# आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR**

श्री रविश सूद, न्यायिक सदस्य **एवं** श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

**आयकर अपील सं./**ITA No.201/BIL/2012 (AY : 2009-2010)

**आयकर अपील सं./**ITA No.401/BIL/2014 (AY : 2010-2011)

**आयकर अपील सं./**ITA No.162/BIL/2017 (AY : 2010-2011)

**आयकर अपील सं./**ITA No.115/BIL/2015 (AY : 2011-2012)

**आयकर अपील सं./**ITA No.102/BIL/2017 (AY : 2012-2013)

**आयकर अपील सं./**ITA No.103/BIL/2017 (AY : 2013-2014)

**आयकर अपील सं./**ITA No.204/RPR/2017 (AY : 2014-2015)

**आयकर अपील सं./**ITA No.169/RPR/2018 (AY : 2015-2016)

**आयकर अपील सं./**ITA No.33/RPR/2019 (AY : 2016-2017)

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| South Eastern Coal Fields Ltd.,<br>Seepat Road,<br>Bilaspur | | Vs | JCIT, Range-1, Bilaspur |
| PAN No. :**AADCS 2066 E** | | | |
| (**अपीलार्थी /Appellant**) | | .. | (**प्रत्यर्थी / Respondent**) |

AND

**आयकर अपील सं./**ITA No.204/BIL/2012 (AY : 2009-2010)

**आयकर अपील सं./**ITA No.382/BIL/2014 (AY : 2010-2011)

**आयकर अपील सं./**ITA No.103/BIL/2015 (AY : 2011-2012)

**आयकर अपील सं./**ITA No.98/BIL/2017 (AY : 2012-2013)

**आयकर अपील सं./**ITA No.99/BIL/2017 (AY : 2013-2014)

**आयकर अपील सं./**ITA No.188/RPR/2017 (AY : 2014-2015)

**आयकर अपील सं./**ITA No.171/RPR/2018 (AY : 2015-2016)

**आयकर अपील सं./**ITA No.54/RPR/2019 (AY : 2016-2017)

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| DCIT, Circle-1(1), Bilaspur | Vs | South Eastern Coal Fields Ltd.,<br>Seepat Road,<br>Bilaspur |
| | | PAN No. :**AADCS 2066 E** |
| (**अपीलार्थी /Appellant**) | .. | (**प्रत्यर्थी / Respondent**) |

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| **निर्धारिती की ओर से** /Assessee by | : | Shri Ajit Korde, Advocate,<br>Shri Ankur Goel & Shri Ankit Agrawal, CAs |
| **राजस्व की ओर से** /Revenue by | : | Shri Debashish Lahiri, CIT-DR |
| सुनवाई की तारीख **/ Date of Hearing** | : | 26/09/2023 |
| घोषणा की तारीख**/Date of Pronouncement** | : | 30/10/2023 |

## आदेश / O R D E R

***Per Arun Khodpia, AM*** :

These are the cross appeals filed by the assessee and revenue against the separate orders passed by the CIT(A), Bilaspur, for the assessment years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017, respectively.

**ITA No.201/BIL/2012 (Assessee's Appeal for A.Y.2009-2010)**

2. In this appeal, the assessee has raised the following grounds :-

*1(a) That on the facts and circumstances of the case, the learned CIT (Appeals) erred in upholding the action of the Assessing Officer in not allowing an amount of Rs.6193.10 lacs representing expenses incurred on rehabilitation of people/villagers & payments to State Government for obtaining use of land for mining purpose for a limited period.*

*1(b) That on the facts and circumstances of the case, the learned CIT(Appeals) erred in not appreciating that expenditure represents payments made to State Government for obtaining use of land for mining purpose for a limited period is an allowable revenue expenditure.*

*1(c) That no the facts and circumstances of the case, the learned CIT (Appeals) erred in not appreciating that expense incurred on rehabilitation of people/villagers is revenue in nature hence allowable.*

*1(d) Without prejudice to above grounds no.1(a) to 1(c), the learned CIT(Appeals) should have directed the Assessing Officer to allow income tax depreciation on such expenditure.*

*2. That on the facts and circumstances of the case, the learned CIT(Appeals) erred in confirming disallowance of Rs.1.21 lacs on account of guest house expenses.*

*3(a) That on the facts and circumstances of the case, the learned CIT(Appeals) erred in confirming 50% of the expenditure disallowed by the Assessing Officer amounting to Rs.477.31 lacs incurred on assets not belonging to the company.*

*3(b) That on the facts and circumstances of the case, the action of the learned CIT(Appeals) in confirming 50% of the disallowance has no basis whatsoever and the same has been made on an ad-hoc basis.*

*4(a) That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming disallowance upto*

*25% of the expenditure amounting to Rs.7208.66 lacs incurred on coal transportation paid by the company to the ex-service men transport companies.*

*4(b) That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in not appreciating that the said expenditure has been incurred wholly and exclusively for the purpose of business of the appellant.*

*4(c) That on the facts and circumstances of the case, the action of the learned CIT(Appeals) in confirming disallowance upto 25% of the expenditure has no basis whatsoever and the same has been made on an ad-hoc basis.*

*5(a) That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming the disallowance made by the Assessing Officer on account provision for leave encashment amounting to Rs.11,385.80 lacs by invoking the provision of section 43B(f) of the Act.*

*5(b) Without prejudice to the above ground no.5(a) above, the AO be directed to disallow unpaid leave encashment only such portion of unpaid leave encashment which was not paid before the due date.*

*5(c) Without prejudice to the above ground nos. 5(a) & 5(b) above, the AO be directed to allow the unpaid leave encashment in the year(s) in which such sums were actually paid by the appellant.*

*6. That the appellant craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or at the hearing of this appeal.*

3. Though the assessee has raised as many as six grounds, however, as per the chart filed by the assessee, the following grounds are emerged as argued by the ld. AR :-

*i) Disallowance of Land Compensation & Rehabilitation Expenses*
*ii) Disallowance of Guest House Expenses;*
*iii) Disallowance of expenditure on assets not belonging to company (roads etc.)*
*iv) Disallowance of coal transportation expense paid to ESM companies; and*
*v) Provision for leave encashment.*

4. The assessee has also taken the additional ground filed on 29.04.2019 as ground No.1E, which reads as under :-

**1(E) Disallowance of Amortization of land rehabilitation**.

> "1E. Without prejudice to our contention that the deduction is a revenue expenditure allowable dully in AY 2009-10, in view of the decision of the Hon'ble ITAT, Cuttack in East India Minerals Limited Vs. JCIT (ITA No.224/CTK/2012), the assesse company should be permitted to claim the said expenditure over the limited period of the lease of land for mining,"

5.1 Brief facts of the case are that the assessee is a Public Sector Undertaking, a domestic company, in which the public are substantially interested. It is wholly owned subsidiary of Coal India Ltd. The assessee company is engaged in the activities relating to the development of mines and extraction of coal from various mines under its control and sale of coal. The assessee had filed its original return of income electronically for the year A.Y.2009-2010 on 25.09.2009 declaring a total income of Rs.17,45,54,12,238/- and income u/s.115JB at Rs.18,09,19,45,593/-. Later on, the assessee also filed copy of Tax Audit Report dated 13.09.2009 in Form No.3CA and 3CD. The case of the assessee was selected for scrutiny through CASS and returned income was assessed by the AO at Rs.26,36,85.49 lakhs by making various additions/disallowances aggregating to Rs.8,91,31.37 lakhs.

5.2 Aggrieved by the assessment order, the assessee preferred appeal before the CIT(A) and the CIT(A) partly allowed the appeal of the assessee.

5.3 Now, the assessee is in further appeal before the Tribunal with the following grounds.

5.4 First, we shall decide the additional ground being 1(E) raised by the assessee regarding Disallowance of Amortization of land rehabilitation.

5.5 With regard to this ground, ld. AR referred to the decision dated 10.05.2019 of the coordinate bench of the Tribunal in assessee's own case for the assessment year 1997-1998 passed in ITA No.141/Nag/2001, wherein the Tribunal following the decision of the ITAT Cuttack Bench in the case of East India Minerals Limited, in ITA No.224/CTK/2012, has remitted the issue to the file of AO. Further the coordinate bench of the Tribunal in assessee's own case for A.Y.1998-1999 in ITA No.187/JAB/2008, order dated 06.11.2019, has also followed the decision of the Cuttack Bench in the case of East India Minerals Limited (supra) and held in paras 27, 28 & 29 as under :-

> *27. The assessee has also filed an additional ground as ground No.1E which is as follows:*
>
> > *"1E.Without prejudice to our contention that the deduction is a revenue expenditure allowable fully in AY.2004-05, in view of the decision of Hon'ble ITAT Cuttack in East India Minerals Limited Vs. JCIT (ITA No.224/CTK/2012, the assessee company should be permitted to claim the said expenditure over the limited period of the lease of land for mining."*
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> *28. With regard to this additional ground No.1E, the Ld. AR of the assessee has placed reliance on the decision of the Co-ordinate Bench of the Tribunal Cuttack in the case of East India Minerals Limited Vs. JCIT (ITA No.224/CTK/2012) wherein the Cuttack Bench of the Tribunal has held as under:*

> *"7. We have heard the rival contentions of the parties and perused the material available on record. Considering the facts and circumstances of the case, we uphold the contention of the learned Counsel for the assessee for the simple reason that the denial of claim of depreciation has been made on misinterpretation of law and the applicability thereof. Explanation to Section 32(1)(ii) leans in favour of the assessee to the extent that it is the actual action of put to use which entitles the assessee to claim depreciation. A straight line method of claiming the writing off of lease hold rights for the period of lease cannot be denied to the assessee for the simple reason it being intangible asset has been written off which pertains to land being a intangible asset. It is nobody's case that the land either belonged to the lessee or to the Government. This simply indicates that a depletion of the land against the payment of premium it was leased has to be claimed after capitalization thereof by the assessee which is for the purpose of its main business. All expenses are incurred for the purpose of business and are incidental to the holding of rights were claimed u/s.32(1)(ii) being the license to carry out the mining therefore could not be denied insofar as the Government and the lessee are in control of the asset. The definition of depreciation therefore has been misconstrued for the purpose of allowing deduction by the Assessing Officer and the learned CIT(A) in holding a view on the promulgation of Section 32(1)(ii) with effect from the year 1998-99 which has been further amended w.e.f. Assessment Year 2003-04. In this view of the mater, we are inclined to hold that the assessee is entitled to depreciation as charged to the P & L account in accordance with its business exigencies. We direct accordingly."*
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> *29. We have perused the case records and given considerable thought to the submissions made by the Ld. AR of the assessee regarding ground No. 1E and we have also observed and considered the findings of the Co- ordinate Bench, Cuttack. In the interest of justice, this ground is remitted back to the file of Assessing Officer and Assessing Officer is directed to adjudicate this issue after taking into consideration the view and directions as given by the Co-ordinate Cuttack Bench of the Tribunal and as per law after providing reasonable opportunity of hearing to the assessee.*
>
> *Hence, additional ground No.1E raised in appeal by the assessee is allowed for statistical purposes.*

5.6 Respectfully following the above observations of the coordinate bench of the Tribunal, we find it appropriate to remit this covered issue to the file of AO to adjudicate the same after taking into consideration the

view and directions given by the ITAT Cuttack Bench in the case of East India Minerals Limited (supra) duly followed by coordinate bench of the Tribunal in assessee's own case in ITA No.141/Nag/2001 dated 10.05.2019 and ITA No.187/JAB/2008, order dated 06.11.2019, after providing reasonable opportunity of hearing to the assessee. Thus, **the additional ground raised by the assessee is partly allowed for statistical purposes**.

5.7 Before concluding, it would be pertinent to mention that, when the parties to the present appeal were enquired about the status of departmental appeals filed before the Hon'ble Jurisdictional High court of Chhattisgarh against the orders of coordinate bench of ITAT, Raipur in assessee's own case, which were relied upon by the assessee, in response Ld AR on behalf of the assessee as well as Ld CITDR on behalf of the revenue has submitted their respective status reports on 07.08.2023, showing status of departmental appeals filed before the Hon'ble Jurisdictional High court. On perusal of the reports furnished, it was revealed that the issue raised by the assessee in the additional ground number '**1E**' qua "***Amortization of Land compensation and rehabilitation expenses",*** as referred herein above, which was allowed to the assessee for statistical purposes, have been admitted vide Appeal No. TAXC/10/2020 by Hon'ble High court against the order Tribunal in ITA 141/NAG/2001 and is pending for adjudication. Under such circumstances, *de hors* any specific direction of the Hon'ble High court

*qua* the issue in hand, following the principle of consistency, the observation of the Tribunal in assessee's own case hold good and, thus, needs to be followed. Once the issue will be decided by Hon'ble High court, the same will be binding to be adhered to.

5.8 Our aforesaid view is duly fortified by the order of Co-ordinate Bench of ITAT, Delhi, "D" Bench, in the case of Concentrix CVG Customer Management Group Inc. Vs, DCIT ( International Taxation), IT Appeal Nos. 1086 and 1281 (Delhi) of 2022 dated 06.03.2023 reported in [2023) 151 taxmann.com 412 (Delhi-Trib.) wherein it is observed that the assessee may be agitating the same issue before Ld. High Court however, as of today the relevant observations and findings of the Tribunal in assessee's own case for aforesaid AY need to be followed on principle of consistency. Accordingly, these grounds are decided against the assessee.

5.9 Similar issue was also dealt with by Special Bench of ITAT, Mumbai, "I" Bench in the case of DCIT Vs. Summit Securities Ltd., ITA No.4977/Mum/2009 dated 10.08.2011 reported in (2011) 12 taxmann.com 372 (Mum.) (SB) wherein it is observed as under:

> 3. In the case of PNB Finance Ltd. Vs. CIT [(2008) 307 ITR 75 (SC)], Punjab National Bank Limited vested in Punjab National Bank on nationalization in 1969. On that account it received compensation of `10.20 crore during the previous year relevant to the assessment year 1970-71. The assessee claimed capital loss. The Assessing Officer held that since the assessee had submitted its own computation of the fair market value of the undertaking as on 01.01.1954, the only

> question which was required to be considered was the correctness of the figure of capital loss submitted by the assessee. The AAC held that it was not feasible to allocate the full value of consideration received amounting to `10.20 crore between various assets of the undertaking and consequently it was not possible to determine the cost of acquisition and cost of improvement under the provisions of section 48 of the Income-tax Act, 1961. In this view of the matter it was laid down that the provisions of section 45 would not be attracted. When the matter finally reached the Hon'ble Supreme court, it came to be held that no capital gains could be charged to tax u/s 45 as the compensation received by the assessee on nationalization of its banking undertaking which included intangible assets tenancy rights etc. was not allocable item-wise. In para no.5 of this judgment, the Hon'ble Supreme Court noted that by an amendment to section 50B inserted by the Finance Act, 1999 with effect from 1st April, 2000, the cost of acquisition is now notionally fixed in case of `slump sale' and the assessee is required to draw up his balance sheet as on the date of transfer for its undertaking and net worth of that date is now required to be taken into account. It has been observed by Their Lordships that "it is only after 1st April, 2000 that computation machinery came to be inserted in s. 48 which deals with mode of computation."

**Ground No.1 : *Disallowance of Land Compensation & Rehabilitation Expenses***

5.10 At the outset, on perusal of the chart provided by the assessee, it is found that with regard to this issue, the ld. AR of the assessee has made a reference to the decision of the coordinate bench of the Tribunal in assessee's own case for A.Y.1997-1998 in ITA No.141/NAG/2001, order dated 10.05.2019 and for A.Y.1998-1999 in ITA No.187/JAB/2008, order dated 06.11.2019. Ld. CIT-DR also submitted that in both the decisions of the coordinate bench of the Tribunal, the issue has been held against the assessee. Therefore, ld. CIT-DR submitted that following the consistency, this issue also be decided in favour of the revenue.

5.11 We have considered the rival submission and perused the relevant documents on record. On perusal of the order of the coordinate bench of the Tribunal in assessee's own case for A.Y.1997-1998 in ITA No.141/NAG/2001, order dated 10.05.2019, in para 11, the Tribunal has dismissed this issue after observing as under :-

> *"11. We have perused the case records and heard the rival contentions and given considerable thought to the judicial pronouncements placed before us on record. That while perusing the order of the Ld. CIT(Appeals) we find that he has stated therein that his issue was already decided against the assessee for assessment year 1989-90 and 1996-97. That all the cases laws relied on by the assessee are substantially distinguishable on facts and therefore, is of no help to the assessee. The principle imbibed in the ratio laid down by the Hon'ble Supreme Court in the case of Arvind Mills Ltd. Vs. CIT (1992) 197 ITR 422 wherein it has been held that capital expenditure would not become revenue expenditure simply by reasons of the fact that it was incurred in connection with business activities which ultimately resulted in efficiently carrying on the day to day business. Enduring nature does not necessarily mean that the benefit is derived for a very long period of time. Even if an asset has a life of five years, the expenditure incurred for acquiring the same, is a capital expenditure, even though the asset has to be replaced after five years and in that case, the period of five years is long enough to qualify as one bringing the asset of enduring benefit and in that case, it has to be treated as a capital expenditure and not as a revenue expenditure.*
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> *Further, we observe in assessee's own case in ITA No.18-22/Nag/2001 dated 28.02.2001 wherein this issue was discussed by Co-ordinate Bench of Tribunal and observed as follows:*
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> > *"11.7. Before us, the learned counsel for the assessee has relied on the decision of Honble Supreme Court in the case of R.J. Trivedi (supra) wherein the expenditure was incurred by the assessee on fault-stone cutting operation in order to remove the obstruction in the course of mining operation and considering that it was not possible for the assessee to carry on the mining operation without removing the said obstruction, the Honble Apex Court found the said expenditure incurred by the assessee was to facilitate mining activities and, therefore, treated the same as revenue in nature. In the present, case there was no such obstruction in carrying on the mining operation of the assessee and the expenditure was incurred by the assessee to relocate and rehabilitate the villages in order to acquire a right to possession in the leasehold land to facilitate the enjoyment of surface rights in respect of the leasehold land. We are, therefore, of*

*the opinion that the present case is distinguishable on facts from the case of R.J. Trivedi (supra) and, therefore the said decision cannot help the assessees case. Reliance was also placed by the learned counsel for the assessee on the decision of Honble Supreme Court in the case of Gotan Lime Syndicate v. CIT (supra) wherein the payment of royalty was made by the assessee in relation to the raw material, i.e., limestone to be obtained from mines taken on lease and the same was not referable to the acquisition of the mining lease. Considering these facts, the Honble Apex Court found the said expenditure incurred in relation to the raw material, which was going to be excavated or extracted by the assessee, and accordingly treated the same as revenue expenditure. The facts in the present case, however, are different inasmuch as the impugned expenditure has been incurred by the assessee-company to acquire the surface rights as well as the right to possession in respect of the leasehold land for enduring benefits and the same being not in the revenue field, the decision in the case of Gotan Lime Syndicate has no application to the facts of the present case. As regards the reliance placed by the learned counsel for the assessee on the decision of Honble Supreme Court in the case of Madras Auto Service (P) Ltd. (supra), it is observed that the assessee in that case had made substantial savings in monthly rent for the entire lease period by spending the amount on construction of a new building on the land taken on long lease and as the said expenditure resulted in a saving of rent which was a revenue expenditure, the Honble Apex Court allowed the said expenditure as revenue expenditure. Similarly, in the case of CIT v. Associated Cement Companies Ltd.(1988) 172 ITR 257 (SC), the assessee by bearing the cost of laying pipelines as per the agreement entered into with the government/municipality, was not needed to pay municipal taxes for 15 years and considering that the assessee in the absence of the said arrangement would have to pay the taxes every year to the debit of revenue account, the said expenditure was allowed as revenue expenditure by the Honble Supreme Court. In the present case as already observed, the expenditure was incurred by the assessee for acquiring any enduring benefits in the capital field and therefore the same is distinguishable from the case of Madras Auto Service (P) Ltd. as well as that of Associated Cement Companies Ltd. Further in the case of Empire Jute Co. Ltd. v. CIT (supra) the Honble Supreme Court observed that if the advantage merely consists of facilitating the assessees trading operation or enabling the management and conduct of the assessees business more efficiently or more profitably while leaving fixed capital untouched, the expenditure would be of revenue nature even though the advantage may endure for a indefinite future. In the present case, the assessee has acquired an interest in the immovable property in the form of surface rights and right to possession in respect of leasehold land and the same being not merely to facilitate the assessees business operation but being in the nature of acquisition of substantive right in the immovable property for enduring advantage, the ratio laid down by the Honble Apex Court in the case of Empire Jute Co. Ltd. cannot be said to have any application in the assessees case. Similarly, the case of Plantation Corporation of Kerala v. Commr.Agrl. IT (supra) is also distinguishable on the similar line.*

*11.8. The learned counsel for the assessee has also contended before us that the assessee-company did not acquire any right or interest in respect of relocated villages which were built up and handed over to the villagers and ultimately became the property of the said villagers. In this regard, we may observe that the said expenditure on rehabilitation and relocation of the villages was incurred by the assessee-company to acquire the right to possession in the leasehold land in respect of surface rights obtained by it and the very purpose of incurring the said expenditure was to acquire such rights in the said immovable property. This being so, it cannot be said that the said expenditure did not result in the acquisition of enduring benefits in the capital asset, the rights or interest in the relocated villages notwithstanding.*

*11.9. In the case of Assam Bengal Cement Co. Ltd. v. CIT (supra) relied upon by the revenue, the Honble Apex Court observed that the aim and object of the expenditure would determine the character of expenditure whether it is a capital or revenue and the source or the manner of payment would then be of no consequence. In the present case, the expenditure was incurred by the assessee-company with aim and object to acquire the surface rights as well as the right to possession in respect of the leasehold land for a long period and, therefore, the nature of such expenditure was certainly of capital nature. The revenue has also relied on the decision of Honble Mysore High Court in the case of N. Peer Sahib v. CIT (supra) in respect of which the learned counsel for the assessee has contended that the lease amounts having been paid to the surface owners by the assessee therein for extracting iron coal at the beginning of the mining operation, it was considered as capital in nature whereas in the present case the assessee has made the relevant payments during the currency of the lease period. After carefully perusing the said decision of Honble Mysore High Court, it however, appears that the payment made to the Pattedars who were occupying rights over the land which had been acquired by the assessee from the government was found to be of the same character as the payments to the government for acquiring the mining lease and keeping in view this character of the payment, the Honble Mysore High Court held the same to be a capital expenditure. In the case of Chloride India Ltd. v. CIT (supra) relied upon by the revenue, the assessee had paid the money for buying out tile tenancy right and, therefore, it was held by the Honble Calcutta High Court that the amount so paid for acquiring the possession which was a benefit of enduring nature, is a capital expenditure. In the present case also, the assessee has acquired the right to possession from the villagers/occupants in respect of the leasehold land by rehabilitating and relocating the said villagers and, therefore, the decision in the case of Chloride India Ltd. v. CIT (supra) is clearly applicable to the facts of the present case. Similarly the case of CIT v. Lucky Bharat Garage (supra) relied upon by the revenue also renders support to the revenues case that the said expenditure was capital in nature. Heavy reliance has been placed by the revenue to support its stand on the decision of Honble Supreme Court in the case of R.B. Seth Moolchand Suganchand v. CIT (supra) wherein the Honble Supreme Court held that the amount spent for obtaining a right of an enduring character which in the case of mining leases is to acquire rights over a land for winning the mineral is of a*

> *capital nature. Before us the learned counsel for the assessee has contended that the said decision in the case of R.B. Seth Moolchand Suganchand (supra) has been distinguished by the Honble Apex Court in its subsequent decision in the case of Bikaner Gypsums Ltd. v. CIT (supra). A perusal of the subsequent judgment of the Honble Apex Court, however, reveals that the facts involved in the case of R.B. Seth Moolchand Suganchand (supra) were found to be totally different from the facts involved in the case of Bikaner Gypsums Ltd. inasmuch as in the latter case the expenditure was incurred by the assessee for the removal of a restriction which was obstructing his business operation of mining within a particular area. We have already observed that the existence of village was not obstructing the mining operations of the assessee-company and the expenditure in question was incurred to acquire the right to possession in respect of the leasehold land to facilitate the enjoyment of surface rights. Moreover, as the said acquisition resulted into accrual of enduring benefits to the assessee-company for the balance period of lease, the same has to be treated as capital expenditure, as held by the Honble Supreme Court in the case of Assam Bengal Cement Co. Ltd. v. CIT (supra). As such, considering all the facts of the case and legal position enumerating from the judicial pronouncements discussed hereinabove, we are of the considered opinion that the impugned expenditure incurred by the assessee for acquiring surface rights as well as the right to possession in respect of leasehold land for enduring period was a capital expenditure and the learned Commissioner (Appeals) was fully justified in upholding the action of the assessing officer in treating the same as capital expenditure and thereby disallowing the deduction claimed by the assessee in respect of the same.*

*Therefore, even in assessee's own case, the Co-ordinate Bench of the Tribunal, Nagpur has decided this issue in favour of the Revenue. Further, before us no material has been placed by the assessee to demonstrate that the aforesaid ITAT order in assessee's own case has been set aside/stayed/overruled by the Higher Judicial Forum. That therefore, the said decision of the Co-ordinate Bench ruling in favour of the Revenue still holds good as in law and facts.*

*On enquiry from the Bench, the Ld. AR of the assessee submitted that they have not filed any appeal before the Hon'ble High Court against the order of the Co-ordinate Bench of the Tribunal, Nagpur in assessee's own case that in fact concludes that order of the Co-ordinate Bench of the Tribunal has attained finality. The decision, therefore, which has been given in favour of the Revenue on the issue of rehabilitation expenses as on date still holds good.*

*Respectfully, following the decision of the Co-ordinate Bench and taking guidance from the Hon'ble Apex Court, we do not find any infirmity with the findings of the Ld. CIT(Appeals) which is thereby upheld. Hence, ground No.3 is decided in favour of the Revenue and against the assessee. Thus, ground No.3 raised in appeal by the assessee is dismissed."*

5.12 Further the coordinate bench of the Tribunal in assessee's own case for A.Y.1998-1999 in ITA No.187/JAB/2008, order dated 06.11.2019, wherein the Tribunal has decided the issue in favour of the revenue following its earlier order passed in assessee's own case for A.Y.1997-1998 in ITA No.141/NAG/2001, order dated 10.05.2019 after observing in para 24. Respectfully following the above observations of the coordinate bench of the Tribunal, we have no reasons to deviate in absence of any further contrary information or decision on the issue but to uphold the findings recorded by the ld. CIT(A) in this regard. Accordingly, we dismiss the Ground No.1 of the assessee.

**Ground No.2 : Disallowance of Guest House Expenses**

5.13 The AO during the course of hearing found that though the assessee has filed the details or expenditure station wise in respect of guest houses for Rs.94.71 lakhs but he could not produce the register/records of occupants. It was also noted that the assessee could not establish with the evidence that its guest houses are being wholly and exclusively used as transit camp for the officers/employees of the assessee company during their tours as claimed in the written submissions. Accordingly, the AO restricted the claim of the assessee company to 50% of the total expenditure. In appeal, the CIT(A) further reduced and restricted the addition made by the AO to Rs.1.21 lakhs on

account of failure to establish the expenditure fully to the extent claimed in the profit and loss account.

5.14 At the outset, ld. CIT-DR submitted that the coordinate bench of the Tribunal in assessee's own case for A.Y.2008-2009 in ITA No.05/BLPR/2012 vide order dated 06.11.2019 has already decided this issue in favour of the revenue after observing in paras No.38, 39, 40 & 41 as under :-

> *38. The issue raised in ground No.4 is against disallowance of Rs.2.10 lakhs on account of guest house expenses.*
>
> *39. The brief facts on the issue are the assessee company has claimed a sum of Rs.90.78 lakhs as Guest House expenses. The Assessing Officer observed that the assessee company has neither filed the details of expenditure station wise in respect of guest houses nor has produced registers / records for occupants. The Assessing Officer held that in the absence of any concrete evidences to the effect that the guest houses were used wholly and exclusively for business purposes, the claim could not be allowed in full and restricted disallowance to 50% and accordingly added Rs.45.39 lakhs to the total income of the assessee company.*
>
> *40. The Ld. CIT(A) restricted the addition to Rs.2.10 lakhs by observing as under:-*
>
> > *"On careful consideration of the submissions made by the learned AR and perusal of material available on record, I find that this issue has been discussed at length in appellate order passed in this case in Appeal No.107/CIT(A)/BSP/03-04 dated 28.02.2007 for Asstt. Yr. 2002-03. The reasons given in the above order has been applied for subsequent years till the Asstt. Yr. 2007-08. Relying on the above order of my predecessors, I find the appellant's claim in this regard as allowable. However, as noticed by the AO, the appellant company could file details of station wise expenditure on guest houses to the extent of Rs.88.68 Lacs. Accordingly, the addition is restricted to Rs.2.10 Lacs for Appellant Company's failure to establish the expenditure fully to the extent claimed in the P & L A/c."*

> *41. We have perused the case records and heard the rival contentions. We have also given considerable thought to the findings of the Ld. CIT(A). We find that the order of the Ld. CIT(A) is fair and reasonable in restricting the addition to the extent of Rs.2.10 Lacs as the assessee company has failed to file the requisite details regarding their claim to that extent. Hence, we uphold the findings of the Ld.CIT(A) and the same does not require any interference. Thus, ground No.4 raised in appeal by the assessee is dismissed.*

5.15 Respectfully following the above observations of the coordinate bench of the Tribunal, we do not see any reason to interfere with the findings recorded by the ld. CIT(A). Thus, this ground raised by the assessee is dismissed.

**Ground No. 3: Disallowance of repair and maintenance expenditure on assets not belonging to company (roads etc.)**

5.16 Ld. AR before us submitted that the assessee incurred an aggregate sum of Rs.954.62 lakhs on assets not belonging to the assessee. The operational area of the assessee stretches across vast landscapes, roads, tunnels, culverts, lights etc. belonging to the State Government pass through such area which are extensively used by the assessee for the purpose of its business. As the roads, etc. are vital to the operations of the assessee, the said roads etc. are maintained by the assessee depending upon requirement. The benefit of such maintenance ensures to the business of the assessee inasmuch that it results in faster and smooth movement which is essential considering the vast area over which the operations of the assessee are carried out. Such expenses are dully accounted for and approved by the CAG. In this regard, ld. AR referred to the earlier decision of the coordinate bench of the Tribunal in

assessee's own case for in ITA No.141/NAG/2001 & Ors (supra) dated 10.05.2019, wherein the Tribunal in ITA No.124/JAB/2007 has deliberated this issue and decided by following the decision of the ITAT Kolkata Bench of the Tribunal in the case of Integrated Coal Mining Ltd. ITA No.788/Kol/2010 for A.Y.2003-2004, has allowed this issue in favour of the assessee after observing as under :-

> *"96. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to disallowance of business expenditure being repair and maintenance of assets not belonging to the assessee. It is an undisputed fact the assessee has incurred the expenses on the assets which does not belong to the assessee. However, it is assessee's contention that by incurring the expenses on such assets, assessee is also benefited and such expenses helps in the business of the assessee. The aforesaid contentions of the assessee has not been controverted by Revenue by placing any materials on record. We further find that the Kolkata Bench of Tribunal in the case of Deputy Commissioner of Income Tax Vs. Integrated Coal Mining Ltd. (supra) after relying on the decision of Hon'ble Apex Court in the case of L.H. Sugar Factory & Oil Mills (P.) Ltd. (supra) and on similar issue has decided the issue in favour of assessee by observing as under :*
>
> > *"10. We have heard rival contentions and gone through facts and circumstances of the case. We find that the genuineness of expenditure is not doubted by the revenue. Only dispute is that the link road constructed by the assessee belongs to Zilla Parishad and for their use. According to the revenue, it is a coincidence that the assessee will use this road for transportation as any other road belonging to the government. We find that assessee had, no doubt, incurred expenditure on up-gradation/construction of link road by making contribution to Burdwan Zilla Parishad from Barabani Railway station to mines of the assessee at Sarashatali, West Bengal. Whether this is a business expenditure or not? We find that this issue has been answered by Hon'ble Apex Court in the case of L. H. Sugar Factory & Oils Mills (P) Ltd. Vs. CIT (1980) 125 ITR 293 (SC), wherein the Apex Court at pages 297 and 299 has held as under:*
> >
> > > *"The amount of Rs. 50,000 was contributed by the assessee under the Sugarcane Development Scheme towards meeting the cost of construction of roads in the area around the factory. Now, there can be no doubt that the construction of roads in the area around*

> *the factory was considerably advantageous to the business of the assessee, because it facilitated the running of its motor vehicles for transportation of sugarcane so necessary for its manufacturing activity. It is not as if the amount of Rs. 50,000 was contributed by the assessee generally for the purpose of construction of roads in the State of Uttar Pradesh, but it was for the construction of roads in the area around the factory that the contribution was made and it cannot be disputed that if the roads are constructed around the factory area, they would facilitate the transport of sugarcane to the factory and the flow of manufactured sugar out of the factory. The construction of the roads was, therefore, clearly and indubitably connected with the business activity of the assessee and it is difficult to resist the conclusion that the amount of Rs. 50,000 contributed by the assessee towards meeting the cost of construction of the roads under the Sugarcane Development Scheme was laid out wholly and exclusively for the purpose of the business of the assessee."*
>
> *"These roads were undoubtedly advantageous to the business of the assessee as they facilitated the transport of sugarcane to the factory and the outflow of manufactured sugar from the factory to the market centres. There can be no doubt that the construction of these roads facilitated the business operations of the assessee and enabled the management and conduct of the assessee's business to be carried on more efficiently and profitably. It is no doubt true that the advantage secured for the business of the assessee was of a long duration inasmuch ITA No.187/JAB/2008 &Ors South Eastern Coalfield Ltd. as it would last so long as the roads continued to be in motorable condition, but it was not an advantage in the capital field, because no tangible or intangible asset was acquired by the assessee nor was there any addition to or expansion of the profit-making apparatus of the assessee. The amount of Rs. 50,000 was contributed by the assessee for the purpose of facilitating the conduct of the business of the assessee and making it more efficient and profitable and it was clearly an expenditure on revenue account."*

*11. We find that this issue is covered by the decision of Hon'ble Apex Court in the case of L. H. Sugar Factory & Oils Mills (P) Ltd. (Supra), wherein Hon'ble Apex Court noted that the assessee a sugar manufacturer contributed to the State of Uttar Pradesh a sum of Rs.50,000/- for construction of a road around its factory for facilitating the transport of sugarcane into the factory and the outflow of manufactured sugar from the factory to the market centres. Contributions were also made for construction of the said road which belonged to the Uttar Pradesh State Government by the Central Government and the State Government equally. The expenditure of Rs.50,000/- incurred by assessee in that case towards contribution for construction of a road around its factory is an expenditure in the revenue field as it was incurred for the purpose of facilitating the conduct of the business of the assessee and making it more efficient and profitable without the assessee getting an advantage of an enduring benefit to itself. We find that in the present case also, there is no dispute to the fact that the*

> *assessee has made the contribution of Rs.3.57 crores during the relevant previous year to Burdwan Zilla Parishad for the purpose of up-gradation/construction of a link road from its mines at Sarasthali to the Barabani railway station in order to facilitate transportation of coal mined so that the business of the assessee could be conducted more efficiently and profitably. There is also no dispute to the fact that the said road is a public road and belongs to the Burdwan Zilla Parishad and the assessee is not owner of the road. In view of the settled position on the issue, we find that the sum of Rs.3.57 cr. incurred during the relevant previous year by the asses `see towards contribution for up-gradation/construction of the link road belonging to the Burdwan Zilla Parishad is allowable as revenue expenditure in the year under appeal having been incurred wholly and exclusively for the purpose of the business of the Company. We, accordingly, uphold the order of CIT(A) allowing the claim of deduction of the sum of Rs.3.57 cr. as revenue expenditure. This issue of the revenue's appeal is dismissed."*
>
> *97. We are of the view that the issue in the present case is identical to that of Kolkata Bench of the Tribunal cited here-in-above. Further before us, Revenue has not pointed out any contrary binding decision in its support. We therefore relying on the aforesaid decision of Kolkata Bench of the Tribunal, hold that the assessee is eligible for deduction of expenses incurred on the assets not owned by assessee and thus, the ground No. 4 of the assessee is allowed.*

5.17 Respectfully following the above observations of the coordinate bench of the Tribunal, we are of the view that the assessee is eligible for deduction of expenses incurred on the assets not belonged to the assessee. This ground of assessee is allowed.

5.18 Before parting with it would be essential to mention here that the issue raised in ground No.3 of the present appeal which was decided by following the decision of the Co-ordinate Bench of ITAT in ITA No.124/JAB/2007 dated 10.05.2019 is admitted and under sub-judice before the Hon’ble Jurisdictional High Court of Chhattisgarh vide Appeal No.TAXC/14/2020. Until any judgment on the issue is granted by the

Hon'ble High Court, following the principle of consistency, the decision of Tribunal, in absence of any specific direction of Hon'ble High Court holds field and thus, the same is adopted. Once a verdict is pronounced by the Hon'ble High Court in this respect, the same will be binding on all the parties.

**Ground No.4 : Disallowance of coal transportation expenses paid to ESM companies:**

5.19 Both the parties have fairly admitted that this issue is covered by the decision of the coordinate bench of the Tribunal in assessee's own case for A.Y.1998-1999 in ITA No.187/JAB/2008 & Ors., order dated 06.11.2019, wherein the Tribunal has remitted the issue back to the file of AO for determining the allowability of expenses in the following manner :-

> *10. We have heard the rival contentions and perused the case records. Before us, the Ld. AR tried to point out the distinctive features in the facts of the year under consideration and that of the earlier year. However, we are of the view that distinct features are not so glaring which would necessitate as to take a different view than the view taken by us in earlier year. That apart the CIT(A) while deciding the issue has also categorically given a finding in the order that the necessary details were not filed by assessee and this fact has not been controverted by the Ld. AR before us. We find that in order of Tribunal (supra) in paras 107 to 112 had similarly remitted this issue back to the file of Assessing Officer. The relevant findings of Tribunal are as under:-*
>
> > *"112. We have perused the case records and heard the rival contentions. The records suggest that no documentary evidences as called for by the Assessing Officer were filed by the assessee to prove the genuineness of the transactions. The Assessing Officer is not definitely an Authority to say to the assessee how to run its business but at the same time the Assessing Officer is a responsible custodian of Revenue to examine, consider or judge the various aspects of the expenditure claimed by the assessee to come to the conclusion whether expenditure has been incurred wholly and exclusively*

*for, business purposes or otherwise even partial. In the absence of complete and verifiable details, the Revenue Authorities cannot verify the genuineness of transactions of a particular expenditure which has happened exactly in the present case. The Ld. AR of the assessee submitted that TDS has been deducted u/s.194C of the Act for all these payments. But neither before the Revenue Authorities nor before us, any documentary evidences co- relating TDS u/s. 194C vis-à-vis payments made to ESM Companies were furnished. Further, no copies of income tax returns of these ESM Companies were filed before us. Onus is on the assessee to prove the genuineness of any transaction not only verbally but also by relevant documents placed on record which in this case the assessee has not done. We find that the Hon'ble Punjab & Haryana High Court in the case of Commissioner of Income Tax Vs. S.G. Exports in ITA No.624 of 2010 has held that a perusal of the findings of the CIT(A) and the Tribunal shows that both the Authorities have placed onus on the Revenue to establish the in- genuineness and non-existence of the parties. According to the Hon'ble High Court this finding is wrong since the assessee who has claimed that it had incurred expenses on account of labour charges, therefore, the onus is on the assessee to prove the said facts by producing cogent and convincing evidences including the identity of the parties along with evidence of payment to those persons.*

*Reverting to the facts of the present case, the assessee has stated that they have employed ESM companies and have made payment to them and has also deducted TDS and its necessary deposit to the Government account has been completed. The onus is on the assesse to prove these statements. The Hon'ble Supreme Court of India in the case of LaxminarayanMadanLalVs. CIT (SC) 86 ITR 439 has held that mere existence of agreement between the assessee and its agent does not prove the genuineness of the transactions in a particular case. It all depends on facts and circumstances of each case and the Revenue Authorities is bound to look into the genuineness of the transaction in each of the case. The Hon'ble Delhi High Court in the case of Goodyear India Ltd. vs Commissioner of Income-Tax reported as 246 ITR 116 has held that even if there is an audit report filed by the assessee that does not prevent the Assessing Officer to ask for relevant documentary evidences and details from the assessee to check the genuineness of the transaction and the entire conduct of the assessee.*

*In the present case before us, when the Assessing Officer called for relevant documentary evidences regarding identity, rates and genuineness of the transactions with regard to ESM companies, the assessee has not furnished requisite details before the Assessing Officer and that for the reasons as opined by the*

> *Hon'ble Delhi High Court, the power to call for details is an inherent power with the Assessing Officer within the scheme of Income Tax Act. That further the claim of TDS deduction u/s.194C of the Act by the assessee, no evidence was furnished before us to demonstrate the payment of taxes after TDS deduction.*
>
> *In view of the matter, we set aside the order of the Ld. CIT(Appeals) on this issue and restore the matter back to the file of Assessing Officer to verify whether necessary TDS have been deducted and other issues, regarding the genuineness of the transactions. Needless to say the Assessing Officer shall grant reasonable opportunity of hearing to the assessee in accordance with law and adjudicate the issue afresh. The assesse is directed to furnish requisite documents /details before the Assessing Officer as called for by the Assessing Officer. In case, the assessee fails to furnish necessary documents, the Assessing Officer shall be at liberty to decide the issue as per materials available on record. Hence, ground Nos.5 and 6 raised in appeal by the assessee are allowed for statistical purposes."*
>
> *11. Since the issues are common and parties are also similar and the very fact that genuineness of transaction is in doubt and is not clear even in the relevant assessment year and since no evidences were brought on record by the Ld. AR for the assessee, therefore, in the interest of justice, the matter should be remitted back to the file of the Assessing Officer maintaining the same parity in justice, for determining the allowability of expenses as directed in our earlier order. We order accordingly. Thus, ground No.3 raised by assessee is allowed for statistical purposes.*

5.20 Respectfully following the above observations of the Tribunal, we also direct the AO to determine the allowability of expenses as directed in the aforesaid observations of the Tribunal. Accordingly, we allow this ground of assessee for statistical purposes.

5.21 With respect to status of the aforesaid decision of the ITAT pertaining to coal transport expense paid to ESM incurred by the company as submitted by the Ld. AR, accordingly to information available on website of Hon’ble Chhattisgarh High Court as on 31.07.2023, no

appeal appears to have been filed by the department. In this context, the report submitted by the revenue regarding status of this issue before the Hon'ble High court, found to be silent having no mention about appeal no.187/JAB/2008. In view of such facts, it appears that the department has not preferred any appeal against the ITA No.187/JAB/2008. Thus, the existing decision of ITAT will prevail and has to be followed.

**Ground No.5 : Provision for leave encashment:**

5.22 Apropos, provision for leave encashment, ld. AR submitted that the issue may kindly be restored to the file of AO to grant relief in the year of actual payment of leave encashment, following the ratio of law settled by Hon'ble Supreme Court in the case of Exide Industries Ltd., reported in 425 ITR 1 (SC). On the other hand, ld. CIT-DR relied on the order of the lower authorities.

5.23 We have considered the rival submissions and perused the record carefully. During the course of assessment proceedings, the AO found that the assessee has claimed provision for leave encashment for the relevant year as fully deductible business expenditure ignoring the provisions of Section 43B(f) of the Act and accordingly he disallowed and added the same to the total income of the assessee. In appeal, the ld. CIT(A) observed that in view of the statutory provisions of section 43B(f) of the Act and in view of the pendency of the civil appeal before the Hon'ble Supreme Court challenging the judgment of Hon'ble Calcutta

High Court wherein the provisions of the Section 43B(f) being arbitrary are struck down, the AO is justified in denying provision for leave encashment as admissible expenditure and upheld the view taken by the AO. The Hon'ble Supreme Court also decided the issue in favour of the revenue in the case of **Union of India Vs. Exide Industries limited, reported in (2020) 425 ITR 1 (SC)** holding therein that, *"an employer seeking deduction from tax liability in advance, in name of discharging liability of leave encashment, without actually extending such payment to employee as and when time for payment arises may lead to abhorrent consequences, it is this mischief clause (f) of section seeks to subjugate and thus is constitutionally valid*". Therefore, considering the prayer of the assessee and in view of the judgment of the Hon'ble Supreme Court in the case of Exide Industries Limited (supra), we remit the issue to the file of AO to verify, examine and allow the payment towards leave encashment in the year of actual payment of leave encashment. If the same has been paid before the due date of filing of the return for the relevant assessment year, then the expenditure is allowable to such extent, if the payment has been made after the due date of filing of the return of income, the amount is to be disallowed. Needless to say, assessee shall be provided with reasonable opportunity of being heard. Accordingly, this ground of assessee is partly allowed for statistical purposes.

5.24 **In the result, the appeal of the assessee in ITA No.201/BIL/2012 for A.Y.2009-2010 is partly allowed for statistical purposes.**

**ITA No.204/BIL/2012 for A.Y.2009-2010 (Revenue's Appeal)**

6.1 Now, we shall take the appeal of the revenue in ITA No.204/BIL/2012 for A.Y.2009-2010, on the following grounds :-

*1(a) That on the facts and in the circumstances of the case, the learned CIT(A) erred in law and on fact in deleting the addition which had been made on account of disallowance of Community Development Expenditure amounting to Rs. 1164.82 lakhs in spite of the fact that no admissible material was produced before the AO to substantiate the claim.*

*(b) That in reaching the aforesaid decision, the learned CIT(A) failed to appreciate both the finding of the A.O. and the facts held in the case of the assessee that the expenditure was in the nature of charity and it could not be said to have been incurred for the purpose of business.*

*2(a) That on the facts and in the circumstances of the case, the learned CITCA) erred in law and on fact in deleting the addition which had been made on account of disallowance of guest house expenditure amounting to Rs. 46.75 lakhs in spite of the facts on record 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 the tours as claimed in the submissions.*

*(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 records that the assessee was categorically asked by the AO to give details of the tour undertaken by the officers and officials etc. who have utilized the guest house.*

*3 That on the facts and in the circumstances of the case, the learned CIT(A) erred in law and on fact in deleting the addition amounting to Rs.6796.88 lakhs which had been made by disallowing the expenditure incurred on social overheads (fuel & Power) in spite of the facts on record that the assessee company failed to furnish the mode of electricity charges*

*recovered from the employees, furnish types of quarters, electricity points in each type of quarter, rates of electricity per unit charged by CBDT and recovered from the employees before the AO*

4. *That on the facts and in the circumstances of the case, the learned CIT(A) erred in law and on fact in deleting the addition amounting to Rs. 1570. 23 lakhs which had been made by disallowing the expenditure incurred on grant of schools and educational institutions in spite of the facts on record that during the course of assessment proceedings the assessee company failed to furnish the break up of the above expenses. It is also pertinent to mention here that the assessee company also failed to explain whether the above expenses were in lieu of reimbursement of tuition fees or the expenses were outright donation or of capital nature etc.*

5. *That on the facts and in the circumstances of the case, the learned CIT(A) erred in law and on fact in deleting the addition amounting to Rs. 2310. 67 lakhs which had been made by disallowing the expenditure incurred on reimbursement of LPG cylinders to the employees in spite of the facts on records that during the course of assessment proceedings the assessee company could not explain the admissibility of the claim.*

6. *That on facts and in circumstances of the case the Id CIT(A) erred in law and on facts in restricting the disallowance from Rs. 954.62 lakhs to Rs. 477.31 lakhs made by the AO towards assessee's claim of expenditure on assets not belonging to the assessee.*

7. *That on the facts and in the circumstances of the case, the learned CIT(A) erred in law and on fact in deleting the addition amounting to Rs. 1273.09 lakhs which had been made by disallowing the expenditure on plantation of trees and reclamation of land respectively in spite of the facts on records that above expenditure is a capital expenditure because the expenditure incurred under the above heads ensure a permanent benefit to the assessee.*

8. *That on the facts and in the circumstances of the case, the learned CIT(A) erred in law and on fact in deleting the addition amounting to Rs. 7208.66 lakhs out of total disallowance of Rs. 14417.32 lakhs which had been made by the AO by disallowing of expenditure on account of transportation charges paid to ESM Company in spite of the facts on records that the assessee company failed to furnish the complete details such as quantity transported and rate charged by the transporters.*

*Further, the assessee during the course of assessment proceedings failed to furnish the information required by the AO in respect of non ESM company which was necessary to verify the allegation against the company that it had paid loading and transportation charges at a very high rate i.e. almost 70 to 80 % more than what was paid to non-ESM company.*

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 amounting to Rs. 43017.28 lakhs which had been made by disallowing of overburden removal expenses by treating the same as capital expenditure because access to the coal itself being durable in nature cannot be debited to the profit & loss account. Further, the assessee has made provision to the future removal of overburden and the provision made is not crystallized into the liability and also to devoid of any particular year.*

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 AO restored.*

11. *That the appellant Assessing Officer reserves the right to amend, modify or add any of the grounds of appeal preferred.*

6.2 Though the revenue has raised as many as 11 grounds of appeal in Form 36, however, ld. CIT-DR has argued that the ld. CIT(A) has erred in deleting the following additions/disallowances :-

i) *Disallowance of community Development Expenditure;*
ii) *Disallowance of Guest House Expenses;*
iii) *Disallowance of expenditure on assets not belonging to company (roads etc.);*
iv) *Addition made on coal transportation expenses paid to ESM companies;*
v) *Disallowance of social overheads fuel & power;*
vi) *Disallowance of grants to schools and institutions;*
vii) *Disallowance of welfare expenses-LPG;*
viii) *Provision for land reclamation/Exp. On reclamation of mining land;*
ix) *Disallowance of expenditure on plantation of trees; and*
x) *Disallowance of claim for OBR adjustment.*

***Ground No. 1: Disallowance of community Development Expenditure;***

6.3 Ld. CIT-DR relied on the order of AO and submitted that the ld. CIT(A) has wrongly deleted the addition made by the AO on account of community development expenditure claimed by the assessee as there was no admissible material produced by the assessee either before the AO or before the CIT(A) to substantiate the claim. It was also submitted by the ld. CIT-DR that the expenditure claimed by the assessee was in the nature of charity and it could not be said to have been incurred for the purpose of business. Therefore, the ld. CIT-DR submitted that the addition deleted by the ld. CIT(A) may kindly be reversed and that of the order of the AO may be restored.

6.4 Ld. AR before us submitted that the very same issue has been decided by the coordinate bench of the Tribunal in assessee's own case in ITA No.141/JAB/2001 & Ors., order dated 10.05.2019 and also in ITA No.187/JAB/2008 & Ors dated 06.11.2019, wherein the Tribunal following its earlier order dated 28.02.2002 passed in ITA Nos.18-22/NAG/2001, allowed the issue in favour of the assessee. Therefore, it was the prayer to decide the covered issue in accordance with earlier decision of the Tribunal.

6.5 We have considered the rival submissions and perused the relevant material available on record. Since the issue is totally covered by the decision of the Co-ordinate Bench of the ITAT, thus, in absence of any

further development qua this issue, we are convinced with the contention raised by the Ld. AR that the very same issue has already been decided by the coordinate bench of the Tribunal in assessee's own case ITA No.141/JAB/2001 & Ors., order dated 10.05.2019 and also in ITA No.187/JAB/2008 & Ors dated 06.11.2019, specifically the issue was dealt with for the assessment year 1998-1999 in ITA No.22/JAB/2002, order dated 10.05.2019, wherein the Tribunal following its earlier order dated 28.02.2002 passed in ITA Nos.18-22/NAG/2001, allowed the issue in favour of the assessee. Further the coordinate bench of the Tribunal in assessee's own case in ITA No.03/BLPR/2012 for A.Y.2008-2009, order dated 06.11.2019 has following its earlier order dated 10.05.2019, have allowed the issue in favour of the assessee, rendering the following observations :-

> *54. We have heard the rival contentions and perused the record. We find that the issue of allowance of expenditure towards Community Development is squarely covered by the decision of Nagpur Bench of Tribunal in the case of South Eastern Coalfields Ltd. Vs. JCIT in ITA Nos.18 to 22/Nag/2001, for assessment years 1989-90, 1990-91, 1994- 95, 1995-96 and 1996-97, order dated 28.02.2002. The Tribunal has deliberated on this issue vide paras 18.1 to 18.6 and decided the issue in favour of assessee by holding as under:*
>
> > *"18.4. We have considered the rival submissions and also perused the relevant material on record, We have also gone through the various case laws cited by the learned representatives of both, the sides. It is observed that the expenditure incurred by the assessee-company for providing basic amenities like road widening, street lighting, better drinking water facilities, etc. for the residential areas in and around the company's area of operations in which mainly the workers of the assessee-company were residing, was disallowed by the AO considering that the same has been incurred by the assessee to discharge its social obligation towards the community as a whole and there is no nexus between such expenditure and the business of the assessee company. In this regard, we find that the AO, however, ignored a very relevant and material fact that the population residing*

> *in the area which was benefitted by the provision of such basic amenities mainly comprised of the workers of the assessee-company and their families. He also appears to have overlooked the fact that such basic amenities could not have been provided to the assessee's employees in isolation as the said expenditure in any case had to be incurred for the entire area as a whole. Before us, the learned counsel for the assessee has contended that over 90 per cent of the population residing in that area constituted assessee's own workers and their families and it appears from the record that this fact has not been disputed by the Revenue at any stage. Moreover, in the absence of such facilities in that area, it would not have been possible for the assessee- company to get the proper work force for its operation without which it was not possible to carry on its business effectively and efficiently. The labour by itself is an important input for any type of business, more particularly for the business of the assessee-company of mining operation and, therefore, the expenditure incurred mainly for the welfare of the labour force has to be treated as incurred wholly and exclusively for the purpose of it's business."*
>
> *55. Before us, Revenue has not pointed to any distinguishing features in the facts of the present case and the case of South Eastern Coalfields decided by Nagpur Bench of ITAT so as to persuade us to take a different view in the matter. The facts and issue are similar to the facts and issue before the Tribunal (supra). Following the same parity of reasoning, we find no reason to interfere with the order of CIT(A) and thus, the ground No.1 raised by the Revenue is dismissed.*

6.6 In view of the observations of the coordinate bench of the Tribunal, we do not see any reason to interfere in the findings recorded by the ld. CIT(A) in this regard and we uphold the same. Accordingly, this ground of revenue stands dismissed.

6.7 Apropos, status of the issue pertaining to community development expenditure the department has preferred an appeal before the Hon'ble Jurisidctional High Court in ITA No. TAXC/11/2020 against the order of ITAT in ITA No.22/JAB/2002 dated 10th May, 2019 and the same has been admitted for adjudication, however, no specific direction are issued pertaining to the issue, therefore, till the issue is decided by the Hon'ble

High Court, the decision of Tribunal following the principle of consistency shall prevail and thus, has been followed.

**Ground No. 2: Disallowance of Guest House Expenses**

6.8 This issue has already been decided by us while deciding the ground No.2 in appeal of the assessee in ITA No.201/BIL/2012(supra) for the assessment year 2009-2010, wherein we have held that the disallowance made by Ld AO was restricted by the ld. CIT(A), is just and proper which does not require any interference. Therefore, following the reasoning given by us in the case of the assessee for A.Y.2009-2010 above, we also uphold the findings recorded by the ld. CIT(A) in restricting the addition made by the AO on account of the expenditure claimed by the assessee on guest house, this ground of revenue is dismissed in terms of our aforesaid observations.

**Ground No.3 Disallowance of social overheads fuel & power:**

6.9 At the outset, the ld. CIT-DR relied on the orders of the authorities below and submitted that there are no separate electric meters installed for measuring consumption of electricity supplied to residences. Each employee is charged 30 units per month, which is microscopic in nature. According to the learned AO, there are around 60,000 staff quarters in townships in SECL, which are provided with electricity. He stated that most reasonable and modest estimate of average consumption of power by employees would not be less than 200 units per month of electricity per

family because almost all of the employees reside in smaller houses whereas some of the employees also live in higher class of accommodations. He estimated that since Electricity Board charges electricity to the Assessee at rates applicable to industrial units, the average rate of electricity comes to Rs 4.50 per unit. Thus, the quantum of non-business expenditure on this account will be less than 50% of total claim. Accordingly, the ld. CIT-DR submitted that the ld. AO has rightly disallowed 50% of the total expenditure claimed under this head. However, without considering the relevant facts and materials available on record, the CIT(A) has wrongly allowed the assessee's claim relying its earlier order which deserves to be reversed. Ld. CIT-DR also referred to the decision of the coordinate bench of the Tribunal in assessee's own case decided in ITA No.187/JAB/2008 & Ors., specifically in the appeal of revenue for A.Y.2008-2009 passed in ITA No.03/BLPR/2012 dated 06.11.2019 and submitted that the Tribunal has restricted the disallowance made by the AO to 25% of expenses incurred by the assessee towards social overheads instead of 50% disallowed by him. Therefore, in the same manner, this ground is decided in favour of revenue.

6.10 Ld. AR before us submitted that the assessee has incurred expenses on Power and Fuel, which mainly consists of expenditure incurred on electricity. While part of the expenses was incurred on Industrial Power, other part of the expenses was of the cost of Power

consumed in various townships maintained by the assessee as well as incurred on maintenance of general services. It was also submitted by the ld. AR that general services include Township lightning, dispensaries, educational institutions, crèche and canteens, office consumption, pumps and filtration plants, parks and gardens, etc. These expenses also include expenses incurred on electricity supplied to the residential quarters of its employees. With regard to electricity provided to the residential quarters of the employees, ld. AR of the assessee submitted that as per National Coal Wage agreement entered from time to time, executive and non-executive employees, 1 % of basic salary (after allowing a deduction of Rs. 100 from basic monthly salary / wage) is deducted as cost of electricity supplied to their residence as this is as per the terms of the employment. Accordingly, ld. AR submitted that the claim of the deduction under this head mainly pertains to the electricity expenditure incurred on common areas of township as mentioned above. The AO found that the quantum of non-business expenditure on this account will be less than 50% of total claim. Accordingly, he disallowed 50% of the total expenditure claimed under this head. It is further submitted by the ld. AR that the decision of the ld. CIT(A) of deleting the entire addition does not require any interference. The Assessee also recovers 1 % of basic salary towards cost of electricity its employees. The learned AO's disallowance based on the estimated average consumption of 200 units per household is on very high side because majority of the quarters are one-bedroom houses. Further, the AO's estimate of electricity consumption is a wild

guess because he has done the entire exercise of estimation without using any factual data of number of quarters in townships and their types and sizes, average size of family to estimate average electricity consumption per household. Moreover, as stated and as the Assessee's submission is partly reproduced by the learned AO in the assessment order, it can be seen that vast majority of the electricity expenditure is incurred towards common areas of township and is as such incurred for the purposes of business.

6.11 We have considered the rival submissions and perused the record carefully along with the order of the coordinate bench of the Tribunal referred to (supra) in assessee's own case wherein the Tribunal has partly allowed this ground after holding as under :-

> *62. After hearing the parties on this issue, we are of the considered view that it is undisputed fact that a National Coal Wage Agreement has been entered into by the assessee with the employees and there itself free usage of electricity is mentioned as 30KWH per employee per month, anything beyond that is supposed to be chargeable. The CIT(A)"s order does not disclose or provide any finding regarding having of any evidence or any specific enquiry while deciding this issue. He has simply relied on orders of earlier years while providing relief to the assessee. In this situation, right course would have been to remit the issue back to the file of Assessing Officer to verify the consumption, whether the excess consumption is as per agreement entered into by the assessee that the use and excess consumption is recovered from the respective employees. However, considering the fact that the matter pertains to assessment year 2008-09 and the number of employees involved and the practicality of the situation, we are of the considered view that the matter will remain undecided. In such a situation and to curtail the uncertainty, we are of the view that the ends of justice shall be met if the disallowance made by the Assessing Officer is restricted to 25% of expenses incurred by the assessee towards social overheads instead of 50% disallowed by him. We therefore*

*direct accordingly. Thus, the ground No.3 raised by Revenue is partly allowed.*

6.12 In view of the observations made by the coordinate bench of the Tribunal above, we are of the opinion that the disallowance of 50% made by the AO is on higher side which is restricted to 25%. The CIT(A) has not discussed the issue in detail and only relied on its earlier order and allowed the claim of the assessee, which in our opinion, is not justified and sustainable. Accordingly, we set aside the order of CIT(A) and restrict the disallowance to 25% as against 50% made by the AO. Thus, we partly allow this ground of revenue.

6.13 Apropos, status of the issue pertaining to social overheads-fuel and power, the department has preferred an appeal before the Hon'ble Jurisidctional High Court in ITA No. TAXC/23/2020 against the order of ITAT in ITA No.03/BLPR/2012 for the A.Y.2008-09, however, the admission of the same was not reflected on the website of Hon'ble High Court as on 31st July, 2023, therefore, till the issue is admitted and decided by the Hon'ble High Court, the decision of Tribunal following the principle of consistency shall prevail and thus, has been followed.

**Ground No. 4: Disallowance of grants to schools and institutions;**

6.14 Both the parties submitted that this issue has been decided by the coordinate bench of the Tribunal in assessee's own case in ITA

No.187/JAB/2008 & Ors, wherein specifically this issue was dealt with in A.Y.2008-2009 in ITA No.03/BLPR/2012, order dated 06.11.2019, wherein the Tribunal has dismissed this ground of revenue after following the reasoning given by the coordinate bench of the Tribunal in ITA No.18-22/NAG/2001, order dated 18.02.2002. The relevant observations of the Tribunal in this regard are as under :-

> *64. The brief facts on the issue are that the assessee company has debited expenses on account of grant to schools and institutions at Rs.1135.86 Lakhs. The submission of the assessee in this regard has been depicted in the assessment order. The Assessing Officer noticed that the disallowance on this issue was made in respect of other subsidiaries of Coal India Ltd and expenses on education can be allowed to the extent of reimbursement of tuition fees of the students who are children of the assessee‟s employees only. Further the Assessing Officer observed that as regard the assessee‟s contention that the first Appellate Authority has allowed the claim of the assessee is concerned, he observed that the order of First Appellate Authority has not been accepted by the Department and has preferred appeal before the Income Tax Appellate Tribunal on this issue. He noted that the Income Tax Appellate Tribunal dismissed the departmental appeal merely on the technical ground that the Committee on Dispute (COD)‟s approval was not obtained by the Department. Moreover, the Department has not accepted the decision of the ITAT, Nagpur Bench in ITA No.20/Nag/2002 dated 28.02.2005, in its case itself for the A.Ys. 1994-95, on the very same issue, the department has preferred appeal u/s.260A before the Hon‟ble High Court, Bilaspur on 10.07.2002 which is still pending for decision. Accordingly, the Assessing Officer disallowed the expenses on grants to school under the head „Social Overheads" at Rs.1135.86 Lakhs.*
>
> *65. When the matter was contested by the assessee before CIT(A), the Ld. CIT(A) provided the relief to the assessee following the order of his predecessor for the assessment year 2002-03. Further, the Ld. CIT(A) observed that this issue has been decided in favour of Western Coalfields Limited in its order ITA No.486/NAG/1996 dated 04.04.2002 for the assessment year 1992-93. Aggrieved by the order of CIT(A), Revenue is now in appeal.*
>
> *66. Before us, Ld. DR supported the order of Assessing Officer.*
>
> *67. The Ld. AR on the other hand reiterated the submissions made before lower authorities and further submitted that this issue is*

*squarely covered by the decision of the Co-ordinate Bench of the Tribunal, Nagpur in ITA No. 18/Nag/2001 &Ors dated 18.02.2002 in favour of the assessee. He thus supported the order of CIT(A). We have perused the case records and heard the rival contentions. We find that the similar issue has been faced by the Co-ordinate Bench of the Tribunal and this issue was decided in favour of the assessee by the Tribunal in the case mentioned aforesaid (supra.) by observing as under:*

> *"13.3. The learned Departmental Representative has contended before us that only the contribution made towards the recognised provident fund, approved gratuity fund or superannuation fund is an allowable expenditure, but the expenditure incurred on payments made to various schools and clubs is not deductible under the specific provisions of Section 40A(9). In this context, we find that a useful reference may be made to the following observations of the Hyderabad Bench of Tribunal recorded in the case of Rassi Cement Ltd. v. ITO (1994) 47 TTJ (Hyd) 254 : (1993) 45 ITD 233 (Hyd) :*
>
> *"The object and intention of the legislature introducing Section 40A(9) was only to discourage contribution to any trust which do not benefit the employees in any manner. In the instant case, reading of the trust deed would clearly reveal that the beneficiaries of the trust are the assessee's employees. Hence, having regard to the legislature intention in introducing the said section and the fact that the contribution constituted employees welfare measures as well as with such contribution made pursuant to an agreement with the employees is a requirement under the Industrial Dispute Act violation of which would result in penalty to the defaulter, an assessee is entitled for the allowance of the relief asked for."*
>
> *As a matter of fact, the impugned expenditure on account of contribution to various schools was not incurred by the assessee-company voluntarily but the same was incurred to discharge it's obligation in terms of a National Coal Wage Agreement entered with the employees and as the said agreement was enforceable in law under the Indian Contract Act as well as the Industrial Dispute Act, the assessee-company was under a statutory obligation to incur the said expenditure. As such, considering all the facts of the case and keeping in view the aforesaid decisions including the decision of this Bench in assessee's own case, we hold that the expenditure incurred by the assessee-company on account of grants made to various schools was an admissible business expenditure and the learned CIT(A) was not justified in confirming the disallowance made by the AO on this count. His impugned order on this issue is, therefore, reversed and the AO is directed to allow the said expenditure."*

> *Following the same parity of reasoning as rendered in the aforesaid decision (supra), we find no reason to interfere with the order of CIT(A) and thus, decide the issue in favour of the assessee and against the Revenue.*

6.15 Respectfully following the above observations of the Tribunal, we dismiss this ground of revenue.

6.16 Apropos, status of the issue pertaining to grants to schools and institutions, the department has preferred an appeal before the Hon'ble Jurisidctional High Court in ITA No. TAXC/23/2020 against the order of ITAT in ITA No.03/BLPR/2012 for the A.Y.2008-09, however, the admission of the same was not reflected on the website of Hon'ble High Court as on 31st July, 2023, therefore, till the issue is admitted and decided by the Hon'ble High Court, the decision of Tribunal following the principle of consistency shall prevail and thus, has been followed.

**Ground No. 5: Disallowance of welfare expenses-LPG:**

6.17 Both the parties submitted that this issue has been decided by the coordinate bench of the Tribunal in assessee's own case in ITA No.187/JAB/2008 & Ors, wherein specifically this issue was dealt with in A.Y.2008-2009 in ITA No.03/BLPR/2012, order dated 06.11.2019, wherein the Tribunal has dismissed this ground of revenue after having the following observations :-

> *74. We have perused the case records and heard the rival contentions. We have also given considerable thought to the*

> *findings of the Ld. CIT(A). We find that as per the National Coal Wage Agreement (Page 69-77 of the Paper book), the employees are entitled to get free issue of coal for domestic use only subject to some quantity limitation. On perusal of the record, it is apparent that the assessee company has considered the reimbursement of LPG Cylinder as a perquisite in the hands of the employees and regular income tax is being deducted from such employees in accordance with law. The Ld. CIT(A) while adjudicating this issue has followed his predecessor"s order and observed that the assessee company has claimed to have treated the reimbursement of expenditure on account of the provision of LPG to the employees as perquisite and has been deducting income tax thereon, the AO"s action is disallowing the above expenditure is not justified. Therefore, we are of the considered view that the order of the Ld. CIT(A) on this issue is fair and reasonable and the same does not call for any interference. Thus, ground No.5 raised by the Revenue is dismissed.*

6.18 Respectfully following the above observations of the Tribunal, this ground of revenue is dismissed.

6.19 Apropos, status of the issue pertaining to welfare expenses-LPG, the department has preferred an appeal before the Hon'ble Jurisidctional High Court in ITA No. TAXC/23/2020 against the order of ITAT in ITA No.03/BLPR/2012 for the A.Y.2008-09, however, the admission of the same was not reflected on the website of Hon'ble High Court as on 31st July, 2023, therefore, till the issue is admitted and decided by the Hon'ble High Court, the decision of Tribunal following the principle of consistency shall prevail and thus, has been followed.

**<u>Ground No. 6 :</u> Disallowance of expenditure on assets not belonging to company (roads etc.)**

6.20 This issue has already been decided by us while considering the ground No.(iii) of the assessee's appeal in ITA No.201/BIL/2012 for the

assessment year 2009-2010, wherein we have allowed this issue in favour of the assessee following the decision of the coordinate bench of the Tribunal in assessee's own case in ITA No.141/NAG/2001 & Ors, wherein specifically this issue was dealt with in A.Y.2001-2002 in ITA No.83/JAB/2004, wherein the Tribunal following the decision of the ITAT Kolkata Bench of the Tribunal in the case of Integrated Coal Mining Ltd. ITA No.788/Kol/2010 for A.Y.2003-2004, has allowed this issue in favour of the assessee. In view of the above, we are of the opinion that the assessee is eligible for deduction of expenses incurred on the assets not belonged to the assessee. This ground of appeal of the revenue is dismissed in terms of our observations in ground No.3 of the assessee's appeal in ITA No.201/BIL/2012 for the assessment year 2009-2010.

**Ground 7: Provision for land reclamation/Exp. On reclamation of mining land & disallowance of expenditure on plantation of trees:**

6.21 Both these issues are raised in ground No. 7 of the appeal by revenue which have already been decided by the Tribunal in assessee's own case in ITA No.187/JAB/2008 & Ors, wherein specifically these issues were dealt with in A.Y.2008-2009 in ITA No.03/BLPR/2012, order dated 06.11.2019, wherein the Tribunal has rejected the claim of revenue raised under this ground after having the following observations :-

> "77. The issue raised in ground No.7 is with regard to disallowance of expenses on trees plantation and others.
>
> 78. Brief facts relating to the issue are that the assessee had claimed a sum of Rs.650.94 lakhs and Rs.419.66 lakhs as expenses incurred on account of "tree plantation expenses" and "others" respectively, under the head "Environment

> expenses". The Assessing Officer has held that this expenditure to be capital expenditure and accordingly, disallowed the same. The CIT(A) in its order has deleted by stating it as revenue expenditure. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.
>
> 79. Before us, the Ld. DR placed reliance on the order of Assessing Officer.
>
> 80. Per contra, the Ld. AR apart from supporting the order of CIT(A) also relied on the following decisions:-
>
> (i) CIT Vs. Malayalam Plantation Ltd. (1964) 53 ITR 140 (SC)
> (ii) CIT Vs. Gogte Minerals (1996) 220 ITR 29 (Kar)
> (iii) Smt. K. SuryakumariVenu Vs. ACIT (2016) 70 taxmann.com
>
> *81. We have heard the rival contentions and perused the record. We find that the Assessing Officer has disallowed the expenditure incurred by the assessee on account of „tree plantation expenses" and „others" to be capital in nature, whereas the CIT(A) relying on the orders of his predecessors has deleted the disallowance made by the Assessing Officer by stating it as revenue expenditure. We find that this issue is squarely covered by the ratio laid down by the Hon"ble Supreme Court in the case of CIT Vs. Malayalam Plantation Ltd. (supra),CIT Vs. Gogte Minerals (supra) and Smt. K. SuryakumariVenu Vs. ACIT (supra).Before us, no fallacy with the finding of CIT(A) has been pointed by Ld. DR. We therefore find no reason to interfere with the order of CIT(A). Hence, we uphold the order of CIT(A) in deleting the disallowance made by the Assessing Officer on account of expenses on trees plantation and others. Thus, the ground No.7 raised by the Revenue is dismissed.*

6.22 Respectfully following the above observations of the Tribunal, this ground of revenue is dismissed.

6.23 Apropos, status of the issue pertaining to <u>provision for land reclamation/Exp. On reclamation of mining land &</u> disallowance of expenditure on plantation of trees, the department has preferred an appeal before the Hon'ble Jurisidctional High Court in ITA No. TAXC/23/2020 against the order of ITAT in ITA No.03/BLPR/2012 for the A.Y.2008-09, however, the admission of the same was not reflected on the website of Hon'ble High Court as on 31st July, 2023, therefore, till the

issue is admitted and decided by the Hon'ble High Court, the decision of Tribunal following the principle of consistency shall prevail and thus, has been followed.

**Ground No.8: Coal transportation expenses paid to ESM companies:**

6.24 This issue has already been considered by us while deciding the appeal of the assessee in Ground No.4 wherein we have remitted the issue to the file of AO for determining the allowability of expenses in view of the direction given in the earlier orders of the Tribunal as stated supra. Thus, this ground of revenue is allowed for statistical purposes in terms of our observations in ground No.4 of the assessee's appeal in ITA No.201/BIL/2012 for the assessment year 2009-2010.

**Ground No. 9: Disallowance of claim for OBR adjustment.**

6.25 The ground No. 9 of revenue's appeal have already been decided by the Tribunal in assessee's own case in ITA No.187/JAB/2008 & Ors, wherein specifically these issues were dealt with in A.Y.2008-2009 in ITA No.03/BLPR/2012, order dated 06.11.2019, wherein the Tribunal following the decision of the Jabalpur Bench of the Tribunal in the case of Northern Coalfields Ltd., reported in 59 taxmann.com 394 (Jabalpur.Trib.) has dismissed this ground of revenue after having the following observations :-

*88. We have perused the case records and heard the rival contentions. We find that Jabalpur Bench of Tribunal in the case of Northern Coalfields Ltd. Vs. ACIT (supra)has deliberated on the issue vide paras 27 to 41 of its order and allowed the claim of assessee by holding that the same is business expenditure. The relevant findings of the Tribunal are as under:-*

> *"40. We are unable to find any legally sustainable merits in this objection either. The criterion on the basis which call is taken as to be whether a mine can be treated as a development mine or as a revenue mine is, as we have noted in paragraph 22 earlier in this order, is uniform all along not only in this case of this assessee but in the case of other similarly placed assessees, and the revenue authorities have accepted that criterion all along. It is a purely a factual matter which permeates through different assessment years, and for the detailed reasons discussed earlier, there is no good reason to disturb this criterion. In any case, the authorities below have neither suggested any alternative criterion, which will be appropriate on the facts of this case, nor have they have demonstrated that the facts implicit in their stand actually exist. As a matter of fact, the apprehensions of the Assessing Officer seem to be purely hypothetical and in the realm of conjectures and surmises inasmuch as not one instance is shown in which the overburden removal expenses, booked in the accounts as revenue expenditure, actually pertain to removal of overburden only at the surface level and should be, therefore, treated as capital expenditure. Similarly, while declining the deduction of overburden removal as capital expenditure, the Assessing Officer, as also the CIT(A), has not treated any part of this expenditure, which essentially includes the expenditure incurred on removing overburden in the process of coal mining and production, as revenue expenditure. It seems to be more or less an undisputed position, given the nature of overburden removal expenses as we have discussed earlier, that a part of the overburden removal expenses is admittedly revenue expenditure, but if we have to uphold the stand of the authorities below, entire overburden removal expenses is required to be treated as capital expenditure eligible only for amortization under section 35D. In any case, there is nothing on record to establish, or even suggest, that expenses incurred on removal of overburden at the surface level, which were capital expenditure in nature, have been claimed as revenue deduction on the strength of coal mining in another piece of land within that coal mine.*
>
> *41. In view of these discussions, as also bearing in mind entirety of the case, we consider it fit and proper to direct the Assessing Officer to delete the disallowance of Rs 2,05,616.72 lakhs. The assessee gets the relief accordingly."*

> *Respectfully following the same parity of reasoning as rendered in the above-mentioned decision (supra), we decide this issue in favour of assessee and against the Revenue. We further find that the expenditure was allowed by Revenue to the assessee in the past. Thus, the ground No.9 raised by the Revenue is dismissed.*

6.26 Respectfully following the above observations of the Tribunal, this ground of revenue is dismissed.

6.27 Apropos, status of the issue pertaining to claim for overburden removal adjustment, the department has preferred an appeal before the Hon'ble Jurisidctional High Court in ITA No. TAXC/23/2020 against the order of ITAT in ITA No.03/BLPR/2012 for the A.Y.2008-09, however, the admission of the same was not reflected on the website of Hon'ble High Court as on 31st July, 2023, therefore, till the issue is admitted and decided by the Hon'ble High Court, the decision of Tribunal following the principle of consistency shall prevail and thus, has been followed.

6.28 **Thus, the appeal of the revenue in ITA No.204/BIL/2012 for the A.Y.2009-2010 is partly allowed in terms of our aforesaid observations.**

**ITA No.401/BIL/2014, ITA No.382/BIL/2014 & ITA No.162/BIL/2017 (AY : 2010-2011)**

**ITA No.401/BIL/2014 (Assessee's appeal for A.Y.2010-2011)**

7.1 The assessee has the following effective grounds, which have been argued during the course of hearing :-

1 Non consideration of revised return.

*2 Disallowance of expenditure on actuarial valuation of employee compensation;*
*3 Disallowance of depreciation on Apollo Hospital Building;*
*4 Disallowance of expenditure on account of land revenue;*
*5 Disallowance of prior period expenses*
*6 Disallowance of Land Compensation & Rehabilitation Expenses;*
*6E A*mortization of land rehabilitation
*7 Disallowance u/s.40(a)(ia) of the Act;*
*8 Disallowance of expenditure on assets not belonging to company (roads etc.);*
*9 Disallowance of coal transportation expense paid to ESM companies;*
*10 Disallowance of expenditure on accumulated liquidated damages penalty;*
*11 Short grant of TDS/TCS credit*
*12 Levy of interest u/s.234 B,C D of the Act.*

**Ground No.1 : Non consideration of revised return.**

7.2 The Ld. AR of the assessee at the very outset submitted that they do not wish to press this ground, therefore, the same has been permitted to be withdrawn and thus, stands dismissed.

**Ground No.2 : *Disallowance of expenditure on actuarial valuation of employee compensation:***

7.3 Facts of the issue, as emanated from the orders of the lower authorities, are that during the year under consideration, the assessee had created provision towards fatal accident under the actuarial valuation done by Coal India Limited, i.e. parent entity of the assessee. he Assessing Officer observed that the provision made by the assessee towards the actuarial valuation of employee compensation on fatal accident is a mere provision and not actual expenses and, therefore, he

disallowed the same. On first appeal, the action of the AO was upheld by the Ld CIT(A).

7.4 Ld AR of the assessee submitted that the assessee had created provision towards fatal accident under the actuarial valuation. Similar, provisions were created in subsequent years for the liabilities towards employee benefits payments being part of the employees' compensation. He also referred to the Workmen Compensation Act, 1923 enacted by the Parliament which is inter alia, applicable for the Coal Industries. Referring to Section 3 of Chapter-II of the said Act, which contains details of the liability of the employer and compensation and also section 4 of the said Chapter, which enumerates that the amount of compensation, payable by the employer, he submitted that the provision for compensation made by the assessee is as per the provisions of the Act. He also submitted that on fatal accidents, the National Coal Wage Agreement VIII (NCWAVIII) provides for payment of Rs. 45,000/- over and above the amount payable under Workmen Compensation Act. Further, on the Coal India Foundation Day ceremony held on 1st November, 2007, the Hon'ble Minister of the State for Coal announced payment of Rs.5 lakhs to the next kin of any employee dying out of the fatal mines accident. Therefore, keeping in view of the above Act as well as the provisions made under NCWA-VIII and the commitment made by the Hon'ble Minister, the provision created by the assessee is an allowable expenditure. It was the submissions of the Ld. AR that the assessee

company's liability to compensate the employees on account of employee's meeting, fatal accident and towards other benefits, arises from National Coal Wage Agreement. The quantification of such liability is done on the actuarial basis. It is a trite and settled law that provisions created on scientific basis are allowable expenses in the income tax computation. He a further referred to the circular issued by CBDT No.146 dated 26.9.1974 on the basis of the decision of Hon'ble Supreme Court in the case of Metal Box India Ltd., 73 ITR 53(SC) and submitted that the liability of gratuity created on the basis of actuarial valuation is scientifically created liability. The relevant part of the said Circular is extracted as under:

> *"….At the relevant time when this circular was issued, the Supreme Court's decision in the case of Metal Box Co. of India Ltd. Vs. Their Workmen (1969) 73 ITR 53 was available and taking note of certain observations in this particular decision of the Supreme Court, it was held that provision of gratuity on a scientific basis ( in the form of actuarial valuation carried out every year) could be considered to represent a real liability of the employer to the employees. Accordingly, the Board decided that such provision would not be a contingent liability and may be treated as admissible deduction under section 37(1). Further the provisions created on the basis of actuarial valuation are made on scientific basis because field of actuary is named as "actuarial Science". Moreover, AS 15 ussyed by the Institute of the Chartered Accountants of India deal with employee benefits. Para 64 of the said AS provides for the measurement of the employee benefit on actuarial valuation. Further under section 211 *3A) of the companies Act, all companies are mandatorily required to comply with Accounting Standards. Therefore, provision created on the basis of actuarial valuation should be considered to have been created on scientific basis and allowable deduction."*

7.5 To support the aforesaid arguments, Ld AR, relied on the following judicial pronouncements:

i) CIT vs Insilco Ltd, (2009) 320 ITR 322 (Delhi)
ii) Rotork Controls Ltd vs CIT, (2009) 314 ITR 62 (SC) follows Metal Box India Ltd. (73 ITR 53 (SC),
iii) PCIT vs Nokia India Pvt Ltd., [2018] 98 taxmann.com 415(Delhi)
iv) DCIT vs PFC Ltd (ITA No.50/Del/2014) order dated 13.5.2016
v) The Tinplate company of India ltd vs DCIT (ITA No.1070/Kol/2018)
vi) Bharat Earth Movers vs CIT, (2000) 245 ITR 428 (SC)

7.6 The Ld. AR also submitted copy of sample actuarial report in support of contention that the company is following scientific basis for valuation of the liability.

7.7 In reply, ld CIT DR supported the orders of the lower authorities. He further submitted that since this was a provision and not actual payment, thus cannot be allowed under the settled position of law.

7.8 We have considered the rival submissions. It is not in dispute that the assessee has created the provision towards fatal accident under the actuarial valuation done by Coal India Limited, i.e., the parent entity of the assessee. To examine the scope of admissibility of a provision, we found it appropriate to take guidance from case laws relied upon by the assessee, wherein decision of Hon'ble Apex Court and High Courts are as under:

**(i) CIT vs Insilco Ltd, (2009) 320 ITR 322 (Delhi)**

*"5. Having heard the learned counsel for the Revenue as well as the assessee, we are of the view that no fault can be found with the reasoning of both the CIT(A) as well as the Tribunal. In our view, the issue raised by the Revenue before us that the liability under the "long*

*service award" scheme of the assessee is contingent as the payment under the same scheme is dependent on the discretion of the management is a submission which deserves to be rejected at the threshold. It is well settled that if a liability arises within the accounting period, the deduction should be allowed though it may be quantified and discharged at a future date. Therefore, the provision for a liability is amenable to a deduction if there is an element of certainty that it shall be incurred and it is possible to estimate the liability with reasonable certainty even though the actual quantification may not be possible as such a liability is not of a contingent nature. See Bharat Earth Movers (supra). The principles enunciated above have been applied by the Supreme Court also in the case of Metal Box Company (supra) wherein the Supreme Court was considering the question whether estimated liability under gratuity schemes were amenable for deduction from gross receipts shown in the P&L a/c. The observation of the Supreme Court being pertinent are extracted hereinbelow :*

*"But the contention was that though Sch. VI to the Companies Act may permit a provision for contingent liabilities, the IT Act, 1961, does not, for under s. 36(v), the only deduction from profits and gains permissible is of a sum paid by an assessee as an employer by way of his contribution towards and approved gratuity fund created by him for the exclusive benefits of his employees under an irrevocable trust. This argument is plainly incorrect because s. 36 deals with expenditure deductible from out of the taxable income already assessed and not with deductions which are to be made while making the P&L a/c. In our view, an estimated liability under gratuity schemes such as the ones before us, even if it amounts to a contingent liability and is not a debt under the WT Act, if properly ascertainable and its present value is fairly discounted is deductible from the gross receipts while preparing the P&L a/c. It is recognised in trading circles and we find no rule or direction in the Bonus Act which prohibits such a practice."*

*6. In the case of Shree Sajjan Mills Ltd. (supra), the Supreme Court was examining the provision made by the assessee towards gratuity under the IT Act, 1961. The Supreme Court, after noticing the judgment in Metal Box Company (supra), crystallized its analysis at p. 599 and made the following observations :*

*"It would thus be apparent from the analysis aforesaid that the position till the provisions of s. 40A (7) were inserted in the Act in 1973 was as follows :*

*1 to (4) ……..... 5 Provision made in the P&L a/c for the estimated present value of the contingent liability properly ascertained and discounted on an accrued basis as falling on the assessee in the year of account could be deductible either under s. 28 or s. 37 of the Act."*

*7. The Division Bench of this Court, while considering deductibility of a provision for warranties made by an assessee, which dealt in computers*

*in the case of CIT vs. Hewlett Packard India (P) Ltd. by its judgment passed in IT Appeal No. 486 of 2006 dt. 31st March, 2008 [reported at (2009) 222 CTR (Del) 378—Ed.], upheld the deductibility of the provision for warranty on the ground that it was made on the basis of actuarial valuation being covered by the principle set out in Metal Box Company (supra). In view of the aforesaid decisions and given the fact that the provision was estimated based on actuarial calculations, we are of the opinion that the deduction claimed by the assessee had to be allowed. We find no fault with the reasoning of the Tribunal. No substantial question of law arises for our consideration."*

**(ii) Rotork Controls Ltd vs CIT, 314 ITR 62 (SC)**

*"17. At this stage, we once again reiterate that a liability is a present obligation arising from past events, the settlement of which is expected to result in an outflow of resources and in respect of which a reliable estimate is possible of the amount of obligation. As stated above, the case of Indian Molasses Co. (supra) is different from the present case. As stated above, in the present case we are concerned with an army of items of sophisticated (specialiased) goods manufactured and sold by the assessee whereas the case of Indian Molasses Co. (supra) was restricted to an individual retiree. On the other hand, the case of Metal Box Company of India (supra) pertained to an army of employees who were due to retire in future. In that case the company had estimated its liability under two gratuity schemes and the amount of liability was deducted from the gross receipts in the profit and loss account. The company had worked out its estimated liability on actuarial valuation. It had made provision for such liability spread over to a number of years. In such a case it was held by this Court that the provision made by the assessee-company for meeting the liability incurred by it under the gratuity scheme would be entitled to* ***deduction*** *out of the gross receipts for the accounting year during which the provision is made for the liability.* ***The same principle is laid down in the judgment of this Court in the case of Bharat Earth Movers (supra). In that case the assessee company had formulated leave encashment scheme. It was held, following the judgment in Metal Box Company of India (supra), that the provision made by the assessee for meeting the liability incurred under leave encashment scheme proportionate with the entitlement earned by the employees, was entitled to deduction out of gross receipts for the accounting year during which the provision is made for that liability****. The principle which emerges from these decisions is that if the historical trend indicates that large number of sophisticated goods were being manufactured in the past and in the past if the facts established show that defects existed in some of the items manufactured and sold then the provision made for warranty in respect of the army of such sophisticated goods would be entitled to* ***deduction*** *from the gross receipts under Section 37 of the 1961 Act. It would all depend on the data systematically*

*maintained by the assessee. It may be noted that in all the impugned judgments before us the assessee(s) has succeeded except in the case of Civil Appeal Nos. of 2009 - Arising out of S.L.P.(C) Nos.14178-14182 of 2007 - M/s. Rotork Controls India (P) Ltd. v. Commissioner of Income Tax, Chennai, in which the Madras High Court has overruled the decision of the Tribunal* ***allowing deduction*** *under Section 37 of the 1961 Act. However, the High Court has failed to notice the "reversal" which constituted part of the data systematically maintained by the assessee over last decade."*

**(iii) Bharat Earth Movers Vs. CIT (2000) 245 ITR 428 (SC)**

*"If a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain. Applying the above-said settled principles to the facts of the case at hand we are satisfied that provision made by the appellant company for meeting the liability incurred by it under the leave encashment scheme proportionate with the entitlement earned by employees of the company, inclusive of the officers and the staff, subject to the ceiling on accumulation as applicable on the relevant date, is entitled to deduction out of the gross receipts for the accounting year during which the provision is made for the liability. The liability is not a contingent liability. The High Court was not right in taking the view to the contrary."*

7.9 Referring to the aforesaid decisions relied upon by the assessee, it was the contention of the assessee that the provision made for employee's compensation on fatal accident on the basis of actuarial valuation as directed by the holding company i.e. Coal India Ltd., copy of sample actuarial valuation pertaining to various employee benefit liabilities including fatal mine accidental benefit duly signed by Mr. Bhudev

Chatterjee, actuary as on 31.03.2015 issued on 27th April, 2015 was furnished. The certificate issued by the actuary was the certification of actuarial valuation as supplied by the company and the data was accepted by the actuary for valuation purpose. The total amount of liability as at 31.03.2015 was Rs.41,08,83,271/-. The certificate by the actuary was not supported with the actual working data. Also, the amount of actual payment incurred during the relevant assessment year i.e. A.Y.2010-11 was not submitted for our perusal. Coming to the issue pertaining to disallowance of provision created on account of actuarial valuation of employee's compensation on fatal accident, after going through the aforesaid decision placed by the Ld. AR in support of assessee's contention to allow the provision made during the year based on actuarial valuation report. On perusal of the judgment in the case of Insilco (supra) and Rotork (supra), it is observed that both these judgments have followed the judicial principle laid down by the Hon'ble Apex Court in the case of Bharat Earth Movers Vs. CIT, (2000) (supra) and Metal Box India Ltd. (1969) (supra). Both these judgments were passed prior to 1st April, 2002 i.e. effective date of the insertion of clause (f) in Section 43B of the IT Act, 1961 . Clause (f) of Section 43B was discussed and deliberated upon by the Hon'ble Apex Court in the case of Union of India vs M/s Exide Industries Ltd. (2020) 425 ITR 1 (SC), wherein the judgment in the case of Bharat Earth Movers (supra) was also considered and finally has laid down ruling that after the amendment in Section 43B effective from 2002, the payment for the benefit of

employees payable by the assessee as an employer in lieu of any leave at the credit of its employees shall be allowed in the previous year in which such sum is actually paid. The relevant portion from the judgment in the case of M/s. Excide Industries Ltd. (supra) are extracted here under:

> *" 4. It is the case of the respondents that the judgment of this Court in Bharat Earth Movers vs. Commissioner of Income Tax, Karnataka3 holds the field of law as far as the nature of the liability of leave encashment is concerned. The said judgment, while dealing with the principles of accounting under Section 37, conclusively holds that if a business liability has arisen definitely, deduction may be claimed against the same in the previous year in which such liability has accrued, even if it has not been finally discharged. The Court further held that the liability in lieu of leave encashment scheme is a present and definite liability and not a contingent liability. As regards the nature of the leave encashment liability, the respondents urge that this liability is carved in the nature of a beneficial provision and leave can only be encashed by the employees in accordance with the terms and conditions of employment. It is further 3 (2000) 6 SCC 645 contended that since the due date for encashment of leave does not arise in the same accounting year in which provision is made, there is no question of subjecting the deductions against such liability upon actual payment.*
>
> *43B (f) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee, shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him:*
>
> *Inconsistency of clause (f) and absence of nexus with Section 43B*
>
> *31. The High Court has supported its finding of invalidity by recording two observations visavis the previously existing (unamended) clauses of Section 43B – first, that clause (f) is inconsistent with other clauses and nature of deduction targeted in clause (f) is distinct from other deductions. Second, that clause*

> *(f) has no nexus with the objects and reasons behind the enactment of original Section 43B and therefore, the objects and reasons attributed to Section 43B cannot be used to deduce the object and purpose of clause (f).*
>
> *32. At the outset, we observe that both the grounds are ill founded. In the basic scheme of Section 43B, there is no direct or indirect limitation upon the power of legislature to include only particular type of deductions in the ambit of Section 43B. To say that Section 43B is restricted to deductions of a statutory nature would be nothing short of reading the provision in a purely imaginative manner. As already discussed above, from 1983 onwards, Section 43B had taken within its fold diverse nature of deductions, ranging from tax, duty to bonus, commission, railway fee, interest on loans and general provisions for welfare of employees. An external examination of this journey of Section 43B reveals that the legislature never restricted it to a particular category of deduction and that intent cannot be read into the main Section by the Court, while sitting in judicial review.* ***Concededly, it is a provision to attach conditionality on deductions otherwise allowable under the Act in respect of specified heads, in that previous year in which the sum is actually paid irrespective of method of accounting****.*
>
> *33. Further, it be noted that the broad objective of enacting Section 43B concerning specified deductions referred to therein was to protect larger public interest primarily of revenue including welfare of the employees. Clause (f) fits into that scheme and shares sufficient nexus with the broad objective, as already discussed hitherto."*

7.10 In cognizance of the aforesaid decision in the case of M/s. Excide Industries Ltd. (supra) wherein judgment in the case of Bharat Earth Movers (supra) was also duly considered on which the assessee has placed reliance so as to achieve the benefit of allowing the expenditure on the basis of provisions without incurring the expenditure in the relevant assessment year.

7.11 Assessee's contention with reference to Circular No.47 of 1970 pertaining to provision for estimated service gratuity payable to its employees- deduction u/s. 37(1) and Section 40A(vii) after its insertion by Finance Act, 1975 w.e.f. 01.04.1973 that provision for gratuity may be treated as an admissible deduction u/s.37(1) does not hold good in terms of another Circular No.146 dated 26.09.1974, since after the judgment by the Hon'ble Supreme Court in the case of Bombay Dyeing and Manufacturing Company Ltd. Vs. CWT reported in 1974, 93 ITR 603 (SC) wherein their Lordships have observed that the decision in Metal Box Company's case (supra) was rendered under a different Act and in a different context. In view of this, the earlier instruction of Board referred to above stands withdrawn with immediate effect. Under such circumstances, assessee's claim to allow provision for employee compensation on fatal accident within the provisions of Section 37(1) does not deserves to be acceptable.

7.12 Under such facts and circumstances, the analogy articulated by Hon'ble Apex Court in the case of M/s. Excide Industries Ltd. (supra) would be the most appropriate ratio of law that has to be adopted wherein Hon'ble Apex Court has held that "***concededly, it is a provision to attach conditionality on deductions otherwise allowable under the Act in respect of specified heads, in that previous year in which the sum is actually paid irrespective of method of accounting*****",** though the observations of the Hon'ble Apex Court in the said case was

pertaining to admissibility of payment in lieu of leave to the employees by the employer under section 43B(f), but the same is squarely applicable in the case of present issue in the hand i.e. provision for employee compensation of fatal accident. Accordingly, we are of the considered view that provision made for employee's compensation on fatal accident on the basis of actuarial valuation should be allowed in the year of actual payment. Since the details pertaining to actuarial valuation as well as actual payment of any compensation to employees on fatal accident were not furnished before us, also in order to work out the admissible figure i.e. the amount actually paid, verification of accounting records, working of actuarial valuation and examination of supporting evidence has to be undergone therefore, in all equality the matter merits to be restored back to the file of the A.O to re-adjudicate the issue in terms of our aforesaid observations. Needless to say, the A.O shall in the course of set-aside proceedings afford a reasonable opportunity of being heard to the assessee. Consequently, Ground No. 2 of the assessee's appeal is allowed for statistical purposes.

**Ground No. 3 :** ***Disallowance of depreciation on Apollo Hospital Building;***

7.13 Ld A.R. of the assessee submitted that the assessee had claimed depreciation on building rented to M/s. Apollo Hospital for purpose of running its clinic as a general hospital. It was the submission that as per agreement dated 19.3.2001 between the Apollo Hospital and the

assessee company, the building was given on lease for 30 years from 16.8.2001 to the hospital. Ld AR submitted that the Assessing Officer denied the claim of the assessee of depreciation on that as per provisions of section 27(iiib) of the Act r.w.s 269UA(f) of the Act, the ownership of the building subsisted with Apollo Hospital. On appeal, the ld CIT(A) confirmed the action of the Assessing Officer. Ld AR submitted that the expenditure is in consequence to the SECL's obligation to fulfil its contractual liability arising from para 10.3 of National Coal Wage Agreement entered with the employees of coal industry for providing quality medical facilities to in-service as well as retired employees and their family members. Ld AR submitted that although initially, the assessee company intended to manage the hospital by its own doctors but due to scarcity of the specialised doctors, the assessee company had to enter with an agreement with Apollo Hospital for treatment of its employees and their dependants. The Apollo Hospital is bound to treat all the patients referred to by the SECL at the concessional rate. He submitted that since this hospital is intended for use by SECL for its employees, depreciation has been claimed by the assessee company as eligible business expenditure. Ld AR relied on the following decisions:

*i) Indusind Bank Ltd vs ACIT, 135 ITD 165 (Mum)*
*ii) Chennai Properties & Investments Ltd., 373 ITR 673 (SC)*
*iii) Sultan Brothers Pvt Ltd. vs CIT, 51 ITR 353 (SC)*
*iv) CIT vs National Newsprints & Paper Mills Ltd., 114 ITR 388 (MP)*
*v) CIT vs Wamer Hindustan Ltd., 364 ITR 208(AP)*

7.14 Further, ld AR relied on the decision of Hon'ble Supreme Court in the case of ICDS Ltd vs CIT, 212 Taxman 550, wherein, it has been held

that "*if there is a specific stipulation in lease agreement that in case of default committed by the lessee, the lessor is empowered to repossess plant and machinery and on termination of lease, leased plant and machinery will be returned to lessor in the same condition in which they are taken, except normal wear and tear, it cannot be said to be a financial lease; it is a case of operating lease and the lessor will be entitled to depreciation on leased assets*". He further submitted that in view of the agreement between SECL and Apollo Hospital, it is clear that SECL is the owner of the building leased to the hospital and is entitled to claim depreciation. The Ld. AR of the assessee placed before us a written submissions marked as "Enclosure M" and the same is extracted as under:

> *"The Assessee claimed depreciation for the above-mentioned years on its hospital building provided to Apollo Hospital for running its hospital. Initially, the assessee itself wanted to set up and run the hospital. accordingly, at the request of the assessee company, the State Government allotted land to it at Lingidiah, Bilaspur only for constructing hospital on 23.01.1990 on lease of 30 years. The Government allotted total 19 acres of land consisting of 12.72 acres for construction of hospital building and 6.28 acres for construction of residential quarters of doctors, nurses, para medical staff and all others, who relate to the hospital. The assessee company decided to approach professionally run hospital group for better achievement of its objectives of providing advanced medical treatment and quality medical care to its employees.*
>
> *It may be mentioned that all successive National Coal Wage Agreements signed between Coal India Limited and its subsidiaries on one hand and employees of Coal Industry on other hand. stipulate that coal mining companies would strive for providing 1 hospital bed for 100 employees and providing medical facilities according to the recommendations of Kumarmangalam Committee.*
>
> *Accordingly, to fulfil its commitment towards providing quality medical facilities to its employees, the assessee vide its*

*agreement dated 16.08.2001 gave licence to Apollo Hospital to run the hospital for 30 years after obtaining "no-objection" from the Government.*

*B. AO's reasons for making disallowance or addition (para numbers of the assessment orders of the respective years are as in the above table)*

*The learned AO considering provisions of section 27(iiib) rws section 269UA(f) of the Act, treated Apollo Hospital "deemed owner". He treated the assessee's claim of the depreciation on hospital building to be irregular and accordingly, he disallowed depreciation claimed by the assessee on hospital building.*

*C. Decision of the CIT(A) and its basis (page numbers of the appellate orders of the respective years are as in the above table)*

*The learned CIT(A) by confirming order of the learned AO held that rental income received from Apollo Hospital should be asseseed as "income from house property" and not "income from business" as treated by the assessee company.*

*D. Assessee's arguments before the Hon'ble Tribunal*

*Before adverting to the arguments on applicable law, it might be useful to appreciate the facts. which are listed as under:*

*1) The assessee company has undertaken to fulfil its obligation of striving for construction of hospital for its employees, which arises from each successive National Coal Wage Agreements signed with employees.*

*2) It obtained lease of the land from the State Government, on which construction of only hospital is permitted by the State Government.*

*3) It has almost completed construction of the hospital, when it signed licence agreement with Apollo Hospital for running hospital because as stated, initially it wanted to run the Hospital.*
*4) The assessee signed licence agreement with the Apollo Hospital after obtaining "No Objection' from the State Government.*

***Argument 1***

*5) The nature of the transaction from the assessee's point of view is NOT of renting of the property simplicitor but transaction is of transfer of licence to run hospital, which was granted to it by the State Government for better attainment of its objective of providing advanced medical treatment to its employees.*

*6) For the assessee, renting of property is incidental and consequential. Renting of property is not the assessee company's dominant objective. Providing advanced medical care to its employees to fulfil its obligation under National Coal wage Agreement is its dominant objective under this agreement.*

*7) Perusal of the different causes of the assessee's rent agreement with Apollo Hospital shows that assessee was primarily interested in proper running of the hospital and not at all on getting return from space rented by it.*

*8) Attention is invited to clause 5.10 of the agreement, which grants right to access the hospital to the assessee company's Chief Medical Officer, Chief Engineer (Civil) or their authorised representative into the Hospital.*

*9) The learned AO in none of the assessment orders of any of the years, has assessed rental income as "income from house property". Disallowance of depreciation without assessing corresponding rental income under the head "income from house property" is illegal and liable to be deleted.*

***Argument- 2***

*On examination of transaction from the point of view of businessman according to the ratio laid down by 3 Judges Bench of the Honourable Supreme Court in the case of Universal Plast Ltd v CIT [(1999) 237 ITR 454 (SC)], it is clear that rental income earned by the assessee should be assessed as "income form House property".*

*The honourable Supreme Court in the above case has laid down one of the test as under:*

> *2) "it is a mixed question of law and fact and has to be determined from the point of view of a businessman in that business on the facts and in the circumstances of each case, including true interpretation of the agreement under which the assets are let out"*

*5 judge Constitution Bench in the case of Sultan Brothers (P) Ltd v CIT [(1964) 51 ITR 353 (SC)] has also applied "intention test". The honourable Apex Court held as under:*
*"It seems to us that the inseparability referred to in sub-section (4) is an inseparability arising from the intention of the parties. That intention may be ascertained by framing the following questions:*

*Was it the intention in making the lease—and it matters not whether there is one lease or two. that is, separate leases in respect of the furniture and the building—that the two should be*

*enjoyed together? Was it the intention to make the letting of the two practically one letting? Would one have been let alone and a lease of it accepted without the other? If the answers to the first two questions are in the affirmative, and the last in the negative then, in our view, it has to be held that it was intended that the lettings would be inseparable."*

*As stated, providing advanced medical care to its employees to fulfil its obligation under National Coal wage Agreement is the assessee company's dominant objective under this agreement. Accordingly, rental income should be assessed as business income.*

***Argument 3***

*Income earned from renting out is business asset for efficient conduct of its business is assessed as "Income from Business" and hence, corresponding depreciation is a business expense.*

*Depreciation claimed on company's residential quarters, employee residential township assets etc are allowed as a business expenditure on the ground that these use of these assets or facilities by its employees facilitates efficient conduct of business. On the same ground, Apollo Hospital facilitates assessee company's business smoothly by providing quality healthcare to its employees. Further, for the assessee company, providing hospital facility is not only a welfare measure but mainly fulfilment of its obligation undertaken under the Wage Agreement.*

*The assessee has let out its business asset of hospital building to be used as hospital building for the purposes of its business. Hence, rental income received for fulfilling its business purpose is assessee's business income.*
*Reliance is placed on following decisions:*

*• CIT v National Newsprint & Paper Mills Ltd [(1978) 114 ITR 388 (MP)]*
*• CIT v Mcleod & Co Ltd [(1993) 203 ITR 290 (Calcutta)]*
*• Vyline Glass Works Ltd v ACWT [(2012) 20 taxmann.com 32 (Chennai)]*

***Argument 4***

*TDS made by the Hospital u/s 194I is not relevant for deciding head of Income of the receipt in the hands of the recipient.*

*In the following cases, Income was assessed as "income from Business" even though the payer had deducted tax under section 194 I. This is because, section 194 I requires TDS on rent payment for use of machinery as well as on furniture. However.*

*rental income arising from use of these assets is not assessed under the head "Income from house property". Therefore, section under which tax is deducted by the payer cannot determine the nature of income in the hands of the recipient.*

*• ITO v Shanaya Enterprises, [ITA No 3647/Mum/2010, dated 30.06.2011] (Page 5, 2" para)*
*• ITO V Tejmalbhai & Co [(2006) 99 ITD 399 (Rajkot)1 (para 8)*
*• DCIT v Tewari Warehousing Co [(2018) 92 taxmann.com 168 (Kolkata - Trib.)] (para 8.1 and 8.2*
*• ITO v RR Industries Ltd [(2012) 21 taxmann.com 448 (Chennai)] (para 14)*

***Prayer for granting consequential relief***

*Alternatively, if assessment of rent received from Apollo Hospital as "income from House property' is upheld, then it is respectfully prayed that the learned AO may be directed to grant consequential relief of granting 30% standard deduction from "Income from House property'.*

*Reliance is placed on the decision in the case of CIT v Ramnath Goenka [(2001) 252 ITR 653, 654 (Mad)], which held that*

*The Tribunal has primary jurisdiction to prevent miscarriage of justice. Further, the Tribunal is duty bound to grant relief to which the assessee is entitled even though there was no plea in that regard.*

***E. Case laws relied on***
***(Copies attached)***

*• Universal Plast Ltd v CIT [(1999) 237 ITR 454 (SC)], copy placed as Attachment M1*
*• Sultan Brothers (P) Ltd v CIT [(1964) 51 ITR 353 (SC)], copy placed as Attachment M2 • CIT v National Newsprint & Paper Mills Ltd [(1978) 114 ITR 388 (MP)], copy placed as Attachment M3*
*• CIT v Mcleod & Co Ltd [(1993) 203 ITR 290 (Calcutta)], copy placed as Attachment M4*
*• Vyline Glass Works Ltd v ACWT [(2012) 20 taxmann.com 32 (Chennai)], copy placed as Attachment M5*
*• ITO v Shanaya Enterprises [ITA No 3647/Mum/2010, dated 30.06.2011] (Page 5, 2nd para) copy placed as Attachment M6*
*• ITO V Tejmalbhai & Co [(2006) 99 ITD 399 (Rajkot)] (para 8), copy placed as Attachment M7*
*• DCIT v Tewari Warehousing Co [(2018) 92 taxmann.com 168 (Kolkata - Trib.)] (para 8.1 and 8.2), copy placed as Attachment M8*
*• ITO v RR Industries Ltd [(2012) 21 taxmann.com 448 (Chennai)] (para 14), copy placed as Attachment M9*

*• CIT v Ramnath Goenka [(2001) 252 ITR 653. 654 (Mad)], copy placed as Attachment M10"*

7.15 In reply, ld CIT DR strongly supported the orders of the AO and ld CIT(A). He submitted that the rent being paid by M/s. Apollo Hospital is shown as business income and not income from house property. He placed reliance on the decision of Hon'ble Karnataka High Court in the case of CIT vs D.R. Puttanna Sons Pvt Ltd., 162 ITR 468. He also relied on the decision of the Hon'ble Madras High Court in the case of CIT vs Ideal Garden Complex Pvt Ltd., 340 ITR 609 (Mad), wherein, it is held that depreciation claimed on the hospital buildings is not admissible deduction. He urged that the addition made by the AO is worthy to be confirmed.

7.16 We have considered the rival submissions. In the present case, the assessee company had leased out the building for a period of 30 years to M/s. Apollo Hospital for treatment of its employees and dependant. On perusal of the assessment order as well as the lease deed, we observe that the assessee company is the licensor having absolute possession of all the place and parcel of land about 19 acres together with building and other construction thereon including additional construction and other super structures under construction at Lingiah, Bilaspur. The licensor had partly constructed the hospital building, which was inspected by the licensee and has taken up the contract of modifying the building suite the requirement of running of modern multi-speciality tertiary care hospital thereon including constructing the additional infrastructure in accordance

with project development agreement dated 16.11.2000. The assessee being licensor has permitted the licensee i.e Appollo hospital enterprise Ltd. to use and occupy on license basis the said premises for the purpose of running a modern multi-speciality tertiary care hospital in the name of Apollo Hospital Bilaspur. On perusal of the clause 4 of the license agreement dated 19.03.2001 at Para 4.2 under the covenants and obligation of licensor, it is clearly mentioned that the licensor shall not interfere in day to day management of the hospital by the licensee which will be run as a separate division of the licensee. According to Para 4.12 all the medical equipment, furniture, fixtures, fittings amenities and all form of assets to be purchased by the licensee and to deployed at the said premises, which shall continue to vest with the licensee and the licenser shall not have any right or interest on the same and the licensee shall be free to use them or remove them or hypothecate or charge them in any manner as it desires. Provided however that it shall not affect the right of licensor under the said agreement. The licensee was also restricted by Clause No.4.9 to mortgage the said premises with any bank or financial institution or other entity as security for loans or otherwise so long as the agreement is subsisting. On further perusal of the license agreement in Para 5 under the head “Covenants and obligations of licensee” the licensee was under obligation to arrange additional power facilities at its own cost after depositing necessary fee/ deposits to the electricity board. The licensee was required to employ its own staff including doctors, nurses, technicians for running of the hospital, the persons so employed

shall have no nexus or connection with the licensor or Coal India or any of its group companies. Such covenants / obligations cast upon the licensee clearly shows that the licensor has provided the land and building to the licensee for running of the hospital and the licensor was in no way connected with the day to day operation of the hospital. Under such facts and circumstances, we are of the considered view that the license fee is in the nature of rental income earned by the assessee and therefore, the same should be charged for tax under the head “income from house property”. Our view is supported by the view of Hon’ble Apex Court in the case of Universal Plast Limited Vs. CIT, (supra). Accordingly, the decision of the Ld. CIT(A) with respect to disallowance of depreciation on Apollo Hospital building is justified and thus, needs no interference. Thus, ground of appeal No.3 is dismissed so far as disallowance of depreciation on Apollo hospital building is concerned, in terms of our aforesaid observations.

7.17 Before parting with, we are adverting to the alternative prayer of the assessee pertaining to granting of consequential relief wherein it was the plea of the assessee that alternatively if the assessment of rent receipt from Apollo hospital as “income from house property” is upheld then the Ld. AO may be directed to grant consequential relief of 30% standard deduction of income from house property. Reliance was placed in the case of CIT Vs. Ramnath Goyenka, 2001, 252 ITR 653, 654 ( Mad.) wherein, it has been held that the Tribunal has primary jurisdiction to

prevent miscarriage of justice. Further, the Tribunal is duty bound to grant relief to which the assessee is entitled even though there is no plea in that regard. Since we have upheld the order of the revenue authorities wherein the income from rent/license fee received from Apollo hospital, which was considered by the assessee as income from business, but such action of the assessee was rejected by the revenue, placing reliance in the cases of CIT Vs. D. R Puttana Sons Pvt. Ltd. (supra) and CIT Vs. Ideal Garden Complex Pvt. Ltd. (supra), stating that depreciation claimed on hospital building is not admissible deduction and addition on this count is confirmed. Because, the income on account of license fee received from Apollo hospital was not found appropriate to be considered as business income, therefore, the same should be treated as “income from house property” and accordingly, the consequential relief available while computing the taxable income under the head “income from house property” should be allowed to the assessee. Respectfully following the decision in the case of CIT Vs. Ramnath Goyenka (supra), we direct the A.O to compute the assessable income under the head “income from house property” in accordance with extant law. In the result ground No. 3 of the assessee is partly allowed for statistical purposes.

**Ground of appeal No. 4 : disallowance of expenditure on account of land revenue**

7.18 The next ground relates to disallowance of expenditure on account of land revenue. In this regard, ld. AR submitted that the expenditure

incurred by the assessee as compensation paid to displaced persons on acquisition of their land in lieu of their employment. It was also submitted that the expenditure on account of land revenue is revenue expenditure and not capital in nature because there is neither acquisition of any capital asset nor any enduring benefit arising to the assessee. The aforesaid expenditure has been incurred purely as a matter of condition precedent to conduct its business. The ld. AR further submitted that the assessee has to incur such expenses on a continuous basis and hence the same is revenue in nature and eligible for the deduction while computing the income tax. In this regard, ld. AR relied on the decision of coordinate bench of the Tribunal in the case of Western Coal Fields Ltd., vs DCIT in ITA No.475/Nag/2007 dated 10.8.2009, wherein, it is held that the nature of the expenditure as compensation in lieu of employment. To support his arguments, he also relied on the decision of the Co-ordinate Bench of Cuttack Tribunal in the case of NALCO vs DCIT, 110 TTJ 948 (CTC), Hon'ble Delhi High Court in the case of Airport Authority of India vs CIT, 340 ITR 407(Del) and the decision of Hon'ble Calcutta High Court in the case of Shyam Burlap Co Ltd., 380 ITR 151 (Cal).

7.19 In reply, ld CIT DR submitted that since the payment was connected with the acquisition of land, hence, the AO was right in treating the expenditure as capital in nature. He dutifully supported the order of the ld CIT(A).

7.20 We have considered the rival submissions. A perusal of the orders of the lower authorities shows that the assessee had incurred the expenditure on account of land revenue as compensation paid to displaced persons in lieu of their employment. For smooth functioning of the assessee's business the assessee has to incur such expenses on a continuing basis and, therefore, the expenditure incurred by the assessee is revenue in nature. The Full Bench of the Hon'ble Delhi High Court in the case of Airport Authority of India, [2012] 18 taxmann.com 174 (Delhi) wherein the judgment of Hon'ble Apex Court in the case of V. Jaganmohan Rao Vs. CIT & Excess Profit Tax (1970) 75 ITR 373 (SC) which was relied upon by the Ld. CIT(A) was duly considered and has held that liability should have been actually incurred in the year and it should be capable of reasonable ascertainment, the assessee is to prove that such a liability had actually been incurred and was capable of reasonable ascertainment. The relevant observations of the Hon'ble High Court are as under :-

> ***13.*** *When we apply the aforesaid test laid down by this Court as well as the ratio of Bikarner Gyupsums Ltd. (supra) to the facts of this case, a conclusion would be that the expenditure in question by the assessee was revenue in nature. It is not in dispute that the land belongs to the assessee. Certain encroachers in all these airports had encroached upon the part of the land. In the schemes formulated by the Government for removal of these encroachers and rehabilitate them at other places, if the assessee had paid the amount that amount is not for acquisition of new assets. The payment was made to facilitate its smooth functioning of the business i.e. in relation to carrying on the business in a profitable manner.*
>
> ***14.*** *We are therefore of the opinion that the Division Bench of this Court in Airport Authority of India (supra) does not lay down the correct law. We accordingly over rule the same holding that such an*

> *expenditure if incurred by the assessee would be on revenue account and is not capital in nature. Having held so, we turn to the reasons given by the Tribunal in denying this expenditure.*

7.21 On the issue of payment of compensation, Hon'ble High Court of Calcutta in the case of Shyam Burlap Company Ltd. Vs. CIT, reported in (2016), 380 ITR 151 (Cal.) has held that where rental income earned by the assessee was taxable as business income, compensation paid to existing tenants to obtain vacant possession of building so as to earn higher rental income by letting it out to new tenants had arisen out of business necessity and commercial expediency which was to be allowed as revenue expenditure.

7.22 Respectfully following the above observations and principle of law laid down by the Hon'ble Delhi High Court and Hon'ble Calcutta High Court in the case of Airport Authority of India, (supra) and Shyam Burlap Company Ltd. Vs. CIT (supra) , we are of the opinion that if the amounts have been incurred by the assessee and these are admissible deduction being arisen out of business necessity and commercial expediency, thus, the same is to be allowed as revenue expenditure. However, on perusal of the order of Ld. CIT(A) in Ground No.8, it was the observation that before A.O, the assessee has submitted that the expenditure was incurred on account of acquisition of land. When the issue was discussed and deliberated before the Ld. CIT(A), the Ld. AR of the assessee submitted that certain rehabilitation expenses and resettlement cost

incurred for concerned displaced persons and other expenditure incurred on acquisition of land like compensation in lieu of employment and same are treated as revenue expenditure. From such facts coming out from the orders of the revenue authorities, it is not clear whether the expenditure booked under the head “miscellaneous expenditure” was for acquisition of land or towards compensation in lieu of employment. This aspect needs to be examined. Therefore, in the interest of natural justice, the issue demands and justifies being restored back to the file of the A.O to verify the nature of expenditure incurred in terms of our observations and re-adjudicate the same accordingly. The assessee shall be provided with adequate opportunity of being heard. Thus, the ground No.4 of the appeal is partly allowed for statistical purposes in terms of our aforesaid observations.

**Ground No. 5 : Disallowance of prior period expenses**

7.23 Ld AR submitted that the assessee company had debited prior period expenses in the profit and loss account amounting to Rs.3912.29 lakhs, which is evident as per schedule 15 of the audited financial accounts. While all prior period expenses were duly added back in computation of income, Rs.15.01 lacs and Rs.41.42 lacs on account of stores and contractual expenses were claimed as admissible deduction, in aggregate the assessee claimed deduction of prior period expenses amounting to Rs.56.43 lakhs, according to Ld. AR the same was crystalized during relevant assessment year 2010-2011. However, the

claim of assessee company was not allowed by the Ld. AO in absence of any corroborative evidence which were requested but not furnished by the assessee. Ld. CIT(Appeals) also observed the same fact and on account of no material provided with respect to crystallization of expenses during the year, the disallowance made by the A.O was upheld. Ld. AR of the assessee submitted that the expenditure was crystalized during the A.Y.2010-11 on account of write off of stores and towards contractual liability for employee wages arising from national coal agreement. The assessee placed reliance on Saurashtra Cement and Chemical Industries Ltd. Vs. CIT (1995) 213 ITR 523 ( Guj) wherein the Hon'ble High Court has held that:

> *"merely because an expense relates to a transaction of an earlier year it does not become a liability payable in the earlier year unless it can be said that the liability was determined and crystallized in the year in question on the basis of maintaining accounts on the mercantile basis. In each case where the accounts are maintained on the mercantile basis it has to be found in respect of any claim, whether such liability was crystallized and quantified during there previous year so as to be required to be adjusted in the books of account of that previous year. If any liability, though relating to the earlier year, depends upon making a demand and its acceptance by the assessee and such liability has been actually claimed and paid in the later previous years, it cannot be disallowed as deduction merely on the basis that the accounts are maintained on mercantile*

*basis and that it relates to a transaction of the previous year. The true profits and gains of a previous year are required to be computed for the purpose of determining tax liability. The basis of taxing income is accrual of income as well as actual receipt. If for want of necessary material crystallizing the expenditure is not in existence in respect of which such income or expenses relate, the mercantile system does not call for adjustment in the books of account on estimate basis. It is actually known income or expenses, the right to receive or the liability to pay which has come to be crystallized, which is to be taken into account under the mercantile system of maintaining books of account."*

In the case of Commissioner of Income Tax Vs. Modipon Ltd. (2011) 334 ITR 102 (Delhi) wherein it has held that

*"had this expense were booked in earlier year, the assessee would have paid lower taxes. In any case, there is no loss of revenue".*

7.24 In reply, ld CIT DR supported the orders of lower authorities.

7.25 We have considered the rival submissions. Considering the settled position of law and totality of the facts to allow any expenditure which pertains to a year earlier to the relevant assessment year, in that case in order to compute the true profit and gains of the year so as to ascertain the taxable income and tax liability, it has to be seen that whether such

liability was crystalized and quantified during the relevant previous year. To verify this aspect, we remit the matter back to the file of the Assessing Officer to allow the expenses in the year in which the expense is actually crystallized. Since the assessee was unable to substantiate by producing corroborative evidence before the revenue authorities in support of the contention that the expenditure termed as prior period expenses are actually crystalized during the relevant assessment year, the assessee is directed to assist in the set-aside assessment proceedings before the A.O making all the requisite compliances and submissions so as to satisfy the Ld. AO with respect to this aspect. Thus, this ground is partly allowed for statistical purposes.

**Ground No. 6 : disallowance of Land Compensation & Rehabilitation Expenses**

7.26 The issue of disallowance of Land Compensation & Rehabilitation Expenses is identical to the issue raised by the assessee in ground No.1 in assessment year 2009-10(supra) in ITA No.201/BIL/2012. In line with our decisions in that appeal, this issue is decided against the assessee. Consequently, this ground of the assessee is dismissed.

**Additional Ground No. 6E : amortization of land rehabilitation**

7.27 This issue is also identical to the ground raised by the assessee in additional ground No.1E for the assessment year 2009-10 in ITA No.201/BIL/2012 (supra). While adjudicating this issue, we have restored

the matter to the file of the AO to decide the same afresh in line with the decision of the Co-ordinate Bench of this Cuttack Tribunal in the case of East India Minerals Limited (supra) after providing reasonable opportunity of hearing to the assessee. Thus, in line with our decision, this additional ground raised by the assessee is allowed for statistical purposes.

**Ground No. 7 : disallowance u/s.40(a)(ia) of the Act**

7.28 The AO disallowed few of the expenses u/s.40(a)(ia) of the Act on the ground that the assessee have not deducted tax at source on said expenses. The CIT(A) in appeal confirmed the order of the AO and stated that the amendment in Section 40(a)(ia) of the Act was brought in Finance act, 2012 and, hence, it is applicable from the 1st April, 2013 and accordingly, it is prospective rather than retrospective in nature. Ld. CIT(A) also stated that, otherwise also, the assessee failed to furnish the proof that the deductees, who have filed their respective income tax return u/s.139 of the Act and, they had considered such income for computing their total income in their income tax return and have paid tax due on such income declared by them.

7.29 Ld. AR before us submitted that it is trite law that where a provision is curative or merely declaratory/clarificatory of provisions of law shall be applied retrospectively. Accordingly ld. AR submitted that in the interest of justice the assessee company's claim may be accepted or, alternatively the assessee may be granted an opportunity to furnish requisite evidence

before the ld. AO that the deductees have filed their respective income tax return u/s.139 of the Act and they had considered such payments by the assessee for computing their total income in their income tax return and have paid tax due on such income declared by them, therefore, it was the request that this matter may be restored to the file of AO. In this regard, ld. AR relied on the following case laws :-

*i) Ansal Landmark Township Pvt. Ltd. [2015] 377 ITR 635 (Delhi);*
*ii) Mobisoft Telesolutions (P) Ltd. [2019] 411 ITR 607 (Delhi); and*
*iii) Perfect Circle India (P) Ltd.,ITA No.707 of 2016, dtd. 07.01.2019*

7.30 On the other hand, ld. CIT-DR relied on the orders of the authorities below.

7.31 We have considered the rival submissions and perused the relevant material available on record. Without going much into the merits of the case and considering the prayer of the assessee, in the interest of substantial justice, we find it appropriate that one more opportunity can be granted to the assessee to furnish the requisite evidence before the AO, the AO is directed to consider the claim of the assessee as per law. Thus, this ground of assessee is allowed for statistical purposes.

**Ground No.8 : addition in respect of expenditure on assets not belonging to company (roads, etc).**

7.32 The issue of **addition in respect of expenditure on assets not belonging to company (roads, etc)** is identical to the issue raised by the

assessee in ground No.3 in assessment year 2009-10(supra) in ITA No.201/BIL/2012. In line with our decision and observation in that appeal, this issue is decided in favour of the assessee. In line with our above decision, for this year also, accordingly this ground of the assessee is allowed.

**Ground No.9 : coal transportation expenses paid to ESM companies.**

7.33 This ground is identical to the issue raised by the assessee in ground No. 4 in assessment year 2009-10 (supra) in ITA No.201/BIL/2012. In line with our decision and observation in the said appeal, we also direct the AO to determine the allowability of expenses as directed in the above observations of the Tribunal. This ground is allowed for statistical purposes.

**Ground No. 10 : accumulated liquidated damages penalty.**

7.34 In this case, the assessee had received liquidated damages from various parties during the year under consideration for belated supply of the machineries and the assessee treated the same as capital receipt. During the course of assessment proceedings, the AO noticed that the liquidated damages received from various parties is compensation for the loss of profit during to belated supply of the machineries and hence, the AO treated the same as revenue in nature. It was also noted by the AO that the assessee did not provide nature and details of the liquidated damages penalty received and the assessee could not explain as to how

late delivery of machinery delayed its production. The ld. CIT(A) confirmed the findings of the AO observing that the assessee could not file any documents to substantiate the fact that the liquidated damages are capital in nature.

7.35 On perusal of the assessment order as well as appellate order along with the written submission filed by the assessee in the paper book marked as Enclosure-O, it is discernible that the assessee neither during the course of assessment proceedings nor before the ld. CIT(A) has provided any documents to substantiate its claim that the liquidated damages are capital in nature. Even before the Tribunal, ld. AR has only relied on the case laws and findings therein, the same is extracted as under:

> *"D. Assessee's argument before the Hon'ble Tribunal*
>
> *The assessee relies on the judgment of the EID Parry Ltd. Vs. Commissioner of Income Tax (233 ITR 335), wherein the Hon'bel Madras High Court held that "position of compensation which related to delay in procurement of capital asset should be treated as capital receipt and balance amount relating to erection and construction of works and performance of all other duties should be treated as revenue receipt assessable in hands of assessee."*
>
> *In the case of CIT Vs. Saurashtra Cements Ltd. (2010) (192 Taxman 300), the Hon'ble Apex Court held that "it is evident that the damages to the assessee was directly and intimately linked with the procurement of a capital asset i.e. the cement plant, which would obviously lead to delay in coming into existence of the profit making apparatus, rather than a receipt in the course of profit earning process. Compensation paid for the delay in procurement of capital asset amounted to sterilization of the capital asset of the assessee as supplier had failed to supply the plant within time. The amount received by the assessee towards compensation for sterilization of the profit earning source and not in the ordinary*

*course of its business, was a capital receipt in the hands of the assessee."*

*E. Case laws relied on*

- *EID Parry Ltd. Vs. Commissioner of Income Tax (233 ITR 335 (Mad.)*
- *CIT Vs. Saurashtra Cements Ltd. (2010) (192 Taxman 300)*
- *CIT Vs. Barium Chemicals (1987) 168 ITR 164 (AP)"t*

7.36 According to aforesaid submissions of the assessee, respectfully following the judgments, the settled position of law is that if the compensation relates to delay in procurement of capital assets, the same should be treated as capital asset, therefore, if the amount received by the assessee towards compensation for sterilization of the profit earning source and not in ordinary course of its business, the same should be treated as capital receipt in the hands of the assessee. Considering the nature of receipt explained by the assessee towards liquidated damages on account of belated supply of machinery by the suppliers has been held as capital receipt. However, in the present case since the assessee was failed before the revenue authorities to substantiate the fact that the liquidated damages are capital in nature, in our opinion, when the assessee could not prove with any relevant and supporting documents as to how the liquidated damages are capital in nature, and since many of the other grounds in the present appeals are being restored to the file of the A.O in the interest of justice, we find it appropriate to provide the assessee one more opportunity to substantiate its claim by submitting relevant information/ evidence before the A.O., with the direction to Ld.

AO to re-adjudicate the issue in light of our observations. Needless to say, the A.O shall in the course of set-aside proceedings afford reasonable opportunity of being heard to the assessee. Thus, ground No.10 raised by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

**Ground Nos. 11 & 12 : Short grant of TDS & TCS credit without any explanation and levy of interest u/s.234 B,C,D of the Act.**

7.37 The issues are with regard to short grant of TDS/TCS credit without any explanation and levy of interest u/s.234B, 234C & 234D of the Act are consequential in nature, which do not need separate adjudication.

7.38 **In the result appeal of the assessee in ITA No.401/BIL/2014 for A.Y.2010-11 is partly allowed for statistical purposes in terms of our aforesaid observations.**

**ITA No.382/BIL/2014-Revenue's appeal for A.Y. 2010-11.**

8.1 The revenue in its appeal has raised the following grounds :-

1. The order of the Ld.CIT(A) is erroneous and bad in law on the facts and in the circumstances of the case.

2. Whether the Ld.CIT(A) was justified in deleting the amount to the extent of Rs.31624.27 lacs made by AO on account of disallowance of overburden removal expenses.

3. Whether the Ld.CIT(A) was justified in deleting the addition of Rs.2810.20 lacs made by the A.O. on account of expenditure on grant to school and institutions.

4. Whether the Ld.CIT(A) was justified in deleting the addition of Rs.6818.56 lacs made by the A.O. on account of social overheads, expenditure on power and fuel.

5. Whether the Ld.CIT(A) was justified in deleting the addition of Rs.743.27 lacs made by the A.O. on account of corporate social responsibility.

6. Whether the Ld.CI'T(A) was justified. in deleting the addition of Rs.1355.95 lacs made by the A.O. on account of environment expenses, expenditure on plantation on trees and reclamation of land.

7. Whether the Ld.CIT(A) was justified in deleting the addition of Rs.493.02 lacs made by the A.O. on account of expenditure on assets not belongings to the assessee.

8. Whether the Ld.CIT(A) was justified in deleting the addition of Rs.9933.04 lacs made by the A.O. on account of disallowances of transportation charges paid to ESM companies.

8.2 **Ground No.1 is general in nature which does not require any adjudication.**

**<u>Ground No. 2 : disallowance of overburden removal expenses</u>**

8.3 Ground No.2 relates to deleting the disallowance of overburden removal expenses. This ground is similar to the ground No.9 raised by the revenue in its appeal for A.Y.2009-2010 in ITA No.204/BIL/2012, wherein the Tribunal following the decision of the Jabalpur Bench of the Tribunal in the case of Northern Coalfields Ltd., reported in 59 taxmann.com 394 (Jabalpur.Trib.) has dismissed this ground of revenue. Respectfully following the reasoning and observations given by us in the appeal of the revenue for A.Y.2009-2010, we also dismiss this ground of appeal of the revenue.

**Ground No.3 : grant to school and institutions**

8.4 This ground relates to deleting the addition made on account of expenditure on grant to school and institutions. This ground of revenue is similar to the ground No.4 raised by the revenue in its appeal for A.Y.2009-2010 in ITA No.204/BIL/2012, wherein we have dismissed this ground of revenue after following the reasoning and observations given by the coordinate bench of the Tribunal in ITA No.18/NAG/2001, order dated 18.02.2002. In view of the above, we also respectfully following the same, dismiss this ground of revenue and uphold the findings given by the ld. CIT(A) in this regard.

**Ground No. 4 : addition on account of social overheads, expenditure on power and fuel**

8.5 This ground relates to deleting the addition made on account of social overheads, expenditure on power and fuel. This ground of revenue is similar to the ground No.3 raised by the revenue in its appeal for A.Y.2009-2010 in ITA No.204/BIL/2012, wherein we have restricted the disallowance to 25% as against 50% made by the AO. Respectfully following the reasoning given in the appeal of revenue in A.Y.2009-2010, this ground of revenue is partly allowed.

**Ground No. 5 : addition made on account of corporate social responsibility.**

8.6 This ground relates to deleting the addition made on account of corporate social responsibility. In this regard, ld. CIT-DR submitted that the assessee in its reply claimed that it had to carry out the impugned activities following the guidelines from Government of India. This clearly suggests that expenses under this head were to comply with the pre-condition to the allotment of land/mines. Unless the assessee was ready to bear the cost of CSR, sites would not have been allotted to it. Thus, the expenses were not incurred in the course of profit earning process but for sterilization of the profit-earning source. Existence of such condition necessarily makes the impugned expenditure capital in nature. Accordingly, the AO has rightly disallowed the expenditure claimed by the assessee under the head corporate social responsibility, but the ld. CIT(A) has wrongly deleted the addition in spite of failure on the part of the assessee to discharge its primary duty of furnishing relevant names, addresses and deduction of TDS on qualifying items. Therefore, the claim of assessee under the head corporate social responsibility can never be allowed.

8.7 On the other hand, ld. AR vehemently supported the order of the ld. CIT(A) and submitted that for the earlier assessment years also the claim of the assessee was accepted in the appellate proceedings. The assessment year under consideration having the similar facts, thus the

claim deserves to be allowed, the ld. CIT(A) has also accepted the same. It was requested that the findings of the ld. CIT(A) recorded in this regard are to be upheld.

8.8 We have considered the rival submissions and perused the relevant material available on record along with the assessment order and appellate order. On perusal of the assessment order, as per the Ld. AO the assessee company is being harping on the same issue on the guidelines issued by the Government of India for past several years, but the assessee failed to furnish the required documents to substantiate its claim. The CIT(A) though followed the decision of the coordinate bench of the Tribunal in ITA No.121 & 122/Nag/2001, order dated 28.02.2002 for A.Ys. 1995-96 & 1996-97, however, on perusal of the assessment order, wherein the A.O has observed that the assessee was kept on relying on the guidelines issued by the Govt. of India so as to substantiate the claim of expenses under the head CSR. However, while the information pertaining to name, address and TDS in respect of CSR was called for, no such details were furnished by the assessee. The Ld. AO further stated that under such circumstances, veracity of expenses remained unconfirmed, the reliability of expenses incurred under the head CSR was also doubtful. With all such observations, the claim of the assessee was not allowed by the A.O. On perusal of appellate order, it is not discernible as to whether ld. CIT(A) has verified the required documents, which were sought by the AO during the course of assessment proceedings, which

was the main cause for the disallowance. Therefore, we cannot take the finding of Ld CIT(A) on proper examination and appreciation of the facts, thus are unable to endorse the view taken by the ld. CIT(A) on the basis of theoretical submissions of the assessee in deleting the disallowance made by the AO without addressing the issues raised by A.O while making the addition under the head in doubt. Accordingly, we left with no option but to restore this issue to the file of AO for verification and examination of the issue afresh and the assessee is directed to submit all the documents to substantiate its claim before the AO. Thus, this ground of the revenue is allowed for statistical purposes.

**Ground No. 6 : disallowance made on account of environment expenses, expenditure on planation of trees and reclamation of land.**

8.9 This ground relates to disallowance made on account of environment expenses, expenditure on planation of trees and reclamation of land. Both the issues have been decided by us in the appeal of department in Ground No. 7 for A.Y.2009-2010 in ITA No.204/BIL/2012, wherein following the earlier decision of the Tribunal in assessee's own case, we have upheld the findings of the ld. CIT(A) in deleting the disallowance made by the AO on the above heads. Therefore, respectfully following the observations made by us both the grounds of revenue are dismissed.

**Ground No. 7 : disallowance on account of expenditure on assets not belonging to the assessee ( roads etc.)**

8.10 This ground relates to disallowance on account of expenditure on assets not belonging to the assessee. This issue has already been decided by us while deciding the appeal of revenue in Ground No.6 in ITA No.204/BIL/2012 for A.Y.2009-2010, wherein we have dismissed this ground of revenue holding therein that the assessee is eligible for deduction of expenses incurred on the assets not belonging to the assessee. Respectfully following the reasoning and observations given by us in the appeal of revenue for A.Y.2009-2010, we also dismiss this ground.

**Ground No. 8 : disallowance made on account of expenditure claimed on transportation charges paid to ESM**

8.11 This ground relates to disallowance made on account of expenditure claimed on transportation charges paid to ESM companies. This issue has already been considered by us while deciding the appeal of the revenue in Ground No. 8 for A.Y.2009-2010 in ITA No.204/BIL/2012, wherein we have remitted the issue to the file of AO for determining the allowability of expenses in view of the direction given in the earlier orders of the Tribunal as stated supra. Thus, this ground of revenue is allowed for statistical purposes.

8.12 **Thus, appeal of the revenue for A.Y.2010-2011 in ITA No.382/BIL/2014 is partly allowed for statistical purposes.**

**ITA No.162/BIL/2014 (AY:2010-2011) (Assessee's Appeal)**

9.1 This appeal is filed against the order of Ld. CIT(Appeals), Bilaspur dated 23.12.2016 in turn arising from the order of the Ld. AO i.e. ITO, Circle-1(1), Bilaspur u/s.143(3) r.w.s.147 dated 30.07.2015. The Grounds of appeal raised by the assessee are as under:

> "1(a) That on the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals) ['Ld. CIT(Appeals)'] has erred in not appreciating that the order passed by the Learned Assessing Officer ('Ld. AO') under section 143(3)/147 of the Income Tax Act. 1961 (Act') dated 30 July 2015 was bad in law, void ab initio and liable to be struck down.
>
> 1(b) That on the facts and in the circumstances of the case, the Ld. AO erred in initiating the reassessment proceedings on mere change of opinion, based on the information/ materials relating to depreciation which was already furnished to the Ld. AO during the course of the original assessment proceedings itself and therefore, the order passed by the Ld. AO under section 143(3)/147 of the Act is erroneous, law, void ab initio and liable to be struck down.
>
> 2(a) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in upholding the disallowance made by the Ld. AO with respect to additional depreciation claimed by the Appellant under section 32(1)(iia) of the Act on Caterpillar, 240 Tonnes Dumpers etc. of Rs 1196.56 lakhs without appreciating the fact that these are heavy earth moving machineries/ chain mounted machineries and not road transport vehicles/ motor vehicles within the ambit of Motor Vehicles Act, 1988.
>
> 2(b) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) erred in holding 240 Tones Dumper as vehicles just by the nomenclature "Dumper" without referring to Section 2(18) of the Motor Vehicles Act, 1988 wherein such machineries though mounted on tyres are not vehicles if it is used in the enclosed premise or factory.
>
> 2(c) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in treating caterpillars as motor vehicles and ignoring the fact that caterpillars are chain mounted machineries and exclusively used for excavation of minerals in mining areas.

> 3 That the appellant craves leave to add, alter, amend, modify or rescind the grounds hereinabove either before or during the course of appellate proceedings."

9.2 As per the aforesaid grounds raised by the assessee before us, there are twofold contentions raised by the assessee, first with regard to validity of assessment proceedings invoked u/s.147 of the Act by reopening of the assessment and second, admissibility of additional depreciation on heavy caterpillar machine. The contentions of the assessee are described and dealt with in the following paras.

Ground No.1 (a & b) : order u/s.143(3) /147 was bad in law and void ab initio and initiating the reassessment proceedings on mere change of opinion based on the information /material already available with the A.O.

9.3 The Ld. AR before us, on the legal contention raised in ground No.1 of the appeal has furnished a written submissions in Enclosure 'D', which reads as under:

> ***Ground 1: Reassessment is bad in law***
>
> *Re-assessment proceedings are invalid in case an issue or query is raised and answered by assessee in the original assessment proceedings and AO did not make addition in the original assessment order. Hence, re-assessment proceedings is based on his "change of opinion", which is not permissible.*
> *Reliance is placed on: -*
>
> - *Aroni Chemicals Ltd v DCIT [(2014) 367 ITR 405 (Bom)] (Para 14)*
> - *Monarch & Quershi Builders v UO! [(2021) 133 taxmann.com (Bom)] (Para 13)*
> - *Pfizer Ltd V ACIT [(2022) 134 taxmann.com 97 (Bom)] (para 4)*
> - *Commissioner of Income Tax v Rubix Trading (P.) Ltd [(2019) 108 taxmann.com 177 (SC)).*
>
> ***Change of opinion on reappraisal of same facts***
>
> *The reasons to believe provided to the assessee [Page 1-2 of Supplementary PB filed on 28 October 2019] refer to details of additions in plant and machinery*

*and additional depreciation claimed thereon provided by the assessee company before the AO during assessment proceedings.*

*It is settled that for taking an action under section 147 of the Act, it is vital for the Assessing Officer to have valid reason(s) for reopening an assessment and such reasons should not be based on mere change of opinion.*

*Further reliance is also placed on Rasalika Trading and Investment Company Private Limited Vs DCIT [(2014) 365 ITR 447] wherein the Hon'ble Delhi High Court held that re-assessment proceedings cannot be initiated based upon stale information which was available at the time of the original assessment proceedings u/s 143(3).*

*Assessee's duty does not extend beyond true and full disclosure of primary facts. It is for the AO to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn.*

*Reliance is placed on:*

- *Calcutta Discount Co Ltd v ITO [(1961 ) 41 ITR 191 (SC)]*
- *CIT v Usha International Ltd [(2012) 384 ITR 485 (Delhi)(FB)] (para 10)*

***No adverse opinion can be drawn merely because AO is silent on the issue in the assessment order***

*Reliance is placed on:*
*"Merely because he did express this in the assessment order, that by itself would not give him a ground to conclude that income has escaped assessment and, Therefore, the assessment needed to be reopened. On the other hand, if the Assessing Officer did not apply his mind and committed a lapse, there is no reason why the assessed should be made to suffer the consequences of that lapse."*

- *CIT v Eicher Ltd [(2007) 294 ITR 310 (Delhi)]*

*Further, Hon'ble Supreme court in a recent decision has held as under:*

*The assessee has no role to play and is not the author of the assessment order and hence the manner and contents of the assessment order as framed is not determinative whether or not it is a case of change of opinion.*

- *JCIT v Cognizant Technology Solutions India Pvt Ltd [TS-06-SC-2023 dated 03.01.2023]*

- *Re-assessment Proceedings cannot be initiated on the basis of audit objections raised*

*The assessee also would like to draw attention to the supplementary paper book filed on 9 July-2022 (Pg 5) on perusal of which it is evident that re-assessment proceedings were initiated in the case of the assessee because of the audit objections raised.*

*It is a well settled law that notice under section 148 of the Act cannot be issued on the basis of an audit objection. The Assessing Officer must come to an independent conclusion that there was an escapement of income, failing which the re-assessment proceedings are considered to be invalid.*

*Further, the audit report cannot be treated as information coming to the tax officer subsequent to the assessment based on which reassessment could be resorted to under section 147 of the Act.*

*Reliance is placed on the following judicial precedents:*

- *Commissioner of Income Tax vs. The Simbhaoli Sugar Mills Limited [Delhi High Court] [ITA no.1391/2009, 1362/2009 and 1130/2009 decided on March 9, 2011]*
- *Indian & Eastern Newspaper Society vs CIT [(1979) 119 ITR 996 COL A*

***Ground 1: Disallowance of additional depreciation on merits***

*The Assessee has claimed additional depreciation u/s 32(1)(iia) of the Act on Caterpillars and 240 Tonne Dumpers treating them as machineries. Items like Caterpillars or 240 tonne Dumpers have special tyre adopted for use in the enclosed premises of the mining areas only. Therefore, as per the provisions of the Motor Vehicles Act 1988, these items as described are not vehicles within the ambit of the Motor Vehicles Act 1988. The dumpers have specialised tyres called 'Off the Road' (OTR), which are not fit for using in regular roads.*

*Section 2(28) of the Motor Vehicle Act reads as:*

*"motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding (twenty-five cubic centimetres)*

*It is submitted that dumpers are not motor vehicles.*

*Without prejudice to the above, if Your Honours consider dumpers as vehicles, it is submitted that they shall not be considered as road transport vehicles.*

*In this connection, reliance is placed on the following decisions where it was inter-alia held that while dumpers are not road transport vehicles: ,*

- *CIT vs. Gotan Lime Stone Khanij Udyog [(2008) 299 ITR 0368 (Raj HC)}. .*
- *Commissioner of Income Tax Vs. Bajrang Enterprises [(2004) 134 Taxman 0659 (Ntad HC)}*
- *Commissioner of Income Tax Vs. Sibson Construction & Co. [(1997) 90 Taxman 0175 (Gauhati HC)]*
- *Agrawal Flooring Stone Co v CIT [(1995) 216 ITR 757 (Raj)]*
- *ITO v Ghuge & Co (1993) [47 TTy 33 (Pune)}*

*It is submitted that mining of iron ore is 'production' as per Hon'ble Supreme Court in CIT v Sesa Goa Ltd [(2004) 271 ITR 331 (SC)].*

*Further, Hon'ble Calcutta High Court has held that coal mining is 'production' in CIT v G S Atwal {(2002) 254 ITR 592 (Calcutta)].*

*The assessee submits that it has disclosed such dumpers under plant and machinery in its financial Statements and tax audit report. Further, additional depreciation was claimed in the preceding and Subsequent years also.*

*Therefore, it is submitted that the assessee is eligible to claim additional depreciation under section 32(1)(iia) of the Act.*

*Without prejudice to the above, if Your Honours consider dumpers as ineligible for additional depreciation, assessee humbly submits before Your Honours to direct the AO to increase the Closing WDV to the block of asset and grant consequential depreciation in the subsequent years.*

***E. Case laws relied on***

- *Aroni Chemicals Ltd Vs DCIT [(2014) 367 ITR 405 (Bom)] (Para 14), - copy placed as Attachment D1*
- *Monarch & Quershi Builders v UO} [(2021) 133 taxmann.com] (Bom)] (Para 13) copy placed as Attachment D2*
- *Pfizer Ltd V ACIT [(2022) 134 taxmann.com 97 (Bom)] (para 4) copy placed as Attachment D3*
- *Commissioner of Income Tax v. Rubix Trading (P.) Ltd [(2019) [108 taxmann.com 177] (SC)] copy placed as Attachment D4*
- *Rasalika Trading and Investment Company Private Limited Vs DCIT [(2014) 365 ITR 447 (Del) copy placed as Attachment D5*
- *Calcutta Discount Co Ltd v ITO ((1961) 41 ITR 191 (SC)] copy placed as Attachment D6*
- *CIT v Eicher Ltd [(2007) 294 ITR 310 (Delhi)] copy placed as Attachment D7*
- *JCIT v Cognizant Technology Solutions India Pvt Ltd [TS-06-SC-2023] dated 03.01.2023 copy placed as Attachment D8*
- *CIT vs. Gotan Lime Stone Khanij Udyog [(2008) 299 ITR 0368 (Raj HC)] copy placed as Attachment D9 .*
- *Commissioner of Income Tax Vs. Bajrang Enterprises [(2004) 134 Taxman 0659 (Mad HC)] copy placed as Attachment D10*
- *Commissioner of Income Tax Vs. Sibson Construction & Co. [(1 997) 90 Taxman 0175 (Gauhati HC)] copy placed as Attachment D11*
- *Agrawal Flooring Stone Co Vs. CIT (1995) 216 ITR 757 ( Raj.) Copy placed as Attachment D12*
- *ITO v Ghuge & Co (1993) [47 TTy 33 (Pune)}*

9.4 While submitting the aforesaid written submissions the Ld. AR further drew our attention to Page 166 of the paper book containing questionnaire dated 16.10.2012 issued by the A.O during the original

assessment proceedings u/s.143(3). According to question No.54 and 55, the A.O has specifically asked following queries:

> *"54. Please refer to Annexure 5 of TAR. Considering the fact that assessee in the business of coal mining please justify the higher rate of depreciation on vehicles.*
> *55. Please refer to Annexure 5 of TAR. Considering the fact that the assessee is in business of coal mining and not in any process of manufacturing, please justify claim of additional depreciation.*

9.5 It was the submission of the Ld. AR that the reassessment proceedings are invalid in case the issue or query is raised and answered by the assessee in original assessment proceedings and A.O did not make any addition on the issue queried in the original assessment order, merely because of change of opinion on reappraisal of the same facts. It further submitted that the reason to believe provided to the assessee refers to the details of addition in plant and machinery and the additional depreciation claimed thereon before the A.O during the assessment proceedings, Ld. AR submitted that reopening action u/s.147 should be based on valid reasons and not on the basis of mere change of opinion. Ld. AR further placed reliance on the judgment in the case of Rasalika Trading and Investment Company Pvt Ltd. (supra) wherein Hon'ble Delhi High Court has held that reassessment proceedings cannot be initiated based on stale information which were available at the time of original

assessment proceedings u/s.143(3) of the Act. It was also the submissions of the Ld. AR that the assessee's duty does not extend beyond true and full disclosure of primary facts. It is for the A.O to decide what inference or facts can be reasonably drawn and what legal inference have ultimately to be drawn. On this aspect, reliance was placed Kolkata Discount Company Ltd. (supra) and CIT Vs. Usha International Ltd. (supra). Ld. AR advanced the argument that no adverse opinion can be drawn merely because the A.O is silent on the issue in the assessment order. On this count, reliance was placed on Eicher Ltd. (supra) and Cognizant Technology India Pvt Ltd. (supra). Ld. AR further drew our attention to the correspondence with Ld. AO wherein it is discernible that the issue pertaining to irregular allowance of additional depreciation on Dumpers was raised under Audit Objection dated 27.05.2013 which was the cause for reopening assessment. On this aspect, the Ld. AR argued that the reassessment proceedings cannot be initiated on the basis of audit objection raised. Reliance was placed in the case of the Simbhaoli Sugar Mills (supra) and Indian Eastern Newspaper Society (supra). With the aforesaid submissions, Ld. AR requested to hold the reassessment proceedings initiated u/s.147 as bad in law and void ab initio.

9.6 On the other hand, the Ld. CIT-DR vehemently supported the orders of the revenue authorities.

9.7 We have considered the rival submissions, perused the material available on record and case laws placed before us for our consideration.

Admittedly, the issue pertaining to disallowance of additional depreciation on caterpillars and Dumpers was reopened and assessed by way of reopening u/s. 147 of the Act and the assessment was done on account of audit objection. The validity of the reopening of assessment has been challenged by the assessee on account of change of opinion including other contentions that if there is no observation by the Ld. AO in the assessment order the same cannot be reason for drawing an adverse opinion against the assessee. The contention of the assessee was that once the material which was the foundation for reopening of assessment was available with the A.O during the original assessment proceedings u/s.143(3), the same becomes stale information, therefore, based on such information, reassessment proceedings cannot be initiated. We have carefully perused the facts of the case and observed that the information pertaining to discussion and deliberation on the issue and also whether the questions raised by the A.O in original assessment proceedings qua the issue of additional depreciation were duly responded by the assessee and opinion was formed by the Ld. AO were not submitted before us, rather the information which the Ld. AR has referred to stating that the information was furnished before the Ld. AO available at Page 4 of the small 8 pages supplementary paper book filed by the assessee on 22nd July, 2022, was found to be submission of the information in response to proposal u/s. 263 of the Act, such submission cannot be considered as submission against the question No. 54 to 56 raised by the Ld. AO vide questionnaire dated 16.10.2012. No information or evidence that such

information was also furnished before the AO have been furnished before us, in absence of any response before the AO, it can be believed that the assessee has failed in furnishing the response to queries raised by the A.O in original assessment pertaining to the issue of additional depreciation. Similarly, Ld. CIT(A) also has observed that there is no discussion on the issue of Motor Vehicle Act in the assessment order, therefore, there was no opinion formed by the A.O about the nature of Dumper as motorable vehicle even when they are used in the mines. With such observations the Ld. CIT(A) further noted that he does not agree with the submissions of the Ld. AR that there is a change of opinion the Ld. CIT(A) discussed the order of Hon'ble Apex Court in Kelvinator of India Ltd. against the order of Delhi High Court therein what does change of opinion means has been explained. The Ld. CIT(A) concluded that when there is nothing about the issue in the assessment order, it will not amount to expression of any opinion and therefore, the claim of assessee that the order u/s.143(3) r.w.s. 147 was bad in law on account of change of opinion, was rejected. In the backdrop of such facts and circumstances, we concur with the findings of the Ld. CIT(A), since there is no evidence or apparent facts showing deliberation or any scrutiny on the issue by the A.O in the original assessment therefore, there was no conclusive formation of opinion. Further, the Ld. AO while issuing the reasons recorded u/s.148(2) of the Act has categorically mentioned that he has reason that income chargeable to tax has escaped assessment within the meaning of Section 147 of the Act. Consequently, the argument by the Ld.

AR based on certain judgments referred to (supra) which are distinguishable from the facts of the present case, accordingly the claim of the assessee that there was change of opinion is not found to be substantiated and thus, the same is rejected. With respect to the contention of the assessee that information available at the time of original assessment proceedings, following the order of Hon'ble Delhi High Court in the case of Rasalika (supra) that the reopening proceedings based upon stale information which was available at the time of original assessment and in fact, appears to have been used by the A.O at the relevant time during the completion of proceedings u/s.143(3) of the Act, found to be misplaced as in the present case, there was no whisper about the availability and use of such information by the A.O which was the basis for reopening of the assessment, therefore, the ratio of law laid down by the Hon'ble Delhi High Court in the case of Rasalika (supra) cannot rescue the contention of the assessee. Since the reassessment proceedings were initiated within the available period of four years from the end of the relevant assessment year, therefore, there was no dispute with respect to disclosure of the facts by the assessee and thus, the case laws in support of full disclosure of facts by the assessee are not relevant in the present case. The assessee's contention that no adverse opinion can be drawn merely because A.O is silent on the issue in the assessment order wherein reliance was placed on Eicher Ltd. (supra) and Cognizant Technology (supra). On the perusal of the said judgments, we find that simply because A.O choose not to give any findings the same

cannot be a reason to reopen the assessment but along with this aspect there should be application of mind to the material and acceptance to the view canvassed by the assessee. However, in the present case, neither there was any finding by the A.O on the issue in the assessment order nor there was any response by the assessee to the queries of A.O on the relevant issue, thus application of mind on the issue by the AO in original assessment proceedings is farfetched thought of the assessee, hence, the same does not worth acceptance. Accordingly, the judgments relied upon by the assessee are found to be on different on facts and thus, are not suitable to be pursued in the present case. With regard to assessee's reliance on the judgment of CIT Vs. Simbholi Sugar Mills (supra) wherein Hon'ble Delhi High Court has held as under:

> *"The sum and substance of discussion is that reassessment proceedings under Section 147 read with 148 of the Act cannot be initiated merely based on the audit report . An audit is principally intended for the purpose of satisfying the auditor with regard to sufficiency of rules and procedures prescribed for the purpose of securing an effective check on the assessment, collection and proper allocation of revenue. As per para (3) of the circular issued by the Board on July 28, 1960, also an audit department should not in any way substitute itself for the revenue authorities in the performance of their statutory duties."*

9.8 In the present case, the reopening u/s.147 was initiated after recording reasons u/s.148(2) of the Act wherein provisions of Section 32(iia) were reproduced and had categorically mentioned that he has the reason to believe that the income chargeable to tax has escaped assessment. The reasons recorded by the A.O has no mention about the

audit objection; therefore, even if the reopening is prompted by the Audit objection but was based on analysis of information available in the form of audited accounts of the assessee and not merely on the basis of audit objection. Under such circumstances, the plea of the Ld. AR that reassessment proceedings cannot be initiated on the basis of audit objection, does not survive.

9.9 The second contention of the Ld. AR on merits regarding the disallowance of additional depreciation that the Assessee has claimed additional depreciation u/s 32(1)(iia) of the Act on Caterpillars and 240 Tonne Dumpers treating them as machineries. Items like Caterpillars or 240 tonne Dumpers have special tyre adopted for use in the enclosed premises of the mining areas only. Therefore, as per the provisions of the Motor Vehicles Act 1988, these items as described are not vehicles within the ambit of the Motor Vehicles Act 1988. The dumpers have specialised tyres called 'Off the Road' (OTR), which are not fit for using in regular roads. Ld. AR also drew our attention to Section 2(28) of the Motor Vehicle Act and submitted that if the Tribunal considers dumpers as vehicle, then they shall not be considered as road transport vehicles. In this regard, ld. AR relied on the following case laws :-

- *CIT vs. Gotan Lime Stone Khanij Udyog [(2008) 299 ITR 0368 (Raj HC)].*
- *Commissioner of Income Tax Vs. Bajrang Enterprises [(2004) 134 Taxman 0659 (Mad HC)]*
- *Commissioner of Income Tax Vs. Sibson Construction & Co. [(1997) 90 Taxman 0175 (Gauhati HC)]*
- *Agrawal Flooring Stone Co v CIT [(1995) 216 ITR 757 (Raj)]*
- *ITO v Ghuge & Co (1993) [47 TTJ 33 (Pune)]*

9.10 In continuity, the ld. AR submitted that the mining of iron ore is 'production' as per Hon'ble Supreme Court in CIT v Sesa Goa Ltd [(2004) 271 ITR 331 (SC)]. It was also submitted by the ld. AR that the Hon'ble Calcutta High Court has held that coal mining is 'production' in CIT v G S Atwal [(2002) 254 ITR 592 (Calcutta)]. As per the ld. AR the assessee has disclosed such dumpers under plant and machinery in its financial statements and tax audit report. It is submitted that the additional depreciation was claimed in the preceding and subsequent years also, therefore, the assessee is eligible to claim additional depreciation under section 32(1)(iia) of the Act.

9.11 Even otherwise, ld. AR also submitted that if the Tribunal considers dumpers as ineligible for additional depreciation, the AO may be directed to increase the closing WDV to the block of asset and grant consequential depreciation in the subsequent years. In this regard, ld. AR relied on the following case laws:-

*Aroni Chemicals Ltd V v OCIT [(2014) 367 ITR 405 (Bom)] (Para 14),*
*Monarch & Quershi Builders v UOI [(2021) 133 taxmann.com] (Bom)] (Para 13)*
*Pfizer Ltd V ACIT [(2022) 134 taxmann.com 97 (Bom)] (para 4)*
*Commissioner of Income Tax v. Rubix Trading (P.) Ltd [(2019) [108 taxmann.com 177] (SC)]*
*Rasalika Trading and Investment Company Private Limited Vs OCIT [(2014) 365 ITR 447 (Del)*
*Calcutta Discount Co Ltd v ITO [(1961) 41 ITR 191 (SC)]*
*CIT v Eicher Ltd [(2007) 294 ITR 310 (Delhi)]*

*JCIT v Cognizant Technology Solutions India Pvt Ltd [TS-06-SC-202~ dated 03.01.2023*
*CIT vs. Gotan Lime Stone Khanij Udyog [(2008) 299 iTR 0368 (Raj HC)]*
*Commissioner of Income Tax Vs. Bajrang Enterprises [(2004) 134 Taxman 0659 (Mad HC)]*
*Commissioner of Income Tax Vs. Sibson Construction & Co. [(1997) 90 Taxman 0175 (Gauhati HC)]*
*Agrawal Flooring Stone Co v CIT [1995] 216 ITR 757 (Raj); and*
*ITO v. Ghuge & CO (1993) [47 TTJ 33 (Pune)]*

9.12 On the other hand, ld. CIT-DR relied on the orders of the authorities below.

9.13 We have considered the rival submissions, perused the relevant material available on record and case laws relied upon by the assessee. The issue to be decided on the merits is that whether the additional depreciation u/s.32(1)(iia) is allowable on caterpillers and 240 Dumpers treating them as machineries. To under the applicability of Section 32(1)(iia) of the Act , the provision of the said section from the Act is extracted as under:

*"In the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March 2005, by an assessee engaged in the of manufacture or production of any article or thing for in the business of generation or generation and distribution of power], a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii):*

*Provided that no deduction shall be allowed in respect of—*

*(A)any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or*

*(B) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house; or*

*(C) **any office appliances or road transport vehicles; or***

> *(D)any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of deprecation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year;]"*

9.14 According to Sub Clause (c) of Clause (ii) of the provision of Section 32(1), the additional depreciation shall not be allowed in respect of any office appliances or road transport vehicle. The addition/disallowance made by the A.O was on account that the caterpillar and Dumpers used by the assessee are held to be road transport vehicles the Hon'ble Bombay High Court in the case of Western Coalfields Ltd. Vs. State of Maharashtra & Ors, (2016) 11 SCC 613, wherein Hon'ble Mumbai High Court following the decision of in the case of Central Coalfields Ltd. Vs. State of Orissa and also decision of the Hon'ble Apex Court in the case of Baloni Ores Ltd. Vs. State of Orissa, AIR (1975) SC 17 has held as under:

> *"6. According to Mr. Shanti Bhushan, learned Senior Counsel, since the dimension of the dumpers in question exceed the permissible dimensions under the aforesaid Rules, there is an embargo for the dumpers to. be used-on public roads and as such, the vehicle cannot be taxed under the Taxation Act. We are unable to persuade ourselves to agree with the submission of the learned Senior Counsel for the petitioner. The crux of the question is whether the dumper is a motor vehicle and whether the vehicle attracts, the liability of tax under Section 3 of the Taxation Act? The very question came up for consideration before this Court in the case of Central Coal Fields Ltd. v. State of Orissa wherein the various provisions of the Orissa Motor Vehicles Taxation Act was under consideration and the vehicles which had been taxed under the Taxation Act in the said case were dumpers and rockers. This Court after tracing the legislative history and the decisions of this Court commencing from Bolani Ores Ltd. v. State of Orissa repelled argument of the mine owners who used dumpers within their mining premises to the effect that the dumpers are vehicles not adapted for use upon roads and, therefore, are outside the*

> *Scope of the Taxation Act and held that these dumpers run on tyres, in marked contrast to chain plates like caterpillars or military tanks. It was also held that by the use of rubber tyres it is evident that they have been adapted for use on roads, which means they are suitable for being used on public roads and on the mere fact that they are required at places to run at a particular speed is not to detract from the position otherwise clear that they are adapted for use on roads. The very nature of these vehicles make it clear that they are not manufactured or adapted for use only in factories or enclosed premises. The mere fact that the dumpers or rockers as suggested are heavy and cannot move on the roads without damaging them is not to say that they are not suitable for use on roads. The word 'adapted' in the provision was read as 'suitable' in Bolani Ores Case by interpretation on the strength of the language in Entry 57 List II of the Constitution. On the fact situation, therefore, it must be held that dumpers and rockers are vehicles adapted or suitable for use on roads and being motor vehicles per se, were liable to taxation on the footing of their use or kept for use on public roads.*
>
> *"9. On these facts it is difficult for us to hold that the vehicles are not adapted or suitable or capable of being used on public roads, even though for most of the time they might actually be used within the mining areas on the roads prepared by the mining owners. Following the two earlier judgments of this Court in Central Coal Fields Ltd. and Union of India v. Chowgule & Co. we hold that the dumpers in question are motor vehicles and are taxable within the ambit of the Taxation Act."*

9.15 Ld. AR on the contention that Dumpers are not transport vehicle has relied upon judgment of various Hon'ble High Courts, wherein it is held that, *Dumpers, tippers and hydraulic excavator- are not road transport vehicles and construction equipment vehicles- not being road transport vehicles are entitled to investment allowance*. [Gaton Lime Stone (supra)]. *Allowability of investment allowance and additional depreciation on Dumpers-necessary facts relevant to the issue whether Dumpers are road transport vehicles or part of machinery not brought on record, therefore, matter rightly remitted back to the A.O for necessary enquiries*.[ Agarwal Florring Stone (surpa)]. Investment

allowance/additional depreciation on trucks, Dumpers, tippers, road rollers etc. employed by the contractor engaged in construction work, applying the functional test laid down by the CBDT, machineries allowed allowance in so far as they did not function as road transport vehicles. In all the judgments relied upon by the assessee the admissibility of additional depreciation is subject to certain verification that whether the said vehicles were used as road transport vehicles or not or whether they succeed on the test laid down by the CBDT. Thus, such case laws are not effectively supporting contention of the assessee. On the other hand the case laws referred by the Ld. AO in the case of Western Coalfields Limited (supra) in the same line of business/operation, pertains to sister concern of the assessee as observed by the Ld. CIT(Appeals), therefore, having a close nexus with the nature of assessee's business, the decision in case of Western Coalfields Limited (supra) will be more apt to be followed. Accordingly, findings of Hon'ble Mumbai High Court Western Coalfields Ltd. (supra) based on the principle of law guided by the Hon'ble Apex Court in the case of Baloni Ors Ltd. (supra) is squarely applicable in the facts and circumstances of the present case. We, thus, hold that the disallowance on account of additional depreciation made by the Ld. AO and confirmed by the Ld. CIT(Appeals) is on right footing and thus, sustained. In the result, Grounds No.2(a) (b) & (c) are dismissed in terms of our aforesaid observations.

9.16 With regard to request of the assessee qua the consequential depreciation by effecting the requisite changes in WDV in the block of assets when the Dumpers are held as ineligible for additional depreciation, in the interest of substantial justice revenue is duty bound to grant the assessee consequential relief of normal depreciation by computing the closing WDV of the block of assets removing the effect of additional depreciation from the relevant assessment year.

9.17 **In the result, appeal of the assessee in ITA No.162/BIL/2017 (AY:2010-2011) is dismissed in terms of our aforesaid observations.**

**ITA No.115/BIL/2015 (AY : 2011-2012) (Assessee's Appeal)**

10.1 Though the assessee has raised as many as fourteen grounds in the grounds of appeal, however, arguments have been advanced by the ld. AR on the grounds mentioned in the chart filed before us. Therefore, the grounds as taken in the chart are decided in the following paragraphs.

*i) Non-consideration of revised return;*
*ii) Disallowance of Land Compensation & Rehabilitation Expenses;*
*iii) Disallowance of expenditure on accumulated liquidated damages penalty;*
*iv) Disallowance of provision made for mine closure;*
*v) Disallowance of expenditure on actuarial valuation of employee compensation;*
*vi) Disallowance of non-grant of TDS credit due to income mismatch;*
*vii) Disallowance of provision for leave encashment & disallowance of reversal of interest on disputed deposits received from coal customers;*
*viii) Disallowance of reversal of interest on disputed deposits w.r.t. MPGATSVA/Terman Tax;*
*ix) Disallowance of depreciation on Apollo Hospital Building;*
*x) Disallowance of expenditure on account of land revenue;*

*xi) Disallowance of coal transportation expense paid to ESM companies;*
*xii) Short grant of TDS/TCS credit without any explanation; and*
*xiii) Levy of interest u/s.234B, 234C & 234D of the Act.*

10.2 Apart from the above grounds, the assessee has also raised an additional ground which reads as under :-

**Additional Ground No.3A : Disallowance of Amortization of land rehabilitation.**

10.3 First, we are dealing with the additional ground raised by the assessee being additional ground No.3A, which relates to Disallowance of Amortization of land rehabilitation. This issue has already been decided by us while deciding the appeal of the assessee in additional Ground No. 1E for A.Y.2009-2010 in ITA No.201/BIL/2012, wherein we have followed the observations of the coordinate bench of the Tribunal and remitted the issue to the file of AO to adjudicate this issue after taking into consideration the view and directions given by the ITAT Cuttack Bench in the case of East India Minerals Limited (supra) after providing reasonable opportunity of hearing to the assessee. In view of the above, this ground of assessee is restored to the file of AO with the observations as mentioned above. Thus, this additional ground raised by the assessee is allowed for statistical purposes.

**Ground No. 1 : Non-consideration of revised return**

10.4 This issue is with regard to non-consideration of revised return. This ground has not been pressed by the ld. AR, as has been noted in the

chart provided before us during the course of hearing. Therefore, we dismiss this ground as not pressed.

**Ground No. 2: Disallowance of Land Compensation & Rehabilitation Expenses.**

10.5 This issue of disallowance of Land Compensation & Rehabilitation Expenses has already been decided by us in favour of the revenue while considering the appeal of the assessee in Ground No.1 for A.Y.2009-2010 in ITA No.201/BIL/2012, wherein we have dismissed the ground of assessee following the reasonings given by the earlier orders of the coordinate bench of the Tribunal. Respectfully following the same, we uphold the findings of the ld. CIT(A) and dismiss this ground of assessee.

**Ground No. 3 : Disallowance of expenditure on accumulated liquidated damages penalty.**

10.6 This issue of disallowance of *expenditure on accumulated liquidated damages penalty* has already been decided by us while considering the appeal of the assessee in Ground No.10 for A.Y.2010-2011 in ITA No.401/BIL/2014, wherein we have set aside this ground of assessee following the reasonings and observations given by us. Respectfully following the same, we allow this ground of appeal for statistical purposes.

**Ground No. 4 : provision made for mine closure.**

10.7 With regard to this issue, ld. AR drew our attention to the Enclosure-I of the paper book, wherein he submitted as under :-

*The Assessee has provided this amount on account of mine closure. The said amount was provided in pursuance to the guidelines issued by the Government of India and in compliance with AS 29. The Government issued these Guidelines to ensure that fly- by- night private mine operators discharge their duty to restore open cast mines in 'as it was' condition after lifespan of the mine is over. Therefore, the Government mandated that operator need to provide for certain amount every year in accordance with the pre-approved Plan of mine-closure, to ensure that operator has required substantial amount is available with it by the time, mine closes after its life span to restore it back in its original condition and make good environmental damage caused by the mining activity during lifetime of mine.*

*The claim is also being made in line with the guidelines issued by the Ministry of Coal vide No 5501-01-2009-CPAM dated 27 August 2009 wherein it has been directed as follows:*

*"It has been decided by the Government that coal (including lignite) mining operations in India shall be governed as per the guidelines listed in this Annexure to this letter as modified from time to time for privation of Mine Closure Plan (MCP) which shall be incorporated in the Project Report/ Mining Plan putforth, for a new mine. The mine closure Plan (progressive & final) shall be approved alongwith the approval of Mining Plan/ Feasibility Report/ Project Report as applicable"*

*Since coal blocks were being allotted to other operators apart from Public Sector Enterprises, hence, mandatory provisions were introduced by the Guidelines issued by the Ministry of Coal regarding such Provision for Mine Closure.*

*As per the guidelines, the amount was to be deposited in Escrow Account and Coal Controllers Organisation ('CCO') shall be the monitoring agency for this account. Once this amount is deposited in this Escrow Account, the control of the fund rests with the CCO. Since the fund is not under the direct control of the assessee, the obligatory requirement of the assessee stands fulfilled. Thus, such amount is not a mere provision and has been claimed as business expenditure and as also advised by the holding company, Coal India Limited.*

*For AY 2011-12 to 2014-15, the Escrow A/c could not be created due to absence of the notification of the procedural modalities, and hence, the corresponding provision, though created, could not be deposited into the Escrow Account during the respective years. The communication in this regard was issued by Coal India Limited on 26 June 2013 (photocopy enclosed as Attachment I1) and the Escrow account was during Nov 2014, after obtaining necessary internal board and other approvals (obtaining quotes from banks,*

*signing formalities, etc.). The funds pertaining to these years (i.e. AY 2011-12 to 2014-15) along with the amount provisioned for AY 2015-16 was credited to the Escrow A/c in FY 2014-15 (i.e. AY 2015-16). The claim of deduction made in AY 2015-16 was specific to the amount set-aside for the AY 2015-16.*

*For the subsequent years (i.e. AY 2016-17 to AY 2017-18), the company has deposited the amount of the provision created in the respective years into the Escrow account. However, the Learned AO without appreciating that the basis of the disallowance is absence of the Escrow account, has continued with the disallowances even after the assessee company had opened the Escrow account in November 2014 (i.e. AY 2015-16).*

*Once the expenses are incurred, the company makes an application for the withdrawal of funds from the Escrow account, if needed. The amount is released by the CCO after the submission of necessary compliance report and is restricted to expenditure incurred on the progressive mine closure in past five years or 80% whichever is less. The balance amount shall be released to the mine owner at the end of the final Mine Closure on compliance of all provisions of the Closure Plan.*

*B. AO's reasons for making disallowance or addition*
*(para numbers of the assessment orders of the respective years are as in the above table)*

*The learned AO stated that the fund so created as per this norm would be used, if at all, sometime in an indefinite future, at the time of mine closure process. The learned AO further stated that thus, it can be inferred that such fund was built up for eventuality. These were neither any specific expense to be incurred nor any specific time frame could be identified. Financial liability on account of the mine closure thus was clearly unascertainable. According to the learned AO, whatever provision is to be made under this head is not a real expenditure but only a security to be pledged for contingency situation, where a mine owner fails to meet costs of closure. Thus, the learned AO pointed out the following:*

1. *No expenditure was actually incurred during the year;*
2. *Impugned claim has no direct nexus with the income of the assessee in the current year;*
3. *The said claim merely represented a fund to be created for eventuality of non-payment of mine closure expenses to be incurred at some indefinite future;*
4. *No such fund was created during the year by the assessee in absence of modalities to be followed.*

*The claims for AY 2011-12 to 2014-15 were disallowed inter-alia for the reason that the amount, in addition to being a provision, was also not set-aside and credited to this Escrow A/c.*

*For AY 2015-16 onwards, the claim was disallowed even though corresponding amounts were credited to the Escrow A/c in the books of account, considering the same as a provision and without appreciating that the funds were actually deposited to the Escrow A/c.*

*Further, the Learned AO inferred that since the said funds will be used for mine closure activities to the extent of the requirement, the Assessee has ownership and control over the funds so created.*

*C. Decision of the CIT(A) and its basis*
*(page numbers of the appellate orders of the respective years are as in the above table)*

*On appeal, the learned CIT(A) held that a provision is a liability which can be measured only by using a substantial degree of estimation. It is recognised when an enterprise has a present obligation as a result of the past event, it is probable that an outflow can be made on amount of the obligation. If these conditions are not met, no provision can be recognized by relying on the decision in the case of Rotork Controls India Pvt Ltd [(2009) 314 ITR 62], Accordingly, he confirmed the disallowance as according to him, this was unascertained liability.*

*D. Assessee's arguments before the Hon'ble Tribunal*

*The learned AO has disallowed the provision mainly on aground that assesses company during the year did not open the Escrow account and therefore, control over provided money was with the assessee. Secondly, the learned CIT(A) held that the liability was not ascertainable.*

*The learned AO failed to appreciate that reason for not opening the Escrow account was of the absence of the procedural notification. Escrow account could only be opened only after issue of the communication by Coal India Limited on 26 June 2013. Even otherwise, the learned CIT(A) failed to appreciate that non-compliance of the procedural guidelines will not take away the fundamental character that provision was crated for the liability, which was ascertainable and scientifically computed in accordance with the Government Guidelines, hence it was an allowable expenditure.*

*Reliance is placed in the case of Udaipur Mineral Development Syndicate Pvt. Ltd v. DCIT [261 ITR 706], the Rajasthan High Court ('HC') noted that there was a clause in the lease deed which obliged the taxpayer to restore the surface land as far as possible*

*to its original condition. The HC, therefore, held that as soon as the taxpayer dug pits it was under obligation to fill those pits and hence the estimated cost of filling the pits was an accrued liability.*

*In the case of M/s Manganese Ore (I) Ltd [ITA No 123/Nag/2012], the Nagpur Tribunal held that provision for mine closure is not an unascertained liability as it is based on the direction of the ministry and calculated through a specified mechanism under such directions and therefore, it is an allowable ex/" '/Lire under the Act. The same was upheld by the Hon'ble Bombay High Court vide its order dated 8 August 2013. (PB Page 228-229, PB of AY 2012-13 - ITA 102/RPR/2017)*

*Further, in CIT v. Gogte Minerals [(1996) 220 ITR 29], the taxpayer was held entitled to claim the deduction of 'pit filling expenses' on the basis of Rule 34 of the Mineral Conservation and Development Rules, 1988 as per which the lessee had to perform in a phased manner the restoration, reclamation and rehabilitation of the lands affected by prospecting or mining operations within the time stipulated under that rule, i.e. before the conclusion of mining operation or the abandonment of prospect of mine. Hon'ble High Court while permitting the taxpayer to claim deduction of such expenses set aside the matter to Tribunal to determine the extent of deduction, the quantum and from what stage the deduction would be allowable.*

*Hence, the addition made by the learned AO may be deleted.*

*Without prejudice to the above contention that the claim for the AY 2011-12 to 2014-15 should be allowed being an ascertained liability, if the Hon'ble Bench takes an adverse view for these years and upholds that the claim for these years should be disallowed in absence of the amount credited to the Escrow A/c, the Assessee humbly prays that a direction be given the corresponding deduction be granted, in the year in which such amount was deposited to the Escrow A/c.*

*E. Case laws relied on*

- *Udaipur Mineral Development Syndicate Pvt. Ltd v. DCIT [261 ITR 706]*
- *M/s Manganese Ore (I) Ltd [(2013) ITA No 123/Nag/2012] - copy placed as Attachment I2*
- *Hon'ble Bombay High Court in M/s Manganese Ore (I) Ltd (PB Page 228-229, PB of AY 2012-13- ITA 102/RPR/2017)*
- *CIT v. Gogte Minerals [(1996) 220 ITR 29]*
- *PCIT vs Rajasthan States Mines and Minerals Ltd [ITA 151/2016] (Para 5) - copy placed as Attachment I3*
- *PCIT vs Rajasthan States Mines and Minerals Ltd [ITA 39/2019] - copy placed as Attachment I4*
- *Barmer Lignite Mining Co v DCIT [ITA No 510/JP/2017*

*dated 12.10.2017] (Para 15) - copy placed as Attachment I5*

- *Rajasthan States Mines and Minerals Ltd v ACIT [ITA no 144/JP/2014 & 124/JP/2014 dated 12.02.2016] (Para 29-30.3 to 30.5) - copy placed as Attachment I6*
- *Mahanadi Coal Fields Ltd v DOT, [ITA 397 and 421/Ctk/2013 dated 20.03.2018] (Para 130-131, Page 56).. - copy placed as Attachment I7*
- *Gujarat Mineral Development Corporation Limited vs. DCIT [ITA No. 1880/Ahd/2019 dated 19 Oct 2022] - copy placed as Attachment I8*

***F. Paper Book references***

| | |
|---|---|
| PBfor ITA 115/RPR/2015 - AY 2011-12 | |
| Page 112 | Annexure 3 - Copy of Guideline dated 27 August 2009 issued by the Ministry of Coal with respect to Mine closure<br>Para 9 of the Guideline on PB page 122 deals with the requirement of 'provision of mine closure" |
| Page 190 | Annexure 1 - Statement of Mine Closure Plan for FY 2010-11 |
| PB for ITA 102/RPR/2017 - AY 2012-13 | |
| Page 149 | Copy of Guideline dated 07 January 2013 issued by the Ministry of Coal with respect to Mine closure |
| Page 228 | Order of Hon'ble Bombay High Court, Nagpur Bench, dated 8 August 2013 in ITA No.<br>2 of 2013 in the case of Manganese Ore (I) Ltd |

10.8 Ld. CIT-DR, on the other hand, vehemently supported the orders of the authorities below and submitted that the AO has rightly disallowed the claim of the assessee because, no expenditure was actually incurred during the year. It was also the observation of the AO that the said claim merely represented a fund to be created for eventuality of non-payment of mine closure expenses to be incurred at some indefinite future. Therefore, the ld. CIT-DR submitted that the CIT(A) after going thoroughly the findings of the AO, has rightly confirmed the disallowance made by the AO.

10.9 We have considered the rival submissions and perused the material evidence placed on record carefully. On perusal of the assessment order, it is clear that the expenditure incurred by the assessee was not actually incurred during the year. On perusal of the CIT(A)'s order it is discernible that the ld. CIT(A) has held that the liability was not ascertainable. In this regard, the submission of the ld. AR that the reason for not opening the Escrow A/c was absence of the notification of the procedural modalities. However, it was the alternative prayer of the assessee that if the Bench upholds the observations of both the lower authorities, then the AO may be directed to grant the corresponding deduction in the year in which such amount was deposited to the escrow account. We found substance in such contention of the assessee that the deduction should be allowed in the year in which such amount was deposited in the escrow account or when the actual expenditure the impugned head has actually been incurred. In view of such observations, we are of the opinion that matter may be restored to the file of AO to verify and examine as to whether the expenditure incurred during the year under consideration. It is also not clear as to whether the amount has been credited to escrow account or not. Therefore, we restore this issue to the file of AO to grant corresponding deduction in the year in which such amount was actually incurred by depositing the same to the escrow account. This issue is allowed for statistical purposes.

**Ground No. 5 : disallowance on account of actuarial valuation of employee compensation**

10.10 This issue of disallowance on account of actuarial valuation of employee compensation has already been decided by us while considering the appeal of the assessee in Ground No.2 for A.Y.2010-2011 in ITA No.401/BIL/2014, wherein we have set aside this issue following the reasonings and observations given by us. Respectfully following the same, we allow this ground of appeal for statistical purposes.

**Ground No. 6 : Non grant of TDS credit due to income mismatch**

10.11 The ld. AR of the assessee with regard to the above ground submitted as under :-

> *The Assessee would like to humbly submit that the credit of deduction made in accordance with the relevant provisions of the Act and paid to the credit of the Central Government Exchequer, shall be given for the amount so deducted on the production of the certificate furnished under section 203 for the assessment made under this Act for the assessment year for which such income is assessable.*
>
> *However, in the amended provisions in the section 199 of the Act by Finance Act 2008, the words "for the assessment year for which such income is assessable'' have been omitted, meaning thereby, that the legislature was quite conscious about the facts and hardships faced by some assessees, while making the amendments in section 199 of the Act and in amended provisions nothing has been stated about the year in which the credit of TDS is to be claimed.*
>
> *As per amended provisions of section 199 of the Act, it has been stated that any deductions made in accordance with the provisions of the Act and paid to the credit of the Central Government Exchequer shall be treated as a payment of tax on behalf of the person from whose income the deduction was made.*
>
> *Further, section 205 of the Income Tax Act, bars recovery of tax from the deductee, which already been deducted by the deductor. Even otherwise, law does not provide for recovering taxes on the*

*same payment multiple times. In the facts of the case before your Honour's consideration, for the first time, the Assessee has paid tax, when income was declared on accrual basis. Second time, the Assessee was required to pay tax because corresponding TDS credit was denied to it. No provision can be interpreted to effect collection of tax on the same payment multiple times.*

*Further, denial of the tax credit cannot be done under Rule 37BA against the express provisions of Section 205. Rules cannot override the Act meaning Rule 37BA cannot be given precedence over section 205, in case of the conflict between two. Rules 37BA seeks to regulate declaration of income and granting of relatable TDS credit on the basis of the matching principle. However, application of Rule 37BA cannot be stretched to deny credit of taxes paid when income is declared without seeking relatable TDS credit in the same year because of the genuine reasons.*

*Therefore, as per the amended provisions, once the TDS was deducted, a credit of the same to be given to the Assessee, irrespective of the year to which it relates.*

*Reliance is placed on:*

*Kartik Vijaysinh Sonavano v DCIT [(2021) 132 taxmann.com 293 (Gujarat)]*
*ACIT v Om Prakash Gattani [(2001) 117 Taxman 549 (Gauhati)]*
*Yashpal Sahni v Rekha Hajarnavis [(2007) 165 TAXMAN 144 (Bom)]*
*ACIT v Peddu Srinivasa Rao, [ITA 324/Vizag/2009 dated 03.03.2011] (para 8 to 10)*
*Vijay Bhavani Constructions Pvt Ltd v DCIT [(2017) 9 ITR (Trib) 99 (Hyd)] (para 9 to 12.1) Sadbhav Engineering Ltd v DCIT, [ITA no 610, 1834, 1835, 2053, 2054 and 2055/Ahd/2009 dated 19.12.2013] (para 23 to 26)*

- *Greatship (India) Ltd v DCIT, [ITA 5562/Mum/2018 dated 08.01.2020] (para 6 and 7)*
- *Supreme Renewable Energy Ltd v ITO [(2010) 3 ITR (Trib) 339 (Chennai)] (para 6 to 10)*
- *AO cannot recover taxes from assessee, if deductor does not deposit taxes. - Ashok Kumar Chowatia v JCIT [(2021) 128 taxmann.com 230 (Mad)]*

***Without prejudice to the above, if the above ground is held against the Assessee, then. Learned AO may be directed to grant TDS credit in a year in which corresponding income is declared.***

*E. Case laws relied on*

- *Kartik Vijaysinh Sonavane v DCIT [(2021) 132 taxmann.com 293 (Gujarat)], copy placed as Attachment Q1*
- *ACIT v Om Prakash Gattani [(2001) 117 Taxman 549 (Gauhati)], copy placed as Attachment Q2*
- *Yashpal Sahni v Rekha Hajarnavis [(2007) 165 TAXMAN 144 (Bom)], copy placed as Attachment Q3*
- *ACIT v Peddu Srinivasa Rao, [ITA 324/Vizag/2009 dated 03.03.2011] (para 8 to 10), copy placed as Attachment Q4*
- *Vijay Bhavani Constructions Pvt Ltd v DCIT [(2017) 9 ITR (Trib) 99 (Hyd)] (para 9 to 12.1)*
- *Sadbhav Engineering Ltd v DCIT, [ITA no 610, 1834, 1835, 2053, 2054 and 2055/Ahd/2009 dated 19.12.2013] (para 23 to 26)*
- *Greatship (India) Ltd v DCIT, [ITA 5562/Mum/2018 dated 08.01.2020] (para 6 and 7)*
- *Supreme Renewable Energy Ltd v ITO [(2010) 3 ITR (Trib) 339 (Chennai)] (para 6 to 10), copy placed as Attachment Q5*
- *Ashok Kumar Chowatia v JCIT [(2021) 128 taxmann.com 230 (Mad)], copy placed as Attachment Q6*

10.12 On the other hand, ld. CIT-DR vehemently supported the order of the authorities below.

10.13 We have considered the rival submissions and perused the relevant material available on record. During the year under consideration, mismatch arose because the TDS Certificates in a physical form were received in the subsequent year whereas income corresponding to the TDS certificate was declared in the previous year on accrual basis and tax was already paid on the same. During the course of the assessment proceedings, the AO requested the Assessee to submit party-wise contractual receipts as per its books viz-a-viz those as per TDS certificates, which was duly furnished by the Assessee. On verification of the submission furnished, the AO found that in many cases receipts as per the account of the Assessee were less than that as per TDS certificates and hence, the AO disallowed the proportionate TDS credits of

Rs. 3,65,63,637/-, the corresponding receipts of which were not offered for taxation in the year under reference but were offered to tax in the earlier years. The CIT(A) upheld the decision of the AO stating therein that the assessee was maintaining the books in mercantile basis but has offering income to tax on receipt basis, which was not proper. It is clear from the assessment order as well as the appellate order that the assessee had claimed the credit of TDS without offering the corresponding income to the income tax and, therefore, both the authorities have rightly denied the TDS credit by virtue of provision of section 199 of the Act read with rule 37BA of the IT Rules, 1962. Ld. AR of the assessee also could not brought to our notice any cogent evidence to substantiate its claim that the corresponding income has been offered to tax. In view of the above, we uphold the findings accorded by both authorities below, in this regard. However, we direct the AO to grant TDS credit in the year in which corresponding income is declared by the assessee. Thus, this issue is partly allowed for statistical purposes.

**Ground No.7 : Part: disallowance of provision for leave encashment**

10.14 This ground relates to provision for leave encashment. This issue has already been considered by us while deciding the appeal of the assessee in Ground No.5 for A.Y.2009-2010 in ITA No.201/BIL/2012, wherein considering the prayer of the assessee and in view of the judgment of the Hon'ble Supreme Court in the case of Exide Industries Limited (supra), we remit the issue to the file of AO to verify and examine

as to whether the payment towards leave encashment have been made to the employee in the year of actual payment of leave encashment. If the same has been paid before the due date of filing of the return for the relevant assessment year, then the expenditure is allowable and to such extent, if the payment has been made after the due date of filing of the return of income, the amount is to be disallowed. Accordingly, this ground of assessee is partly allowed for statistical purposes.

**Ground No. 7 (Part) : disallowance of reversal of interest on disputed deposits received from coal customers and**

**Ground No. 8 : reversal of interest disputed deposits w.r.t. MPGATSVA/Terminal Tax**

10.15 Since ground No.7 (part) and ground No.8 with respect to reversal of interest on disputed deposits are inter-connected, therefore the same are dealt with under the following common observations :

10.16 These issues relate to reversal of interest on disputed deposits received from coal customers and reversal of interest on disputed deposits w.r.t. MPGATSVA/Terminal Tax. In this regard, ld. AR of the assessee has referred to Enclosure-C of the paper book which contains the submissions to both the issues, which read as under :-

> *"One Note is prepared for the sake of convenience because the underlying facts and therefore, the law applicable to the facts is common in all the above years. The assessee's common argument to all the disallowances made by the learned AO is based on the premise that 'collected amounts belong to third parties and does not belong to the SECL but are liability for the SECL, therefore, interest earned on it cannot constitute its income".*

*In AY 2011-12, the learned AO disallowed the reversals made by the interest earned on fixed deposits made out of the amounts lying with it from*

*• Interest on Disputed deposits of coal customers*
*• Interest on Disputed Deposits w.r.t. Madhya Pradesh Gramin Avsanrachna Tatha Sadak Vikas Adhiniyam' (MP State Rural Infrastructure and Road Development Act, 2005)*
*• Interest on Disputed Deposits w.r.t. Terminal Tax*

*In the subsequent years, the learned AO had added the income corresponding to the TDS credit claimed by the assessee on interest income from the above deposits. The Assessee by relying on the Court decisions argues that if credit of tax deducted in its name is not granted to it, then there would be unjust enrichment by the Department because offering of corresponding income depends on the factors different form making of TDS because assessee may not offer income may not offered because set-oof losses, operation of DTAA, income deducted on assessee's capital receipt etc.*

*The detailed Note is as under:*

*A. Facts [Interest on Disputed Deposits of Coal Customers]*

*During the AY 2011-12, the Learned Aa has made an addition of Rs. 21,12,000 on account of interest W.r.t. disputed deposits of coal customers, which consists of the disallowance of reversal of interest made by the Assessee of Rs. 11,37,248, which was declared as its income in the earlier years and reversed during the impugned year under the head "prior period" and addition of Rs. 9,75,024 pertaining to interest accrued in the current year but was not offered to tax by the Assessee.*

*Thus, the learned Aa made the total addition of Rs. 11,37,248 and of Rs. 9,75,025 totalling Rs.21,12,000.*

*The assessee had received deposits from certain purchasers against coal purchased by them from it. Subsequently, the assessee stopped selling coal to them and retained part of their deposits with it after the assessee learnt that these purchasers had used fake papers for making purchases for their non- existent brick kilns. Aggrieved by stoppage of sale of coal to them, Shri Basant Jain and Shir Subhash Gupta - middlemen - approached Hon'ble MP high court for getting refund of their balance deposits. Hon'ble High Court directed the assessee to deposit money with Collector, Shahdol directing him to return money to original depositors. The depositors appealed in a SLP to the Hon'ble Apex Court against the decision of the Hon'ble MP High Court. The Hon'ble Apex court vide its order dated 25 Nov 2007 directed the Assessee to return their*

*deposits to the purchasers after ascertaining identity of the parties. Accordingly, the deposits were placed in custody of the Collector, Shahdol. However, later, the Collector returned the deposits to the assessee company because none of the purchasers could be found as none of them claimed the deposits by furnishing their identity and- source of funds of their deposits.*

*The assessee kept the amount in interest earning deposits and offered to tax, interest accrued on such deposits as its income in the earlier years. Subsequently, the assessee sought advice of the Additional Solicitor General of India, who advised that interest should not be treated as its income but should be treated as liability till final outcome of the case. The assessee also sought advise of Shri Soli Sorabjee, Attorney General of India and of Shri Altaf Ahmed, Additional Solicitor General of India (ASG) (opinion of ASG at PS, Page 226 of PS for ITA 115/RPRI2015).*

*The assessee which offered interest as its income to tax till AY 2011-12, reversed entire interest, on appreciation of the fact that interest income earned on the deposits of third parties cannot constitute its income.*

*In subsequent years, the Assessee has credited the relevant interest income to the Profit and Loss statement and have booked corresponding liability by debiting the Profit and Loss statement.*

*B. Facts [Interest on Disputed Deposits w.r.t. Madhya Pradesh Gramin Avsanrachna Tatha Sadak Vikas Adhiniyam 'MPGATSVA']*

*During the AY 2011-12, the AO has made the total addition of Rs.34,51,91,000, which consists of the disallowance of reversal of interest of Rs. 20,74,91,000, which was earned by the assessee from the fixed deposits made from tax collected by it w.r.t. MPGATSAVA under "Madhya Pradesh Rural Infrastructure and Road Development Act, 2005" credited and offered to tax in earlier years and addition of Rs. 13,77,00,000 accrued in the current year but not offered to tax. (Ref para 12.9 of the assessment order for the AY 2011-12)*

*The assessee company was required to collect taxes from its customers under "Madhya Pradesh Rural Infrastructure and Road Development Act, 2005" on behalf of the State Government of MP. Taxes collected by the assessee company could not be handed over to the MP Government because some of the customers challenged the constitutional validity of the Act in the Court. Subsequently, the assessee company invested the collected tax amount in "Corporate Liquid Term Deposits." The assessee earned total interest of Rs 20,94,71,000 over the years, which it duly declared every year as its income in its return of income and paid tax on it.*

*The case between M/s Jai Prakash Associates Ltd v State of M P went up to the Hon'ble Supreme Court, in which the said company had contested constitutional validity of such levy of Rural Infrastructure and Road Development Tax by the state of MP. The case filed before the Hon'ble Supreme Court of India was tagged with the case of Mls Jai Prakash Associate Ltd vide No 2055/2007 and was disposed of by a common interim order dated 02.08.2010. It was observed that the Hon'ble Supreme Court in its interim order dated 02.08.10 had directed, "each of the assessee-company(s) to file its respective returns under 2005 Act in respect of each year". (Page 207 of PB for ITA 115/RPR/2015)*

*As per the directives of the Hon'ble Supreme Court of India, the assessee company filed the respective returns under Madhya Pradesh Rural Infrastructure and Road Development Act, 2005 and after receiving the Assessment orders the amount was paid to the relevant authority under protest. Meanwhile, a copy of demand notice towards tax and interest, issued by Mining Officer Anuppur under the above Act was filed before the learned AO with the assessee's submissions dated 28.10.2013. (Page 206 of PB for ITA 115/RPRl2015) The Assessee company had submitted copies before the learned AO of the interim order of the Hon'ble Supreme Court of India and Demand Notice in support of its contention of the possibility of recovery of taxes and interest in future as well.*

*Subsequently, the Comptroller and Auditor General of India (CAG) in an audit conducted by it of the assessee company vide its Audit Enquiry No PHASE 111/23 dated 3rd May 2010 observed that treating income on deposits made from disputed dues (MP Road Tax and Terminal Tax) is not appropriate. As a consequence, the assessee in the FY 2010-11, reversed interest earned in the previous years and shown as "prior period expenses". To this, the CAG observed that ft should be charged to current year's Profit & Loss account. (Ref para 12.7 (4) and (5) of the assessment order for the AY 2011-12).*

*In subsequent years, the Assessee has credited the relevant interest income to the Profit and Loss statement and have booked corresponding liability by debiting the Profit and Loss statement.*

*C. Facts [Interest on Disputed Deposits w.r.t. Terminal Tax]*

*For AY 2011-12, similar to Para B above, learned AO made the disallowance on account of Terminal Tax collected totalling to Rs. 1,95,36,000. This addition consisted of interest of Rs. 89,04,691 reversed during current year, which was offered to tax in the earlier years. Whereas, amount of Rs. 1,06,31,310 represented interest accrued during the year but was not offered to tax. (Ref para 12.14 of the assessment order for AY 2011-12)*

*Thus, total addition of interest on the amounts collected under Madhya Pradesh Rural Infrastructure and Road Development Act, 2005 and Terminal Tax to income works out to be Rs 36,47,27,000 = (Rs 20,74,91 ,000+Rs 13,77,00,000+ Rs 89,04,691+ Rs 1,06,31,310) for the AY 2011-12.*

*In the AY 2012-13 and 2013-14, the Assessee has credited the relevant interest income to the Profit and Loss statement and have booked corresponding liability by debiting the Profit and Loss statement.*

*D. AO's reasons for making disallowance or addition*

*(para numbers of the assessment orders of the respective years are as in the above table)*

*The learned AO stated that the assessee did not enclose the copy of the opinion given by the Solicitor General of India along with its reply submitted to the learned AO. He stated that in his opinion, the ASG has clearly stated that the Agents are not entitled to claim interest on balance deposits lying with the assessee company. Accordingly, the learned AO has made the addition of Rs 21,12,000, which consisted of the disallowance of reversal of interest made by the assessee of Rs 11,37,248 declared in earlier years as its income under the year "prior period" and made the addition of Rs 9,75,024 accrued in the current year but was not offered to tax.*

*W.r.t, MPGATSVA, the Learned AO stated that, it is seen on perusal of Audit Query that the CAG has nowhere advised to reverse interest income, which was offered to tax in earlier years. Neither did it suggest that accrued interest of Rs 13,77,00,000 should not be routed through P&L account. The learned AO further observed that with regard to the interest income offered to tax in earlier years, the Department has already given credit of TDS relatable to interest income. There is no enabling provision under the Income Tax Act under which, TDS credit can be reversed.*

*W.r.t., terminal tax, the Ld. AO stated that the Assessee failed to substantiate with any documents or supporting that the fact that the interest liability of Rs. 62,02,708 crystallised or accrued during the year and hence, in the absence of explicitly convincing and irrefutable corroboration, the said claim Rs. 62,02,708 cannot be allowed in the income tax computation for the year. Further, the AO also invoked provisions of section 438 of the Act in respect of income for making the disallowance.*

*In the years subsequent to the AY 2011-12, the Ld. AO has relied on section 199 of the Act read with 378A of the Income Tax Rules,*

*to hold that since the TDS credit has been claimed by the company, the corresponding income is required to be brought to tax.*

*E. Decision of the CIT(A) and its basis*

*(para numbers of the appellate orders of the respective years are as in the above table)*

*On appeal, the learned CIT(A) held that when the appellant follows mercantile system of accounting and when interest on such deposits were accrued in earlier years, such accumulated interest shown as income in earlier years cannot be reversed in the year under reference as a prior period item. The learned CIT(A) reasoned that reversal is not permissible because the liability to refund the interest to the customers was not proved, crystallization of liability to refund the same in the year under reference not brought on to record, auditor's comment in TAR regarding effect of such change in accounting not filed. Similarly, the assessee had a right to receive interest that has arisen out of such deposits during the accounting year under consideration and there is no such evidence on record to conclusively prove that such a right is not present and therefore, non-disclosure of interest without having final verdict of the court is not justified.*

*Wr.t. Interest on terminal tax deposits, Ld. CIT(A) upheld to the learned AO's application of section 438 of the Act, without appreciating that the interest did not pertain to assessee's any liability under the terminal tax legislation.*

*F. Assessee's arguments before the Hon'ble Tribunal*

*The Assessee's arguments consist in following parts:*

*• Whether interest income earned from FDs made out of money not belonging to the assessee, can constitute its income?*

*• TDS credit claimed by the assessee on interest income declared in the years prior to AY 2011-12 and consequences on reversal of interest*

*• TDS credit claimed by the assessee in the years subsequent to the AY 2011-12 but corresponding income not declared to tax*

*Whether interest income earned from FDs made out of money not belonging to the assessee, can constitute its income?*

*W.r.t interest on disputed deposits of coal customers, the assessee company is holding deposits of third parties as trustee. Interest income earned on such deposits can never be considered as its*

*own money. If the assessee is not the owner of the money in the deposits, then interest earned thereon also is its liability.*

*W.r.t. interest on deposits of MPGATSVA and terminal tax, the learned AO and Learned CIT(A) both have not adjudicated the fundamental question as to whether the deposits or interest thereon constitutes the assessee's income or its liability? Their decisions pre-supposes that the assessee is owner of the impugned money.*

*However, in reality, the assessee is holding tax collected on behalf of the Government as its trustee. Interest income earned on such taxes can never considered its own money or its income. The assessee company will have to return taxes collected and interest earned on it to the Government as when the Government either demands it or passes appropriation Act for it.*

*It is settled that money lying with the assessee company for substantial period can be treated as its income either on remission granted by the creditor or on a cessation of liability. There is no remission granted by any of the creditors in this case. As to the cessation of the liability, it may occur either by reason of the operation of law, i.e., on the liability becoming unenforceable at law by the creditor and the debtor declaring unequivocally his intention not to honour his liability when payment is demanded by the creditor, or a contract between the parties, or by discharge of the debt - the debtor making payment thereof to his creditor as held in the case of JK Chemical Ltd v CIT [(1966) 62 ITR 34 (Bom)]. This has also not happened in the assessee's case.*

*In this connection, Constitution Bench in the case of Bombay Dyeing & Manufacturing v The State of Bombay [1958 AIR 328, 1958 SCR 1122] has held that the debt or liability may subsist notwithstanding its recovery was barred by the limitation for the law of limitation merely bars the creditor from invoking legal remedy.*

*In the case of CIT v Sugauli Sugar Works Pvt Ltd [(1999) 2361TR 518 (SC)] (para 6 and 10), it was held as under:*

*"The question whether the liability is actually barred by limitation, is not a matter which could be decided by considering the assessee's case alone but it is a matter which has to be decided only if the creditor is before the concerned authority. In the absence of the creditor, it is not possible for the authority to come to a conclusion that the debt was barred and had become unenforceable. There may be circumstances which may enable the creditor to come with a proceeding for enforcement of the debt even after expiry of the normal period of limitation as provided in the Limitation Act. The principle that expiry of period of limitation prescribed under the Limitation Act cannot extinguish the debt but it will only prevent the creditor from enforcing the debt is well-settled."*

*Further, in the case of PCIT v New World Synthetics Ltd [(2018) 97 Taxmann.com 399 (Delhi)] held that non-payment of outstanding liability which is admitted and acknowledged as due and payable by an assessee does not indicate remission or cessation of liability.*

*The assessee company acknowledges its debt towards purchasers of coal and towards the Government for the taxes collected on its behalf. Therefore, debt exists in the eyes of law. The creditors have not granted remission w.r.t. interest liability on disputed deposits of coal customers. Similarly, the government has not granted remission on interest liability w.r.t. disputed deposits of MPGATSVA and Terminal Tax.*

*As held by the Honourable Apex court that creditor can initiate a proceeding for enforcement of the debt even after expiry of the normal period of limitation as provided in the Limitation Act. Therefore, interest income on deposits of third party cannot constitute the assessee's Income. Accordingly, the addition made by the learned AO may be deleted.*

*TDS credit claimed by the assessee on interest income declared in the years prior to AY 2011-12 and consequences on reversal of interest*

*TDS credit claimed by the assessee in the years subsequent to the AY 2011-12 but corresponding income not declared to tax*

*The Assessee places its arguments on both the above issues are as under:*

*Further to the above, since the Assessee is holding the money in trust for the depositors I government, it shall be liable to deposit the entire amount as and when the creditor claims the same. If the corresponding TDS credit is not claimed by the company, it shall be required to make good the shortfall from its own pockets. The same is explained with the help of an example below.*

*Assuming interest income earned during a period on deposit is Rs. 100. The same is paid by the bank after deducting a TDS of 10% i.e. Rs. 10. Therefore, net amount of Rs. 90 is credited to the Assessee. If TDS credit of Rs. 10 is not granted to the Assessee, it will be not be able to meet its interest liability of Rs 100 to its creditor, thus leading to a shortfall and extra cost to the PSU company.*

*Given the above fact pattern, Section 199 of the Act read with Rule 37BA of the Rules, do not bar availing of credit in scenarios where the corresponding income on which TDS was deducted is not taxable at all.*

*Reliance in this regard is placed on the following decisions in which, the hon'rable courts have granted TDS credit, when TDS on payment was made by the deductor but receipt was on capital account for the deductor, hence it did not declare income on it. Further, in the case of Escorts, the assessee had claimed credit of TDS of income declared in the earlier years (facts similar to that of the assessee) as listed under:*

*• In CIT v Bhooratnam & Co [(2013) 357 ITR 396 (AP)] honourable High Court held as under:*

*" The Revenue cannot be allowed to retain tax deducted at source without credit being available to anybody. If credit of tax is not allowed to the assessee, and the joint venture has not filed a return of income, then credit of the TDS cannot be taken by anybody. This is not the spirit and intention of law."*

*• Delhi ITAT in the case of Escorts Ltd vs DCIT [(2007) 15 SOT 368] held that*

*"Credit for TDS must in every case be given to the assessee from whose income tax was deducted at source and paid to the credit of the Central Government. If the recipient of the income considers that he is not liable to tax in respect of the income, wholly or partly, therefore, does not disclose the amount of such income in his return, the IT Department cannot refuse to give credit merely by contending that the income had not been disclosed in the return filed by the assessee for the assessment year. The assessee may as per relevant provisions of IT Act, consider the income either as not taxable in his hands or as being relatable to a different assessment year and he may even claim set off of loss or other deductions against such income. The assessee may also be not chargeable to tax on the income because of the overriding provisions of Double Taxation Avoidance Agreement and/or because of the provision for exemption of such income, whether wholly or partly, under some provisions of the IT Act. It would be, therefore, improper and even impermissible for the Revenue to swallow the amount of TDS after having received and enjoyed the same. It cannot be ignored that every item of TDS carries with it an obligation of trust and accountability to return the amount and/or give credit for the amount so deducted depending upon the tax liability of*

*the recipient to be determined in the course of his assessment. .*

*Assessee's income for which tax is deducted at source should not be refused to be given credit. Being a case of direct tax, there is also no question of unjust enrichment being claimed so as to take the credit of tax without an Obligation to return the same to the*

*assessee. The payer does not pay the amount of TDS as his own liability and he only acts as the agent of the Government or as trustee to collect the TDS for the Government, free of cost. If no credit is to be given to the payer and/or to the payee, the Government would have no authority to treat the same as tax and article 265 does not empower the Government to make any levy or collection of tax not authorized by law. "*

*• Chennai IT AT in the case of Supreme Renewable Energy Ltd [(2010) 3 ITR 339] where the Assessee had earned interest income on deposits kept with Indian Renewable Energy Development Agency Limited ('IREDA'). Credit of TDS deducted on the same was disallowed by the AO since such income was deducted from the expenditure incurred for installation of machinery and not offered for taxation. In the above fact pattern the Hon'ble Bench held as follows:*

*"6 ……..*

*When the interest income is not directly liable for tax as the same is incidental in the acquisition and installation of the asset then the tax deducted at source from the interest income which was duly received by the Government shall be refunded to the assessee or the assessee is entitled for the credit of the same. The Government cannot benefit itself by taking advantage of legal technicalities.*

*• Relying in the same, the Hon'ble Visakhapatnam Tribunal in the case of ACIT v. Peddu Srinivasa Rao [ITA 324Nizag/2009], in this case, the learned AO denied the TDS credit, which was made on mobilisation Advance received by the assessee because the same being on capital account, income was not declare by the assessee. The Hon'ble ITAT after considering the amended section 199 of the Act held that*

*"10. . we are of the view that once the TDS was deducted and paid to the Central Government, a credit of the same should be given to the assessees in order to avoid all sorts of complications in the year of deduction of the TDS"*

*• The Mumbai IT AT in its recent case of Hampi Expressways Pvt Ltd vs DCIT [ITA No. 895/Mum/2022 dated 18 October 2022] had the occasion to adjudicate on a similar issue where the Assessee was raising invoices to its client, NHAI on the basis of invoices received from its subcontractor, without any markup. Since the transactions with the NHAI were of the same amount as that of transactions with the Sub-Contractor, the balance in the above said ledger account was 'Nil'. On account of back-to-back arrangement and there was no profit accruing to the Assessee. With this background, after considering the amended section 199 of the Act, as well as amended Rule 37BA, the Hon'ble Tribunal directed the*

*AO to allow the TDS credit, even though the corresponding receipts were not offered to tax.*

*Similar decisions are also rendered by the Hon'ble IT AT in the following cases:*

*• Vijay Bhavani Constructions Pvt Ltd v DCIT [(2017) 9 ITR (Trib) 99 (Hyd)] (para 9 to 12.1) (credit not granted on TDS made on mobilisation advance- follows Peddu Srinivasa Rao)*

*• Sadbhav Engineering Ltd v DCIT, [ITA no 610,1834,1835,2053,2054 and 2055/Ahd/2009 dated 19.12.2013] (para 23 to 26) credit not granted on TDS made on mobilisation advance- follows Peddu Srinivasa Rao)*

*• Toyo Engg India Ltd v JCIT [(2006) 100 TT J 373 (Mum)] (TDS credit claimed but Income declared in subsequent year as per project completion method)*

*Accordingly, it is prayed that the company may be allowed to continue availing the TDS credit, so as to avoid genuine hardships to the Assessee company.*

*G. Case laws relied on*

*• Bombay Dyeing & Manufacturing v The State of Bombay [SC 1951r AIR 328: 1958 SCR 1122]- copy placed as Attachment C1*

*• CIT v Sugauli Sugar Works Pvt Ltd [(1999) 236 ITR 518 (SC)] (para 6 and 10) - copy placed as Attachment C2*

*• JK Chemical Ltd v CIT [(1966) 62 ITR 34 (Bom)] - copy placed as Attachment C3*

*• PC IT v New World Synthetics Ltd [(2018) 97 Taxmann.com 399 (Delhi)] - copy placed as Attachment C4*

*• CIT v Bhooratnam & Co [(2013) 357 ITR 396 (AP)]- copy placed as Attachment C5*

*• CIT v Relcom [(2015) 62 taxmann.com 190 (Delhi)]- copy placed as Attachment C6*

*• Escorts Ltd vs DC IT [(2007) 15 SOT 368]- copy placed as Attachment C7*

*• Supreme Renewable Energy Ltd [(2010) 3 ITR 339]- copy placed as Attachment C8*

*• ACIT v. Peddu Srinivasa Rao [ITA 324/Vizag/2009]- copy placed as Attachment C9*

*• Hampi Expressways Pvt Ltd vs DCIT [ITA No. 895/Mum/2022 dated 18 October 2022]- copy placed as Attachment C 10*

*• Vijay Bhavani Constructions Pvt Ltd v DCIT [(2017) 9 ITR (Trib) 99 (Hyd)] (Para 9 to 12.1)*

*• Sadbhav Engineering Ltd v DCIT, [ITA no 610,1834,1835,2053,2054 and 2055/Ahd/2009 dated 19.12.2013] (Para 23 to 26)*

*• Toyo Engg India Ltd v JCIT [(2006) 100 TT J 373 (Mum)]*

*H. Paper Book references*

| *PB for ITA 115/RPRI2015* | |
|---|---|
| *Page- 196* | *Copy of submission dated 28 October 2013 filed before the learned AO (Reply 20 and 21)* |
| *Page-206* | *Copy of the demand notice dated 27 August 2013 issued by the Collector (Mining Branch), Anuppur* |
| *Page 207* | *Copy of order of the Hon'ble Supreme Court in Jai Prakash Associates v State of MP & ORS (Civil Appeal No 4745 of 2006)* |
| *Page 212* | *Copy of submission dated 28 November 2013 filed before the learned AO* |
| *Page 226* | *Opinion of Shri Altaf Ahmed, Additional Solicitor General.* |

10.17 Ld. CIT-DR strongly supported the orders of revenue authorities, however, have also submitted that this issue should be restored to file of AO for fresh adjudication of the issue pertaining to the claim made by the assessee.

10.18 On perusal of the assessment order as well as the appellate order along with the submissions of the assessee, according to which during the A.Y.2011-12 the assessee has reversed the income on account of interest received on disputed deposits of coal customers for Rs.11,37,248/- which was declared as income in the earlier year and

reserved during the impugned year under the head “prior period”. The interest accrued during the current year for Rs.9,75,024/- was also not offered to tax by the assessee. Both these figures in aggregate were added back to the income of the assessee by the Ld. A.O for the reason that the TDS credit corresponding to the said interest income was claimed by the assessee. The reason for such reversal of income explained by the Ld. AR was that the assessee company had received certain deposits from the purchaser of coal subsequently when the assessee company has learnt that those purchasers had used fake papers for making such purchases, therefore, the transaction with such purchasers were stopped. Aggrieved by this stoppage of sale of coal Shri Basant Jain and Shri Subhas Gupta, the middleman approached Hon’ble MP High Court for getting refund of their balance deposits. As an outcome of the said case before the Hon’ble M.P High Court the assessee was directed to deposit money with Collector Shahdol directing him to return the money to original depositors. Against the said decision SLP is filed before the Hon’ble Apex Court by the complainants, wherein vide order dated 25.11.2017, Hon’ble Apex Court had directed the assessee to return deposit to the purchasers after ascertaining identity to the parties. The deposits were placed in the custody of Collector Shahdol however the same was returned back to the assessee because none of the purchasers could be found as none of them have claimed the deposit by furnishing their identity and source of funds of their deposits. Such funds were kept by the assessee in deposits and interest accrued was offered for tax. Subsequently, the assessee

sought advise from Addl Solicitor General of India, who according to the assessee has advised that the interest should not be treated as income but should be treated as liability till final outcome of the case. Copy of the opinion received is extracted as under:

**OPINION**

...Ex parte

**South Eastern Coalfields Limited**

...Querist

*I have perused the Brief for Opinion prepared by Shri K.V. Sreekumar, Advocate for the Querist, which shall form a part of this opinion. I have also discussed the matter in a conference with Shri Sreekumar, who was accompanied by Shri Easwar Rao, General Manager (Legal) of the Querist. Three questions have been formulated for my opinion, which read thus: —*

*1. Whether SECL can refund the money to Shri S.K. Gupta and Shri Basant Kumar Jain if they produce sufficient proof to show that they have deposited the money with SECL on behalf of the 21 brick-kiln units as del-credere agent?*

*2. Whether interest is also payable on the amount lying in credit with SECL and, if so at what should be the reasonable rate?*

*3. What precaution/safeguards is to be taken for securing discharge of SECL's financial liability in the event of refunding the amount?*

*I have perused the order of Hon'ble the Supreme Court dated 1.1.8.1994 and the Special Leave Petition No.7841/1992 — South Eastern Coalfields Ltd. & ors. Vs. Subhash Kumar Gupta & anr, and the order made thereafter on 25.11.1997 in the same matter. A perusal of these two orders would cl indicate that the Querist, who were petitioners in these proceedings were not required to surrender the amounts deposited with them on behalf of 21 brick kiln units to the respondents in these proceedings, who are Shri Subhash Kumar Gupta and Shri Basant Kumar Jain. The order of 11.8.1994 clearly reflects that the position taken by the Querist that they will be willing to refund the deposit directly to the actual users, i.e., the brick kiln owners, rather than the respondents, who claim to act as the del credere agents:, The Court accepted the stand of the petitioners (Querist) and directed that the amount of deposit be disbursed amongst the brick kiln owners and for this purpose appointed a two-member committee consisting of the General Manager, District Industries Centre,*

*Sheopuri and the District Collector-cum-District Magistrate, Sheopuri. That committee reported back to the Hon`ble Supreme Court that*

> *"...none of these 21 applicants have deposited any money with the petitioner. The Committee, in its report has given particulars of the statements made by each of the applicants and their willingness or unwillingness for accepting the money which was admittedly not theirs, All of them have stated that the money was not deposited by them with the petitioner. The Committee, in the light of the statements made by the 1 applicants, has come to the conclusion that It Is not possible to distribute the money to these 21 persons as they have not deposited any money with the petitioner. The Committee has therefore prayed for further directions."*
>
> *The Hon'ble Court finally concluded —*
>
> *"....Since it is now found that none of these 21 applicants is entitled to the money, the Committee is directed .to refund the money forthwith to the original depositor, namely, the petitioner, This order may be communicated by the Registry to the Committee forthwith."*
>
> *The Hon'ble Court had earlier observed to the following effect:*
>
> *“The Court further observed that it was of the view that the facts of the case do not warrant burdening the petitioner with any interest on the amount in question."*
>
> *On the basis of a perusal of the above two orders I am of the view that the Querist have no obligation to voluntarily refund the money on deposit to S/Shri Subhash Kumar Gupta and Basant Kumar Jain, particularly after Querist took a strong stand before the Supreme Court that this money cannot be released in their favour. This stand of the Querist is reflected in para 7 of the order dated 11,8.1994, which reads,—*
>
> *"Shri Sanghi, the learned counsel for the petitioner, however,, vehemently opposed the prayer for refund of the amount to the respondents on the ground that the identity of the 21 alleged actual users was not established with the officers of the petitioner at any stage, He further stated that the officers had never issued any recommendation/ sponsorship letters in favour of the alleged applicants and that their officers' signatures obtained on the said letters were forged. Some of the officers of the petitioner who were*

*allegedly in collusion with the respondents had been suspended and complaints had been registered and First information Reports lodged with the police. The investigation was in progress. He further submitted that as far as the petitioner's office record is concerned, it showed that it had received from 21 different applicants separate bank drafts of varying amounts. The office record does not show that the amounts were paid by the two respondents herein on whose behalf the request is being made for the refund of the amount. In the circumstances, he contended that if the amount deposited in the Court is paid over to the respondents, the petitioner will not be validly discharged of its liability to the 21 applicants who had paid the amounts. However, he submitted that without prejudice to all Its contentions, the petitioner was willing to make payment individually to the 21 applicants against their valid receipts. The learned counsel for the respondents equally vehemently opposed this suggestion and contended that since the 21 applicants have filed. their Individual affidavits in this Court stating In categorical terms that the amounts were paid by the two respondents and that they had no objections to the amounts being refunded to the respondents who were their gel erecters agents, the amount should no longer be paid to the 21 applicants individually. He further stated that if now the payments are made individually to 21 applicants, they may change their mind and money would be lost to the respondents. Since the fear was expressed by the counsel for the petitioners with regard to the Identity of the 21 applicants and also with regard to the validity of the discharge to be given by them, the learned, counsel for the respondents suggested that those 21 applicants should be called to this Court at the cost of the petitioner. They could be identified before such officer of the Court as the Court may name, and upon their identification, and acceptance of the fact that they had flied the relevant affidavits, the money should be paid to the respondents. He also submitted that since the petitioner had the money in their possession ever since 30th March/2nd April, 1991, the petitioner should be asked to pay interest at 21 per cent from the said date till 20th August; 1992 when the amount was deposited in this Court."*

*It is only in view of this position taken by the Querist, that the Hon'ble Supreme Court constituted a two-member committee, which were required to identify the true claimants and disburse the amounts from out of the deposit in their favour. In light of the above discussion, I am of the opinion that, in the absence of S/Shri Subhash Kumar Gupta and Basant Kumar Jain establishing their right to the*

*amount of deposit, it would not be proper for the Querist to refund the money to them. Indeed, that would be contrary to the very stand they had taken in the Hon'ble Supreme Court. However, if S/Shri Subhash Kumar Gupta and Basant Kumar Jain are able to establish their right to the amount of deposit by adducing credible evidence showing that they have made this deposit with the Querist and since none of the persons, on whose behalf this amount was said to have been deposited, have come forward to make their claim in spite of sufficient opportunity, it would be open to the Querist to refund the amount of deposit to S/Shri Subhash Kumar Gupta and Basant Kumar Jain, subject to my opinion on question 3.*

*In regard to question 2, I am of the opinion that in the background of the proceedings culminating in the aforesaid orders by Hon'ble the Supreme Court, I do not see how S/Shri Subhash Kumar Gupta and Basant Kumar Jain can lay claim to the payment of interest on the amount of deposit in law. I would, therefore, advise the Querist not to consider the request for payment of any interest on the amount of deposit in the event the Querist decide to make the refund of the deposit to them.*

*In regard to question 3, 1 am of the opinion that it is for the claimants of the deposit to assert and establish their rights by adducing credible evidence and the Querist in the meantime would be entitled to retain the money in terms of the directions made by Hon'ble Supreme Court in its order dated 25.11.1997 directing the committee of the General Manager,. District Industries Centre, Sheopuri and .he District Collector-cum-District Magistrate, Sheopuri, to refund the money forthwith to the Querist, If, after the Querist is satisfied upon evidence adduced by S/Shri Subhash Kumar Gupta and Basant Kumar Jain that they are entitled to the release of the amount of deposit, the Querist must, before actually releasing the amount of deposit, secure bonds of indemnity from them against any possible claims, which be put forward by brick-kiln owners for refund in their favour for an amount of deposit. It is only after the necessary indemnity bonds have been secured from them that the amount of deposit may be released in their favour, subject of course, to their evidence that this amount was actually deposited by them. I opine accordingly and have nothing further to add."*

*Sd/-*
*(Altaf Ahmed)*
*Additional Solicitor*
*General of India*
*New Delhi*

*24 October, 2002*

10.19 According to the aforesaid opinion of the Addl. Solicitor General of India, as interpreted by the assessee, the interest income offered to tax till A.Y.2011-12 has been reversed, taking into consideration that the interest income earned on deposit of third parties cannot constitute its income. On perusal of the order of Ld. CIT(A), it was the observation of the Ld. CIT(A) that the assessee had right to receive interest that has arisen out of such deposits during the year under consideration and there is no such evidence on record to conclusively prove that such a right is not present and therefore, non-disclosure of interest without having final verdict of the court is not justified. Before us Ld. AR of the assessee has raised following questions in support of the contention of the assessee:

- *Whether interest income earned from FDs made out of money not belonging to the assessee, can constitute its income?*

- *TDS credit claimed by the assessee on interest income declared in the years prior to AY 2011-12 and consequences on reversal of interest*

- *TDS credit claimed by the assessee in the years subsequent to the AY 2011-12 but corresponding income not declared to tax*

10.20 On perusal of the opinion offered by the Ld. Addl. Solicitor General of India wherein the order of Hon'ble Apex Court has been interpreted and it was opined that the assessee company have no obligation to voluntarily refund the money deposited to the complainants. However, the Hon'ble Supreme Court constituted two member committee which were required to identify the true claimants and disbursed the

amount out of the deposit in their favour. With regard to payment of interest to the complainants or the claimants as the case may be, it was the opinion that the querist i.e. the assessee company need not consider the request for payment of interest of any amount of deposit, in the event of querist decide to make the refund of deposit to them. It is further advised that till the time the claimants of the deposit would be able to assert and establish their rights by adducing credible evidence the querist in the meantime would be entitled to retain the money in terms of directions accorded by Hon'ble Supreme Court in its order dated 25.11.1997. In view of such advisory provided by the Ld. Addl. Solicitor General of India, the assessee is not liable to pay any interest to the identified claimants of the deposits a/w the amount of deposit retained by the assessee at the time of refund of the same in compliance to the order of Hon'ble Apex Court. Accordingly, the interest income received by the assessee on such deposits which would not be a liability for the assessee in any eventuality, the same should be considered as income of the assessee company. However, since the assessee company has perceived a different interpretation from the impugned opinion that the interest income earned on the deposits of third parties cannot constitute its income. If such perception of the assessee company is validated in that case, the right and fair approach would be that, the assessee company have to set apart such receipt of or accrual of interest income as the same pertains to third parties and also preserve an amount equivalent to TDS on such interest being the tax on income of the third parties which

have utilized by the assessee company, under a separate reserve fund on behalf of such third parties.

10.21 Another contention raised by the Ld. AR in context to the interest earned on disputed deposits of third parties was that, the interest on disputed deposit of coal customer are hold by the assessee company as trustee of those third parties, therefore, interest income earned on such deposits can never be considered as its own money/income. If the assessee is not owner of the money of the deposits, then interest earned thereon also is its liability. The contention of the Ld.AR that the deposits and interest are liability of the assessee company and therefore the same are hold as trustee of those third parties. In such a situation, if the interest income are not taxed in the hands of recipient i.e. the assessee company or in the hands of the owner of such funds, who are not identifiable at present but may emerge with the claim of recovery of their deposits in future, the legitimate taxes would not be paid to the exchequer, thereby the revenue would be deprived of such non-receipt of taxes and it would be very difficult to calculate and recover such taxes when such deposits were refunded to the real owner of such deposits.

10.22 Under such facts and circumstances, to settle the tax liability on real time basis, we are of the considered view that provisions of Section 160(v) of the IT Act, pertaining to representative assessee should be the most appropriate law to deal with such a peculiar situation,

accordingly, we hold that in the present case for the purpose of taxing the interest income on disputed deposits accrued in the hands of the assessee company, should be assessed by treating the assessee company as a representative assessee on behalf of such third parties. Also, as per the provisions of Section 161, the assessee company in capacity of representative of the assessee in respect of income received on behalf of third parties shall be subject to some duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of it beneficially, and shall be liable to assessment in its own name in respect of that income. Further, Section 162 provides that the assessee company would be able to recover the amount of taxes so paid from such person at the time of settlement. In terms of the aforesaid observations that the assessee company who had holds the deposits and has received interest income under trust on behalf of third parties is held to be representative assessee as per the provisions of Sections 160 r.w.s. 161 & 162 of the Act and therefore, the assessment of the assessee shall be completed under the provisions of said sections. For the sake of clarity provisions of section 160, 161 and 162 are carved out as under:

**Representative assessee.**

***160.*** *(1) For the purposes of this Act, "representative assessee" means—*

*(i) ……*

*(ii) ……*

*(iii) ……*

*(iv) …….*

*(v) in respect of income which a trustee appointed under an oral trust receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees.*

*Explanation 1.—A trust which is not declared by a duly executed instrument in writing [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] shall be deemed, for the purposes of clause (iv), to be a trust declared by a duly executed instrument in writing if a statement in writing, signed by the trustee or trustees, setting out the purpose or purposes of the trust, particulars as to the trustee or trustees, the beneficiary or beneficiaries and the trust property, is forwarded to the Assessing Officer,—*

*(i) where the trust has been declared before the 1st day of June, 1981, within a period of three months from that day; and*

*(ii) in any other case, within three months from the date of declaration of the trust.*

*Explanation 2.—For the purposes of clause (v), "oral trust" means a trust which is not declared by a duly executed instrument in writing [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] and which is not deemed under Explanation 1 to be a trust declared by a duly executed instrument in writing.*

*(2) Every representative assessee shall be deemed to be an assessee for the purposes of this Act.*

**Liability of representative assessee.**

***161.*** *(1) Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.*

*(1A) Notwithstanding anything contained in sub-section (1), where any income in respect of which the person mentioned in clause (iv) of sub-section (1) of section 160 is liable as representative assessee consists of, or includes, profits and gains of business, tax shall be charged on the whole of the income in respect of which such person is so liable at the maximum marginal rate :*

***Provided*** *that the provisions of this sub-section shall not apply where such profits and gains are receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him.*

*(2) Where any person is, in respect of any income, assessable under this Chapter in the capacity of a representative assessee, he shall not, in respect of that income, be assessed under any other provision of this Act.*

**Right of representative assessee to recover tax paid.**

***162.*** *(1) Every representative assessee who, as such, pays any sum under this Act, shall be entitled to recover the sum so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the sum so paid.*

*(2) Any representative assessee, or any person who apprehends that he may be assessed as a representative assessee, may retain out of any money payable by him to the person on whose behalf he is liable to pay tax (hereinafter in this section referred to as the principal), a sum equal to his estimated liability under this Chapter, and in the event of any disagreement between the principal and such representative assessee or person as to the amount to be so retained, such representative assessee or person may secure from the Assessing Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount.*

*(3) The amount recoverable from such representative assessee or person at the time of final settlement shall not exceed the amount specified in such certificate, except to the extent to which such representative assessee or person may at such time have in his hands additional assets of the principal.*

10.23 In view of aforesaid discussions and deliberations, the issues pertaining to interest on disputed deposits on behalf of third parties which are considered as liability by the assessee company, since the same belongs to deposits of third parties under trust. Accordingly, the assessment of such income should be completed treating the assessee company as representative assessee as deliberated in the foregoing discussions. The issue, therefore, is restored back to the file of Ld. AO for fresh adjudication after examining and verifying the facts of the issue. Needless to say, the assessee shall be given sufficient opportunity of

hearing. Thus, ground Nos.7 (part) & 8 are partly allowed for statistical purposes.

10.24 Our decision rendered in case of interest on disputed deposits of coal customers would mutatis mutandis apply in all the other related issues under consideration in the present appeals viz. (a) Interest on disputed deposits w.r.t. MPGATSVA, (b) Interest on disputed deposits of terminal tax, (c) Short credit of interest income on disputed deposits, wherein the interest on disputed deposits have been accrued or received by the assessee company and credit of TDS have been utilized by it.

**Ground No. 9 : *Disallowance of depreciation on Apollo Hospital Building;***

10.25 This issue of disallowance of *depreciation on Apollo Hospital Building* has already been decided by us while considering the appeal of the assessee in Ground No.3 for A.Y.2010-2011 in ITA No.401/BIL/2014, wherein we have dismissed this issue in so far as disallowance is concerned however, the alternate plea of the assessee for grant of standard deduction while treating the license fee or rental from apollo hospital as income from house property was considered as acceptable in terms of our aforesaid observations. Therefore, the decision rendered therein will mutatis mutandis apply for this issue also.

**Ground No.10 : disallowance of expenditure on account of land revenue.**

10.26 This issue relates to disallowance of expenditure on account of land revenue. This issue has already been decided by us in Ground No. 4 in ITA No.401/BIL/2014 for A.Y.2010-11, wherein respectfully following the judicial precedence, we have allowed this issue directing the AO to allow the claim of the assessee subject to the verification in terms of our observations in ground No.4 of the said appeal. Accordingly, this ground of appeal is allowed for statistical purposes.

**Ground No. 11 : disallowance of coal transportation expenses paid to ESM companies.**

10.27 This ground relates to disallowance of coal transportation expenses paid to ESM companies. This issue has already been decided by us while considering the similar ground raised in assessee's appeal in Ground No.4 for A.Y.2009-2010 in ITA No.201/BIL/2012, wherein following the decision of coordinate bench of the Tribunal, as accepted by both the parties, in assessee's own case for A.Y.1998-1999 in ITA No.187/JAB/2008, order dated 06.11.2019, has remitted the issue back to the file of AO for determining the allowability of expenses as claimed by the assessee. In the same manner, as the issue is identical to the ground raised by the assessee for A.Y.2009-2010, we also restored this issue to the file of AO for determining the allowability of expenses as claimed by the assessee for the year under consideration.

**Ground No. 12 & 13 : short grant of TDS/TCS credit without any explanation and levy of interest u/s.234B, 234C & 234D**

10.28 The next issues are with regard to short grant of TDS/TCS credit without any explanation and levy of interest u/s.234B, 234C & 234D of the Act are consequential, which do not need separate adjudication.

10.29 **Thus, the appeal of the assessee in ITA No.115/BIL/2015 for A.Y.2011-2012 is partly allowed for statistical purposes.**

**ITA No.103/BIL/2015 (AY : 2011-2012) (Department's Appeal)**

11.1 On perusal of the grounds of appeal in **ITA No.103/BIL/2015 (AY : 2011-2012)** filed by the department, it is found that the following effective grounds raised by the department were similar to the grounds raised by the department in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will mutatis mutandis applicable and accordingly, are disposed off.

| Ground No of ITA No.103/BIL/2015 | Grounds of appeal | Covered by corresponding grounds of ITA | Remarks |
|---|---|---|---|
| 1 | *Disallowance of expenditure under the head grants to schools and institutions;* | 4. of ITA No.204/BIL/2012 | |
| 2 | *Disallowance of claim for OBR Adjustment;* | 9. of ITA No.204/BIL/2012 | |
| 3 | *Disallowance of expenses on social overheads-fuel & power;* | 3. of ITA No.204/BIL/2012 | |
| 4 | *Disallowance of CSR Expenses.* | 5. of ITA No.382/BIL/2014 | |
| 5 | *Disallowance of expenditure on plantation of trees;* | 7. of ITA No.204/BIL/2012 | |
| 6 | *Disallowance of provision for land reclamation/exp. on reclamation of mining land;* | 7. of ITA No.204/BIL/2012 | |
| 7 | *Disallowance of coal transportation expenses paid to ESM companies;* | 8. of ITA No.204/BIL/2012 | |
| 8, 9 & 10. | *General in nature* | No adjudication requires. | |

11.2 **In the result, appeal of the revenue in ITA No.103/BIL/2015 is partly allowed for statistical purposes in terms of our aforesaid observations.**

**ITA No.102/BIL/2017 (AY: 2012-2013) (Assessee's appeal)**

12.1 On perusal of the grounds of appeal in **ITA No.102/BIL/2017 (AY : 2012-2013)** filed by the assessee, it is found that the following effective grounds raised by the assessee were similar to the grounds raised by assessee/revenue in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the respective grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will *mutatis mutandis* applicable and accordingly, are disposed off. The ground which were not covered by our aforesaid observations, are dealt with separately after the table as mentioned in remark column.

| Ground No of ITA No.102/BIL/2015 | Grounds of appeal | Covered by corresponding grounds of ITA | Remarks |
|---|---|---|---|
| 1. | General ground | | Separate adjudication not required. |
| 2. | *Non-grant of TDS credit due to income mismatch;* | 6 of ITA No.115/BIL/2015 A.Y.2011-12 | |
| 3. | *Addition made on account of short credit of interest income w.r.t. disputed deposits from coal customers;* | 7 & 8 of ITA No.115/BIL/2015 A.Y.2011-12 | |

| | | | |
|---|---|---|---|
| 4. | *Disallowance u/s.14A read with rule 8D;* | | Adjudicated in the ensuing paras of this order |
| 5. | *Disallowance on account of actuarial valuation of employee compensation;* | 2 of ITA No.401/BIL/2014 for A.Y.2010-11 | |
| 6. | *Disallowance u/s.40(a)(ia) of the Act;* | 7 of ITA No.401/BIL/2014 for A.Y.2010-11 | |
| 7. | *Disallowance of land compensation & rehabilitation expenses;* | 1 of ITA No.201/BIL/2012 for A.Y.2009-10 | |
| 7A. ( additional ground) | ***Amortization of land rehabilitation expenses**.* | 1E of ITA No.201/BIL/2012 for A.Y.2009-10 | |
| 8. | *Disallowance on accumulated liquidated damages penalty;* | 10 of ITA No.401/BIL/2014 for A.Y.2010-11 | |
| 9. | *Disallowance of provision made for mine closure;* | 4 of ITA No.115/BIL/2015 A.Y.2011-12 | |
| 10. | *Disallowance of prior period expenses* | 5 of ITA No.401/BIL/2014 for A.Y.2010-11 | |
| 11. | *Disallowance of claim for OBR adjustment;* | 9 of ITA No.204/BIL/2012 for A.Y.2009-10 | |
| 12. | *Disallowance of depreciation on Appollo Hospital* | 3 of ITA No.401/BIL/2014 for A.Y.2010-11 | |

| | | | |
|---|---|---|---|
| | *Building;* | | |
| 13. | *Interest liability of BG encashment (LANMCO);* | | This ground is dismissed as not pressed |
| 14. | *Addition on account of short credit of interest income w.r.t.disputed deposits.* | 7 & 8 of ITA No.115/BIL/2015 A.Y.2011-12 | |
| 15. | *Disallowance of expenditure on computer software* | | Adjudicated in the ensuing paras of this order |
| 16. | *Disallowance of expenditure on assets not belonging to company (roads. Etc.);* | 3 of ITA No.201/BIL/2012 for A.Y.2009-10 | |
| 17. | *Disallowance of coal transportation expenses paid to ESM companies;* | 4 of ITA No.201/BIL/2012 for A.Y.2009-10 | |
| 18. | *Levy of interest u/s.234B, 234C and 234D of the Act* | 12 of ITA No.401/BIL/2014 for A.Y.2010-11 | |

**Ground No. 4 : Disallowance u/s.14A read with rule 8D;**

12.2 Ld. AR before us submitted that in the instant case, the assessee had 8.5% tax-free bonds, which it had to accept as one time settlement of the dues from the electricity Boards, however, the AO observed that for handling investments in mutual fund of such proportion, there has to be man, material and management. Therefore, the AO expected that for leach of these activities, the assessee has incurred cots on personnel, overheads and other related costs. Accordingly, the AO

made disallowance u/s.14A by invoking Rule 8D. The CIT(A) upheld the above findings of the AO. It was the submission that the AO has considered the expenditure relatable to earning tax-free income from investments made in mutual funds for the disallowance u/s.14A of the Act. It was submitted that the AO has not compared year-end investment value with the amount of the dividend earned in a year. It was further submitted by the ld. AR that the AO has invoked Rule 8D without recording satisfaction merely by making general observation and without examining correctness of its accounts and the facts in the light of the assessee's explanation. Ld. AR of the assessee has filed his written arguments which has been placed in Enclosure-S of the paper book, which is extracted hereunder :-

> *The assessee has 8.5 % tax-free bonds, which it had to accept as one time settlement of dues from Electricity Boards. The learned AO has not considered this investment State Electricity Board for making disallowance u/s 14A. The learned AO has considered expenditure relatable to earning tax-free income from investments made in mutual funds for the disallowance u/s 14A.*
>
> *The learned AO has not compared year-end investment value with the amount of the dividend earned in a year.*
>
> *The learned AO has reproduced submission of the assessee in italics in first para of the assessment order of all the years. In the second last para of the reproduced submission, the assessee explained that it has not incurred any expenditure towards making investments in mutual funds because it has made investment of surplus funds on short-term basis.*
>
> *The correctness of the assessee's contention of short-term investments, by comparing year-end investment value in mutual funds as mentioned in row 7 with dividend earned in row 9 in the table above. It is obvious that dividend earning of Rs. 34.92 cr out of investment of Rs. 60 cr in AY 2013-14 and of Rs 47.13 cr out of investment of Rs 55.05 cr is disproportionality high whereas dividend earning of Rs 9.51 cr from investment of Rs 600 cr in AY 2012-13 is disproportionately low. It is clear from these amounts of income and year-end investments that the assessee company is earning dividend income from making investments on short term basis.*

*The learned AO without examining the assessee's explanation, has not agreed with the assessee and has invoked Rule 8D.*

*The learned AO has invoked Rule 8D without recording satisfaction merely by making general observations and without examining correctness of its accounts and the facts in light of the assessee's explanation*

*As stated the learned AO has made general observations in para 7.2 and para 6.2 of the assessment orders of the AY 2012-13, AY 2013-14 and AY 2014-15 respectively. The words used by the learned AO of 'has to'and 'It is expected...' show his guess and not his satisfaction arrived at by examining correctness of the assessee's accounts in light of the assessee's explanation.*

*Further, usage of the same copy-paste text in all 3 years after changing only figures, show learned AO's lack of application of mind and mechanical approach. Such conclusion cannot be considered as satisfaction arrived at by considering the facts of the year. Therefore, disallowance made u/s 14A be deleted on account of the learned AO's failure to satisfy mandatory pre-condition of recording satisfaction before making disallowance u/s 14A. Relance is placed on following decisions:*

- *PCIT v TV Today Network Ltd (2022) 141 taxmann.com 275 (Delhi), - copy placed as Attachment S1*
- *Kesoram Industries Ltd v PCIT (2022) 441 ITR 642 (Cal), - copy placed as Attachment S2*
- *PCIT v Bajaj Finance Ltd (2019) 110 taxmann.com 303 (Bombay), - copy placed as Attachment S3*
- *PCIT v Hindusthan Aeronautics Ltd (2022) 143 taxmann.com 357 (Karnataka), - copy placed as Attachment S4*

*The learned AO has not established proximate nexus between the expenditure to be disallowed and investments he learned AO has failed to establish proximate nexus between the expenditure to be disallowed and investments. In absence of fulfilling mandatory pre-condition of "determination of expenditure incurred in relation to such income" used in section 14A(2), invoking of Rule 8D as done by the learned AO is illegal. Hence, the addition is liable to be deleted. Relance is placed on following decisions:*

- *CIT v Sociedade De Fomento Industrial (P) Ltd (2020) 429 ITR 358 (Bombay), - copy placed as Attachment S5*
- *H T Media Ltd v PCIT (2017) 399 ITR 576 (Delhi), - copy placed as Attachment S6*
- *CIT v Gujarat Apollo Industries Ltd (2015) 55 taxmann.com 158 (Gujarat), - copy placed as Attachment S7*

*The AO has sufficient interest-free funds for investing in investments having tax-free income. Hence, disallowance under 14A is not justified*
*Relance is placed on following decisions:*

- *Maxopp Investment Ltd v CIT [(2018) 402 ITR 640 (SC)] (para 41 ) - copy placed as Attachment S8*
- *Godrej & Boyce Manufacturing Co Ltd v DCIT [(2017) 394 ITR 449 (SC)] (para 38) - copy placed as Attachment S9*

- *CIT v HDFC Bank Ltd [(2014) 366 ITR 505 (Bom)] - copy placed as Attachment S10*

*E. Case laws relied on*

- *PCIT v TV Today Network Ltd (2022) 141 taxmann.com 275 (Delhi), - copy placed as Attachment S1*
- *Kesoram Industries Ltd v PCIT (2022) 441 ITR 642 (Cal), - copy placed as Attachment S2*
- *PCIT v Bajaj Finance Ltd (2019) 110 taxmann.com 303 (Bombay), - copy placed as Attachment S3*
- *PCIT v Hindusthan Aeronautics Ltd (2022) 143 taxmann.com 357 (Karnataka), - copy placed as*

*Attachment S4*

- *CIT v Sociedade De Fomento Industrial (P) Ltd (2020) 429 ITR 358 (Bombay), - copy placed as Attachment S5*
- *H T Media Ltd v PCIT (2017) 399 ITR 576 (Delhi), - copy placed as Attachment S6*
- *CIT v Gujarat Apollo Industries Ltd (2015) 55 taxmann.com 158 (Gujarat), - copy placed as Attachment S7*
- *Maxopp Investment Ltd v CIT (2018) 402 ITR 640 (SC) (para 41 ), - copy placed as Attachment S8*
- *Godrej & Boyce Manufacturing Co Ltd v DCIT (2017) 394 ITR 449 (SC) (para 38), - copy placed as Attachment S9*
- *CIT v HDFC Bank Ltd (2014) 366 ITR 505 (Bom), - copy placed as Attachment S10*

*F. Paper Book references*

| AY 2013-14<br>ITA 102/RPR/2017 (Assessee's appeal) | |
|---|---|
| Page 19 | Balance sheet showing 'Reserves and Surplus" |
| Page 36 | Investment in Mutual Funds, Note-14 |

| AY 2013-14<br>ITA 103/RPR/2017 (Assessee's appeal) | |
|---|---|
| Page 10 | Balance sheet showing 'Reserves and Surplus" |
| Page 36 | Investment in Mutual Funds, Note-14 |
| | |
| AY 2014-15<br>ITA 204/RPR/2017 (Assessee's appeal) | |
| Page 10 | Balance sheet showing 'Reserves and Surplus" |
| Page 36 | Investment in Mutual Funds, Note-14 |

12.3 Ld. CIT-DR, on the other hand, relied on the orders of the authorities below and has specifically drawn our attention at Para 7.7 of the assessment order wherein, the Ld. AO after considering various judgments, had calculated the amount of addition u/s.14A read with

clause (ii) & (iii) of Rule 8D, also Ld. AO has categorically mentioned that the provision of statute is very clear and the assessee deliberately tried to circumvent disallowance of expense in order evade higher tax liability. Penalty u/s.271(1)(c) of the Act was also separately initiated. Therefore, the order of the A.O cannot be said to be without satisfaction and thus, the addition made deserves to be sustained.

12.4 We have heard the rival submissions, perused the material available on record and case laws relied upon by the both the parties. In the submissions of the assessee, the allegation was made that the Ld. AO has used same text while making the addition u/s.14A after changing only the figures, this shows that there was lack of application of mind under mechanical approach by the Ld. AO and Ld. AO has failed to record satisfaction before making the disallowance. In the present case, since the A.O has referred to various judgments, response of the assessee and also, made the requisite calculation, therefore, we are unable to subscribe with the contention of the assessee that there was no application of mind, and the addition was made under mechanical approach.

12.5 Next contention raised by the assessee with regard to sufficient interest free funds for investing in investments having interest free income, therefore, disallowance u/s.14A is not justified. On this aspect, Ld. AR has relied upon judgment of Hon’ble Apex Court in the case of Maxoop Investment (supra) and Godrez and Boyce Manufacturing

Company Ltd. (supra). Both these judgments were pronounced in the year 2018 and 2017 respectively which were after the date of assessment order 30.01.2015, therefore, the Ld. AO who has relied upon judgment in the case of Maxoop Investment Ltd. given by the Hon'ble Delhi High Court in 2011, has no occasion to refer to the judgment of the Hon'ble Apex Court on the issue which was decided by various courts till 2015, similar was the position of Ld. CIT(A), who had decided the issue on 24.10.2016. Also, the aspect like the investment was made out of sufficient interest free funds available with the assessee, which is the contention of the assessee before us has been assailed before the revenue authorities or not, is not evident from the orders of the revenue authorities. Under such facts and circumstances, whether the disallowance u/s.14A r.w.r. 8D made by the Ld. AO will survive or not is dependent on verification of facts from the financials of the assessee and also, depends upon the judgment of Hon'ble Apex Court wherein the provisions of Section 14A r.w.r. 8D and their applicability has been interpreted. In the backdrop of such facts and circumstances of the case we are of the considered opinion that this issue should be restored back to the file of the A.O for adjudicating the same afresh in light of the various binding judicial pronouncements by the Hon'ble Courts, applying the provisions of extant law. The assessee is directed to assist in the set-aside assessment proceedings by furnishing requisite details and also, the judicial pronouncements upon which they have placed their reliance in support of their contentions, failing which, revenue would be at liberty to decide the issue as per law. Thus, the

ground No. 4 is partly allowed for statistical purposes in terms of our observations hereinabove.

**Ground No. 15 : Disallowance of expenditure on computer software**

12.6 It was submitted by the ld. AR that the computer software purchased by the assessee during the year are mainly annual licensing software, which are required to be renewed every year or every two years. Further, the expenditure incurred by the assessee on acquiring the computer software are not of enduring nature. During the course of assessment proceedings, the AO observed that the computer software is an asset and eligible for 60% tax depreciation, hence, he added back 40% of the cost of the computer software to the total income of the assessee for the year under consideration. The CIT(A) upheld the order of the AO stating that the computer software is an asset and eligible for 60% tax depreciation and, hence, 40% of the cost of the computer software should be added back to the total income of the assessee. On perusal of the assessment order, it is found that the assessee has claimed the entire expenses for purchase of computer software as revenue expenditure during the year under consideration. We may accept the fact submitted by assessee that the computer software requires upgradation or renewal after one year or two years, in such a situation, the expenditure incurred on software under the normal accounting parlance shall be allowed according to the life of software on pro-rata basis, based on usage in the relevant assessment year. Since such details of usage are not readily

available or would be difficult to fetch according to Ld. AR, it would be appropriate to allow depreciation according to the mandate of law. We, therefore, are of the view that the authorities below have rightly added 40% of the cost of the computer software to the total income of the assessee. However, the assessee can claim depreciation on the computer software in the subsequent years. Thus, we direct the AO to allow the depreciation on the computer software in the subsequent years on production of the material evidence and documents relating to actual amount of purchase of computer software. This issue is partly allowed for statistical purposes.

12.7 **Thus, the appeal of the assessee for A.Y.2012-2013 in ITA No.102/BIL/2017 is partly allowed for statistical purposes.**

**ITA No.98/BIL/2017 (Department's appeal)(AY: 2012-2013)**

13.1 On perusal of the grounds of appeal in **ITA No.98/BIL/2017 (AY : 2012-2013)** filed by the department, it is found that the following effective grounds raised were similar to the grounds raised by assessee/revenue in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the respective grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order

under respective grounds of the appeal No. referred in the table below will mutatis mutandis applicable and accordingly, are disposed off.

| Ground No of ITA No.98/BIL/2017 | Grounds of appeal | Covered by corresponding grounds of ITA | Remarks |
|---|---|---|---|
| 1. | *Disallowance of expenditure under the head grants to schools and institutions;* | 4 of ITA No.204/BIL/2012 for A.Y.2009-10 | |
| 2. | *Disallowance of expenses on social overheads-fuel & power* | 3 of ITA No.204/BIL/2012 for A.Y.2009-10 | |
| 3 to 6. | *Disallowance of CSR Expenses* | 5 of ITA No.382/BIL/2014 for A.Y.2010-11. | |
| 7 & 8 | *Disallowance of expenditure on planation of trees & Disallowance of environmental expenses;* | 7 of ITA No.204/BIL/2012 for A.Y.2009-10 | |
| 9. | *Disallowance of Expenditure on assets not belonging to company (roads. Etc.* | 3 of ITA No.201/BIL/2012 for A.Y.2009-10 | |
| 10. | *Disallowance of coal transportation expenses paid to ESM companies;* | 4 of ITA No.201/BIL/2012 for A.Y.2009-10 | |

13.2 **Thus, the appeal of the revenue in ITA No.98/BIL/2017 for A.Y.2012-2013 is partly allowed for statistical purposes.**

**ITA No.103/BIL/2017(Assessee's Appeal for A.Y.2013-2014)**

14.1 On perusal of the grounds of appeal in **ITA No.103/BIL/2017 (AY : 2013-2014)** filed by the assessee, it is found that the following effective grounds raised were similar to the grounds raised by assessee/revenue in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the respective grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will mutatis mutandis applicable and accordingly, are disposed off. The ground which were not covered by our aforesaid observations, are dealt with separately after the table as mentioned in remark column.

| Ground No of ITA No.103/BIL/2017 | Grounds of appeal | Covered by corresponding grounds of ITA | Remarks |
|---|---|---|---|
| 1. | General ground | | Separate adjudication not required. |
| 2. | *Addition made on account of short credit of interest income w.r.t.* | 7 & 8 of ITA No.115/BIL/2015 A.Y.2011-12 | |

| | | | |
|---|---|---|---|
| | *disputed deposits from coal customers;* | | |
| 3. | *Disallowance u/s.14A read with rule 8D;* | 4 of 102/BIL/2017 A.Y.2012-13 | |
| 4. | *Disallowance on account of actuarial valuation of employee compensation;* | 2 of ITA No. 401/BIL/2014 A.Y.2010-11 | |
| 5. | *Disallowance of land compensation & rehabilitation expenses;* | 1 of ITA No.201/BIL/2012 for A.Y.2009-10 | |
| 5A. | **Amortization of land rehabilitation expenses.** | 1E of ITA No.201/BIL/2012 for A.Y.2009-10 | |
| 6. | *Disallowance on accumulated liquidated damages penalty;* | 10 of ITA No. 401/BIL/2014 A.Y.2010-11 | |
| 7. | *Disallowance of provision made for mine closure* | 4 of ITA No.115/BIL/2015 A.Y.2011-12 | |
| 8. | *Disallowance of claim for OBR adjustment;* | 9 of ITA No.204/BIL/2012 A.Y.2009-10 | |
| 9. | *Disallowance of depreciation on Appollo Hospital Building;* | 3 of ITA No. 401/BIL/2014 A.Y.2010-11 | |
| 10. | *Disallowance of land crop compensation* | N.A | Adjudicated in the ensuing paras of this order |

| | | | |
|---|---|---|---|
| 11. | *Disallowance of expenditure on assets not belonging to company (roads. Etc.);* | 3 of ITA No.201/BIL/2012 for A.Y.2009-10 | |
| 12. | *Addition made on account of short credit of interest income w.r.t. disputed deposits* | 7 & 8 of ITA No.115/BIL/2015 A.Y.2011-12 | |
| 13. | *Disallowance of coal transportation expenses paid to ESM companies;* | 4 of ITA No.201/BIL/2012 for A.Y.2009-10 | |
| 14. | *Disallowance of Write off/Depreciation of Railway Siding leased out to Aryan Coal Beneficiation (ACB)* | | Adjudicated in the ensuing paras of this order |
| 15. | *Levy of interest u/s.234B, 234C and 234D of the Act.* | 12 of ITA No. 401/BIL/2014 A.Y.2010-11 | |

**Ground No. 10 : disallowance of land crop compensation.**

14.2 It was submitted by the ld. AR that heavy blasting conducted in the coal mines by the assessee to loose coal and remove overburden, there may be subsidence in nearby agricultural areas and cracks may get developed in soil bed. As a result of the same, crop grown by the adjacent villages to the mine boundary get damaged / land becomes unsuitable for cultivation. The revenue authorities of the state, along with the company officials, visit the field to make a survey, on the basis of which, the actual

damages are determined at the Minimum support price / average yield of the relevant crop. The state revenue authorities pass an order for payment of compensation, basis which the assessee makes payment. The AO disallowed the said Land crop compensation expenses incurred by the Assessee on the premise that the said expenses were not incurred towards "expenditure incurred for profit-earning apparatus", rather the Assessee had incurred the said expenditure to earn it the land under which lay the bed of coal, i.e., the amount was spent for obtaining a right of an enduring character which allowed the Assessee to acquire rights and access over land for winning the stock- in-trade, coal. The CIT(A) relying the order of ITAT Nagpur Bench of the Tribunal in assessee's own case in ITA No.18-22/Nag/2001, order dated 28.02.2002, upheld the disallowance made by the AO. It was submitted by the ld. AR that the CIT(A) had inadvertently relied on the Assessee's own order passed by ITAT Nagpur Bench of the Tribunal in ITA No.18-22/Nag/2001 without appreciating the facts that the said order nowhere covers the issue of disallowance of the expenses paid for Land Crop Compensation incurred by the Assessee. It was also submitted that the Land crop compensation paid by the Assessee to the farmers are revenue in nature and eligible for income tax deductions. In this regard, ld. AR relied on the order of the ITAT Nagpur Bench of the Tribunal in the case of assessee's sister concern in the case of Western Coal Fields Ltd v DCIT, ITA no 475/Nag/2007, dated 10.08.2009, wherein the Tribunal deleted the disallowance made under the expenses incurred on land crop

compensation. With such arguments, the ld. AR submitted that the disallowance made by the AO and confirmed by the CIT(A) deserves to be deleted.

14.3 Ld. CIT DR on the other hand, vehemently supported the order of revenue authorities.

14.4 We have considered the rival submissions and perused the material evidence placed on record. We have also perused the order of the ld. CIT(A), wherein the ld CIT(A) has upheld disallowance made by the AO under the head land crop compensation relying on the order of the ITAT Nagpur Bench of the Tribunal in ITA No.18-22/Nag/2001, which according to the assessee was not on the similar facts and thus, nowhere covers the issue with respect to the expenses paid for land crop compensation incurred by the assessee. The order passed by the ITAT Nagpur Bench of the Tribunal is dated 28.02.2002. However, subsequently in ITA No.475/Nag/2007, vide order dated 10.08.2009 in the case of assessee's sister concern has deleted the disallowance/addition made under the head crop compensation. Since the expenditure incurred and disallowed on account of land crop compensation is on the basis of facts and was dealt with by the Nagpur Tribunal in assessee's own case and in the case of M/s. Western Coalfields Ltd. (supra) i.e. sister concern of the assessee in different manner, which suggests that the facts under these two appeals were on different footings and therefore, the facts in the present case needs to be examined whether those are similar with the nature and

facts similar to which one of these two orders. In such facts and circumstances, it would be appropriate to send this issue back to the file of the A.O to verify the nature of the expenditure incurred, if the same is in lieu of employment which helps the assessee company to avoid recurring revenue expenditure in the nature of salary and other administrative legal hassles, then the same would be considered as revenue in nature and should be treated as an allowable expenditure. On the contrary, in case the expenditure is found to be for acquisition of land or any rights of capital nature then the same should be treated as capital expenditure, not admissible as expenditure for the relevant year, this view of our is supported by the decision of Co-ordinate Bench of ITAT, Nagpur in the case of Western Coalfields Ltd. dated 10.08.2009 (supra), para 16, wherein ITAT has observed as under:

> "*16. We have considered the rival submissions, the orders of the authorities below and the materials available on record. It is noted that the assessee company is engaged in the extraction of coal from mines. It is also noted that acquisition and development of new mines is an on-going process in the line of business of the assessee. It is also noted that after acquisition of mines certain development activities are undertaken to extract coal therefrom. Thus, there would be a time lag between the acquisition of mines and actual production of coal therefrom. The assessee has also evolved a policy to treat the development expenditure as of the capital nature till certain stage is reached. It is also noted that cost of land is paid to the land owners which is capitalized. Since the acquisition of land results into migration of land owners therefrom, hence, to carry out the operations smoothly, the holding company in consultation with the Govt. of India has revised re-settlement and rehabilitation policy for the land oustees. As per this policy, they are to be given employment in the assessee company and till such employment is given, the assessee company is liable to pay subsistence allowance © Rs.2,Soo/- per month per person. The company, as a prudent measure, has evolved the policy to pay a lump sum consideration to such land oustees in lieu of employment. Thus, essentially such compensation is of revenue nature. The revenue authorities have treated this expenditure of the capital, nature for the reason that It was a case of lump sum*

> *payment which. In our opinion. Is not a correct criteria to decide the nature of a payment, Tho assesses has placed reliance on various Judicial decisions on this aspect, however, we do not consider It necessary to deal with them In a specific manner as this proposition Is a settled one. Another objection of the - Revenue authorities Is that the assessee has capitalized this payment In the past and has also claimed the same as of capital nature even in the return of Income, hence, principles of consistency was to be applied. In this regard, first of all,-the assesses has submitted that the Impugned expenditure was Incurred and paid-only when the land mines so acquired have become revenue mines. In this regard, we have also perused the remand report of the A.O, wherein et one place the A.O. has Stated that the assessee did not produce documentary evidence to show that-such expenditure was connected with, revenue mines and in the very next Jine, he has stated that even though these conditions were fulfilled but the approval of the Board of Directors was not there. Both these findings are self-contradictory and rather show a state of uncertainty In the mind of the A.O. which makes It a case of mere doubt only and for this reason, the claim of the assessee that impugned expenditure was Incurred In respect of revenue mines cannot be rejected. Once it is so held that there remains no controversy as regards to the allowability of this expenditure.- Having stated so, however, we are further of the opinion that nature of expenditure for the purpose of Act, can not be decided by the Board of Directors, hence, this reasoning of Revenue authorities Is also not correct. We also do not find any merit in the contention Of the td; D.R. that Chis expenditure was connected . with acquisition of land, hence, of capital nature firstly because it has been paid In lieu of employment and secondly In case actual employment for normal operations, this-expenditure would have been allowed as revenue expenditure regardless of the fact that whether such mines were developing mines or revenue mines. In view of these facts and circumstances, we allow this ground of the assessee.*

14.5 Since the matter is remitted back to the file of the A.O, the assessee shall be provided with reasonable opportunity of being heard in the set-aside proceedings. Thus, ground No.10 is allowed partly for statistical purposes in terms of our aforesaid observations.

**Ground No.14 : write off/depreciation of railway siding leased out to Aryan Coal Beneficiation (ACB).**

14.6 Ld. AR submitted that the assessee claimed depreciation for the above-mentioned years on its fully constructed Railway Siding leased to

Aryan Coal Beneficiation for the period of 20 years. The assessee company leased siding and adjoining land granting right to use railway siding for loading coal washed from washeries and other by-products obtained from washing coal. The AO considering provisions of section 27(iiib) rws section 269UA(f) of the Act, treated Aryan Coal Beneficiation as “deemed owner”. He treated the assessee’s claim of the depreciation on Railway Siding to be irregular and accordingly, he disallowed depreciation claimed by the assessee on Railway siding. The ld. CIT(A) by confirming order of the learned AO held that rental income received from Aryan Coal Beneficiation should be assessed as “income from house property" and not "income from business” as treated by the assessee company. As per the ld. AR the railway siding is its business asset Aryan Coal Beneficiation (ACB) washes coal purchased by State Electricity Board (SEB) and other customers. SEBs are customers of SECL as well as of Aryan Coal Beneficiation. Aryan Coal Beneficiation provides coal washing services to the SEBs and other customers before assessee company despatches coal by loading it in railway. Thus, the assessee company has leased its asset in course of its business of Mining to facilitate sales by providing value added service, which ACB provides to SEBs as an independent of the assessee company. Railway siding are used by the assessee company to load coal into wagons for despatching coal to different customers. The Railways siding leased to ACB is one the sidings owned by the assessee company. Thus, railway siding is assessee’s commercial asset. It was also submitted by the ld. AR that

railway siding is assessee company's commercial asset therefore income earned from commercial asset is assessed as income from business, with the result, depreciation should be allowed. Ld. AR also placed following case laws to support his contentions :-

*Reliance is placed on the following decisions:*

- *Universal Plast Ltd v CIT [(1999) 237 ITR 454 (SC)], copy placed as Attachment M1*
- *CEPT v Shri Lakshmi Silk Mills Ltd [(1951) 20 ITR 451 (SC)], copy placed as Attachment N1*
- *Scientific Instrument Co Ltd V CIT [(2011) 14 taxmann.com 157 (All)], copy placed as Attachment N2*
- *ITO v Ultravision Associates, [ITA No 337/Rjt/2013 dated 09.03.2016], copy placed as Attachment N3*

14.7 Ld. CIT-DR on the other hand, relied on the orders of the authorities below.

14.8 We have considered the rival submissions, perused the material evidence placed before us including judicial pronouncements relied upon by the assesse as well as the orders of both the authorities below. On verification of the lease agreement produced during the course of assessment proceedings, the AO found that the railway siding was given on a lease for a period of 20 years to M/s Aryan Coal Beneficiation Pvt. Ltd. New Delhi. As per the AO it was not a stop gap arrangement, thus, the shows that there was intention on the part of the assessee not to use it any time in near future, under the circumstances the asset i.e., Railway siding ceases to remain as an asset of the company meant to be use for the purpose of its business, therefore, the same can never be considered as an asset eligible for depreciation. When the asset was leased to M/s

Aryan Coal Beneficiation Pvt. Ltd. for a period of 20 years and with the right to use the fully constructed railway siding, therefore, the asset was not a business asset which was put to use by the assessee. Thus, the AO has rightly relied on the Section 27(iiib) read with Section 269UA of the Act, which provides that, "*a person who acquires any rights (excluding any rights by way of a lease from month to month or for a period not exceeding one year ) in or with respect to any building or part thereof, by virtue of any such transaction as is referred to in clause (f) of section 269UA, shall be deemed to be the owner of that building or part thereof*". From the preposition of the above provisions, it is clear that the assessee is not eligible to claim depreciation as the asset of the assessee has already been given on lease and currently not in possession of the assessee. The Ld. AR by way of submission or arguments was also unable to substantiate that how the case laws relied upon are applicable on the facts and circumstances of the present case and helpful in substantiating contention of the assessee. Accordingly, we do not observe any good reason to interfere with the order of the ld. CIT(A) upholding the disallowance made by the AO in not accepting the claim of the assessee for depreciation of railway siding leased out to M/s Aryan Coal Beneficiation (ACB). Thus, we dismiss this ground of assessee.

14.9 **Thus, the appeal of the assessee for A.Y.2013-2014 in ITA No.103/BIL/2017 is partly allowed for statistical purposes.**

**ITA No.99/BIL/2017 (Department's Appeal for A.Y.2013-2014)**

15.1 On perusal of the grounds of appeal in **ITA No.99/BIL/2017 (AY : 2013-2014)** filed by the department, it is found that the following effective grounds raised were similar to the grounds raised by assessee/revenue in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the respective grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will mutatis mutandis applicable and accordingly, are disposed off. The ground which were not covered by our aforesaid observations, are dealt with separately after the table as mentioned in remark column.

| Ground No of ITA No.99/BIL/2017 | Grounds of appeal | Covered by corresponding grounds of ITA | Remarks |
|---|---|---|---|
| 1. | *Disallowance of expenditure under the head grants to schools and institutions;* | 4 of ITA No.204/BIL/2012 A.Y.2009-10 | |
| 2. | *Disallowance of expenses on social overheads-fuel & power* | 3 of ITA No.204/BIL/2012 A.Y.2009-10 | |
| 3 to 6. | *Disallowance of CSR Expenses; and* | 5 of ITA No.382/BIL/2014 A.Y.2010-11 | |

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| 7 to 10. | *Disallowance of expenditure on planation of trees and disallowance of environmental expenses;* | 7 of ITA No.204/BIL/2012 for A.Y.2009-10 | |
| 11. | *Disallowance of Expenditure on assets not belonging to company (roads. Etc.* | 3 of ITA No.201/BIL/2012 for A.Y.2009-10 | |
| 12. | *Disallowance of coal transportation expenses paid to ESM companies;* | 4 of ITA No.201/BIL/2012 for A.Y.2009-10 | |
| 8 & 10 ( part) | *Disallowance of sustainable development as Cap. Expenditure.* | | Adjudicated in the ensuing paras of this order |

**Ground No. 8 & 10 (part) : Disallowance of sustainable development as Cap. Expenditure.**

15.2 Ld. CIT-DR relied on the order of AO and submitted that the CIT(A) was not justified in ignoring the finding of the AO that the sustainable development expenses were not incurred in the course of profit earning process but for sterilization of the profit earning sources. Therefore, the order of the CIT(A) deserves to be set aside and the order of the AO should be upheld.

15.3 The ld. AR before us submitted that the assessee is a Central Public Sector Undertakings ('CPSU') and is engaged in the business of mining of coal from open cast mines. Being a CPSU, it has to abide by the

guidelines issued by the Ministry of Heavy Industries and Public Enterprises. The concerned ministry issued guidelines for incurring expenditure towards sustainable development on 23 September 2011 vide DPE's O.M. No. 3(9)/2010-DPE (MOU). SECL being a CPSU had to abide by those guidelines. Copy of such guidelines is placed as Attachment K1. These guidelines required CPSU's to expend money on specified R&D activities, so as to maintain competitiveness and market share due to changing business environments, rapidly changing technology, changing needs of customers etc. The above stated guidelines cover activities relating to "ecological balance, conserving environment and resource optimization". Thereafter, on 02 March 2013, Coal India Limited, the parent company of the Assessee had issued a communication to all its subsidiaries, mandating creation of such reserve and incurrence of such expenditure. Copy of such communication is placed in the paper book as Attachment K2. The AO disallowed the Sustainable expenses incurred by the Assessee on various contentions. On appeal, the Ld. CIT(A) passed the order in favour of the Assessee during AY 2013-14 by observing that the said expenditure is shown under the welfare expenses and the same had been allowed in earlier years in Assessee's own case. Therefore, the ld. AR submitted that the order of the ld. CIT(A) deserves to be upheld.

15.4 We have considered the rival submissions, perused the material evidence carefully. On perusal of the order of the ld. CIT(A) we found that

the ld. CIT(A) has allowed the claim of the assessee after having the following observations :-

> *Decision — Since the welfare expenses are included as environmental expenses, sustainable development expenses and tree plantation, the issue is in the nature of earlier issues on social welfare and tree plantation expenses which had been under litigation for earlier years and my predecessor had been allowing in all assessment years. Respectfully following their decisions, I have to decide the case on principle of consistency. The Ld. AO has not appreciated the fact that the assessee has to cut the trees and also to plant them after mining, hence, assessee succeeds and the addition made by the AO is hereby deleted.*

15.5 On careful perusal of the above observations of the ld. CIT(A), allowing the expenditure incurred under the guidelines issued by the Ministry of Heavy Industries and Public Enterprises, following the same Coal India Limited, the parent company of the Assessee had issued a communication to all its subsidiaries, mandating creation of such reserve and incurrence of such expenditure, which was mandatory in the business interest and expediency of the assessee's business. Such information has been duly substantiated with the supporting evidence, accordingly Ld. CIT(A) has followed the decision of his predecessors on the basis of principal of consistency has allowed such expenditure and deleted the addition/disallowance made by the AO. Such a finding of the Ld. CIT(A) on the issue is found convincing and justified, thus, we do not see any reason to interfere with the findings of the ld. CIT(A). Accordingly, we dismiss this ground of revenue.

15.6 **Thus, the appeal of revenue in ITA No.99/BIL/2017 for A.Y.2013-2014 is partly allowed for statistical purposes.**

**ITA No.204/RPR/2017 (Assessee's appeal for A.Y.2014-2015)**

16.1 On perusal of the grounds of appeal in **ITA No.204/RPR/2017 (AY : 2014-2015)** filed by the assessee further concise and submitted in form a chart, it is found that the following effective grounds raised were similar to the grounds raised by assessee/revenue in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the respective grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will mutatis mutandis applicable and accordingly, are disposed off. The ground which were not covered by our aforesaid observations, are dealt with separately after the table as mentioned in remark column.

| Ground No of ITA No.204/RPR/2017 | Grounds of appeal | Covered by corresponding grounds of ITA | Remarks |
|---|---|---|---|
| 1. | General ground | | Separate adjudication not required. |
| 2. | *Addition made on account of short credit of interest income w.r.t. disputed deposits from* | 7 & 8 of ITA No.115/BIL/2015 A.Y.2011-12 | |

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|---|---|---|---|
| | *coal customers;* | | |
| 3. | *Disallowance u/s.14A read with rule 8D;* | 4 of ITA No.102/BIL/2017 A.Y.2012-13 | |
| 4. | *Disallowance on account of actuarial valuation of employee compensation;* | 2 of ITA No.401/BIL/2014 for A.Y.2010-11 | |
| 5. | *Disallowance of land compensation & rehabilitation expenses;* | 1 of ITA No.201/BIL/2012 A.Y.2009-10 | |
| 5A. | *Amortization of land rehabilitation expenses.* | 1E of ITA No.201/BIL/2012 A.Y.2009-10 | |
| 6. | *Disallowance on accumulated liquidated damages penalty;* | 10 of ITA No.401/BIL/2014 for A.Y.2010-11 | |
| 7. | *Disallowance of provision made for mine closure* | 4 of of ITA No.115/BIL/2015 A.Y.2011-12 | |
| 8. | *Disallowance of claim for OBR adjustment;* | 9 of ITA No.204/BIL/2012 A.Y.2009-10 | |
| 9. | *Disallowance of depreciation on Appollo Hospital Building;* | 3 of ITA No.401/BIL/2014 for A.Y.2010-11 | |
| 10. | *Disallowance of sustainable development as Cap.* | 8 & 10 of ITA No.99/BIL/2017 A.Y.2013-14 | |

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| | *Expenditure.* | | |
| 11. | *Disallowance of expenditure on assets not belonging to company (roads. Etc.);* | 3 of ITA No.201/BIL/2012 A.Y.2009-10 | |
| 12. | *Disallowance of expenditure towards payment to Coal India Sports Promotion Fund;* | | Adjudiated in ensuing paras of this order |
| 13. | *Disallowance of coal transportation expenses paid to ESM companies;* | 4 of ITA No.201/BIL/2012 A.Y.2009-10 | |
| 14. | *Disallowance of Write off/Depreciation of Railway Siding leased out to Aryan Coal Beneficiation (ACB)* | 14 of ITA No.103/BIL/2017 A.Y.2013-14 | |

**Ground No. 12 : disallowance of payments made to Coal India Sports Promotion Fund.**

16.2 Ld. AR before us submitted that as per the direction of Coal India Limited, all the subsidiaries of Coal India Limited are required to

contribute towards the Coal India Sports Promotion Fund which is subsequently spent on the employee's welfare schemes by organising various sports events and tournaments. The disallowed the payment made to Coal India Sports Promotion Fund on the premise that the said expenses are not related to the business of the Assessee coupled with the fact that no explanation was placed on records to substantiate the fact that the said expenses was related to the business of the Assessee. The CIT(A) confirmed the disallowance made by the Ld. AO and stated that Coal India Sports Promotion Fund has been created by the holding company of the Assessee, i.e., Coal India Limited and it is managed by Coal India Limited itself and hence, held that the payment made to Coal India Sports Promotion Fund by the Assessee are not related to the business of the Assessee. He also observed that no explanation was placed on records to substantiate the fact that the said expenses was related to the business of the Assessee. It was submitted by the ld. AR that being a company under the control of the Government, the assessee was bound to comply with all the Government orders. Therefore, an expenditure directed to be incurred by it by the Government is allowable expenditure. Accordingly, ld. AR submitted that that the payment made to Coal India Sports Promotion Fund may be allowed. To support his contention, ld. AR relied on the decision in the case of CIT v Travancore Titanium Products Ltd (2010) 187 Taxmann 81 (Kerala). The relevant part of the decision is reproduced as under:

> *" the claim of deduction was to be considered with reference to the peculiar circumstances of the company in which it had no discretion in regard to the payment of the service charges to the Government, as it was bound to comply with the Governmental orders. So much so, the parameters applicable to the case of a private company, that too with respect to the claim for business expenditure, are exactly not applicable to the case of a public sector company, whether it is under the control of the State Government or the Central Government. In fact, many public sector companies are not formed just to make profit alone, but are supposed to achieve larger objectives for the society and the State. Section 37(1) is the residuary provision provided under the Income-tax Act enabling the assessee engaged in business to claim all expenditure laid out or expended wholly and exclusively for the purposes of the business. By making payment of the service charges, the assessee-company had discharged only the obligation under the Governmental orders. It could not carry on business by violating the Government's Orders and remain as a defaulter to the Government. Therefore, on the face of it, payment of service charges to the Government was a business expenditure and it was paid every year and the payment are mandatory for carrying on the business."*

16.3 Ld. CIT DR supported the order of authorities below.

16.4 On perusal of the both the orders of the authorities below, we found that the assessee could not substantiate its claim either before the AO or before the CIT(A). According to the revenue authorities the expenditure incurred was considered as not for the business of the assessee and therefore, the same was disallowed. Before us Ld. AR of the assessee submitted a copy of the Sports Policy of Coal India Ltd (CIL) which apparently was also available before the revenue authorities. According to the said policy in order to comply with the national sports policy issued by govt of India in May 1984 for promotion of sports and culture, CIL and its subsidiary companies had created Coal India Sports Promotion Association (CISPA). CISPA is represented by the Apex body consisting

of representatives of CIL and its subsidiary companies duly registered under West Bengal Societies Registration Act, 1961. On perusal of the objectives, responsibilities and activities to be conducted by the Apex body of CISPA, it seems that participation of the assessee company in all such activities and to contribute for the same was necessary being a company is under the control of government and the assessee was bound to comply with all such orders. This observation of our is in line with the decision in the case of CIT Vs. Travancore Titanium Products Ltd. (supra). Such facts of the issue establishes that the incurrence of expenditure for CISP fund was an unavoidable regulatory necessity for functioning of the business activities of the company and for business expediency. Accordingly, the expenses incurred on direction of the holding company in accordance with the policies of Government are mandatory and beyond the control of the assessee. Thus, the same cannot be said to be non-business in nature and accordingly, we hold that such expenses deserves to be allowed. Thus, the ground of No.12 of the assessee is allowed in terms of our aforesaid observations.

16.5 **Thus, the appeal of the assessee in ITA No.204/RPR/2017 is partly allowed for statistical purposes.**

**ITA No.188/RPR/2017 (Department's Appeal for A.Y.2014-2015)**

17.1 On perusal of the grounds of appeal in **ITA No.188/RPR/2017 (AY : 2014-2015)** filed by the revenue further concise and submitted in form a chart, it is found that the following effective grounds raised were similar to the grounds raised by assessee/revenue in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the respective grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will mutatis mutandis applicable and accordingly, are disposed off.

| Ground No of ITA No.188/RPR/2017 | Grounds of appeal | Covered by corresponding grounds of ITA | Remarks |
|---|---|---|---|
| 1. | *Disallowance of expenses on grants to schools and institutions.* | 4 of ITA No. 204/BIL/2012 A.Y.2009-10 | |
| 2. | *Disallowance of expenses on social overheads-fuel & power;* | 3 of ITA No. 204/BIL/2012 A.Y.2009-10 | |
| 3 to 6. | *Disallowance of CSR Expenses;* | 5 of ITA No.382/BIL/2014 A.Y.2010-11 | |

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|---|---|---|---|
| 7 to 9 | *Disallowance of expenditure on planation of trees and disallowance of environmental expenses;* | 7 of ITA No. 204/BIL/2012 A.Y.2009-10 | |
| 10. | *Disallowance of Expenditure on assets not belonging to company (roads.) Etc.* | 3 of ITA No.201/BIL/2012 A.Y.2009-10 | |
| 11. | *Disallowance of coal transportation expenses paid to ESM companies;* | 4 of ITA No.201/BIL/2012 A.Y.2009-10 | |

17.2 **Thus, the appeal of revenue in ITA No.188/RPR/2017 for A.Y.2014-2015 is partly allowed for statistical purposes.**

**ITA No.169/RPR/2018(Assessee's appeal for A.Y.2015-2016)**

18.1 On perusal of the grounds of appeal in **ITA No.169/RPR/2018 (AY : 2015-2016)** filed by the assessee further concise and submitted in form a chart, it is found that the following effective grounds raised were similar to the grounds raised by assessee/revenue in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the respective grounds of appeals already decided in

terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will mutatis mutandis applicable and accordingly, are disposed off.

| Ground No of ITA No.169/RPR/2018 | Grounds of appeal | Covered by corresponding grounds of ITA | Remarks |
|---|---|---|---|
| 1. | *Addition made on account of short credit of interest income w.r.t. disputed deposits from coal customers* | 7 & 8 of ITA No. 115/BIL/2015 A.Y.2011-12 | |
| 2. | *Disallowance on account of actuarial valuation of employee compensation;* | 2 of ITA No.401/BIL/2014 A.Y.2010-11 | |
| 3. | *Disallowance of land compensation & rehabilitation expenses;* | 1 of ITA No.201/BIL/2012 A.Y.2009-10 | |
| 3A. | Amortization of land rehabilitation expenses | 1E of ITA No.201/BIL/2012 A.Y.2009-10 | |
| 4. | *Disallowance on accumulated liquidated damages penalty;* | 10 of ITA No.401/BIL/2014 A.Y.2010-11 | |
| 5. | *Disallowance of provision made for mine closure.* | 4 of ITA No. 115/BIL/2015 A.Y.2011-12 | |

| | | | |
|---|---|---|---|
| 6. | *Disallowance of claim for OBR adjustment;* | 9 of ITA No.201/BIL/2012 A.Y.2009-10 | |
| 7. | *Disallowance of depreciation on Appollo Hospital Building* | 3 of ITA No.401/BIL/2014 A.Y.2010-11 | |
| 8. | *Disallowance of coal transportation expenses paid to ESM companies;* | 4 of ITA No.201/BIL/2012 A.Y.2009-10 | |
| 9. | *Disallowance of Write off/Depreciation of Railway Siding leased out to Aryan Coal Beneficiation (ACB)* | 14 of ITA No.103/BIL/2017 A.Y.2013-14 | |

18.2 **Thus, the appeal of the assessee in ITA No.169/RPR/2018 for A.Y.2015-2016 is partly allowed for statistical purposes.**

**ITA No.171/RPR/2018 (Department's Appeal for A.Y.2015-2016)**

19.1 On perusal of the grounds of appeal in **ITA No.171/RPR/2018 (AY : 2015-2016)** filed by the revenue further concise and submitted in form a chart, it is found that the following effective grounds raised were similar to the grounds raised by assessee/revenue in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the respective grounds of appeals already decided in

terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will mutatis mutandis applicable and accordingly, are disposed off.

| Ground No of ITA No.171/RPR/2018 | Grounds of appeal | Covered by corresponding grounds of ITA | Remarks |
|---|---|---|---|
| 1. | *Disallowance of expenses on grants to schools and institutions.* | 4 of ITA No. 204/BIL/2012 A.Y.2009-10 | |
| 2. | *Disallowance of expenses on social overheads-fuel & power;* | 3 of ITA No. 204/BIL/2012 A.Y.2009-10 | |
| 3 to 5 | *Disallowance of expenditure on planation of trees and disallowance of environmental expenses;* | 7 of ITA No. 204/BIL/2012 A.Y.2009-10 | |
| 6. | *Disallowance of land crop compensation* | 10 of ITA No.103/BIL/2017 A.Y.2013-14 | |
| 7. | *Disallowance of coal transportation expenses paid to ESM companies;* | 4 of ITA No.201/BIL/2012 A.Y.2009-10 | |

19.2 **Thus, the appeal of revenue in ITA No.171/RPR/2018 for A.Y.2015-2016 is partly allowed for statistical purposes.**

**ITA No.33/RPR/2019(Assessee's Appeal for A.Y.2016-2017)**

20.1 On perusal of the grounds of appeal in **ITA No.33/RPR/2019 (AY : 2016-2017)** filed by the assessee further concise and submitted in form a chart, it is found that the following effective grounds raised were similar to the grounds raised by assessee/revenue in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the respective grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will mutatis mutandis applicable and accordingly, are disposed off.

| Ground No of ITA No.33/RPR/2019 | Grounds of appeal | Covered by corresponding grounds of ITA | Remarks |
|---|---|---|---|
| 1. | *Addition made on account of short credit of interest income w.r.t. disputed deposits from coal customers* | 7 & 8 of ITA No. 115/BIL/2015 A.Y.2011-12 | |
| 2. | *Disallowance of land compensation & rehabilitation expenses;* | 1 of ITA No.201/BIL/2012 A.Y.2009-10 | |

| | | | |
|---|---|---|---|
| 2A. | Amortization of land rehabilitation expenses | 1E of ITA No.201/BIL/2012 A.Y.2009-10 | |
| 3. | *Disallowance on accumulated liquidated damages penalty;* | 10 of ITA No.401/BIL/2014 A.Y.2010-11 | |
| 4. | *Disallowance of provision made for mine closure.* | 4 of ITA No. 115/BIL/2015 A.Y.2011-12 | |
| 5. | *Disallowance of claim for OBR adjustment;* | 9 of ITA No.204/BIL/2012 A.Y.2009-10 | |
| 6. | *Disallowance of depreciation on Appollo Hospital Building* | 3 of ITA No.401/BIL/2014 A.Y.2010-11 | |
| 7 | *Disallowance of coal transportation expenses paid to ESM companies;* | 4 of ITA No.201/BIL/2012 A.Y.2009-10 | |
| 8. | *Disallowance of Write off/Depreciation of Railway Siding leased out to Aryan Coal Beneficiation (ACB)* | 14 of ITA No.103/BIL/2017 A.Y.2013-14 | |

20.2 **Thus, the appeal of the assessee in ITA No.33/RPR/2019 for A.Y.2016-2017 is partly allowed for statistical purposes.**

**ITA No.54/RPR/2018 (Department's Appeal for A.Y.2016-2017)**

21.1 On perusal of the grounds of appeal in **ITA No.54/RPR/2018 (AY : 2016-2017)** filed by the revenue further concise and submitted in form a chart, it is found that the following effective grounds raised were similar to the grounds raised by assessee/revenue in the assessee's case for the earlier years, therefore, instead of deciding those issues again we are furnishing hereunder a table showing grounds of present appeal covered by our decision in the respective grounds of appeals already decided in terms of our observations hereinabove. Accordingly, our decision rendered in the foregoing paras of this order under respective grounds of the appeal No. referred in the table below will mutatis mutandis applicable and accordingly, are disposed off.

| Ground No of ITA No.54/RPR/2018 | Grounds of appeal | Covered by corresponding grounds of ITA | Remarks |
|---|---|---|---|
| 1. | *Disallowance of expenses on grants to schools and institutions.* | 4 of ITA No. 204/BIL/2012 A.Y.2009-10 | |
| 2. | *Disallowance of expenses on social overheads-fuel & power;* | 3 of ITA No. 204/BIL/2012 A.Y.2009-10 | |
| 3 | *Disallowance of expenditure on planation of trees and disallowance of* | 7 of ITA No. 204/BIL/2012 A.Y.2009-10 | |

| | | | |
|---|---|---|---|
| | *environmental expenses;* | | |
| 4. | *Disallowance of land crop compensation* | 10 of ITA No.103/BIL/2017 A.Y.2013-14 | |
| 5. | *Disallowance of coal transportation expenses paid to ESM companies;* | 4 of ITA No.201/BIL/2012 A.Y.2009-10 | |
| 6. | *Non grant of TDS credit due to income mismatch* | 6 of ITA No.115/BIL/2015 A.Y.2011-12 | |

21.2 **Thus, the appeal of revenue in ITA No.54/RPR/2019 for A.Y.2016-2017 is partly allowed for statistical purposes.**

22. This is apposite to mention here that all the grounds / contentions raised and argued by the counsel of the assessee / CITDR on behalf of revenue in the captioned appeals in the course of hearings are thoughtfully considered and dealt with on the basis of arguments raised, material available, judicial precedence and the relevant / applicable provisions of the law. General and explanatory grounds are regarded as supportive or academic in nature, thus, are not adjudicated separately. Certain grounds which are opted not to press, become infructuous thus are dismissed.

23. Specific Grounds covered by the orders of the coordinate benches of the ITAT in the earlier years in the asssessee's own case, relied upon by the parties, wherein we have followed the decision rendered in such orders of the ITAT, however as apprised by the parties hereto, in certain cases such issues are further raised before the Hon'ble High Court by way of filing of tax appeals, which were either admitted or yet to be admitted or status not available. Under such circumstances, *de hors* any specific direction of the Hon'ble High court *qua* the issues, following the principle of consistency, the observations of the Tribunal in assessee's own case in earlier years have been considered as holds ground, thus, have been followed. Once such issues are decided by Hon'ble High court, the same will be binding to be adhered to, by the concerned parties.

24. In the result, all the captioned appeals of the assessee as well as revenue are either allowed, partly allowed for statistical purposes or dismissed, in accordance with our observations herein above.

Order pronounced in the open court on 30/10/2023.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(RAVISH SOOD)** | **(ARUN KHODPIA)** |
| **न्यायिक सदस्य / JUDICIAL MEMBER** | **लेखा सदस्य / ACCOUNTANT MEMBER** |

**रायपुर/Raipur**; दिनांक Dated 30/10/2023
*Prakash Kumar Mishra, Sr.P.S, SB, Vaibhav*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

**आदेशानुसार/** BY ORDER,

**// सत्यापित प्रति True copy //**

**(Assistant Registrar)**
**आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur**