आयकर अपीलीय अधिकरण
रांची पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
RANCHI BENCH AT KOLKATA

[वर्चुअल कोर्ट]
[Virtual Court]

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before

SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER

I.T.A. Nos.: 303 & 304/RAN/2017
Assessment Years: 2013-14 & 2014-15

ACIT, Circle-1(1), Dhanbad.......................................Appellant

Vs.

M/s. Bharat Coking Coal Limited...........................Respondent
[PAN: AAACB 7934 M]

C.O. Nos.: 12 & 13/RAN/2018
Assessment Years: 2013-14 & 2014-15

M/s. Bharat Coking Coal Limited..............................Appellant
[PAN: AAACB 7934 M]

Vs.

ACIT, Circle-1(1), Dhanbad....................................Respondent

Appearances by:

Sh. Pranob Kumar Koley, Sr. D/R, appeared on behalf of the Revenue.
Sh. M.K. Choudhary, Adv., appeared on behalf of the Assessee.

Date of concluding the hearing : July 7th, 2023
Date of pronouncing the order : August 18th, 2023

ORDER

Per Rajesh Kumar, Accountant Member:

Both these appeals preferred by the Revenue and the cross objections filed by the assessee are directed against separate orders of Learned Commissioner of Income Tax (Appeals), Dhanbad [in short ld. 'CIT(A)'] even dated 20.09.2017 for the Assessment Years (in short 'AY') 2013-14 & 2014-15. First, we shall take up I.T.A. No. 303/RAN/2017.

I.T.A. No. 303/RAN/2017

2. Revenue's first ground of appeal is against the order of Ld. CIT(A) deleting the addition made by The Assessing Officer (in short ld. 'AO') on account of purchase of timber as capital expenditure by treating the same as revenue in nature.

3. Brief facts of the case as culled out from the records are that Ld. AO, during the course of assessment proceedings observed that the assessee has charged to the profit and loss account the purchase of timber to the tune of Rs. 10,10,70,000/- as revenue expenditure. The assessee is a Government concern and is engaged in the business of coal mining. Ld. AO called upon the assessee to justify the claim of the said expenditure which was replied by the assessee vide written submission dated 10.12.2016 submitting that in coal mining, timbers in the form of props and clogging are being used in underground mines as support material against roof to prevent collapse of roof strata with the objective to ensure safety of persons deployed in the mines and, therefore,

submitted that these expenses are in the nature of revenue as the said timber has hardly any life and is written off in the year of purchase. The assessee submitted that the said expenses on purchase of timbers has been allowed consistently as revenue expenditure by the Revenue in the preceding 10 years right from 1998-99 to 2007-08. Similarly, the said expenditure was also allowed in the subsequent year up to AY 2012-13. However, the contention of the assessee did not satisfy Ld. AO and he added the same by treating as capital expenditure in the order framed u/s 143(3) of the Act dated 18.03.2016.

4. Ld. CIT(A) allowed the claim of the assessee by observing as under:

> *"[5.3] I have considered the submissions of the appellant and have perused the assessment order. As regards whether the expenses were of revenue or capital nature, the main argument of the Ld.AO is that the props (timber) being of sal wood was of enduring nature and the same the timber structure in form of props and arches was an integral part of the advancing mine tunnels. It was part of the newly constructed tunnels. It was not the case that the timber was used as running material or spares. The expenditure on this account at a place was incurred once for all and was of enduring nature. The argument of the Ld. AO has to be seen in the light of the nature of such expenses specific to the operations carried by the appellant.*
>
> *[5.3.1] Before the discussion on this aspect is made it would be relevant to keep in mind the judgement of the apex court in the case of Alembic Chemicals Works Co Ltd v CIT [1989] 177 ITR 377 (SC). On the issue of the criteria to be used for treating an expense as revenue or capital the apex court held that "There is also no single definite criterion which by itself is determinative whether a particular outlay is capital or revenue. The 'once for all' payment test is also inconclusive. What is relevant is the purpose of the outlay and its intended object and effect, considered in a common-sense way having regard to the business realities. In a' given case, the test of 'enduring*

benefit' might break down. In CIT v. Associated Cement Co. Ltd. JT 282 (2) 287 this Court said:

".........As observed by the Supreme Court in the decision in Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1 (SC) that there may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, nonetheless, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principles laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test………………." (p. 290)

[5.3.2]The Supreme Court, in the case, Bombay Steam Navigation Company v. Commissioner of Income-tax [1965] 56 ITR 52 (SC), has laid down the test for determining the question whether a particular expenditure had been incurred for the purpose of the business and, therefore, a revenue expenditure in the following words:

" Whether a particular expenditure is revenue expenditure incurred for the purpose of business must be determined on a consideration of all the facts and circumstances, and by the application of principles of commercial trading. The question must be viewed in the larger context of business necessity or expediency. If the outgoing or expenditure is so related to the carrying on or conduct of the business, that it may be regarded as an integral part of the profit-earning process and not for acquisition of an asset or a right of a permanent character, the possession of which is a condition of the carrying on of the business, the expenditure may be regarded as revenue expenditure."

