

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

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No.104/JAB/2018
Assessment Year:2014-15

Deputy Commissioner of Income Tax (Central), Jabalpur.	Vs.	M/s Anand Mining Corporation, 1, Khitola Bazar, Jabalpur. PAN:AAGFA0187Q
(Appellant)		(Respondent)

C.O.No.03/JAB/2018
(I.T.A. No.104/JAB/2018)
Assessment Year:2014-15

M/s Anand Mining Corporation, 1, Khitola Bazar, Jabalpur. PAN:AAGFA0187Q	Vs.	Deputy Commissioner of Income Tax (Central), Jabalpur.
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Revenue by	Smt. Garima Chaudhary, CIT (D.R.)
Assessee by	Shri Dheeraj Ghari, C.A.
Date of hearing	21/11/2023
Date of pronouncement	24/11/2023

ORDER

PER YOGESH KUMAR U.S.; J.M.

The present appeal filed by the Revenue against the order of CIT(A)-I, Jabalpur dated 12/02/2018 and the assessee has also filed Cross Objections by challenging the very same order impugned. The grounds of

appeal of the Revenue and the grounds raised in the Cross Objection are as under:

Grounds of I.T.A.No.104/JAB/2018

- "1. *On the facts and in the circumstances of the case, the Ld CIT (Appeals) erred in deleting the addition of Rs. 1,00,000/- made by AO on account of difference in royalty payment.*
2. *On the facts and in the circumstances of the case, the Ld CIT (Appeals) erred in deleting the addition of Rs.15,38,092/- made by AO on account of disallowance of depreciation of assets.*
3. *On the facts and in the circumstances of the case the Ld. CIT(Appeals) erred in allowing relief of Rs.1,01,612/- out of total disallowance of Rs.1,21,807/- made by AO u/s 40A(3) of the I.T. Act.*
4. *On the facts and in the circumstances of the case, the Ld CIT (Appeals) erred in deleting the addition of Rs.5,74,219/- made by AO on account of disallowance of agriculture expenses.*
5. *On the facts and in the circumstances of the case, the Ld CIT (Appeals) erred in allowing relief of Rs.3,99,129/- out of total disallowance of Rs.5,99,129/- made by the AO on account of disallowance of telephone and mobile expenses incurred.*
6. *On the facts and in the circumstances of the case the Ld. CIT(Appeals) erred in i allowing relief of Rs.50,000/- out of total addition of Rs.79,500/- made by the AO as the assessee failed to deduct TDS on expenses on professional charges.*
7. *On the facts and in the circumstances of the case the Ld CIT(Appeals) erred in deleting the addition of Rs.2,50,00,000/- made by AO on account of compensation expenses.*
8. *On the facts and in the circumstances of the case the Ld. CIT(Appeals) erred in deleting the addition of Rs.1,81,712/- made by AO on account of disallowance of expenditure claimed by the assessee."*

Grounds of Cross Objection No.03/JAB/2018

- "1. *On the facts and in the circumstances of the case, the learned CIT(A) was not justified in confirming disallowance of Rs.20,195/- made by the learned Assessing Officer under section 40A(3) of the Act.*
2. *Considering the fact that the auditor has treated Rs.7,30,000/- out of telephone and mobile expense, vehicle expense and office expense as personal expense hence the ld CIT(A) was not justified in confirming further disallowance of Rs.2,00,000/- out of these expenses.*
3. *On the facts and in the circumstances of the case, the learned CIT(A) was not justified in confirming disallowance of interest paid Rs.21,215/- on account of late deposit of TDS.*
4. *On the facts and in the circumstances of the case, the learned CIT(A) was not justified in confirming disallowance of Rs.50,000/- made under section 40(a)(ia) of the Act."*

2. The facts, in brief, are that the assessee firm had filed its return of income declaring total income at Rs.5,52,85,400/- for the assessment year 2014-15. The case was selected under scrutiny through CASS and notice u/s 143(2) of the Act was issued and the assessment u/s 143(3) of the Income Tax Act, 1961 ("IT Act" for short) had been completed on 05/12/2016 at total income of Rs.8,38,28,640/-. Aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). The learned CIT(A), vide order dated 12/02/2018, deleted various additions and upheld/confirmed the disallowance of Rs.20,195/- made by the Assessing Officer u/s 40A(3) of the Act and also upheld Rs.7,30,300/- out of telephone and mobile expenses, vehicle expenses & office expenses and further disallowed the interest paid Rs.21,215/- on account of late deposit of TDS. Aggrieved by the deletion of addition, the Department has preferred the appeal in I.T.A.No.104/JBP/2018 and the assessee filed Cross

Objection No.3/JAB/2018 aggrieved by the sustaining of the additions/disallowances.

I.T.A.No.104/JBP/2018 (Revenue's Appeal)

3. Ground No. 1 of the appeal of the Revenue is regarding deletion of addition of Rs.1,00,000/- made by the Assessing Officer on difference in royalty payment.

4. In the course of assessment proceedings, the Assessing Officer found that as per TCS claimed by the assessee in his return of income is amounting to Rs.12,46,163/- on total receipts amounted to Rs.6,39,16,251/- whereas the receipts credited in the 26AS shown amounting to Rs.6,40,16,251/-. The assessee had not shown his income from the Directorate of Geology & Mining from which the TCS was made amounting to Rs.2,000/- on total receipt of Rs.1,00,000/-, the same was asked to the assessee vide order sheet entry dated 01.09.2016 but the A/R had not given proper reply for the same. Thus, the Assessing Officer was of the opinion that the assessee had concealed the income of Rs.1,00,000/- which did not include in the gross receipts, accordingly made the addition.

5. The learned CIT(A), while deleting the addition, held as under:

"6.3.3.DECISION:- I have carefully considered the submission put forth & the documents furnished on behalf of the appellant, perused the facts of the case and the observation of the AO in the impugned assessment order and other material brought on record. The AO has made the addition of Rs.1 lakh on account of difference in royalty payment. As per the form no 26AS the assessee has paid total royalty of Rs. 6,40,16,251/-. Out of which royalty of Rs. 6,08,00,000/- was paid to Directorate of Geology and Mining and royalty of Rs.32,16,251/- was paid to Nirmala Minerals. As per the books of accounts of the assessee, it has paid the royalty of Rs.

6,08,00,000/- to Directorate of Geology and Mining and Rs. 32,16,251/- to Nirmala Minerals i.e. as per books of accounts also the assessee has paid the royalty of Rs. 6,40,16,251/-. Since there is no difference in the royalty paid as per books of accounts and royalty payment appearing in form no 26AS, hence the addition of Rs. 1 lakh made by the AO is deleted. In result, this ground of appeal is allowed."

6. The learned D.R. submitted that the CIT(A) erred in deleting the addition and relied on the findings and conclusions of the assessment order and the learned A.R. relied on the order of the CIT(A).

7. Heard the parties and perused the materials. The learned CIT(A) found that there is no difference in the royalty paid as per books of account and royalty payment appearing in Form-26AS and accordingly deleted the addition. The said findings of the fact has not been disputed by the Revenue, thus, we find no error or infirmity in the order of the CIT(A) in deleting the addition of Rs.1,00,000/- made by the Assessing Officer. Accordingly, ground No. 1 of the Revenue is dismissed.

8. Ground No. 2 of the Revenue is regarding deletion of addition of Rs.15,38,092/- made by the Assessing Officer on account of disallowance of depreciation of assets.

9. The learned Assessing Officer on perusal of Audit Report submitted by the assessee, found that the assessee had claimed the depreciation amounting to Rs.1,81,13,439/- in Schedule No. 4 of profit & loss account. The addition made on fixed asset was annexed with Audited Report as chart "Addition Details (From Point No. 18)", there was an addition in Plant & Machinery @15% amounting to Rs.1,02,53,945/- and the depreciation claimed on it of Rs.15,38,092/-. The detail of machine i.e. date of purchase

and date of put to use is as under **(as per chart provided in audited report):**

Description of block of assets	Sl.No.	Date of purchase	Date of put to use	Amount (Rs.)
Plant & machinery @15%	11	03/05/2014	03/05/2014	1,02,53,945/-

The learned Assessing Officer was of the opinion that the assessee had purchased the machinery after the year which is under consideration i.e. financial year 2013-14 and claimed the depreciation in financial year 2013-14 and found that the plant & machinery were put to use on 03/05/2014 amounting to Rs.15,38,092/-. Accordingly, the Assessing Officer disallowed the same and added to the total income of the assessee.

