

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

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष**

Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.299/Ran/2017  
Assessment year: 2009-10

ACIT,Central-1, Dhanbad.....Appellant

vs.

M/s Bharat Coking Coal Ltd.....Respondent  
Koyla Bhawan, Koyla Nagara,  
Dhanbad—826005  
[PAN: AAACB7934M]

I.T.A No.123/Ran/2018  
Assessment year: 2009-10

M/s Bharat Coking Coal Ltd..... Respondent  
Koyla Bhawan, Koyla Nagara,  
Dhanbad—826005  
[PAN: AAACB7934M]

vs.

ACIT,Central-1, Dhanbad..... Appellant

C.O No.08/Ran/2018  
(In ITA No.299/Ran/2017)  
Assessment year: 2009-10

M/s Bharat Coking Coal Ltd..... ...Cross-Objector  
Koyla Bhawan, Koyla Nagara,  
Dhanbad—826005  
[PAN: AAACB7934M]

vs.

ACIT,Central-1, Dhanbad..... Appellant

**Appearances by:**

Shri Rinku Singh, CIT- DR., appeared on behalf of the appellant.

Shri M. K. Choudhary with Devesh Poddar, Adv appeared on behalf of the Respondent.

Date of concluding the hearing : May 23, 2023

Date of pronouncing the order : July 07, 2023

**आदेश / ORDER**

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

With this common order, we will dispose of revenue's appeal ITA No.299/Ran/2017 and corresponding cross-objections by the assessee bearing C.O No.08/Ran/2018 and assessee's appeal ITA No.123/Ran/2018 preferred against the order dated 20.09.2017 of the Commissioner of Income Tax (Appeals), Dhanbad (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') for assessment year 2009-10. First we take revenue's appeal ITA No.299/Ran/2017.

2. ITA No.299/Ran/2017 – The sole issue raised by the revenue in this appeal is relating to the set off unabsorbed depreciation of the previous year against the income of the assessee.

3. At the outset, both the ld. representatives of the parties have submitted that the issue is squarely covered in favour of the assessee and against the revenue by the decision of the Coordinate bench of the Tribunal in the own case of the assessee for assessment year 2008-09 vide order dated 31.03.2023 passed in ITA No.298/Ran/2017 and Ors. The relevant part of the order of the Tribunal, for the sake of ready reference, is reproduced as under:

*“4. The ld. AO further disallowed the brought forward unabsorbed depreciation loss of Rs. 944,77,29,240/- for the AYs 1996-97, 1997-98 & 1999-2000 by recalculating the brought forward unabsorbed depreciation / loss of the preceding years at Rs. 942,13,59,936/- (AY 2000-01 to AY 2005-06) instead of Rs. 1886,90,89,176/- (AY 1996-97 to 2005-06) and restricting the same for preceding 8 years only by relying on the amendment made in this regard by Finance (No. 2), Bill 1996.*

5. Aggrieved by the above order passed by the ld. AO, assessee preferred an appeal before the ld. CIT(A) where the appeal of the assessee was partly allowed.

6. Dissatisfied with the above order assessee as well as revenue both have filed their appeal before the Tribunal raising various grounds of appeal.

7. Now for the sake of convenience, we first take up the appeal of ITA No. 298/Ran/2017 filed by the revenue. At the time of hearing before this Tribunal, ld. DR submitted that unabsorbed depreciation is allowed to be carried forward for a period of 8 years as per 1996 amendment regarding the provisions of section 32(2) of the Act. Therefore, the ld. CIT(A), Dhanbad erred in allowing the prior period depreciation to the assessee and order passed by the ld. AO needed to be restored. On the other hand, ld. AR submitted that unabsorbed depreciation could be allowed to the assessee to be carried forward and set off even after 8 years without any limit in accordance with section 32(2) as amended by Finance Act, 2001. The ld. AR in order to support his arguments relied on the decision of the Gujarat High Court in the case of General Motors India Pvt. Ltd. vs DCIT (Guj) (2013) 354 ITR 244 (Guj) wherein, the Hon'ble Gujarat High Court has held that unabsorbed depreciation from AY 1997-98 up to 2001-02 got carried forward to AY 2002-03 and became part of it came to be governed by the provisions of section 32(2) as amended by the Finance Act, 2001 and were available for carry forward and set off against income of subsequent years without any limit. The relevant observations of the Hon'ble Court was as under:

“We are of the considered opinion that any unabsorbed depreciation available to an assessee on 1<sup>st</sup> day of April 2002 (A.Y. 2002-03) will be dealt with in accordance with the provisions of section 32(2) as amended by Finance Act, 2001. And once the Circular No. 1004 of 2001 clarified that the restriction of 8 years for carry forward and set off of unabsorbed depreciation had been dispensed with, the unabsorbed depreciation from A.Y. 1997-98 upto the A.Y. 2001-02 got carried forward to the assessment year 2002-03 and became part thereof, it came to be governed by the provisions of section 32(2) as amended by Finance Act, 2001 and were available for carry forward and set off against the profits and gains of subsequent years without any limit whatsoever.”

8. In the light of the judicial precedents on the issue especially that of the Hon'ble Gujarat High court in the case of General Motors India Pvt. Ltd. (supra), we find that the issue is covered in favour of the assessee,

*therefore, the ground taken by the revenue is rejected and the order passed by the ld. CIT(A) in respect of instant issue is sustained.*

4. Following the above decision of the Tribunal in the own case of the assessee, this issue is accordingly decided in favour of the assessee and against the revenue. The appeal of the revenue is therefore, hereby, dismissed.

5. C.O No.08/Ran/2018 – The assessee vide its corresponding cross-objection has just supported the order of the CIT(A). There is no grievance raised in the cross-objection and the same is accordingly dismissed.

6. ITA No.123/Ran/2018 – The assessee in its appeal has, inter alia, raised the issue of validity of reopening of assessment u/s 147 of the Act and consequential additions made by the Assessing Officer and confirmed by the CIT(A) relating to contractual expenses of Rs.23,22,00,000/-, provision for contractual expenses of Rs.29,00,00,000/- and addition of Rs.70,25,00,000/- on account of disallowance of interest for non-deduction of TDS u/s 40(a)(ia) of the Act etc.

7. At the outset, the ld. DR has invited our attention to the impugned order of the CIT(A) to submit that the assessee during the appellate proceeding before the CIT(A) had withdrawn all grounds relating to other additions including the legal ground relating to the validity of the reopening of the assessment except the ground relating to unabsorbed depreciation and carry forward of losses.

8. It has been categorically mentioned by the CIT(A) that the assessee vide letter dated 19.06.2017 had modified the grounds of appeal and raised only one ground relating to the brought forward business loss and

brought forward depreciation. Thereafter, the assessee vide another letter dated 19.06.2017 had written to the CIT(A) that it wanted to contest only two grounds relating to carry forward and set off of unabsorbed depreciation and brought forwarded business loss and that the assessee withdrew the ground relating to the disallowance of Rs.70,25,00,000/- u/s 40(a)(ia) of the Act. In view of this, the assessee is estopped from his own act and conduct from raising other grounds before this Tribunal having withdrawn such grounds before the CIT(A). The assessee at this stage cannot be allowed to re-agitate the issue having already withdrawn before the CIT(A) for the sake of finality of the litigation also.

9. In view of the above, the appeal of the assessee is dismissed being not maintainable as the issues raised already having attained finality.

10. In the result, all the captioned appeals are hereby dismissed.

***Kolkata, the 7<sup>th</sup> July, 2023.***

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]

लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य /Judicial Member

Dated: 07.07.2023.

RS

*Copy of the order forwarded to:*

1. ACIT, Central-1, Dhanbad
2. M/s Bharat Coking Coal Ltd
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

*I.T.A No.299/Ran/2017, I.T.A No.123/Ran/2018 & C.O No.08/Ran/2018  
M/s Bharat Coking Coal Ltd  
Assessment year: 2009-10*

//True copy//

By order

Assistant Registrar, Kolkata Benches