

**IN THE INCOME TAX APPELLATE TRIBUNAL “DB” BENCH: RANCHI**  
**VIRTUAL HEARING AT KOLKATA**  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 11/RAN/2018**  
**Assessment Year : 2013-14**

M/s Jamshedpur Utilities & Services Co. Ltd., (JUSCO)  (PAN: AABCJ 3604 P)	Vs.	DCIT, Circle-2, JSR
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

**I.T.A. No. 355/RAN/2017**  
**Assessment Year : 2014-15**

M/s Jamshedpur Utilities & Services Co. Ltd., (JUSCO)  (PAN: AABCJ 3604 P)	Vs.	ACIT, Circle-2, JSR
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

**I.T.A. Nos. 8 & 9/RAN/2018**  
**Assessment Year : 2013-14 & 2014-15**

ACIT, Circle-2(1), Jamshedpur	Vs.	M/s Jamshedpur Utilities & Services Co. Ltd., (JUSCO)  (PAN: AABCJ 3604 P)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	18.08.2023
Date of Pronouncement /	31.08.2023

आदेश उद्घोषणा की तिथि	
For the Appellant / निर्धारिती की ओर से	Shri Ketan Ved, A.R
For the Respondent / राजस्व की ओर से	Shri Rinku Singh, CITDR

**ORDER/ आदेश**

**Per Rajesh Kumar, AM:**

These cross appeals by the assessee and by the revenue are directed against the separate orders of the Ld. Commissioner of Income Tax, (Appeal)-Jamshedpur [hereinafter referred to as ' Ld.CIT(A)'] dated 10.10.2017 for the assessment year 2013-14 & 2014-15.

2. First of all, we shall adjudicate assessee's appeal in ITA No. 11/Ran/2018 for AY 2013-14 and revenue's cross appeal in ITA NO. 8/Ran/2018 for AY 2013-14.

3. The issue raised in ground no. 1 is general in nature and does not require any specific adjudication.

4. The issue raised in ground no. 2 by the assessee is against the order of Ld. CIT(A) restoring the issue of disallowance of deduction u/s 80IA of the Act of Rs. 3,07,91,119/- to the file of Ld. DCIT for allowance after verification in spite of the fact that all the relevant materials were available before the Ld. CIT(A).

4. Facts in brief are that the assessee filed return of income electronically on 29.11.2013 declaring total loss of Rs. 12,42,55,704/-. The assessee did not claim deduction u/s 80IA of the Act. However the AO erroneously noted from the ITR filed by the assessee that the assessee has claimed a deduction of Rs. 3,07,91,119/- u/s 80IA of the Act in column D in respect of profits of an undertaking referred to in Section 80IA(4)(iii) of the Act. The AO noted that Form no. 10CCB is mandatory along with return or during the assessment proceedings but the assessee company has not

submitted the Form no. 10CCB. Accordingly the counsel of the assessee was asked to explain the justification of claim. The AO noted that the assessee used to purchase power from Tata Power Ltd. and DVC and thus derived income from sale of power only. Thus it is neither engaged in generation nor distribution of power. The AO finally held that the assessee did not qualify for deduction u/s 80IA of the Act as its business was sale of power and made an addition of Rs. 3,07,91,119/- in the assessment framed u/s 143(3) of the Act dated 22.03.2016.

5. In the appellate proceedings the Ld. CIT(A), after taking into account the submission and contention of the assessee, remanded and restored the issue to the file of the AO by directing that in case the assessee has suffered loss during the year and has not claimed deduction u/s 80IA of the Act then the same may be deleted after necessary verification.

