

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायि कसदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 153 to 159/JPR/2023
निर्धारण वर्ष/Assessment Year :2011-12 to 2017-18

M/s Barmer Lignite Mining Company Ltd. Office No. 2 & 3, 7 th Floor, Man Upasana Plaza, C-44, Sardar Patel Marg, C-Scheme, Jaipur.	बनाम Vs.	ACIT/DCIT(TDS), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AADCB 0574 G		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assesseeby : Shri P.C. Parwal(C.A.)
राजस्व की ओरसे/ Revenue by: Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख/Date of Hearing :24/05/2023
उदघोषणा की तारीख/Date of Pronouncement: 28/06/2023

आदेश/ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

These seven appeals are filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi all dated 20.01.2023 [herein after "NFAC/CIT(A)"] for assessment years 2011-12 to 2017-18 respectively.

2. Since the issues involved in these appeals of the assessee for all years are almost identical, are common, all these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the ld. AR has submitted that the matter pertaining to M/s Barmer Lignite Mining Company Ltd. in ITA No. 159/JPR/2023 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are exactly identical except the difference in the amount of **levy of penalty in** other assessment year. The ld. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 159/JPR/2023 is taken as a lead case. The assessee has raised following ground:-

- “1. The Ld. CIT(A), NFAC has erred on facts and in law in not accepting the contention of assessee that no TDS is required to be deducted by the assessee on reimbursement of expenses incurred by M/s Raj West Power Ltd. and thereby confirming the levy of interest u/s 201(1A) at Rs. 34,696/-.*
- 2. The appellant craves to alter, amend & modify any ground of appeal.*
- 3. Necessary cost be awarded to the assessee.”*

4. Brief facts of the case are that the assessee company M/s. Barmer Lignite Mining Company Limited (BLMCL) has been incorporated as joint

venture company of M/s. Rajasthan State Mines and Mineral Limited and M/s. Raj West Power Ltd. in the ratio of 51:49. The assessee deductor company has engaged in development, operation and extraction of lignite from mining blocks situated in Barmer District of Rajasthan. This lignite or coal was supplied to power generation companies for generation of power. A TDS/TCS verification u/s. 133A(2A) of IT Act dated 27.12.2016 was carried out at the office premise of appellant deductor. Consequently, proceedings u/s. 201(1)/201(1A) of IT.Act were initiated by the Assessing officer for various Assessment Years A.Y. 2010-11 to 2017-18, for omission involving non deduction of TDS by the assessee company for certain expenses in the nature of salary, mining expenses/labour expenses/personnel expenses etc. in these A. Yrs. 2011- 12 to 2017-18 attracting TDS provisions as applicable in few years/instances in the nature of rent attracting provisions u/s. 194I of the IT Act, Taxi hire charges and other similar expenses attracting provisions u/s. 194C of the I.T.Act and salary expenses claim attracting relevant TDS provisions etc. as per I.T.Act. With reference to these payments/expenses assessee company contended that the same are only in the nature of reimbursement of expenses incurred on behalf of assessee company by its JV constituent,

M/s. Raj West Power Ltd. (RWPL) [now known as JSW Energy (Barmer) Limited].

5. Assessing officer has treated the assessee company as assessee in default to the extent it did not deduct tax on expenses/payment u/s. 201(1) of the IT. Act along with levy of interest u/s. 201(1A) of the Act for all these A. Yrs. 2011-12 to A.Y 2017-18.

6. Aggrieved, assessee has filed appeal with more or less similar grounds of appeal for all these A.Yrs. 2011-12 to AY. 2017-18 and also placed reliance on similar facts and circumstances involved in non deduction of TDS on such expenses paid, contending that the same as only reimbursement of expenses on actual basis having not attracted by TDS provisions u/s 201(1)/201(1A) of I.T. Act. A propose to the grounds so raised by the assessee the relevant findings of the Id. CIT(A) is reproduced here in below:-

"From the above clause it is clear that all the expenses incurred / to be incurred by RSMML under this agreement are to be borne by JV Company/RWPL. This agreement nowhere envisages any specific clause which warrants appellant company to reimburse expenses as incurred by RWPL on behalf of RSMML as appellant company constituent partner or on behalf appellant company itself. In fact plain reading infers it as composite J.V agreement among in constituents namely RSMML AND RWPL, and other stake holders referred in the J.V. clauses in a comprehensive manner. In fact RWPL acts as lead constituent of J.V. formation as per clause (c) of J.V. agreement dated 27.12.2006 with Government of Rajasthan (GOR). In view of this it is neither a simple agreement having no element of income component involved in these expenses incurred or

reimbursed nor it establishes with any verifiable proofs that a fiscal duty is cast as accrued on appellant company to pay any amounts expenses to M/s. RWPL as claimed. Accordingly, any payments made by appellant company to RWPL under the guise of rent/hire charges/mining charges/labour charges/personal expenses etc. are to be treated as expenses paid by appellant company to its JV constituent without any basis of specific exclusion from TDS provisions on such payments in the guise of reimbursement of expenses and accordingly, AOS invocation of provisions u/s. 201(1)/201(1A) of the I.T. Act is well within the provisions of TDS of the I.T. Act as applicable to A. Yrs. 2011-12 to 2017-18. The appellant company could not bring on record any specific agreement between appellant company and RWPL which envisages incurring of expenses on behalf of appellant to RWPL and its cost to cost basis reimbursement without having overlapping relevance to provisions of JV agreement dated 27.12.2006 as entered between RSMML and RWPL with other stake holders like GOR. In the absence of same, all such payments as incurred by appellant company are to be treated as relevant expenses based on the nature of such expenses attracting relevant provisions of TDS such as 194C, 194I etc. Further, the agreement between JV constituents is a composite agreement having equity ratio of 59 and 41 between RSMML and RWPL respectively to fulfil various conditions and obligations as per the comprehensive clauses of JV agreement as appearing at clauses 3.1 to 3.4 and in particular, clause 3.2, wherein it envisages expenses to be borne by JV company / RWPL. Considering this comprehensive and composite agreement fulfilling the equity ratios, it would not be appropriate to visualise any reimbursement of expenses to RWPL from appellant company when RWPL itself has agreed to bear such expenses as per clause 3.2 referred by the Assessing Officer in A.Y 2011-12. Even considering possibility of reimbursement, placing reliance on appellant's submissions on Board resolutions to reimburse such expenses, it would not be economically and arithmetically feasible to divide such costs as incurred by RWPL in the heads of rent/salary/hire charges/labour charges/mining charges etc. as attributable to actual expenses on quantitative basis when the expenses are incurred as a going concern by RWPL using its regular manpower and related assets of RWPL without adducing any specific contract by RWPL with appellant or others to do works of appellant. Accordingly, appellant's contentions that the expenditure incurred is only mere reimbursement of expenses having no income / gain/ advantage element etc. to the recipient is devoid of facts and merit and appellants mere claims that it is reimbursement on actual basis having no element of income is far from truth and acceptability. Accordingly, appellant's claims on this analogy is not accepted, as rightly

assessed by A.O. by invoking provisions u/s. 201(1)/201(1A) of the IT Act in all these assessment years 2011-12 to 2017-18. In the instant case the A.O has raised demand u/s. 201(1) for A. Yrs. 2011-12 and 2012-13 only. along with interest u/s. 201(1A) in A.Ys. 2011-12 to 2017-18 ie. to say for A.Y. 2013-14 to 2017-18 the appellant has submitted certificate of Chartered Account as per the first proviso u/s. 201(1) certifying that M/s. Raj West Power Ltd. has filed its due return of income for these A Yrs. 2013-14 to 2017-18 and accordingly the sums received by M/s. Raj West Power Ltd. from appellant Co. having taken for computing its income. Considering the same, the A.O has not treated the appellant company as 'deemed assessee in default resulting in non levy of demand u/s. 201(1) for A.Y. 2013-14 to 2017-18. However, for A.Y 2011-12 and 2012-13 as appellant could not submit such certification, same was considered for levy of demand u/s. 201(1). During the pendency of appeal proceedings, for these two assessment years, the appellant has submitted the same as additional evidence involving such certification for these two assessment years as submitted before AO for AY 2013-14 to 2017-18 in Form No. 26A which is as detailed in the submissions of these assessment years brought out in the relevant appellate orders of AY. 2011-12 and 2012-13 Hence considering the reasonableness of same and keeping in view the fact that the same has been already allowed by Assessing Officer for A.Y. 2013-14 to 2017-18, the appellant cannot be deemed as 'assessee in default as per proviso u/s. 201(1) of IT Act. However, without prejudice to the treatment of appellant as assessee not in default. provisions u/s 201(1A) are squarely attracted to the facts of the appellant as appellant failed to deduct TDS on such payment of expenditure to RWPL which cannot be treated as payments not attracted by TDS and also keeping in view the fact that the recipient has no income element on such receipt is not maintainable considering the composite agreement of JV being in force among JV constituents and having not entered any specific agreement by JV with recipient RWPL as analysed and discussed as above and as per the assessment order.

Accordingly, appellant's appeals for A.Y. 2011-12 and 2012-13 are allowed partly to the extent of deletion of demand u/s. 201(1) on such verification of reconciliation of appellant's filing of CA certificate in Form 26A for these assessment years by the Assessing Officer, as filed during the appellate proceedings. Accordingly, appellant's grounds on the issue of levy of demand u/s. 201(1) are allowed to consider the appellant, that the appellant cannot be deemed as assessee in default, similar to A.Y. 2013-14 to 2017-18. With reference to levy of interest u/s. 201(1A) appellant's Grounds of Appeal are not

maintainable 'as no demand u/s 201(1) of IT.Act will alter the liability to charge interest u/s. 201(1A) of the I.T. Act till the date of payment of taxes by the deductee assessee.

Hence, as reasoned and discussed in detail in the assessment order, the appellant's Grounds of Appeal to seek relief u/s 201(1A) of the IT Act holding to the view that having treated assessee not in default, the same as not leviable, is not acceptable placing reliance on the Hon. Supreme Court adjudication in the case of M/s Hindustan Coca Cola Beverages vs. CIT dated 16.8.2007 as relied by the A.O. Accordingly, appellant's grounds of appeals on the levy of interest u/s 201(1A) for these A. Yrs 2011-12 to 2017-18 is not maintainable and same is dismissed for all the assessment years 2011-12 to 2017-18.

In view of the above detailed discussion, the appellant's appeals and relevant grounds of appeal for A.Y. 2011-12 and 2012-13 are partly allowed to the extent of demand u/s. 201(1) of the IT Act and grounds of appeal on levy of interest u/s, 201(1A) of the I.T.Act for all these assessment years 2011-12 to 2017-18 are dismissed. In the result the appeal of the appellant for AY 2011-12 is partly allowed."

7. Feeling dissatisfied from the order of the ld. CIT(A), the assessee has filed these appeals as per grounds mentioned hereinabove. The ld. AR of the assessee in support of the grounds so raised as also filed a detailed submissions which is reproduced hereinbelow:-

“Assessee was incorporated on 19th January, 2007 as a Joint Venture company (JV) with RSMM Limited (a government undertaking) and M/s Rajwest Power Limited (RWPL) (now known as JSW Energy {Barmer} Limited - JSWEBL) as shareholder to carry out lignite mining activities at Kapurdi and Jalipa Mines at district Barmer.

2. As per clause 3.1(vi), RSMML and RWPL jointly agreed to depute its employees required by JV Company for implementation of the mining project. The JV Company shall not recruit persons directly on its own. In terms of this agreement, RWPL provided management support and deputed its employees required by the assessee. Accordingly, Board of Directors of the assessee in its meeting held on 11th August, 2010 approved the reimbursement of expenditure incurred by RWPL on its behalf for mining related activities including personal expenses, office administration, travel and tours of its employees etc.

3. A TDS verification u/s 133A of the Act was conducted on the assessee on 27th December, 2016. In such verification, the AO TDS observed that assessee made payment of salary expenses and other expenses incurred by RWPL without deducting tax at source. Accordingly, it held the assessee to be in default u/s 201(1) of the Act but since RWPL has filed the return by considering the amount paid by assessee to it, no demand u/s 201(1) for AY 2013-14 to 2017-18 was raised but interest u/s 201(1A) was levied.

4. The Ld. CIT(A) deleted the demand raised u/s 201(1) for AY 2011-12 and 2012-13 but by not accepting the contention of the assessee that it only reimbursed the actual expenditure incurred by RWPL on which no tax is required to be deducted at source, upheld the levy of interest u/s 201(1A) by referring to clause 3.2(iv) of the JV agreement to held that this clause do not envisage that assessee will reimburse the expenses incurred by RWPL and no specific agreement between assessee and RWPL was brought on record to prove that the reimbursement is on cost to cost basis.