[5.3.3]Now coming to the facts of the case, it would be relevant to understand the nature of operations of the appellant. The timber was used in the underground mines as props and as pathways for the workers. The conditions inside the mine is definitely not the same as outside. Things may rot or get worn out because of the kind of usage and the environmental conditions onside the mines. The fact that the appellant had purchased timber every year shows that the requirement of timber was of recurring nature.

[5.3.4] Similar issue had come up for consideration before the Hon'ble Patna High Court in the case of CIT v Kirkend Coal Company [1966] 60 ITR 537 (Pat) . Facts as resting in that case was that the assessee,

Messrs. Kirkend Coal Company, was a firm carrying on coal mining business. During the accounting year ending with December 31 ,1956 they spent a sum of Rs. 21,911 in stowing operations. It was common ground that the stowing in respect of which the aforesaid amount was spent was not undertaken as was generally done in connection with depillaring operations: it was rather undertaken in the process of extraction of coal as a business necessity or expediency. Indeed the department of mines required the stowing of certain galleries near the pitmouth to be done before permission for Working the colliery during the accounting year could be given, and, accordingly, the assessee expended the aforesaid amount on stowing for being able to work the colliery. In these circumstances, the assessee claimed that the aforesaid expenditure having been incurred for the purpose of its business was revenue expenditure and fell within section 10(2)(xv) of the Income-tax Act, 1922. The Income-tax Officer as well as the Appellate Assistant Commissioner on appeal by the assessee having held that the expenditure in question was in the nature of capital expenditure and was thus not a deductible allowance

[5.3.5] On appreciation of the facts of the case the Hon'ble HC held that "On the facts of this case, it is apparent that the stowing in question in respect of which the expenditure was incurred was undertaken as an operational measure making the extraction of coal during the year in question feasible, and, therefore, the expenditure was, in fact, an integral part of the profit-earning process of the assessee. According to the Appellate Tribunal, the expenditure was "necessary for the purpose of extraction of coal". There is nothing on the record to suggest that the expenditure was incurred "with a view to bringing into existence any asset or an advantage for the enduring benefit" of the assessee's trade or business, and, on that ground alone, it must follow that the dictum of Lord Cave as pointed out above has no application to the instant case."

[5.3.6] The Hon'ble SC in the case of CIT v Kirkend Coal Company [1970] 77 ITR 530 (SC) confirmed the order of the Hon'ble Patna High Court.

[5.3.7]The Ld. AO has relied on the judgement in the case of Karuna Mica (1987) 167 ITR 292 (Patna). However, the ratio of the case is not applicable in the facts of the present case. Hon'ble High Court had held that the aim and object of the expenditure would determine the character of the expenditure. In that case the expenditure was held

as having enduring character when there was a new construction, whereas in the case of the appellant, it is apparent that there was no new construction. As such this decision is not applicable in facts.

[5.3.8] Based on the above discussions it is held that use of timber props which the appellant purchases every year to replace the worn out pieces were used in the process of extraction of coal and unless it is carried out, extraction of coal was not possible. The fact that the same were recurring in nature was demonstrated by the purchases made every year which were used in the same mines. The expenses are held to be revenue in nature and hence allowable. Since the ground of appeal is allowed on first principles the alternate ground regarding higher depreciation is not considered. Ground of appeal is allowed."

5. After hearing rival contentions and perusing the material on record, we observe that the issue is repetitive in nature and the assessee has been claiming the expenditure right from AY 1998-99 till AY 2012-13 which have been allowed by the Revenue. We note that ld. CIT(A) has appreciated all these facts and after discussing various decisions in the operative part as reproduced above has come to the conclusion by referring to the decision of Hon'ble Patna High Court in the case of *CIT Vs. Kirkend Coal Company* reported in *[1966] 60 ITR 537 (PAT.)* which was upheld by the Hon'ble Supreme Court in the case of *CIT Vs. Kirkend Coal Co.* reported in *[1970] 77 ITR 530 (SC)*. Ld. CIT(A) has also distinguished the facts of the decision relied upon by Ld. AO in the case of *CIT Vs. Karuna Mica* reported in *[1987] 167 ITR 292 (Patna)* and, thus, allowed the appeal. Considering the nature of activities carried out by the assessee and also the decisions of the Hon'ble Apex Court in the case of *Kirkend Coal Company (supra)*, we are inclined to uphold that Ld. CIT(A) by dismissing ground no. 1.

6. The issue raised in ground no. 2 is against the order of Ld. CIT(A) deleting the disallowance made by Ld. AO u/s 14A of the Act read with Rule 8D(2)(ii) of the Income Tax Rules, 1962.

7. Brief facts are that the assessee has received interest and dividend income from Govt. Securities of Rs. 4,41,67,000/- and claimed the same as exempt u/s 10(34) of the Act. Ld. AO on perusal of the profit and loss accounts and books of accounts came to the conclusion that provisions of Section 14A of the Act r.w. Rule 8D of the Rules were applicable on the assessee and after giving a show cause computed the disallowance at Rs. 27,19,753/- comprising of Rs. 9,11,753/- under Rule 8D(2)(ii) and Rs. 17,32,000/- under Rule 8D(2)(iii) of the Rules. Ld.

8. CIT(A) in the appellate proceedings recorded the finding that assessee's own interest free funds were sufficient to cover investment made in the securities. Ld. CIT(A) noted that the equity fund of the assessee was Rs. 4,657 Cr whereas average investments were only Rs. 34.64 Cr and, therefore, presumption has to be drawn that sufficient fund was available with the assessee and thus, no disallowance is called for under Rule 8D(2) of the Rules. Ld. CIT(A) relied on various decisions to reach the said conclusion namely, in the cases of *CIT Vs. HDFC Bank Ltd.* reported in *[2014] 366 ITR 505 (Bombay)*, *CIT Vs. Hero Cycles Ltd.* reported in *[2010] 323 ITR 518 (Punjab & Haryana)*, *CIT Vs. Walfort Share & Stock Brokers (P.) Ltd.* reported in *[2010] 326 ITR 1 (SC)* and *CIT Vs. Reliance Utilities & Power Ltd.* reported in *[2009] 313 ITR 340 (Bombay)*. Considering these facts and the ratio laid down

in the various decisions, we are inclined to uphold the order of Ld. CIT(A) wherein it has held that no disallowance is required under rule 8D(2)(ii) by dismissing the ground no. 2 raised by the Revenue.

9. In the result, the appeal filed by the Revenue is dismissed.

C.O. No. 12/RAN/2018.

10. In ground no. 1, raised in the cross objection by the assessee is in support of the order of Ld. CIT(A). Since, we have decided the issue against the Revenue in the Revenue appeal, therefore, cross objection raised by the assessee becomes infructuous and is dismissed as infructuous.

11. The issue raised in ground no. 2 is against the deletion of disallowance made u/s 14A of the Act by Ld. AO which has been decided in favour of the assessee by dismissing the appeal of the Revenue. Accordingly, this cross objection also becomes infructuous and, hence, dismissed.

12. The issue raised in ground no. 3 is not pressed and accordingly dismissed as not pressed.

I.T.A. No. 304/RAN/2017 and C.O. No. 13/RAN/2018.

13. The issues raised in I.T.A. No. 304/RAN/2017 and C.O. No. 13/RAN/2018 are identical in nature similar to that of I.T.A. No. 303/RAN/2017 and C.O. No. 12/RAN/2018. Therefore, our decision in I.T.A. No. 303/RAN/2017 and C.O. No. 12/RAN/2018 shall, *mutatis mutandis,* apply to I.T.A. No. 304/RAN/2017 and

C.O. No. 13/RAN/2018. Accordingly, both the appeal of the Revenue and cross objection of the assessee are dismissed.

14. In the result, the appeals filed by the Revenue in I.T.A. Nos. 303 & 304/RAN/2017 are dismissed and the cross objections filed by the assessee in C.O. Nos. 12 & 13/RAN/2018 are also dismissed.

Kolkata, the 18th August, 2023

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

Dated: 18.08.2023

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***ACIT, Circle-1(1), Dhanbad.***
2. ***M/s. Bharat Coking Coal Limited, Koyla Bhawan, Koyla Nagara, Dhanbad.***
3. CIT(A), Dhanbad.
4. CIT-
5. CIT(DR), Ranchi Bench, Ranchi.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata