natural Gas Commission & Anr. Vs. Collector of Central Excise (supra), therefore, the mechanism requiring approval of the CoD prior to filing of an appeal by the department before the Tribunal was to be held as having never been in existence. The Ld. DR in order to buttress his aforesaid contention had relied on the judgment of the Hon'ble Apex Court in the case of M/s. Steel Authority of India Ltd. Vs. Commissioner of

Central Excise, Civil Appeal No.3611 of 2015, dated 28.07.2022. It was submitted by the Ld. DR that the Hon'ble Supreme Court in its aforesaid order, had observed, that as subsequent to application filed by the assessee appellant on 11.02.2011 with the CoD, the order passed in Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) dated 17.02.2011 had done away with the mechanism of seeking permission of the CoD, therefore, the application of the assessee appellant before them could not have been considered by the CoD. The Ld. D.R on the basis of his aforesaid contention had tried to impress upon us that in light of the judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) no obligation was cast upon the department to obtain approval from the CoD. It was, thus, the claim of the Ld. DR that as the mechanism of seeking permission of CoD had been done away with by the Hon'ble Apex Court vide its order passed in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. dated 17.02.2011, therefore, no infirmity did emerge from the appeals of the department which were pending before the Tribunal. On being confronted with the interim order of the Tribunal dated 26.07.2021, wherein a period of four months was given to the department to come up with its stand in writing i.e, as to whether or not it had filed any application with the CoD, the Ld. CIT-DR expressed his unawareness as to whether or not any application for approval was filed by the department with the CoD.

10. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

11. We shall first take up the cross-objection filed by the assessee-respondent wherein, it had assailed the very maintainability of the appeal filed by the revenue before us, which reads as under:-

> "1. That on the facts and in the circumstances of the case and in law, appeal filed by the learned A.O is void ab initio for want of COD approval in view of decisions in the case of Hon'ble Bombay High Court in the case of CIT Vs. Central Bank of India (89 CCH 428) and CIT Vs. Air India Limited (95 CCH 67) and Hon'ble Jharkhand High Court in the case of Hindustan Copper Ltd. (WP 6852 of 2013) and therefore, the appeal filed by the learned A.O is liable to be quashed."

Before adverting any further, we may deem it fit to look into the scope and gamut of a cross-objection filed by a respondent, which can be traced in sub-section (4) of Section 253 of the Act, as under:-

> "(4) The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Commissioner (Appeals), has been preferred under sub-section (1) or sub-section (2) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3)."

On a careful perusal of the aforesaid, it transpires that the A.O or the assessee, as the case may be, by filing a cross-objection can object to any part of the order of the CIT(Appeals). Sub-section (4) of Section 253 of the Act grants to the respondent before the Tribunal, liberty to prefer a memorandum of cross-objections, within thirty days from the date of the receipt by him of the notice of the other party having filed an appeal before the Tribunal. The cross-objection is to be disposed of by the Tribunal as if it were an appeal presented before it. On a perusal of the aforesaid right for preferring a cross-objection, we find that the said procedure is *a la* Order 41, Rule 22 of the Code of Civil Procedure. On a bare reading of the provisions to sub-section (4) of Section 253, we find that the right to file memorandum of cross-objections is an independent right given to the opposite party in an appeal and it is in addition to the independent right of appeal which may or may not be exercised by the assessee under sub-section (1) or by the department under sub-section (2).

12. In sum and substance, where the assessee or revenue has preferred an appeal to the Tribunal against that part of the order of the appellate authority which consists of decisions recorded against him, the other party, if he had not already appealed, may file cross-objections against that part of the order of the appellate authority which consists of decisions with which he is dissatisfied. In our considered view, an issue which does not arise from

the order of the CIT(Appeals) cannot be objected to by filing a cross-objection. As an appeal by the assessee or revenue may be against *"…against any part of the order of the Commissioner (Appeals)"* which are against him and by which he is aggrieved, therefore, it is imperative that there must be a decision of the appellate authority by which, the assessee or revenue is aggrieved before he can prefer an appeal or a cross-objection against that part of the order of the appellate authority containing such decision. If a particular matter has not been considered and decided by the appellate authority and the decision on it does not form part of the order of the appellate authority then, there can be no appeal or a cross-objection against it. On the basis of an analogy which can be drawn from the aforesaid observations, it can safely be concluded that a cross-objection which in itself can be treated as regular appeal, would lie only against any part of the order of the CIT(Appeals). To sum up, the issue which does not emanate from the order of the CIT(Appeals) cannot form a subject matter of a cross-objection.

13. On the basis of our aforesaid deliberations, we are of the considered view, that the challenge thrown by the assessee-respondent to the maintainability of the appeal filed by the department for want of CoD approval does not arise from the order of the CIT(Appeals). Considering the scope of a cross-objection as provided in sub-section (4) of Section 253 of the Act, we are of the considered view, that as the objection raised by the

assessee respondent *qua* the very maintainability of the appeal filed by the department does not arise from the order of the CIT(Appeals), therefore, the same could not have been carried before us by way of a cross-objection. We, thus, in terms of our aforesaid observations, not finding the cross-objection filed by the assessee respondent in conformity with the clear mandate of law, dismiss the same by treating it as infructuous.