Submission:-

1. At the outset, it is submitted that both the lower authorities have not correctly appreciated the facts of the case. In fact, the JV agreement dated 27th December, 2006 between RSMM and RWPL only provided that both these two parties to the agreement would incorporate a JV company and such company would carry out the mining activity who/RWPL would bear all expenses incurred/to be incurred by RSMM. After incorporation of the assessee company on 19th January, 2007, when RWPL raised debit note on the assessee, the Board of Directors in its meeting dated 11th August, 2010 in para 3 of Item no. 15.9 approved to reimburse the actual expenditure incurred by RWPL with a further request to RWPL to continue to incur such expenditure in future which would be reimbursed by the assessee on a quarterly basis. Thus, the AO incorrectly observed that there is no such agreement for reimbursement between assessee and RWPL and the Ld. CIT(A) incorrectly relied upon clause 3.2(iv) of the JV agreement in holding that it is not a case of actual reimbursement of expenses.

2. It is a fact on record that RWPL raised quarterly debit note for actual reimbursement of salary of the employees deputed by it and also of various other expenditure incurred by it for and on behalf of the assessee. From the details placed at **PB 31-123** it can be noted that along with the debit note raised for reimbursement of salary, RWPL has further provided the name of the employee and the actual salary paid to these employees for which reimbursement is claimed. Further, from the details placed at **PB 124-157** it can be noted that along with the debit note raised for reimbursement of other expenses, RWPL has further provided the bills and vouchers of all these expenses for which reimbursement is claimed. This is further certified by Senior Manager (Head F&A) where it is certified that assessee has paid various amounts to RWPL towards salary and reimbursement of other expenses which has been netted off from the relevant expense head. Thus, the amount paid by the assessee is actual reimbursement of expenses without any element of income and therefore, section 194C or any other TDS provision is not attracted on the reimbursement of actual expenses. Further, RWPL has deducted tax at source on the salary paid to its employees deputed with the assessee and on other expenditure for which it sought

reimbursement by raising debit note for the actual expenditure incurred by it. Hence, on the same amount, liability of TDS cannot be again fastened on the assessee.

3. It has been held in various cases that TDS provisions are not attracted on actual reimbursement of expenditure. In support, reliance was placed on the following case laws:-

PCIT vs. Goldman Sachs (India) Pvt. Ltd. in Appeal No. 652 of 2017 dated 06.06.2019 (Bombay HC)

Para 4 of this decision reads as under:-

4. Learned counsel for the Revenue fairly brought to our notice that for earlier assessment years, this Court had by an order dated 26.02.2019, dismissed the Revenue's Income Tax Appeal No. 1742 of 2016 on the ground that the payment made for reimbursement of costs, deduction at source is not necessary. The Court observed as under:-

"3. The Tribunal, however, held that, the amount in question was by way of reimbursement of costs. The Tribunal held that Assessee had paid such sums towards administrative costs such as the employee cost, rent, finance and legal corporate recharge etc. The Tribunal noted that, GSIPL had provided services to the assessee by deploying its employees for such work and the cost was for reimbursement for such expenses besides other related expenditure. Revenue was unable to dislodge these findings of fact recorded by the Tribunal. That being the position, we must proceed on the basis that the payment in question was in the nature of reimbursement of costs. As held by the Supreme Court in the case of Director of Income Tax v/s. A. P Moller Maersk A. S. reported in 78 taxmann.com 287 and consistently followed by this Court in the number of decisions, liability to deduct tax at source in such a case, would not arise. No question of law arises."

CIT Vs. Kalyani Steels (2018) 163 DTR 513 (Kar.) (HC)

Para 13 to 16 of this decision reads as under-

13. It is trite that, if there is no income embedded in a payment, then TDS provisions would not apply as TDS is only an alternative method of collection of taxes. It is beneficial to refer to the judgment of this Court in the case of Hyderabad Industries Ltd. vs. ITO & Anr. (1991) 95 CTR (Kar) 164 (1991) 188 ITR 749 (Kar), wherein it is held that, "an amount which will not be included in the total income of a person cannot be considered as "income" for the purpose of deduction of tax at source at all. The purpose of deduction of tax at source is not to collect a sum which is not a tax levied under the Act, it is to facilitate the collection of tax lawfully leviable under the Act". In view of the factual finding of the appellate authorities that the payment made by KSL and ML to HSL for various expenses incurred would be a reimbursement and not a fee for technical services, s. 194J of the Act is not attracted.

14. The CBDT in the Circular No. 715, dr. 3rd Aug., 1995 [(1995) 127 CTR (St) 13] has clarified that the reimbursement cannot be deducted out of the bill amount for the purpose of TDS The AO's view is against the intent of the said circular.

15. This Court in Karnataka Power Transmission Corporation Ltd vs. Dy. CIT (2016) 288 CTR (Kar) 77 (2016) 139 DTR (Kar) 33 (2016) 383 ITR 59 (Kar) while considering the applicability of

s. 1944 of the Act has observed that, s. 1944 of the Act mandates the tax deductor to deduct income-tax on any income by way of interest other than income by way of interest on securities. The phrase 'any income' and 'income tax thereon' if read harmoniously, it would indicate that the interest which finally partakes the character of income, alone is liable for deduction of the income tax on that income by way of interest. If the said interest is not finally considered to be an income of the deductee, as per reversal entries of the provision, s. 194A(1) of the Act would not be made applicable. In other words, if no income is attributable to the payee, there is no liability to deduct tax at source in the hands of the tax deductor

16. Under the circumstances, the assessee falls outside the scope of s. 1943 re s. 200 of the Act during the relevant assessment years. Consequently, the provisions of ss. 201 and 201(1A) of the Act are not attracted. We do not find any material irregularity or infirmity in the orders passed by the appellate authorities. For the aforesaid reasons, we answer substantial questions of law against the Revenue and in favour of the assessee.

Zephyr Biomedicals Vs. JCIT (2820) 428 ITR 398 (Bom) (HC)

The held part of this decision reads as under-

What is important is that the income-tax is a tax payable in respect of "tal income" o the previous year of every person, Further, much income-tax shall have to be deducted source or paid in advance, where it is so deductible or payable under any of the provision of the IT Act From this, it follows that unless the paid amount has any element in it, there will arise no liability to pay any income-tax apun ach Further, in such a situation, there will also arise no liability of a source upon such amount (Para 14) deduction of t

There is no dispute or in any case, there is overwhelming material on record which establishes the following position: The C&F agents have raised two separate sets bille (4) first towards the services rendered by the C&F agents; and (6) second towards the reimbursement of freight charges paid to the carriers () These are not cases where any composite bills were raised by the C&F agents with indicating the service charge components and reimbursement components separately () There are ample evidences in the form of ledger entries, bills, payment vouchers etc, placed on record to establish that separate sets of bills were invariably made towards the service charge components and reimbursement components by the assesseees to the C&F agent (iv) The have invariably deducted tax at source when it comes to payment towards the first set of bills ie, towards the services rendered by the C&F agents without any dem (x) Even in cases where composite bills were issued or where there was any ambiguity about payment towards reimbursement components, the assesseees have deducted tax at source: (vi) It is only in cases where separate bills were raised by the C&F agents reimbursement and the freight charges, backed by proper evidence that the assesseees have not deducted any tax at source before making payments towards such reimbursement. Thus, the assesseees only contend that in clear cases where separate hills have been raised by the C&F agents towards the reimbursement of freight charges, they are not liable to deduct tas at source upon payment towards such reimbursement components, since, such payment has no income element embedded in it. The assesseees contention deserves to be upheld in the facts and circumstances of the present case Director of IT

(International Tatution) vs Krupp Udhe GmbH (2010) 38 DTR (B) 251 (2013) 354 ITR 173 (Bom) followed Transmission Corporation of AP. Lad &Ors. 13. CIT (1999) 155 CTR (SC) 489: (1999) 239 ITR 587 (SC) relied on (Paras 17 & 18)

The assessee's contention that there was no liability to deduct tax at source upon payments made towards reimbursement of amounts to the C&F agents will have to be accepted. The Tribunal, in its impugned order indeed appears to have misread the bills issued by JA Freighters and proceeded to incorrectly state "34 Freighters" as "camers" and not as the C&F agents. These very bills as well as other material record very clearly establishes that JA Freighters were indeed the C&F agents and a "A" which was the carrier in these cases. The reasoning of the Tribunal is therefore vitiated by this apparent error. (Paras 22 & 23)

Answers to question Nos. 7 and 30 if Circular No. 715, d. 8th Aug. 1995 do not seem to clearly suggest that even in cases where separate bills are raised towards reimburse components, the payments against such separate bills carry liability of TDS. In any case it is well-settled that the CBDT Circular has to be read and construed in consonance with the provisions of the IT Act. If there is any ambiguity, such ambiguity has to be resolved by accepting the position consistent with the provisions of the IT Act. If there is conflict, then, it is obvious that the provisions of the IT Act will have to prevail. Principal CIT vs. Consumer Marketing (India) (P) Ltd. (2015) 64 taxmann.com 16 (Guf) and CIT vs. Kalyani Steel Ltd (2018) 163 DTR (Kar) 513 (2019) 308 CTR (Kar) 400 concurred with. (Para 26).

In view of above, interest levied u/s 201(1A) be directed to be deleted.”

8. Per contra, the ld. DR relied upon the orders of the lower authorities and supported the order of the Hon'ble Calcutta High court in case of Surendra Commercial & Exim (P.) Ltd. vs. ITO (2022) 141 taxmann.com 23.

9. We have heard the rival contentions and perused material available on record. We observed that the only issue before us is that whether on reimbursement of expenditure whether TDS is to be deducted under the

provisions of Chapter XVII-B of the Income Tax Act, 1961. We note that the ld. AO observed that the assessee made payment of salary expenses and other expenses incurred by RWPL without deducting tax at source and held that the assessee is in default u/s 201(1) of the Act and erred in compliance of provisions of the Act. We are of the view that the ld. CIT(A) as well ld. AO erred on facts and in law in not accepting the contention of the assessee that no TDS is required to be deducted by the assessee on pure reimbursement of expenses incurred by RWPL and thereby confirming the levy of tax and interest u/s 201(1A) of the Act for all years i.e. for A.Ys. 2011-12 to 2017-18. Taking into facts and circumstances of the case and the submissions made before us the issue is only that whether the TDS is to be deducted on pure reimbursement of expenditure incurred. Perusing the record placed before us and the entire order of the ld. CIT(A) wherein findings are recorded that there is no material placed on record. But we observed that during the hearing from the record that the ld. CIT(A) has wrongly held that no material is placed. But before us the ld. AR for the assessee has produced all the evidences in paper book at page no. 1 to 157 which has also been produced before the ld. CIT(A) also, We note and after perusing all the records, regarding the issue of salary and other expenses, we see from paper books at page 112 to 123 the persons who

were deployed with company, where the exact salary was reimbursed and we see debit note by the RPWL company to the Barmer Lignite Mining Company Limited and debit note persons wise details has also been given by the assessee. Thus, it is evident that the assessee has raised debit note on which there is no profit element and therefore the AO cannot fastened the liabilities of TDS as there is clear absence of profit component and it is actual reimbursement and from the records available, the Id. AR of the assessee has produced all documents where it is evidences it is an actual reimbursement and where individual is shown in paper book at page 150 proves that there is no profit component. The decision relied upon the Id. Ld. DR wherein the absence of material it was held that the assessee has not proved that the same is of pure reimbursement in nature. In support, reliance was placed on the following decisions in case of CIT vs. Kalyani Steels (supra) and Zephyr Biomedicals vs. JCIT (supra) wherein the Board Circular has been taken into consideration, we come to the conclusion that reimbursement of expenses were earlier incurred by a person on behalf of another or covered as such where there is no element of profit in such reimbursement and when that reimbursement has sufficient supporting documents that no TDS is required to be deducted by the assessee on

reimbursement of actual expenses incurred by the RWPL and we set aside the order passed by the Id. CIT(A). Hence, the appeal is being allowed.

10. The Bench feels that the fact in the case M/s Barmer Lignite Mining Company Ltd. in ITA No. 153 to 158/JPR/2023 is exactly the similar to the fact ITA No. 159/JPR/2023 and therefore, it is not imperative to repeat the fact in ITA No. 153 to 158/JPR/2023. The decision taken by us in ITA No. 159/JPR/2023 shall apply mutatis mutandis to ITA No. 153 to 158/JPR/2023.

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

Order pronounced in the open court on 28/06/2023.

Sd/-

(राठोडकमलेशजयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28/06/2023

*Santosh

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- M/s Barmer Lignite Mining Company Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT/DCIT(TDS), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्डफाईल / Guard File (ITA No. 153 to 159/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar