

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 1405/KOL/2023
Assessment Year: 2004-2005**

***Eastern Coalfields Limited,.....Appellant
Office of CMD, ECL,
Headquarters, Santoria,
P.O. Dishergarh,
Dist. Paschim Bardhaman-713333,
West Bengal
[PAN: AAACE7590E]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Circle-2, Asansol,
Aayakar Bhawan,
116, Vivekanand Sarani,
P.O. Kanyapur, Asansol,
Dist. Paschim Bardhaman-713341,
West Bengal***

Appearances by:

*Shri Arvind Agarwal, Advocate, appeared on behalf of the
assessee*

*Shri S. Datta, CIT (DR), appeared on behalf of the
Revenue*

Date of concluding the hearing : February 22, 2024

Date of pronouncing the order : February 23, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), Asansol dated 05.03.2018 passed for A.Y. 2004-05.

2. Before adverting to the ground of appeal raised by the ld. Counsel for the assessee before us, we deem it appropriate to take note of brief facts.

3. The assessee has filed its return of income on 30.10.2004 disclosing loss of Rs.530,88,34,988/-. The case of the assessee was selected for scrutiny assessment and notices under sections 143(1) and 143(2) were issued and served upon the assessee. The ld. Assessing Officer has passed the assessment order on 29.12.2006. The assessee has made an interim payment to National Coal Wages Act (NCWA), Schedule-VII. The ld. Assessing Officer has disallowed the deduction of this payment to the assessee.

4. Dissatisfied with the disallowance, the assessee carried the matter in appeal before the ld. CIT(Appeals), but ld. 1st Appellate Authority failed to adjudicate this issue. Hence, against the order of ld. CIT(Appeals), the assessee came up in appeal before the ITAT. The matter travelled to the ITAT in ITA Nos. 462 to 464/KOL/2009 for A.Ys. 2003-04 to 2005-06. The Tribunal has decided all these issues in appeals by way of a common order.

Copy of this order dated 27th July, 2016 has been placed on page no. 31 of the paper book.

5. Ld. Counsel for the assessee submitted that this order is running into 37 pages, but he has placed on record the relevant part of this order, which is only three pages. Page no. 36, paragraph no. 49 reads as under:-

“49. The last common ground except variance in amount that remains for adjudication is Gr. No. 10 in AY 2004-05 and Ground No. 9 in AY 2005-06 reads as follows:-

“That on facts as well as on law, the ld. A.O. has erred in disallowing Rs.28557.50 lakhs on account of interim payment on account of NCWA-VII”.

6. A perusal of the above finding would reveal that the Tribunal has relegated this issue to the file of ld. CIT(Appeals) for fresh adjudication.

7. After the first round of ITAT, order that is passed in ITA Nos. 462 to 464/KOL/2009 for A.Ys. 2003-04 to 2005-06, the ld. CIT(Appeals) took up the matter and decided it on merit vide order dated 9th January, 2018. Copy of this order has been made available on page no. 34 of the paper book. The ld. CIT(Appeals) has allowed the claim of assessee.

8. Dissatisfied with the order of ld. CIT(Appeals), Revenue came up in appeal before the ITAT bearing ITA No. 1357/KOL/2018. This appeal was decided by the Tribunal vide its order dated 15th May, 2018 and the copy of the order is

available at page 43 of the paper book. The Tribunal has again set aside this issue to the file of Id. CIT(Appeals) for adjudication.

9. Ld. Counsel for the assessee submitted that after this order of the ITAT, two proceedings have been emanated:-

(a) The Id. Assessing Officer has given effect to the original order of the Id. CIT(Appeals) vide its order dated 12.12.2017 and in this order, Id. Assessing Officer has made disallowance of Bus Hire Charges.

(b) An appeal, against this assessment order, was filed before the Id. CIT(Appeals). There was one more appeal before the Id. CIT(Appeals) which has been relegated by the Tribunal vide its order dated 15.05.2018 passed in ITA No. 1357/KOL/2018.

10. In the second round, one appeal was filed against the assessment order dated 12.12.2017 passed under section 154/143/250 of the Income Tax Act, in other words, it is an appeal giving effect of the order of Id. CIT(Appeals). As observed earlier, the second appeal has been instituted by the ITAT setting aside the issue regarding payment made to NCWA, Schedule-VII. The assessee availed the benefit of Vivad Se Vishwas Scheme *qua* Bus Hire Charges, which has been added by the Id. Assessing Officer while giving effect to the order of Id. CIT(Appeals). Therefore, Id. CIT(Appeals) ought to have dismissed the appeal to that extent and on the ground of admissibility of deduction *qua* the payment made to NCWA, Schedule-VII amounting to

Rs.28557.50 lakhs ought to be decided on merit. Ld. Counsel for the assessee has further contended that the ld. 1st Appellate Authority has treated both the appeals as settled under VSV Scheme, namely against the order giving effect of ld. ITO passed on 12.12.2017 and as per the order of ITAT dated 15.05.2018 (ITA No. 1357/KOL/2018). Since the second appeal has erroneously been dismissed by the ld. CIT(Appeals), it was bound to decide the issue of admissibility.

11. In the result, the appeal of the assessee is allowed for statistical purposes. The ld. CIT(Appeals) is directed to decide the issue whether the assessee is entitled for deduction of Rs.28557.50 lakhs on account of interim payment made to NCWA, Schedule-VII or not.

Order pronounced in the open Court on 23/02/2024.

Sd/-

(Rajesh Kumar)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 23rd day of February, 2024

*Copies to :(1) Eastern Coalfields Limited,
Office of CMD, ECL,
Headquarters, Santoria,
P.O. Dishergarh,
Dist. Paschim Bardhaman-713333,
West Bengal*

*(2) Deputy Commissioner of Income Tax,
Circle-2, Asansol,
Aayakar Bhawan,*

*116, Vivekanand Sarani,
P.O. Kanyapur, Asansol,
Dist. Paschim Bardhaman-713341,
West Bengal*

*(3) Commissioner of Income Tax (Appeals),
Asansol;*

(4) CIT- , Kolkata

(5) The Departmental Representative;

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.