6. After hearing the rival contentions and perusing the material on record, we find that during the year the assessee has suffered loss and has not claimed any deduction u/s 80IA of the Act. The Ld. CIT(A), after observing that the AO has wrongly made the addition by mis-appreciating the facts on record, has restored the issue to the file of the AO and AO has deleted the addition of Rs. 3,07,91,119/- accordingly after doing necessary verification. We note that the revenue has also raised this issue in its appeal in ITA No. 8/Ran/2018 by way of ground no. 1 that the Ld. CIT(A) has no power to set aside the issue to the AO. Since this was a factual mistake on the part of the AO which has been corrected, accordingly ground no. 2 raised by the assessee and ground no. 1 raised by the revenue become infructuous and are dismissed.

7. Issue raised in ground no. 3 in the assessee's appeal is against the confirmation of disallowance to the tune of Rs. 23,83,417/- by the Ld. CIT(A) against the disallowance made by the AO on account of staff welfare expenses to the tune of Rs. 1,28,23,243/-.

8. Facts in brief are that the AO observed from the profit and loss account that the assessee has debited a sum of Rs. 2,30,69,181/- under the head staff expenses and accordingly the assessee was called upon to furnish the details of these expenses which were duly filed before the AO. The AO on the basis of said reply/details observed that the expenses debited were comprising canteen subsidy, medical bills, refreshment etc. The AO extracted the details of medical expenses to the tune of Rs. 1,02,45,938/- from page 6 to 12 in the assessment order and then came to the conclusion that only Rs. 1,02,45,938/- is allowable expenditure and remaining expenses assessee incurred on account of tea refreshment, lunch, dinner etc. during the office hours and even beyond the office hours were disallowed thereby making an addition of Rs. 1,28,23,243/- to the income of the assessee.

9. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal by deleting the addition of Rs. 1,04,39,826/- whereas a sum of Rs. 23,83,417/- was sustained by observing and holding as under:

*“6. Ground no. 4 relates to disallowance of Rs. 1,28,23,243/- under head staff welfare expenses.*

*6.1. During the course of appellate proceedings, the appellant contention is reproduced as under:*

*The Learned Assessing Officer has disallowed & added Rs. 1,28,23,243/- under the head staff welfare expenses out of Rs. 2,30,69,181/- ignoring the fact that this expense are incurred wholly & exclusively for the purpose of business. The assessee would like to submit that beside medical expenses, the assessee had incurred various other expenses for the smooth functioning and furtherance of the business of the assessee. The assessee company had incurred the following expenses as under:*

Particulars	Amount
5141001 WELFARE EXPENSES	2,39,765
5141002 SPORTS ACTIVITY	94,256
5141003 PICNIC GRANT	41,500
5141004 HOLIDAY PLAN	14,99,327
5141006 CANTEEN SUBSIDY	34,74,463
5141007 SUGGESTION BOX AWARD	31,500
5141009 SETTling EXPENSES	8,85,000
5141010 AWARDS RELATED TO INDUSTRIAL RELATIONS	62,232
5141011 LONG SERVICE AWARDS TO EMPLOYEES	1,74,500
5141013 UNIFORM TO STAFF	2,41,927
5141016 OUTSIDE MEDICAL TREATMENT EXPENSES	47,97,474
5141018 MEDICAL TREATMENT EXPENSES	80,56,863
5142001 EXP ON LUNCHESES & DINNER - OUTSIDE OFFICE	14,72,619
5142002 ENTERTAINMENT CHARGES	2,74,525
5149043 TRAINING OF STAFF	8,12,432
5149057 EXP ON LUNCHESES & DINNER-OFFICE PREMISES	9,10,798
	<b>230,69,181</b>

*During the assessment proceedings, the AO had sought the details of staff welfare expenses (annexure 4) upon which the assessee had submitted the relevant documents. The Id. AO is of the opinion that expenses that have been laid down in the terms and conditions of employment are only allowable and the remaining is not allowable.*

*Your attention is brought to the Assessment order in which the AO has given reference of terms & conditions for consideration of allowing expenses includes Medical Care, Holiday Plan and Settling Allowance whereas the allow-ability has only being given for medical expenses to the tune of Rs. 1,02,45,938/-. The Id. AO did not consider the allowability of other expenditure inspite of the fact that each and every item is fully vouched and verified. Further, the appellant company pleads that the expenses have been incurred wholly and exclusively incurred for the purposes of the business of the appellant company. The ledger copies of the above expenses have been attached for your ready reference.*