14. At the same time, we may herein observe that the maintainability of the present appeal filed by the department in absence of clearance from the CoD is an issue that was mandatorily required to have been considered by the Tribunal as it goes to the very root of the maintainability of the said appeal. Our aforesaid conviction is fortified by the OM No.53/2/6/91-Cab dated 31.12.1991 issued by the Government of India, Cabinet Secretariat, wherein referring to the judgment of the Hon'ble Supreme Court in the case of ONGC Vs. Collector of Central Excise, Bombay (supra), directions were issued that no litigation involving such disputes between, viz. Government Department and another; Government Department and a Public Enterprise; and between Public Enterprises themselves, is taken up in a court or Tribunal without the matter having been first examined by the committee and the committee's clearance for litigation is obtained. For the sake of clarity the relevant observation of the OM No.53/2/6/91-Cab dated 31.12.1991 are culled out as under:

> "4. The instructions regarding settlement of disputes between one Government Department and another and one Government Department and a Public Enterprise and between Public Enterprises themselves as contained in this Secretariat Memo. Referred to in Para 1 above need to be strictly followed in all cases. If, however, no final decision can be arrived at following the said instructions, the concerned Ministry/Department or the concerned Public Sector Undertaking through their administrative Ministry/Department should refer such cases to the Cabinet Secretariat with a self-contained note for placing before the above constituted committee for decision. **Further, it has to be ensured that no litigation involving such disputes is taken up in a Court or Tribunal without the matter having been first examined by the above constituted Committee and the Committee's clearance for litigation is obtained**.
>
> 5. The foregoing instructions may be brought to the notice of all concerned for guidance and strict compliance."

(emphasis supplied by us)

15. Taking a step further the Ministry of Law & Justice, Department of Legal Affairs vide its OM No. F.32(2)/2009-Judl. Dated 07.08.2009 therein, referring to the aforesaid judgment of the Hon'ble Supreme Court in the case of ONGC (supra) a/w. its earlier OM No.53/2/6/91-Cab dated 31.12.1991, clarified that in absence of CoD approval the proceedings were not be proceeded with. On a perusal of the aforesaid position of law, we are of the considered view, that pursuant to the judgment of the Hon'ble Apex Court in the case of ONGC Vs. Chief Commissioner, Central Excise (supra) as was applicable at the relevant point of time when the department had filed the present appeal i.e. on 04.06.2008, it was obligatory on the part of the Tribunal to have demanded a clearance from the CoD, and in absence of

such clearance it was obligated not to have proceeded with any further on the said matter.

16. We shall now advert to the very basis on which the maintainability of the appeal filed by the department is in question before us.

17. It is claim of the assessee company that as the department had not obtained CoD approval; or in fact not even filed any application before the CoD, therefore, its appeal on the said count itself not being maintainable was liable to be dismissed. We shall before adverting to the adjudication of the issue before us briefly cull out as to how the concept of obtaining CoD approval had come into existence. The mechanism of obtaining CoD approval finds its roots in three judgments of the Hon'ble Supreme Court in ONGC cases, reported as (i) ONGC Vs. CCE (1992) 104 CTR (SC) 31: 1995 Supp. (4) SCC 541, dated 11.10.1991; (ii) ONGC Vs. CCE (1994) 116 CTR (SC) 643 : 2004 (6) SCC 437, dated 07.01.1994 ; and (iii) ONGC Vs. City & Industrial Development Corpn. 2007 (7) SCC 39, dated 20.07.2007. The mechanism of obtaining CoD approval as had evolved pursuant to the directions/observations of the Hon'ble Apex Court in its aforesaid respective orders is culled out as under:

> • (A) By order dt. 11th Sept. 1991, reported in ONCG & Anr. Vs. CCE 1992 Supp (2) SCC 432, the Hon'ble Apex Court noted that "Public Sector Undertakings of Central Government and the Union of India should not fight their litigations in Court". Consequently, the Cabinet Secretary, Government of India was "called upon to handle the matter personally."

- (B) By order dt. 11th Oct, 1991 in ONGC-II case (supra) the Hon'ble Apex Court directed the Government of India "to set up a Committee consisting of representatives from the Ministry of Industry, Bureau of Public Enterprises and Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and Public Sector Undertakings of the Government of India and Public Sector Undertaking between themselves to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation.

- (C) Thereafter, in ONGC-II case (supra) the Hon'ble Apex Court directed that in the absence of clearance from the "Committee of Secretariates" (CoS), any legal proceedings will not be proceeded with. This was subject to the rider that appeals and petitions filed without such clearance could be filed to save limitation. It was, however, directed that the needful should be done within one from such filing, failing which the matter would not be proceeded with.

As observed by us hereinabove the Hon'ble Supreme Court in the case of Oil & Natural Gas Commission & Anr. Vs. Collector of Central Excise (1992) 104 CTR 31 (SC), had directed the Govt. of India to set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law to monitor disputes between Ministry and Ministry of Government of India; Ministry and Public Sector Undertaking of the Government of India; and Public Sector Undertakings in between themselves, to ensure that no litigation comes to a Court or to a Tribunal without the matter having been first examined by the Committee and is cleared for litigation. It was further observed by the Hon'ble Apex Court that the Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of finance in the

Committee. The relevant observations of the Hon'ble Apex Court to the said effect in its aforesaid order are culled out as under:-

> "3. We direct that the Government of India shall set up a Committee consisting representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India; Ministry and Public Sector Undertaking of the Government of India and Public Sector Undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may included a representative of the Ministry concerned in a specific case and one from the Ministry of finance in the Committee. Senior Officers only should be nominated so that the Committee would function with status, control and discipline.
>
> 4. It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.
>
> 5. The committee shall function under the ultimate control of the Cabinet Secretary but his delegate may look after the matters. This Court would expect a quarterly report about the functioning of this system to be furnished to the Registry beginning from 1st Jan,, 1992.
>
> 6. Our direction may be communicated to every High Court for information of all the Courts subordinate to them."

18. Considering the aforesaid directions of the Hon'ble Apex Court the Cabinet Secretariat had thereafter issued a "Office Memorandum" dated 24.01.1994, whereby a committee was constituted to give clearance to the disputes between Government Department and another; one Government Department and a Public Sector Enterprise; and Public Sector Enterprises themselves, before these were agitated in a Court/Tribunal. For the sake of clarity the aforesaid contents of the "Office Memorandum" is culled out as under:

No.53/3/10/94-Cab.
CABINET SECRETARIAT
RASHTRAPATHI BHAVAN

New Delhi, the 24th January,1994

OFFICE MEMORANDUM

Subject:- Settlement of Disputes between the Government Department and another and one Government Department and a Public Enterprises and Public Enterprises and another.

The undersigned is directed to refer to this Sectt.O.M.No.53/3/6/91-Cab. dated 31st December, 1991 whereby a Committee was constituted to give clearance to the disputes between a Government Department and another and one Government Department and a Public Sector Enterprises and Public Enterprises themselves, before these are agitated in a Court/Tribunal. The Hon. Supreme Court had an occasion to go into the working of the Committee in the Civil Appeal Nos.2058-59/ 1988 (IA Nos. 3 & 4 of 1992) between Oil & Natural Gas Commission Vs. Collector of Central Excise and has further directed vide its Order dated 7-1-1994 as follows:-

(i) All the pending matters before any Court or Tribunal should also be subject matter of the deliberations of the Committee. All the matters pending as on 7.1.1994 either instituted by the Union of India or any of the Public Sector Undertakings, shall within one month from the said date i.e. 7.1.1994 be referred by the appellant or the petitioner, as the case may be,to the High Power Committee.

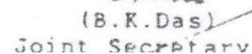
(ii) There should be no bar to the lodgement of an appeal or petition either by the Union of India or by the Public Sector Undertakings before any Court or Tribunal,so as to save limitation. But, before such filing, every endeavour should be made to have the clearance of the Committee. However, as to what the Court or Tribunal should do if such judicial remedies are sought before such a Court or Tribunal, the Supreme Court's Order of 11th October, 1991 clarifies:-

> "It shall be the obligation of every High Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceeding would not be proceeded with".

(iii) Wherever appeals/petitions etc., are filed without the clearance of the High Power Committee, so as to save limitation, the appellant or the Petitioner, as the case may be, shall within one month from such filing, refer the matter to the High Power Committee, with prior notice to the designated authority in Cabinet Secretariat (Under Secretary (Coordination)) authorised to receive notices in that behalf. The reference shall be deemed to have been made and become effective only after the notice of the reference is lodged with the Under Secretary (Coordination) in the Cabinet Secretariat. The reference shall be deemed to be valid if made in the case of Union of India by its Secretary, in the Ministry of Finance,Department of Revenue and in the case of Public Sector Undertakings by its Chairman, Managing Director or Chief Executive, as the case may be. It is only after such reference to the Committee is made in the manner indicated that the operation of the order or proceedings under challenge, shall be suspended till the Committee resolves the dispute or gives clearance to the litigation.If the High Power Committee is unable to resolve the matter for reasons to be recorded by it, it shall grant clearance for the litigation.

2. In view of the directions of the Hon. Supreme Court mentioned above, it is requested that the Ministry/Department of Government of India and Public Sector Undertakings should refer the dispute to the Committee in a self-contained note. It is also requested that while forwarding the requisite note (15 copies) to this Secretariat, the note may also be circulated to the Members of the Committee viz., Secretary, Department of Industrial Development, Secretary, Department of Public Enterprises, Secretary, Department of Legal Affairs, Finance Secretary, Secretary of the administrative Ministry/Department of Public Sector Undertakings and Chief Executive of the concerned Public Sector Undertakings viz. Public Sector Undertakings which are parties to the dispute/ or concerned in that matter.

3. The foregoing instructions may be brought to the notice of all concerned for guidance and strict compliance.



(B.K.Das)
Joint Secretary

About seventeen years thereafter, the Hon'ble Supreme Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & ors (2011) 332 ITR 58 (SC) dated 17.02.2011, while dealing with a *lis* between a PSU on the one hand and the Central Government (Ministry of Finance) on the other, had observed, that though the principle and object behind setting up of a "High Powered Committee" (HPC) [which was later on referred as "Committee of Secretaries" (CoS) and finally termed as "Committee on Disputes" (CoD)], as per directions in its earlier order in the case of Oil & Natural Gas Commission & Anr. Vs. Collector of Central Excise (1992) 104 CTR 31 (SC), was though an unexceptionable and a laudatory idea with a vision to ensure that no litigation would come to a Court/Tribunal without the parties exhausting an opportunity of conciliation before an in-house committee, but experience had revealed that despite best efforts the mechanism that was

set-up could not achieve the results for which the committee was constituted, and, in certain instances was a root cause for the delays in litigation. Considering the fact that the CoD mechanism had led to delay in filing of the Civil Appeals causing loss of revenue and also unintended discrimination between the litigating PSUs, the Hon'ble Apex Court in its order in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (2011) 332 ITR 58 (SC) dated 17.02.2011 was of the view that the CoD mechanism had outlived its utility. Accordingly, the Hon'ble Apex Court in terms of its aforesaid observation recalled its earlier directions given in the case of , viz. (i) Oil & Natural Gas Commission & Anr. Vs. Collector of Central Excise (1992) 104 CTR 31 (SC) : 1955 Supp. (4) SCC 541 dt. 11th Oct., 1991; (ii) ONGC Vs. CCE (1994) 116 CTR (SC) 643 : (2004) 6 SCC 437, dt. 7th Jan, 1994; and (iii) ONGC Vs. CEE (2007) 7 SCC 39, dt. 20thJuly, 2007. For the sake of clarity the relevant observations of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) are culled out, as under:

> "9. The idea-behind setting up of this Committee, initially, called a "High-Powered Committee" (HPC), later on called as "Committee of Secretaries" (CoS) and finally termed as "Committee on Disputes" (CoD) was to ensure that resources of the State are not frittered away in inter se litigations between entities of the State, which could be best resolved, by an empowered CoD. The machinery contemplated was only to ensure that no litigation comes to Court without the parties having had an opportunity of conciliation before an in-house committee. [see : para 3 of the order dt. 7th Jan., 1994 (supra)]. Whilst the principle and the object behind the afore-stated orders is unexceptionable and laudatory, experience has shown that despite best efforts of the CoD, the mechanism has not achieved the results for which it was constituted and has in fact led to delays in litigation. We have already given two examples hereinabove. They indicate that on same set of facts, clearance is given in

> one case and refused in the other. This has led a PSU to institute a SLP in this Court on the ground of discrimination. We need not multiply such illustrations. The mechanism was set up with a laudatory object. However, the mechanism has led to delay in filing of civil appeals causing loss of revenue. For example, in many cases of exemptions, the Industry Department gives exemption, while the same is denied by the Revenue Department. Similarly, with the enactment of regulatory laws in several cases there could be overlapping of jurisdictions between, let us say, SEBI and insurance regulators. Civil appeals lie to this Court. Stakes in such cases are huge. One cannot possibly expect timely clearance by CoD. In such cases, grant of clearance to one and not to the other may result in generation of more and more litigation. The mechanism has outlived its utility. In the changed scenario indicated above, we are of the view that time has come under the above circumstances to recall the directions of this Court in its various orders reported as (i) 1995 Supp (4) SCC 541 dt. 11th Oct., 1991 (supra) (ii) (2004) 6 SCC 437 dt. 7th Jan., 1994 (supra) and (iii) (2007) 7 SCC 39 dt. 20thJuly, 2007 (supra),
>
> 10. In the circumstances, we hereby recall the following orders reported in : (i) ONGC vs. CCE (1992) 104 CTR (SC) 31 : 1995 Supp (4) SCC 541, dt. 11th Oct., 1991- (ii) ONGC vs. CCE (1994) 116 CTR (SC) 643 : (2004) 6 SCC 437, dt. 7th Jan., 1994 ;(iii) ONGC vs. CCE (2007) 7 SCC 39, dt. 20th July, 2007."

On the basis of the aforesaid judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) dated 17.02.2011, its earlier orders passed in Oil & Natural Gas Commission Vs. CCE (supra) were recalled and the mechanism of seeking CoD approval was dispensed with.

19. Considering the judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra), wherein its earlier orders passed in Oil & Natural Gas Commission Vs. CCE (supra) were recalled, it is on the one hand the claim of the department, that, as pursuant to the judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) dated

17.02.2011 the earlier orders passed in Oil & Natural Gas Commission Vs. CCE (supra) had been recalled and the mechanism of seeking of CoD approval rendered as non-est from the very inception, therefore, it could not be saddled with any obligation to have obtained any CoD approval qua its appeals pending with the Tribunal; while for on the other hand, it is the claim of the assessee company that the aforesaid overruling by the Hon'ble Apex Court of its earlier orders in the case of Oil & Natural Gas Commissioner Vs. CCE (supra) in light of principle of prospective overruling would be applicable only w.e.f. 17.02.2011 i.e. the date of judgment in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra). On the basis of their respective contentions, it is the claim of the department that now when the very mechanism of CoD approval had impliedly been held to be *non-est*, therefore, its appeal could not be treated as non-maintainable for a failure to comply with a mechanism whose operation in itself had been recalled; while for on the other hand, it is the claim of the assessee respondent that as the department had not only failed to obtain the mandatory approval as per the CoD mechanism as was available at the time when the present appeal was filed with the Tribunal, but had not even filed any application before the said committee, therefore, the said appeal was liable to be dismissed as non-maintainable.

20. We have given a thoughtful consideration to the aforesaid contentions of the Ld. Authorized Representatives of both the parties as regards the issue in hand. On a perusal of the judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra), we find that the earlier orders of the Hon'ble Apex Court in the case of Oil & Natural Gas Commission Vs. CCE (supra) were recalled and the mechanism of CoD approval was dispensed with. Analyzing the observations of the Hon'ble Apex Court in the case of Electronics Corporation of India (supra) would assist in comprehending the scope and gamut of recall of its earlier orders in the case of Oil & Natural Gas Commission Vs. CCE (supra); and also the dispensing with the mechanism of CoD approval. Ostensibly, the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) had observed, that the principle and the object behind its earlier orders in the case of Oil & Natural Gas Commission (supra) was unexceptionable and laudatory, i.e., the resources of the state should not be frittered away in inter se litigations between the entities of the State, which, otherwise could be resolved by an empowered CoD. It was, however, observed by the Hon'ble Apex Court that as the CoD mechanism had not achieved the results for which it was constituted, and, on the contrary was leading to delays in filing of Civil Appeals with a resultant loss of revenue, therefore, the said mechanism had outlived its utility. The observation of the Hon'ble Apex Court i.e. "*….mechanism has outlived its utility",* though clearly

reveals that the said mechanism in light of changed circumstances and the bottlenecks which it was causing in timely dispensation of justice was sought to be dispensed with, but there is nothing discernible there from that would reveal that the same was in the nature of a retroactive overruling which was intended to dislodge the issues that had been settled pursuant to its earlier orders in the case of Oil & Natural Gas Commission Vs. CCE (supra).

21. In our considered view, the judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) can safely be held to be a prospective overruling of its earlier order passed in the case of Oil & Natural Gas Commission Vs. CCE (supra) i.e, on the basis of which the CoD mechanism was brought into existence. We, thus, are of the considered view that the judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) recalling its earlier orders passed in Oil & Natural Gas Commission Vs. CCE (supra) only does away with the practice of obtaining approval of the CoD in view of changed circumstances. In our considered view, the dispensing with the necessity of obtaining approval from CoD which was in practice at the relevant time i.e. upto 17.02.2011 cannot be related back and done away with during the period falling prior thereto. We, say so, for the reason that though the Hon'ble Apex Court in its subsequent judgment

in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra), had held, that the said practice needs to be discontinued, but it does not dispenses with the said mechanism for the period falling prior to the date of its said order i.e 17.02.2011. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **Commissioner of Income Tax Vs. Central Bank of India (2015) 232 TAXMAN 396 (Bom).** In its aforesaid order, it was observed by the Hon'ble High Court that the necessity of obtaining approval from CoD which was in practice at the relevant time cannot be done away with in view of the subsequent judgment of the Hon'ble Supreme Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra). Elaborating on its aforesaid view, it was observed by the High Court that the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) had only held that due to changed circumstances the practice of seeking CoD approval was required to be dispensed away with. In the said case, the Tribunal had dismissed the appeal of the department vide its order dated 20.02.2008 for the reason that it had failed to take any action for obtaining approval of the CoD. At the same time the Tribunal had given liberty to the department to seek revival of its appeal in case if it desired to prosecute the same, but subject to its satisfaction that there were justifiable reasons for the delay in getting approval from the CoD. Thereafter, the department on the basis of the

judgment of the Hon'ble Supreme Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) dated 17.02.2011, wherein the requirement of obtaining of CoD approval was dispensed with, vide its miscellaneous application filed u/s. 254(2) of the Act, dated 06.12.2012 sought for a recall of the earlier order dated 20.02.2008 (supra). The Tribunal vide its order dated 05.07.2013 dismissed the miscellaneous application filed by the revenue u/s. 254(2) of the Act for two fold reasons, viz. (i) that the application under sub-section (2) of Section 254 was filed beyond the statutory period of four years provided under the Act; and (ii) that the miscellaneous application was even otherwise filed after a delay of more than 11 months from the date on which the order of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) was rendered. The department assailed the order of the Tribunal dated 05.07.2013 rejecting its miscellaneous application u/s. 254(2) of the Act by way of a Writ Petition before the Hon'ble High Court. The Hon'ble High Court considering the fact that the Tribunal while dismissing the appeal of the department vide its order dated 20.02.2008, had observed that nothing was placed before them which would reveal that department had taken any action for obtaining approval of the CoD, thus queried the petitioner assessee as to whether or not it had made any application to obtain approval of the CoD before filing of an appeal with the Tribunal. In reply, it was submitted by the petitioner assessee in the

negative. It was observed by the Hon'ble High Court that the CoD mechanism was very much in force at the relevant point of time i.e. at the time when appeals were filed by the department with the Tribunal. Referring to the judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra), it was observed by the Hon'ble High Court that the recall of the earlier orders in the case of Oil & Natural Gas Commission Vs. CCE (supra) only did away with the practice in view of the changed circumstances, and the same by no means could be construed as dispensing with the practice of obtaining approval from CoD which was very much in force at the relevant point of time. Accordingly, the Hon'ble High Court on the basis of its aforesaid observations dismissed the Writ Petition filed by the revenue. For the sake of clarity the relevant observations of the Hon'ble High Court are culled out, as under:

> "This petition by the petitioner revenue challenges the order dated 5.7.2013 passed by the Income Tax Appellate Tribunal (the Tribunal) dismissing the petitioner's Misc. Application under section 254 (2) of the Income Tax Act (the Act). By the aforesaid Misc. Application the petitioner-revenue sought to recall the order of the Tribunal dated 20.2.2008 passed in relation to A.Y.1996-97.
>
> 2. On 20.2.2008 the Tribunal dismissed the petitioner's appeal for A.Y.1996-97 recording as under :
>
> > "3. Nothing was placed before us to demonstrate that what action the revenue took for obtaining the approval of COD. However, we may mention that in case the revenue desires to prosecute the appeal, it shall be free to move this Tribunal by appropriate petition for recalling the case and if the Bench is so satisfied about the reasons for the delay in getting the

> approval from COD then this order shall be recalled so as to treat this appeal as admitted."

3. On 1.3.2011 the Supreme Court in the case of ELECTRONICS CORPORATION OF INDIA LTD held that the mechanism of obtaining an approval from the Committee on Disputes (COD) for prosecuting the appeals with regard to disputes inter see between the government departments/undertakings has outlived its utility and it must be done away with.

4. On the basis of the above decision in ELECTRONICS CORPORATION OF INDIA LTD the petitioner-revenue filed Misc. Application before the Tribunal on 6.12.2012 under section 254 (2) of the Act seeking a recall of the earlier order dated 20.2.2008. The basis of the above application is that no approval is required by the petitioner-Revenue of the COD for the purposes of prosecuting its appeal before the Tribunal.

5. The Tribunal by the impugned order dated 5.7.2013 dismissed the petitioner's Misc. Application under section 254 (2) of the Act for recall of its order dated 20.2.2008. In the impugned order the Tribunal records the fact that the Misc. Application under section 254 (2) of the Act has been filed beyond the statutory period of 4 years provided under the Act to file a Misc. Application for rectification from the order dated 20.2.2008. Moreover, the Tribunal also records the fact that after the decision of the Supreme Court in case of ELECTRONICS CORPORATION OF INDIA LTD also the application has been filed after a delay of more than 11 months. When the matter was called out, we asked the petitioner's counsel whether or not the petitioner had applied to the COD for seeking its approval before filing its appeal to the Tribunal relating to A.Y.1996-97. This was in view of the fact that the Tribunal in its order dated 20.2.2008 had recorded the fact that nothing was placed before them to demonstrate that the revenue had taken action for obtaining approval of the COD.

6. Mr. Suresh Kumar learned counsel appearing for the revenue on instructions states that the Revenue had not made any application to obtain approval of the COD before it filed its appeal for A.Y.1996- 98 to the Tribunal. This in spite of the COD mechanism being very much in force at that time. The recall of its earlier orders in respect of ONGC by the Supreme Court in the case of ELECTRONICS CORPORATION OF INDIA LTD only does away with the practice in view of the changed circumstances. The necessity of obtaining approval from COD which was in practice at the relevant time cannot be done away with on the ground that the Supreme Court has now held that the practice needs to be discontinued.

> 7. In the above facts and circumstances, we see no reason to entertain the present petition. Accordingly, writ petition is dismissed with no order as to costs."

22. Similar view had been taken by the **Hon'ble High Court of Jharkhand** in the case of **Hindustan Copper Limited Vs. Union of India & Ors., in Writ Petition No.6852 of 2013 dated 13.03.2014**. In the said case the CESTAT vide its order dated 18.09.2012 had dismissed the appeal that was filed in the year 2009 by the assessee, a Public Sector Undertaking, for the reason that it had neither produced any clearance from CoD nor produced any evidence that its application for such clearance was pending with the CoD on 17.02.2011 i.e. the date of judgment of the Hon'ble Supreme Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra). Thereafter, the assessee filed an application seeking restoration of its appeal on 21.11.2012. The CESTAT observing that the assessee had failed to produce either permission of CoD or any proof that the application was pending before the CoD as on 17.02.2011 (supra) dismissed the restoration application vide its order dated 26.04.2013. The assessee assailed the order of CESTAT dismissing its restoration appeal vide order dated 26.04.2013 by way of a Writ petition before the Hon'ble High Court. On a perusal of the record, it was observed by the Hon'ble High Court that the petitioner assessee before them had applied for CoD clearance only on 04.09.2012 i.e just 10 days prior to taking up of its appeal by the CESTAT. It was observed by the Hon'ble High Court that though the

assessee petitioner should have approached the CoD for approval within a period of one month after filing of the appeal with CESTAT i.e. on 14.10.2009, but despite the fact that the said appeal was pending from the year 2009 to 2012 it had not moved any application for approval before the CoD. It was, thus, observed by the Hon'ble High Court that on the date of judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) i.e on 17.02.2011, the petitioner assessee had neither obtained CoD clearance nor produced any evidence which would show that it had approached the CoD for obtaining such clearance. Considering the aforesaid facts, the Hon'ble High Court was of the view that as the assessee petitioner was not vigilant in either applying or obtaining the approval of CoD, therefore, it could not be allowed to take benefit of the judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra). For the sake of clarity the relevant observations of the Hon'ble High Court are culled out, as under:

> "In the present case, the petitioner, HCL, filed appeal in 2009. As per the ONGC-III [(2004) 6 SCC 437], the petitioner should have approached COD for obtaining clearance within one month after such filing (i.e. on 14.10.2009). But even though the appeal was pending from 2009 to 2012, the petitioner has not approached COD for obtaining clearance. As on the date of the judgment of ECIL, i.e. 17.2.2011, the petitioner has neither obtained COD clearance, nor produced evidence showing that it had approached COD for obtaining clearance. It is a matter of record that the petitioner had applied for COD clearance only on 4.9.2012 just ten days prior to taking up of its appeal. Having not been vigilant in either applying or obtaining

> COD clearance, the petitioner cannot take advantage of ECIL judgment".

Also, it was observed by the Hon'ble High Court in the case of Hindustan Copper Limited Vs. Union of India & Ors. (supra) that pursuant to the judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) the **Central Board of Excise (CBEC)** had issued an **Instruction dated 24.03.2011**, which reads as under:

> "3. In view of the above there is no requirement of obtaining approval of the Committee on Disputes for pursuing litigations as was being done. Field formations may now pursue their appeals in the respective Tribunals/Courts without obtaining clearance from the Committee on Disputes. Proposals which have already been sent to the Committee and no decisions have been taken till 17-2-2011 shall be deemed to be covered by the decision of the Hon'ble Court dated 17-2-2011, i.e. COD permission is not required in those cases."

As per the aforesaid Instruction of the Central Board of Excise, in a case where a proposal was sent to CoD but no decision had been taken by the said committee till 17.02.2011 (supra), then, it shall be deemed to be covered by the decision of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) and no permission would be required in such case. Considering the Instruction of the Central Board of Excise, it was observed by the Hon'ble High Court, that though the same clearly revealed that in a case where a proposal for approval had been sent to CoD but the same was not received till 17.02.2011 i.e. upto the date of order in the case of Electronics

Corporation of India Ltd. Vs. Union of India & Ors. (supra), it was to be deemed that the said case would be covered by the aforesaid order of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) and no CoD permission would be required in such a case, however, no such concession was provided to an assessee which had neither obtained clearance from the CoD nor had applied for such clearance with the CoD upto 17.02.2011 (supra).

23. Also a similar view had been taken by the Hon'ble **High Court of Andhra Pradesh & Telangana** in the case of **Commissioner of Income Tax Vs. State Bank of Hyderabad, (2017) 80 taxmann.com 244 (Andhra Pradesh & Telangana).** In the aforesaid case the following question of law was, inter alia, raised by the assessee appellant, a nationalized bank:-

> "In the facts and circumstances of the case, whether the order of the hon'ble Tribunal (ITAT) is correct in law in rejecting the miscellaneous application filed by the department holding that it is barred by limitation without appreciating the fact that the hon'ble Tribunal (ITAT) itself, while passing the orders had given liberty to approach it for revival of appeals as and when the approval from Committee on Disputes (CoD) is received and that the scope for filing miscellaneous application came into existence only after the decision of the Hon'ble Supreme Court in the case of Electronics Corp. of India Ltd. v. Union of India (2011) 332 ITR 58(SC) dated February 17, 2011."

It was observed by the Hon'ble High Court that though the Tribunal vide its order dated September 30, 2010 had dismissed the assessee's appeal with a liberty to obtain the CoD approval and seek restoration of its appeal, but the application seeking recalling of the order of the Tribunal was filed by the

assessee bank only in the month of January 2014 i.e., much subsequent to the judgment of the Hon'ble Supreme Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra), dated 17.02.2011. Considering the said factual position, it was observed by the Hon'ble High Court that though the assessee bank should have approached the CoD immediately after the order of the CIT(Appeals) dated April 30, 2007, however, despite its appeal having been dismissed by the Tribunal vide its order September 30, 2010, wherein it was made aware of the aforesaid statutory requirement and was also allowed liberty to seek revival of the appeal after obtaining CoD approval, it had, however, not made any efforts and had filed the application for restoration only in the month of January, 2014 i.e. after the judgment of the Hon'ble Supreme Court was rendered in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra). Considering the lapse of a substantial period of three years on account of inaction on the part of the assessee bank in approaching the Tribunal for restoration of its appeal that was dismissed way back vide its order dated September 30, 2010, the Hon'ble High Court was of the view that in absence of any diligence on the part of the assessee in approaching the Tribunal to recall its order no infirmity did emerge from the dismissal of its application seeking restoration of appeal that was filed after a substantial lapse of time i.e. in the month of January, 2014. Also, it was observed by the Hon'ble High Court that even if the judgment of the Hon'ble Supreme

Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) was to be taken as the starting point, the application seeking restoration of its appeal even then was found to be belated. For the sake of clarity the relevant observations of the Hon'ble High Court are culled out as under:-

> "4. It is an admitted fact that even when the matter was taken up by the Tribunal for hearing or even on the date of pronouncement of the order by the Tribunal on September 30, 2010 or even thereafter, no application was made before the Committee on Disputes seeking its approval to prosecute the appeal. The order of the first appellate authority which is the subject matter of the present appeal is dated April 30, 2007. In normal circumstances, immediately after the order passed by the first appellate authority or within a reasonable time, the appellant ought to have made an application to the Committee on Disputes seeking permission to prosecute the appeal as it was a mandatory requirement by virtue of the judgment delivered by the Supreme Court (1st cited supra) in Civil appeal No. 1883 of 2011. Admittedly, no application was made. The present miscellaneous application came to be filed by the appellant on noticing the judgment dated February 17, 2011 of the apex court (1st cited supra) wherein the apex court had recalled its earlier order seeking clearance from the Committee on Disputes and thereby giving liberty to all the Government Departments to approach the higher forums and exercise the right of appeal in accordance with the respective statutes. Though this judgment is dated February 17, 2011, the application seeking to recall the order of the Tribunal in terms of the liberty given to the appellant in the order dated September 30, 2010 came to be filed only in the month of January 2014, i.e., after a substantial lapse of the period of three years. In other words, there is a total lapse on the part of the appellant in prosecuting the appeal diligently, and in normal circumstances, the appellant ought to have approached the Committee on Disputes immediately after April 30, 2007. Even after the appellant was made aware of the requirement by September 30, 2010 by the Tribunal, no application was made by him before the Committee on Disputes. In other words, there was never any effort made by the appellant in seriously desiring to prosecute the appeal against the order dated April 30, 2007 passed by the Commissioner. These factors were taken into consideration by the Tribunal while refusing to recall the order dated September 30, 2010. Hence, we do not find any infirmity in the order passed by the Tribunal to interfere with. Even assuming for arguments' sake, it is only on account of the

> law declared by the apex court in the judgment (1st cited supra), dispensing with the requirement of obtaining sanction from the Committee on Disputes is taken as starting point, the application made is belated. Further, even on the ground of the absence of diligence shown in approaching the Tribunal to recall the order, we do not find any error in the order of the Tribunal. It may be noted that in taxation matters, a citizen is entitled to have certainty with regard to his or her liability and the issues which were settled long back should not be reopened as it would lead to upsetting the entire financial planning of the individuals who would have accepted the orders or judgments as final and arranged their affairs based on the orders or situations prevailing at the relevant point of time."

24. On a careful perusal of the aforesaid judicial pronouncements, it can safely be concluded that the judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors.(supra), though in light of changed times a/w. bottlenecks caused by the CoD mechanism in timely dispensation of justice had done away with the mechanism of seeking CoD approval, but the same as had been so held in the aforesaid judicial pronouncements cannot be construed as dispensing with the said mechanism which was in practice at the relevant point of time i.e. prior to the order in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra). We, thus, in terms of our aforesaid observations concur with the claim of the Ld. AR that failure on the part of the department to have obtained the CoD approval; or even file an application for such approval with the CoD renders the appeals of the revenue as non-maintainable.

25. At this stage, we may herein observe that though the department had filed the appeal on 04.06.2008, but till date despite having been afforded sufficient opportunity, it had neither produced the CoD approval nor any evidence which would reveal that it had filed any such application with the said committee. On the contrary, we find that despite the fact that the Tribunal vide its interim order dated 26.07.2021 had allowed a period of four months to the department to verify the factual position and come forth with its stand in writing i.e as to whether or not it had filed any application seeking approval with the CoD, but we are pained to observe that till date nothing had been filed before us. As observed by us hereinabove, the Ld. D.R on a specific query as to whether any approval was obtained by the department from the CoD; or any application for approval had been filed with the said committee, had expressed his unawareness about the same. We, thus, in terms of our aforesaid observations are constrained to proceed with on the premise that the department had neither obtained any CoD approval nor had filed any application for the same before the said committee. Our conviction as regards the lackadaisical approach adopted by the department is further fortified by the fact that though the Tribunal had earlier vide its order dated 25.11.2008 dismissed the appeal of the revenue, which, in turn emanated from the original/regular assessment order dated 30.11.2000 for the year under consideration i.e. A.Y.1998-99, for the reason that the same in absence of clearance from the High Powered

Committee (CoD) was not maintainable, but despite suffering such dismissal the department had allowed its said mistake to perpetuate, and in the present appeal too had neither obtained any approval nor filed any application seeking such approval with the CoD. Considering the aforesaid factual position, we are unable to comprehend as to why the department as a matter of consistent practice had failed to scrupulously follow the CoD mechanism as was in practice at the relevant point of time.

26. In so far the judgment of the Hon'ble Supreme Court in the case of M/s. Steel Authority of India Ltd. Vs. Commissioner of Central Excise (CEXA No.23 of 2013) dated 28th July, 2022 as had been pressed into service by the Ld. DR is concerned, we are of the view that the same being distinguishable on facts would by no means assist the case of the revenue before us. We, say so, for the reason that the facts involved in the aforesaid case stand on an absolutely different footing. In the aforesaid case, the assessee, a Public Sector Undertaking (PSU) of the Government of India was pursuant to a "Show Cause Notice" (SCN) dated 04.08.2015 issued by the Commissioner of Central Excise subjected to, viz. (i) demand towards duty of Rs.15.66 crore ; and (ii) penalty. The assessee company filed an application with the CoD seeking approval for filing appeals with the CESTAT. The CoD in its minutes of meeting dated 02.11.2006 granted permission to the assessee company to pursue all the appeals only on the

penalty aspect. As regards the duty aspect the CoD declined the approval for the reason that in the CENVAT regime the dispute was revenue neutral. The CESTAT vide its order dated 11.06.2007 though set-aside the penalty that was imposed on the assessee company but dismissed the appeal with regard to "duty demand", for the reason that the same was non-maintainable for want of clearance from CoD. The assessee company under protest deposited the duty amount of Rs.15.66 crore (supra). As series of letters were further issued by the authority directing the assessee company to deposit interest on the duty amount, therefore, it vide a fresh application dated 11.02.2011 sought for approval from CoD for preferring an appeal with respect to duty aspect before the CESTAT. In the meantime, the judgment of the Hon'ble Supreme Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) dated 17.02.2011 was passed, wherein, the entire CoD mechanism that was brought into existence pursuant to its earlier orders passed in the case of Oil & Natural Gas Commission & Anr. Vs. Collector of Central Excise (supra) was dispensed with. The assessee company, thereafter, filed a miscellaneous application with CESTAT seeking restoration of its order dated 11.06.2007 wherein its appeal on the duty aspect was dismissed. On 30.10.2012, the aforesaid miscellaneous application filed by the assessee company was dismissed. Aggrieved, the assessee company assailed the order of CESTAT dismissing its miscellaneous application vide its order dated 30.10.2012

before the Hon'ble High Court. On 12.11.2013, the Hon'ble High Court dismissed the appeal of the assessee company. On further appeal, it was observed by the Hon'ble Supreme Court that the assessee company on 11.01.2011 had filed its second application with the CoD for approval to file an appeal against the duty aspect with the CESTAT. The Hon'ble Supreme Court was of the view that as pursuant to its subsequent judgment in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) dated 17.02.2011 the mechanism of seeking permission of CoD was dispensed with, thus, there remained no occasion for the CoD to have considered the second application of the assessee appellant. On the basis of its aforesaid observations the Hon'ble Apex Court quashed the order of the Hon'ble High Court and remitted the matter to CESTAT.

27. On a careful perusal of the aforesaid order of the Hon'ble Apex Court, we find that the same is clearly distinguishable on facts. We, say so, for the reason that unlike as in the present case of the assessee before us, wherein no application seeking approval had been filed before the CoD, in the aforementioned case of M/s. Steel Authority of India Ltd. (supra) the application of the assessee company that was filed with the CoD on 11.02.2011 was pending on the date when the order of the Hon'ble Supreme Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) dated 17.02.2011 was passed. At this stage, we may herein

observe that the Central Board of Excise in its Instruction dated 24.03.2011 (supra), had observed, that in a case where a proposal was sent to CoD and the latter had not taken any decision till 17.02.2011 (supra), then it shall be deemed to be covered by the decision of the Hon'ble Supreme Court in the case of Electronics Corporation of India Ltd. Vs. Union of India & Ors. (supra) dated 17.02.2011 and no CoD permission would be required in such case. As in the case of M/s. Steel Authority of India (supra) the application filed by the assessee company on 11.02.2011 with the CoD was not disposed off till 17.02.2011 i.e. the date of judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. Vs. Union of India &ors. (supra), therefore, the said case did clearly fell within the realm of the aforesaid Central Board of Exercise Instruction dated 24.03.2011 and thus, no CoD permission was required in its case.

28. We, thus, in the backdrop of the aforesaid peculiar facts involved in the case of M/s. Steel Authority of India Ltd. (supra) are of the considered view, that the facts therein involved are clearly distinguishable as against those involved in the case of the present assessee before us. At this stage, we may also observe that the issue that in a case where the proposal for approval to file an appeal was pending disposal before the CoD on 17.02.2011 (supra), then, it is to be deemed to be covered by the decision of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd.

Vs. Union of India & Ors. (supra) dated 17.02.2011, and no CoD permission would be required in such case, is supported by the judgment of the Hon'ble High Court of Jharkhand in the case of Hindustan Copper Ltd. Vs. UOI (WP 6852 of 2013) dated 13.03.2014.

29. We, thus, in terms of our aforesaid deliberations, are of the considered view, that as in the present appeal the department had neither obtained the approval of the CoD nor had filed any application/proposal seeking the mandatory approval with the said committee, therefore, in light of the aforesaid position of law as had been looked into by the Hon'ble High Courts the appeal filed by the department would not be maintainable.

30. As we have held the appeals filed by the department as not maintainable, therefore, there remains no occasion for us to deal with the other contentions on the basis of which the impugned order passed by the CIT(Appeals) has been assailed before us, which having been rendered as merely academic in nature are left open.

31. Resultantly, the cross-objections filed by the assessee company in (CO Nos.14 to 16/RPR/2019, CO Nos. 17 to 20/RPR/2019, CO Nos. 21 & 22/RPR/2019 & 23/RPR/2019) are dismissed as having been rendered as infructuous; while for the appeals filed by the department in (ITA Nos.176 to 178/RPR/2008, ITA Nos.180, 182 to 184/RPR/2008, ITA Nos. 185 &

186/RPR/2008 & ITA No.30/RPR/2010) are dismissed as not maintainable in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-	Sd/-
ARUN KHODPIA	**RAVISH SOOD**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 23rd February, 2023
**SB

<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :-</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Bilaspur (C.G)
4. The CIT, Bilaspur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.