10. The learned CIT(A), while deleting the addition, held as under:

"6.2.3. DECISION:- I have carefully considered the submission put forth & the documents furnished on behalf of the appellant, perused the facts of the case and the observation of the AO in the impugned assessment order and other material brought on record. The AO has disallowed depreciation of Rs. 15,38,092/-claimed on Trucks by the appellant.It is seen that the assessee has purchased on 03.05.2013 three trucks from Man Trucks India Pvt Ltd. vide invoice no 2813100017 to 2813100019. These trucks were put to the use immediately after their purchase on 03.05.2013. Due to typing mistake, in the audit report, the auditor has wrongly mentioned the date of purchase and date of put to the use of these 3 trucks as 03.05.2014. A certificate from the auditor was also filed clarifying this mistake. The assessee has used these 3 trucks for more than 180 days in the previous year relevant to assessment year 2014-15. Hence, the assessee is entitled for the depreciation on these trucks. Accordingly, the AO is directed to allow depreciation of Rs.15,38,092/- as claimed by the assessee. In result this ground of appeal is allowed."

11. Heard the learned D.R. and the learned A.R. It is found from the record that the CIT(A) observed that the trucks were put to use immediately after purchase on 03/05/2013 and due to typographical error in the audit report, the auditor has wrongly mentioned the date of purchase and date of put to use of the three trucks as 03/05/2014 and the auditor has also filed letter clarifying the mistakes. Considering the fact that the three trucks were used for more than 180 days in the previous year, relevant to assessment year 2014-15, we are of the opinion that the same are entitled for depreciation and find no error in the order of the CIT(A) in deleting the addition. Therefore, we find no merit in ground No. 2 of the Revenue's appeal.

12. Ground No. 3 is regarding allowing the relief of Rs.1,01,612/- out of total disallowance of Rs.1,21,807/- made by the Assessing Officer u/s 40A(3) of the Act.

13. The learned Assessing Officer made the addition of Rs.1,21,807/- on the ground that the assessee was following single or aggregate payment to same person during a day exceeding Rs.20,000/- which is in contravention of section 40A(3) of the Act.

14. The learned CIT(A) while restricting the addition held as under:

"6.4.3.DECISION:- I have carefully considered the submission put forth & the documents furnished on behalf of the appellant, perused the facts of the case and the observation of the AO in the impugned assessment order and other material brought on record. The AO has made the disallowance of Rs. 1,21,807/- by applying the provision of section 40A(3) of the Act. As per the ledger account of Mine safety expense and Electric expense the assessee has paid on 24.12.2013 only to Rs. 19,000/- to Ramcharan and has paid Rs. 9,212/- to Dinesh Vishwakarma. Further on 23.01.2014 the assessee has paid Rs. 17,100/- to Ramcharan Kumar and Rs. 19000/- to Maa traders.

On 05.04.2013 the assessee has paid Rs. 18300 to Dinesh Vishwakarma and Rs. 19,000/- to Shankar Traders. On 20/10/2013, the assessee has paid Rs.15,391/- and Rs.4,804/- to Dinesh Vishwakarma.

Since all the payment except the payment of Rs.20,195/- made on 20.10.2013 to Vinod Electrical are below the limit prescribed under section 40A(3) of the Act, the disallowance under section 40A(3) is reduced from 1,21,807/- to Rs. 20195/-. In result, the assessee gets relief of Rs. 1,01,612/-. Thus, this ground of appeal is partly allowed.

15. Heard the parties and perused the materials. The learned CIT(A) being a fact finding authority found that all the payments made to the parties except the payment made to one Vinod Electrical are below the limit prescribed u/s 40A(3) of the Act, deleted the addition to Rs.20,195/- from Rs.1,21,807/-. Considering the fact that all the payments made by the assessee were below the limit prescribed u/s 40A(3) of the Act, we find no error or infirmity in the approach of the CIT(A) and we find no merit in ground No. 3 of the Revenue's appeal. Accordingly, ground No. 3 of the Revenue is dismissed.

16. Ground No. 4 is regarding deleting the addition of Rs.5,74,219/- made by the Assessing Officer on account of disallowance of agricultural expenditure.

17. During the year under consideration, the assessee Firm had shown Mess Expense of Rs.23,07,157/- out of which Agriculture Expense amounting to Rs.5,74,219/- were claimed. Agricultural income was not only exempted from tax, but under the scheme of the I.T. Act, 1961 it is also to be excluded in computing the total income. The learned Assessing Officer was of the opinion that the assessee has not shown any agricultural income although claimed expenses relating to agricultural operations and

the claim of agricultural expense cannot be allowed as expenditure computing the business income for the reason that agricultural income does not form part of the total income under the I.T. Act. Accordingly, the Assessing Officer disallowed Rs.5,74,219/- claimed as agricultural expenses.

18. The learned CIT(A), while deleting the addition, held as under:

"6.5.3. DECISION:- I have carefully considered the submission put forth & the documents furnished on behalf of the appellant, perused the facts of the case and the observation of the AO in the impugned assessment order and other material brought on record. The AO made the disallowance of Rs. 5,74,219/- out of Mess Expense The assessee has 2 iron ore mines situated at Village Tikariya and Dubiyara and Pratappur. In both these mines the assessee has office and barrack for accommodation of labour working in the mines. The assessee is providing tea lunch and dinner to staff and labour working in mines. The assessee firm and its partner have 40.68 acres of agriculture land in the area surrounding the mine area. On these agriculture lands the assessee firm is cultivating food grain like wheat rice etc. The agriculture produce of these lands are used in the mess of the assessee firm and the assessee firm is not paying any amount to the partner for the food grain cultivated on their land and used by the assessee firm in its mess. For this reason, like earlier years the agriculture expense of these agriculture land are debited in mess expense. Since the assessee firm has used in its mess the food grain produced in the 40.68 acres of agriculture land owned by the firm and its partner hence, I am of the opinion that the AO was not justified in disallowing agriculture expense of Rs. 5,74,219/- debited in mess expense. For this reason, the disallowance of Rs.5,74,219/- is deleted."

19. We have heard the parties and perused the materials. The learned CIT(A), while deleting the addition, found that the assessee Firm and its partner have 40.68 acres of agriculture land in the mining area wherein foodgrains like wheat, rice etc. are cultivated. The agriculture produce of these lands were used in the mess of the assessee firm and the assessee

Firm was not paying any payment to partner for the food grains cultivated and used by the assessee firm in its mess. The agriculture expenses were also debited in the mess expenses. Since the assessee Firm had used in its mess the food-grains produced in the agriculture land, the disallowance has been deleted by the learned CIT(A). Considering the above facts and circumstances, we find no error or infirmity in the findings of the CIT(A) in deleting the disallowance and we find no merit in the ground No. 4 of the Revenue's appeal. Accordingly, the same is dismissed.

20. Ground No. 5 is regarding granting relief of Rs.3,99,129/- out of total disallowance of Rs.5,99,129/- made by the Assessing Officer on account of disallowance of telephone and mobile expenses.

21. The assessee claimed administrative expenses, the expenses made on account of telephone and mobile, vehicle and other expenses. The Assessing Officer disallowed 25% of the expenses and made addition of Rs.5,99,129/-. The learned CIT(A), while granting relief to the extent of Rs.3,99,129/-, out of total disallowance of Rs.5,99,129/-, held as under:

"6.6.3. DECISION:- I have carefully considered the submission put forth & the documents furnished on behalf of the appellant, perused the facts of the case and the observation of the AO in the impugned assessment order and other material brought on record. The AO has made the impugned disallowance of Rs. 5,99,129/-out of telephone and mobile expense, vehicle expense and office expense. It is seen that the assessee has incurred telephone and mobile expense of Rs.5,68,567/-, vehicle expense of Rs. 39,17,918/- and office expense of Rs. 8,30,030/-. Out of these expenses, the auditor has treated expenses to the extent of Rs.7,30,00/- as personal expense and has disallowed the same while working out taxable income. The AO was of the opinion that 25% of the expenses debited under these heads are of personal nature and accordingly further disallowed Rs.5,99,129/-. Considering the totality of the fact, I am of the view that the further disallowance of Rs.5,99,129/- is excessive and disallowance of Rs.2 lakh will meet the ends of justice. In the result,

the assessee gets the relief of Rs.3,99,129/- in this ground of appeal."

22. It is found that there is no basis for the Assessing Officer to make disallowance of Rs.5,99,129/- which is 25% of the expenses debited under the different heads which are of personal nature and the learned CIT(A) has granted the relief of Rs.3,99,129/- to the assessee. In our considered opinion, the approach of the CIT(A) requires no interference in the absence of any contrary material on record. Accordingly, ground No. 5 of the Revenue is dismissed.

23. Ground No. 6 is regarding deletion of the addition of Rs.50,000/- out of total addition of Rs.79,500/- made by the Assessing Officer as the assessee failed to deduct TDS on expenses of professional charges.

24. The assessee has claimed expenses from professional charges in the audited report amounting to Rs.95,79,056/- on account of payment to professionals for their services, but the assessee Firm has not deducted the tax u/s 194J of the Act on payment of Rs.79,500/-. Accordingly, the professional fees of Rs.79,500/- paid without deducting the TDS has been disallowed under the provision of section 40(a)(ia) of the Act.

25. The learned CIT(A), while restricted the disallowance in following manner:

25. "6.8.3. DECISION:- I have carefully considered the submission put forth & the documents furnished on behalf of the appellant, perused the facts of the case and the observation of the AO in the impugned assessment order and other material evidences brought on record and this ground of appeal relating to the disallowance of professional charges of Rs. 79,500/- by applying the provision of section 40(a)(ia) of the Act is decided as under:-

(i) As per the detail submitted by the assessee, out of professional charges of Rs. 79,500/- no TDS was required to be deducted under

section 194J on the payment of Rs. 29,500/- made to 3 different parties. Hence, the assessee gets the relief of Rs.29,500/-.

(ii) As regard the payment of Rs. 50,000/- made to Shri V Ravindra Prasad Advocate, the assessee submitted that V. Ravendra Prasad is a regular assessee of income and has included the payment received from the assessee while working out his taxable income of the assessment year 2014-15. However, the assessee not given any evidence in support his this contention. Further the assessee has not given the PAN of V. Ravindra Prasad. For this reason, the case law relied by the Id AR is not applicable to the case of the assessee. Hence, the disallowance of Rs. 50,000/ - made by the Assessing Officer is sustained."

26. Considering the fact that out of professional charges of Rs.79,500/-, no TDS was required to be deducted u/s 194J of the Act on payment of Rs.29,500/- made to three different parties, the learned CIT(A) rightly deleted the addition of Rs.29,500/-, therefore, we find no error or infirmity in the order of the CIT(A) in deleting the disallowance of Rs.29,500/-. Accordingly, the ground No. 6 of the Revenue is dismissed.

27. The ground No. 7 of the Revenue's appeal is regarding deletion of addition of Rs.2,50,00,000/- made by the Assessing Officer on account of compensation expenses.

28. The assessee claimed administrative expenses, forming part of profit & loss account, denotes that the compensation expenses of Rs.2,50,00,000/- were claimed. The learned Assessing Officer called for clarification of the said expenses. It is the case of the assessee that the said compensation paid to a dealer M/s Shree Rupandham Steel Pvt. Ltd. for supply of goods which has not been made as per terms and conditions and the said expenditure incurred as genuine and purely for the purpose of business. The said clarification has not been accepted by the Assessing

Officer and the claim of the assessee found to be non-incidental in the nature by the Assessing Officer for following reasons:

"(i) The assessee firm carried out mining activity in two mines situated at village- Pratappur and at village- Tikariya-Dubyara. The assessee firm carried out mining activities from only one mine which is situated at Pratappur during the year under consideration, whereas, the Tikariya-Dubyara mines had been closed with effect from 18.10.2011.

(ii) Although, the mining activity has been stopped by one mines, on 18.10.2011, the assessee firm has given quotation to M/s Shree Rupanadham Steel (P) Ltd., Raipur for purchase of materials i.e. Iron Ore Fines on 16.12.2012. Consequently on 03.01.2013 the assessee firm has received the purchase order.

(iii) The assessee firm has sent the letter on 20.02.2013 asking for 15 days time for supply of iron ore."

The learned Assessing Officer has also issued notice u/s 133(6) of the Act to M/s Shree Rupandham Pvt. Ltd. which has been returned un-served. Considering the above facts, the Assessing Officer was of the opinion that the said amount claimed by the assessee as expenditure, is only undisclosed money/income of the assessee which has been routed through corporate channel for utilization in the business of the assessee. Accordingly, the Assessing Officer made the addition of Rs.2,50,00,000/- u/s 68 of the Act.

29. The learned CIT(A), while deleting the above said addition, held as under:

"6.1.3. DECISION:- I have carefully considered the submission put forth & the documents furnished on behalf of the appellant, perused the facts of the case and the observation of the AO in the impugned assessment order and other material evidences brought on record and these grounds of appeal relating to the disallowance of

compensation of Rs.2,50,00,000/- paid to Shree Rupandham Pvt. Ltd is decided as under:-

(i) The assessee has 2 iron ore mines. Out of these 2 mines, Village Tikariya Dubiyara mine was temporarily closed in pursuance to District Collector Jabalpur order dated 18.10.2011. As per the inspection report of the Inspector of Mines and Mineral Jabalpur dated 17.07.2012 in Dubiyara stock of 613200 MT of lumps and 151782 MT of fines was lying as overburden.

(ii) In the case of Pacific Exports the hon'ble MP High Court in WP no 18922 of 2011 decided on 17.05.2012 has given that party permission for removal of stock of overburden from its mine. In the case of Pacific Exports also the mining operation was temporarily suspended by the competent authority. The assessee relying on the order of Pacific Exports filed on 05.06.2012 an application before Deputy Director Mining department Jabalpur to permit the assessee to lift overburden of 613200 MT of lumps and 151782 MT of fines lying in Dubiyara mine.

(iii) The assessee in anticipation of obtaining permission has submitted quotation on 16.12.2012 to Shree Rupandham Steel Pvt Ltd. for supply of 1,00,000 MT of fine iron ore @ 3200 /- per MT in response to their inquiry letter dated 15.12.2012. As per the inquiry letter the material supply has to be started from 12.01.2013. After negotiation the assessee agreed to supply 1,00,000 MT iron ore @Rs.3000/- per MT. Vide purchase order dated 03.01.2013 Shree Rupandham Steel Pvt Ltd. placed a purchase order for purchase of 1,00,000 MT of iron ore. Vide letter dated 15.02.2013 Shree Rupandham Steel Pvt Ltd requested the assessee to start supply of the material immediately because they are facing scarcity of raw material and if the assessee is not able to start the supply of the material then a compensation @ 600/- per MT has to be paid by the assessee to Shree Rupandham Steel Pvt Ltd. The assessee requested Shree Rupandham Steel Pvt Ltd vide letter dated 20.02.2013 to give some time for supply of iron ore because of some Government issues the assessee is not able to supply iron ore to them. Shree Rupandham Steel Pvt Ltd. vide letter dated 27/03/2013 and 13/04/2013 demanded compensation@Rs.600/- per MT if the assessee fails to supply the material within 3 days. Since the assessee has not received the permission from the competent authority for lifting of overburden from the Dubiyara mine hence the assessee was not in a position to supply the fine iron ore to Shree

Rupandham Steel Pvt Ltd. and after negotiation on 24.04.2013 it was agreed that the assessee will pay compensation of @ 250/- per MT to Shree Rupandham Steel Pvt Ltd. Accordingly the debit note of Rs. 2,50,00,000/- was issued by Shree Rupandham Steel Pvt Ltd on 25.04.2013. The assessee has paid this compensation amount of Rs. 2,50,00,000/- in the month of March 2014 through banking channel.

(iv) In the case of CIT v Dalmia Cement Ltd [2002] 254 ITR 377 the hon'ble Delhi High Court has held that an allow ability and reasonableness of an expenses has to be looked from the angle of prudent businessman. This observation of the Delhi High Court has been approved by the hon'ble Supreme Court in the case of SA Builders v CIT 288 ITR 1 . Further in the case of CIT v Rajkumar Mills Ltd [1982] 135 ITR 811, the hon'ble MP high Court has held that compensation paid on account of short packing of controlled cloth is an allowable expense. Similar in the case of CIT v Peico Electronic [1992] 107 CTR 240 ,the hon'ble Calcutta High Court has held that compensation paid in respect of business activity is an allowable expense.

(v) In the case of the assessee it has paid by the compensation of Rs.2,50,00,000/- on account of non supply of 1,00,000 MT of fine iron ore to Shree Rupandham Steel Pvt Ltd. This compensation was paid because the assessee was not able to lift the fine iron ore lying in its Dubiyara mine for want of permission from competent authority. Hence, I am of the view that the compensation of Rs.2,50,00,000/- paid by the assessee to Shree Rupandham Steel Pvt Ltd is an allowable revenue expense. Accordingly these grounds of appeal are decided in favour of the assessee."

30. The learned D.R. submitted that the learned CIT(A) erred in deleting the addition of Rs.2,50,00,000/- made by the Assessing Officer on account of compensation expenses which is nothing but undisclosed money/income of the assessee which has been routed through corporate channel for utilization in the business of the assessee and it is nothing but utilization of undisclosed payment without payment of legitimate taxes. Thus, the learned D.R. submitted that the order of learned CIT(A) in deleting addition requires to be reversed.

31. Per contra, learned A.R. made extensive submissions both oral as well as in writing by providing date-wise events to show that the assessee had entered into an agreement with Shree Rupandham Steel Pvt Ltd. and the compensation has been paid due to the assessee could not lift the fine iron ore for want of permission from the competent Authority therefore, the compensation of Rs.2,50,00,000/- was paid by the assessee to Shree Rupandham Steel Pvt Ltd. which is allowable revenue expenses. Therefore, prayed for dismissal of ground No. 7 of Revenue's appeal.

32. We have heard the parties and perused the materials on record. The assessee on 16/12/2012 made a quotation of supplying of the fine ore to Shree Rupandham Steel Pvt Ltd. of 1,00,000 Metric Ton ("M.T." for short) at Rs.3,200/- per MT. On 24/12/2012 Shree Rupandham Steel Pvt Ltd. accepted the order for 1,00,000 M.T. @Rs.3,000/- per M.T. being supply commenced from 12/01/2013. Vide letter dated 15/02/2013 Shree Rupandham Steel Pvt Ltd. requested the assessee to start supply immediately as they are facing scarcity of raw material alternatively asked the assessee to pay the compensation of Rs.600/- per M.T. The assessee had been requesting the Department of Mining to give permission to uplift the stock of the ore by relying on the order of the Pacific Sports, wherein the Hon'ble High Court vide order dated 17/05/2012 have allowed to remove the stock of similar mines. Since the mining department had not allowed the assessee to uplift the stock inspite of in a similar case of M/s Pacific Exports the Hon'ble High Court has allowed to uplift the stock, the assessee had filed Writ Petition before the Hon'ble High Court of Madhya Pradesh to get a direction to the Mining Department for permission to uplift the ore. On 27/03/2013 and 13/04/2013, once again Shree Rupandham Steel Pvt Ltd. demanded compensation @Rs.600/- per M.T. as the assessee was not able to supply the materials. It is a case of the assessee that

inspite of having order of Hon'ble High Court, the Department of Mining has not allowed the assessee to lift the minerals. Therefore, having no other choice but to negotiate the compensation and finally agreed for compensation @Rs.250/- per M.T. on 25/04/2013 which was accepted by Shree Rupandham Steel Pvt Ltd. and accordingly, paid the compensation. It is further brought to our notice that after paying the compensation the assessee filed the second Writ Petition to Hon'ble High Court of Madhya Pradesh for direction to the Mining Department to allow up-liftment of stock and procured order on 03/06/2013 directing the Mining Department to allow the assessee to lift the material. From observing the above said sequence of events, we are of the opinion that the learned CIT(A) is right in observing that the said compensation has been paid with an intension not to become defaulter in the market towards supply of minerals which was essential in business. The learned CIT(A) has appreciated the above facts and circumstances which is duly supported by the documentary evidences and deleted the addition, thus, we find no error or infirmity in the order of learned CIT(A) in deleting the said addition and we find no merit in ground No. 7 of Revenue's appeal. Accordingly, ground No. 7 of the Revenue is dismissed.

33. Ground No. 8 is regarding deleting the addition of Rs.1,81,712/- made by the Assessing Officer on account of disallowance of expenditure claimed by the assessee.

34. The assessee claimed labour charges expenses of Rs.11,74,914/- and mines expenses of Rs.24,59,316/-. The Assessing Officer made disallowance of 5% of Rs.36,34,230/- which is Rs.1,81,712/- of the above expenses treating the same as inadmissible expenses and added back to the income of the assessee.

35. The learned CIT(A) deleted the addition by relying on the order of ITAT, Jabalpur Bench in the case of Ganesh Pratap Singh. Considering the fact that the disallowance has been made on ad hoc basis, which is 5% of labour charges and mines expenses to cover possible leakage, we find no error or infirmity in the order of learned CIT(A) in deleting the addition. Accordingly, ground No. 8 of the Revenue is dismissed.

36. In the result, the appeal of the Revenue is dismissed.

C.O.No.03/JAB/2018

37. The ground No.1 is regarding confirmation of disallowance of Rs.20,195/- made by the Assessing Officer u/s 40A(3) of the Act.

38. The learned Assessing Officer made disallowance of Rs.1,21,807/- by applying the provisions of section 40A(3) of the Act. The learned CIT(A) deleted the addition wherever the payments were made in cash less Rs.20,000/- and sustained the disallowance of payment of Rs.20,195/- made on 20/10/2013 to Vinod Electrical. Considering the fact that the assessee had made the payment more than Rs.20,000/- in cash, the provision of section 40A(3) is applicable and in our considered opinion, the CIT(A) committed no error in sustaining the disallowance of Rs.20,195/- and we find no merit in the ground No. 1 of the C.O. of the assessee.

39. Ground No. 2 of the Cross Objection is against the confirmation of disallowance of Rs.2,00,000/- out of telephone and mobile expenses, vehicle expenses and other expenses. The learned CIT(A) has restricted disallowance to Rs.2,00,000/- out of Rs.5,99,129/- which was originally disallowed by the Assessing Officer. Considering the business activities of the assessee and the expenses incurred thereupon, we are of the opinion

that the disallowance of Rs.2,00,000/- restricted by the CIT(A) is required to be reduced to Rs.1,00,000/- considering the totality of the case. Thus, ground No. 2 of the Cross Objection filed by the assessee is partly allowed.

40. Ground No. 3 of the Cross Objection is regarding disallowance of interest paid Rs.21,215/- on account of late deposit of TDS. It is the case of the assessee that the interest paid on TDS Rs.21,215/- is an allowable expense as it is not the payment of income tax of the assessee but of the deductees. The Hon'ble Supreme Court in the case of Bharat Commerce & Industries vs. CIT [1998] 230 ITR 733 (SC) held that the interest for late payment of direct taxes is not deductible expenditure from the profit & loss account of the assessee. Considering the above facts and circumstances, we find no error or infirmity in the order of the CIT(A) in confirming the disallowance of interest paid on account of late deposit of TDS and we find no merit in the ground No. 3 of the Cross Objection of the assessee. In the result, the Cross Objection of the assessee is partly allowed.

(Order pronounced in the open court on 24/11/2023)

Sd/.
(DR. B.R.R. KUMAR)
Accountant Member

Sd/.
(YOGESH KUMAR U.S.)
Judicial Member

Dated:24/11/2023

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R.,

Asstt. Registrar