*The assessee has also relied on following decisions for the proposition that in applying the test of commercial expediency, for determining whether expenditure was wholly and exclusively laid out for the assessee business, reasonableness of the expenditure has to be justified from the point of businessman.*

*The jurisdictional High court in the case of Jamshedpur Motors Accessories Stores vs CIT, 95 (ITR 664 Patna) held that "It should be taken as well-settled now that, when a claim is preferred by an employer under the provisions of the Income Tax Act, 1961, the reasonableness or otherwise of the payment to an employee is to be judged, not with reference to any subjective standards of the assessing authority, but with reference to commercial expediency."*

*In the absence of any specific unverifiable item of expenditure, the disallowance of Rs. 1,28,23,243/- is highly unjustified, most arbitrary and liable to be deleted in to-to.*

*6.2. I have gone through the order of the learned AO as well as the written submission made by the appellant. The AO has considered the only expenses related to medical expenses and ignore all other expenses claimed by the assessee as mentioned herein supra in assessee's submission. I found that the expenses allowable to the extent it relates to business. I do not*

*find any reason for expenses claimed at Rs. 14,72,619/- on expenses on lunches, dinner outside office and Rs. 9,10,798/- as expenses on lunches, dinner in office premises particularly when the assessee has separately debited picnic grant and canteen subsidy . Therefore the expenses to the extent of Rs. 14,72,619/- + Rs. 9,10,798/- = Rs. 23,83,417/- is to be disallowed. The assessee will get a relief of Rs. 1,28,23,243/- - Rs. 23,83,417/- is to be disallowed. The assessee will get a relief of Rs. 1,28,23,243 - Rs. 23,83,417/- = Rs. 1,04,39,826/-."*

10. After hearing rival contentions and perusing the material on record, we observe that the expenses were incurred by the assessee in respect of medical expenses on the staff welfare, expenses on lunch and dinner outside office and also expenses on and lunch dinner in the office premises. The assessee has separately debited picnic grant and canteen subsidy. The AO disallowed the expenses in respect of lunch, dinner in the office premises and outside office. We note that the total expenses were in the nature of staff welfare expenses, sports activity, picnic grant, canteen subsidy settling expenses and all are related to medical treatment of the staff, expenses on lunch, dinner in the office premises and outside office premises. The Ld. CIT(A) has given the complete details at page 15 of these expenses. According to Ld. CIT(A), expenses incurred in respect of lunch and dinners in the office premises and outside are not allowable when separate picnic grant and canteen subsidy were debited. Consequently the expenses on lunch and dinner outside office hours of Rs. 14,72,619/- and Rs. 9,10,798/- on lunch and dinner in the office premises were disallowed and remaining expenses were allowed as being the incurred for the pupose of business of the assessee. The assessee has challenged the sustaining of disallowance of expenses to the tune of Rs. 23,83,417/- whereas the revenue has challenged the above deletion on this expenditure of Rs. 1,04,39,826/-. We note that the assessee has huge turnover of Rs. 506.19 crores against which the expenses charged under the head staff welfare were Rs. 2,30,69,180/-. Considering the nature of expenses on lunch and dinner outside office premises and in the office premises which were disallowed by the Ld. CIT(A) is not sustainable as in case of big corporate these expenses are very common and incidental as the assessee has to serve food in office to the staff in the conferences as well as outside office meetings. The Id. CIT(A) has just confirmed the addition to the tune of Rs. 23,83,417/- citing the same for lunch and

dinners and therefore the same can not be sustained. Accordingly we modify the order of Ld. CIT(A) and direct the AO to delete the expenses of Rs. 23,83,417/-. Accordingly ground no. 3 raised by the assessee is allowed. The revenue has also raised by way of ground no. 2 against the part deletion of expenses to the tune of Rs. 1,04,39,826/-. Considering the nature of these expenses we are of the considered view that the deletion of Rs. 1,04,39,826/- was rightly done by the ld CIT(A). Accordingly the ground no. 2 raised by the revenue is being dismissed.

11. Now we shall take in assessee's appeal in ITA No. 355/Ran/2017 for AY 2014-15. Issue raised in ground no. 1 is general in nature and does not require any specific adjudication.

12. Issue raised in ground no. 2 is in respect of part confirmation of disallowance by Ld. CIT(A) of Rs. 31,75,469/- as made by the AO on account of staff welfare expenses. Issue is squarely covered by our decision on ground no. 3 in assessee's appeal in ITA No. 11/Ran/2018 for AY 2013-14 wherein we have deleted the addition as partly sustained by the Ld. CIT(A). Accordingly our decision in ground no. 3 in ITA NO. 11/Ran/2018 would, mutatis mutandis, apply to this ground as well. Consequently ground no. 2 is allowed.

13. Issue raised in ground no. 3 is against the order of Ld. CIT(A) not granting TDS credit of Rs. 1,65,36,789/- .

14. Facts in brief are that the assessee was not allowed credit of TDS of Rs. 1,65,36,789/- and the Ld. CIT(A) restored the issue to the file of AO to verify and allow the credit of the assessee by following the circular of CBDT in this regard. Since the issue has been restored to the file of AO, we direct the AO to look into the matter and decide the issue accordingly. The appeal of the assessee is partly allowed for statistical purposes.

15. Now revenue's appeal in ITA No. 9/Ran/2018 for AY 2014-15.

At the outset, the Ld. Counsel for the assessee submitted that the CBDT has issued a Circular No. 17/2019 dated 08.08.2019, whereby the monetary limits for filing of appeal by the Department before Income Tax Appellate Tribunal and High Courts and SLP before Supreme Court have been increased as a measure for reducing Litigation. The revised monetary limits laid down in para-2 of this Circular are as follows:

1. Before Appellate Tribunal	Rs. 50,00,000/-
2. Before High Court	Rs.1,00,00,000/-
3. Before Supreme Court	Rs. 2,00,00,000/-

16. In the present case, the tax effect by the revenue is less than Rs.50,00,000/-. We note that this appeal had been filed by the revenue on 5.1.2018 and since the tax effect is within the monetary limit for filing appeals before Tribunal, in view of the Circular of CBDT (supra) at the first place, Revenue should not have preferred this appeal. In view of the above, we hold that the appeal filed by the Department, against the impugned order of the Ld. CIT(A), is contrary to the policy decision of the Department and as such the appeal filed by the Department is dismissed *in limine*.

17. As a matter of caution, we observe that if the Revenue finds at a later point of time that the tax effect in the appeal is more than Rs.50 lakhs or despite low tax effect, the appeal of the revenue is maintainable, the revenue is at liberty to move this Tribunal for recalling of this order.

18. In the result, the appeal of the assessee are partly allowed and the appeal of the revenue is dismissed.

Order is pronounced in the open court on 31<sup>st</sup> August, 2023

Sd/-

(Sonjoy Sarma /संजय शर्मा)  
 Judicial Member /न्यायिक सदस्य

Sd/-

(Rajesh Kumar / राजेश कुमार)  
 Accountant Member / लेखा सदस्य

Dated: 31<sup>st</sup> August, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Jamshedpur Utilities and Services Company Ltd. Town Office Building, Boulevard Road, Northern Town, Jamshedpur-831001
2. Respondent – DCIT, Circle-2, Jamshedpur  
ACIT, Circle-2, Jamshedpur  
ACIT, Circle- 2(1), Jamshedpur
3. Ld. CIT(A)-Jamshedpur
4. PCIT- , Ranchi
5. DR, Ranchi Bench, Ranchi

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata