

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA 'B' BENCH, KOLKATA**

**BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER  
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA Nos.822, 823, 824 & 893/Kol/2012  
Assessment Year: 2002-03 to 2004-05 & 2008-09**

JCIT (OSD), Circle-5, Kolkata	vs	M/s. Hindusthan Copper Ltd.  PAN: AAACH 7409 R
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri S. Bhattacharya, AR  
Revenue by : Shri Abhijit Kundu, CIT

Date of Hearing : 12.04.2024  
Date of Pronouncement : 22.04.2024

**ORDER**

**PER SONJOY SARMA, JM:**

These 4 appeals are filed by the revenue for Assessment Years 2002-03, 2003-04, 2004-05 & 2008-09. Since issues involved in the appeals are common and interlinked therefore have been heard together and are being disposed of by a single consolidated order for the sake of convenience. The revenue has raised the following grounds of appeal:

**ITA No. 822/Kol/2012**

- "i. That on the facts and circumstances of the case, ld. CIT(A) has erred in law as well as on the facts in deleting the sum of Rs. 24,04,01,000/-.*
- ii. That on the facts and circumstances of the case, ld. CIT(A) has erred in law and as well as on facts in applying Accounting Standard As-12 in respect of unutilized Government Grant for the purpose of VRS compensation on matching concept and deleted the addition.*
- iii. That the appellant craves for leave to add, delete or modify any of the grounds of appeal before or at the time of hearing."*

**ITA No. 823/Kol/2012**

- "i. That on the facts and circumstances of the case, ld. CIT(A) has erred in law as well as on the facts of the case in not treating the disbursement of*

VRS compensation as any capital expenditure and thus there should not be any applicability of section 35DDA.

ii. That on the facts and circumstances of the case, ld. CIT(A) has erred in law and as well as on facts in applying Accounting Standard AS-12 for this particular nature of case because machinery is only restricted to utilized portion of receipt.

iii. That on the facts and circumstances of the case, ld. CIT(A) has erred in law as well as on facts by deleting the addition made by AO of Rs. 96,92,000/- being undisbursed Central Government Grant towards Voluntary Retirement Expenditure.

iv. That on the facts and circumstances of the case, ld. CIT(A) has erred in law as well as on facts by deleting the amount of addition by stating that the benefit of overhauling of the plants could be available to the appellant for 2 to 3 years proportionately, though the expenditure claimed by the assessee is capital in nature.

v. That the appellant craves for leave to add, delete or modify any of the grounds of appeal before or at the time of hearing.”

### **ITA 824/Kol/2012**

“i. That on the facts and circumstances of the case, ld. CIT(A) has erred in law as well as on the facts of the case in not treating the disbursement of VRS compensation as any capital expenditure and thus there should not be any applicability of section 35DDA.

ii. That on the facts and circumstances of the case, ld. CIT(A) has erred in law and as well as on facts in applying Accounting Standard AS-12 for this particular nature of case because machinery is only restricted to utilized portion of receipt.

iii. That on the facts and circumstances of the case, ld. CIT(A) has erred in law as well as on facts by deleting the disallowances of expenditure of Rs. 41,34,95,000/- shown under the head “Mine Development Expenditure” without considering the applicability of section 35E.

iv. That on the facts and circumstances of the case, ld. CIT(A) has erred in law as well as on facts by considering the expenditure aggregating to Rs. 41,34,95,000/- shown under “Mine Development Expenditure” as an allowable expenditure u/s 37(1).

v. That the appellant craves for leave to add, delete or modify any of the grounds of appeal before or at the time of hearing.”

### **ITA No. 893/Kol/2012**

*“i. That on the facts and circumstances of the case, ld. CIT(A) has erred in law as well as on the facts in not treating the disbursement of VRS Compensation as any capital expenditure and thus there should not be any applicability of section 35DDA.*

*ii. That on the facts and circumstances of the case, ld. CIT(A) has erred in law and as well as on facts by deleting the disallowances of expenditure of Rs. 19,31,53,000/- shown under the head “Mine Development Expenditure” without considering the applicability of section 35E.*

*iii. That the appellant craves for leave to add, delete or modify any of the grounds of appeal before or at the time of hearing.”*

2. First we take up the appeal of the revenue for A.Y. 2002-03 being ITA No. 822/Kol/2012. The assessee for the year under consideration has received an amount of Rs. 440 crores on conversion of Government of India Non Plan Loan to grants-in-aid for meeting voluntary retirement expenses. Out of the said amount, the assessee spent Rs. 415.6599 crores and charged in the Profit & Loss Account with corresponding credit to the Profit & Loss Account. On perusal of the assessment records, it was noticed by the assessing officer that assessee had under stated its income. Therefore, the case of the assessee was reopened u/s 148 of the Act and balance amount of Rs. 24,04,01,000/- being not spent actually the income of the assessee. Therefore, it was treated as income of the assessee and added back to the income of the assessee.

3. Aggrieved by the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was allowed.

4. Dissatisfied with the above order, revenue is in appeal before this Tribunal. The contention of the revenue in the appeal is that ld. CIT(A) erred in law as well as in fact deleting the sum of Rs. 24,04,01,000/- which was treated as income by the assessing officer on account of unutilized Government grant for VRS expenditure received by the assessee. Therefore, the view taken by ld. CIT(A) may be set aside and sustained the order of AO.

5. On the other hand, ld. AR of the assessee stated that the issue is squarely covered in favour of the assessee in terms of the Tribunal's order dated 09.12.2016 passed in ITA No. 2583/Kol/2013 in assessee's own case and subsequently the Jurisdictional High Court also allowed the issue in favour of the assessee by dismissing the consequential appeal filed by the revenue. Therefore, the appeal of the revenue may be dismissed by sustaining the order of ld. CIT(A).

6. We after hearing the rival submission of the parties and also perused the relevant material available on record find that the instant issue is covered in favour of the assessee in assessee's own case as decided by the Hon'ble Jurisdictional High Court dated 10.12.2021 by dismissing the appeal of the revenue. Therefore, we do not find any merit in the appeal filed by the revenue. Accordingly, the instant appeal filed by the revenue is hereby dismissed.

7. Similarly, in ITA No. 823/Kol/2012 ground no. 1 to 3, ITA No. 824/Kol/2012 ground no. 1 & 2 and ITA No. 893/Kol/2012

ground no. 1 involve in the appeals are similar to the issue decided in ITA No. 822/Kol/2012. Therefore, our view taken in ITA 822/Kol/2012 would apply mutantis mutandis in ITA No. 823/Kol/2012 in respect of ground no. 1 to 3, ITA No. 824/Kol/2012 in respect of ground no. 1 & 2 and ITA No. 893/Kol/2012 in respect of ground no. 1 respectively. Accordingly, issue raised by the revenue in ITA No. 823/Kol/2012 in respect of ground no. 1 to 3, ITA No. 824/Kol/2012 in ground no. 1 & 2 and ground no. 1 in ITA No. 893/Kol/2012 are hereby dismissed.

8. Similarly in ITA No. 823/Kol/2012, ground no. 4 raised by the revenue is in relating to upholding the claim of assessee of Rs. 2,54,98,000/- being 1/3 of appellant expenses towards overhauling smelter/refinery plant which had been booked in the accounts of the assessee as deferred revenue expenses by ld. CIT(A) deleting the addition made by AO as in the case of assessee. On this issue, ld. DR stated that the alleged view taken by the ld. CIT(A) is not correct. Therefore, needs to be set aside.

9. On the other hand, ld. AR brought to our notice to the fact by showing the findings given by the ld. CIT(A) at page no. 10 of the impugned order wherein the assessment year 2002-03 on the similar issue, the ld. CIT(A) has passed an order in favour of the assessee relying on the judgment rendered by the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Ltd. vs CIT (225 ITR 802)(SC) and the ld. CIT(A) in his order stated the fact in the following manner:

*“20. The Ld. CIT(A-V, Kolkata for the Assessment year 2002-03 in appeal order no. CIT(A)-V/Kol/70/Cir-5/05-06 dated 15.04 2008 has observed on this issue as follows:-*

*"I have perused the assessment order, the written submission furnished by the appellant and the decisions of the Calcutta High Court, Supreme Court as well as the ITAT-Calcutta. It is noted that the Calcutta High Court held that in certain circumstances a revenue expenditure can be spread over a number of years and the amount attributable to each of such years would be deductible. The Supreme Court also observed that there may be certain circumstances where the fact may justify an assessee who has incurred expenditure in a particular year, to spread and claim it over a period of ensuing years. That ITAT Calcutta in the matter of spreading over of heavy expenditure. On considering the facts of the appellant' case and the decisions of the Calcutta High Court Supreme Court and the ITAT Calcutta as referred to above, I incline to agree with the appellant's claim that as the benefit of overhauling of the plants could be available to the appellant for 2 to 3 years the spreading over of expenses over 3 years and claim of deduction on a proportionate basis in each of the 3 years, should be considered as a justified one. Accordingly, I uphold the claim of the appellant and delete the disallowance of Rs. 254,97583/- made by the Assessing officer on this*

*21. I have gone through the Assessing officer's observations, the A/R's submissions and the copy of the Appellate Order dated 15-04-2008 passed by the CIT(A)-V, Kolkata for the Assessment Year 2002-03 in appeal order no. CIT(A)-V/Kol/70/Cir-5/05-06 dated 15.04.2008. I find that in the Appellate Order for the Assessment Year 2002-03 after making elaborate discussions and considering the decisions of the Hon'ble Supreme Court, Jurisdictional High Court and Kolkata ITAT's decision, the CIT(A)-V, Kolkata held that the benefit of overhauling of the Plants Could be available to the appellant for 2 to 3 years and the spreading over of expenses over 3 years and claim of deduction on a proportionate basis in each of the 3 years, should be considered as a justified one. The Ld. CIT(A)-V, Kolkata upheld the claim of the appellant and deleted the disallowance of Rs.2,54,97,583/- in Assessment Year 2002-03 being the second of the three years that had commenced from the Assessment Year 2001-02, the year under present Appeal, viz., 2003-04 is the Third year for the purpose of 1/3<sup>rd</sup> deduction. Accordingly, I hold that the appellant should be allowed Rs.2,54,97,584/- towards Deferred Revenue Expenditure in the Assessment Year 2003-04. Hence, these two grounds are allowed.”*

10. He therefore prayed before the bench that the instant issue is covered in favour of the assessee and in the instant issue revenue has never challenged the matter before appropriate forum against the order passed by ld. CIT(A). In such a situation the issue is covered in favour of the assessee. Therefore, the Tribunal has no need to interfere in the order passed by the ld. CIT(A) in the case of assessee.

11. The ld. CIT(A) while passing the above order on which revenue has not challenged the order before the appropriate forum. Therefore, the issue had attained the finality.

12. We after hearing the rival submission of the parties and examining the various documents filed by the assessee. Ground no. 4 in ITA No. 823/Kol/2012 is also covered in favour of the assessee. Since in the earlier assessment year 2002-03, the ld. CIT(A) has passed a favourable order in the case of assessee on the issue involved and revenue has accepted the view taken by ld. CIT(A) by not challenging the issue before the appropriate forum in the earlier years too. Therefore, the instant issue is also attained its finality. Accordingly, ground no. 4 in ITA No. 823/Kol/2012 is also hereby dismissed.

13. In ITA No. 824/Kol/2012 ground no. 3 & 4 challenged by the revenue stating that ld. CIT(A) has erred in law as well as fact by considering the expenditure aggregating to Rs. 41,34,95,000/- showing under the head "Mine Development Expenditure" without

considering the applicability of section 35E of the Act. Therefore, the view taken by ld. CIT(A) may be set aside by this Tribunal.

14. On the other hand, ld. AR stated that the instant issue is covered in favour of the assessee. The Hon'ble ITAT vide its order dated 09.12.2016 (for the Assessment Year 2007-08) and the Hon'ble Calcutta High Court vide its order dated 10.12.2021 (for Assessment Year 2007-08) held that the expenses booked under the head Mine Development Expenditure by the respondent had not attracted the provisions of section 35E and those expenses were allowable as revenue expenditure u/s 37(1). On the basis of above facts the respondent submits that there should not have been any application of section 35E in relation to the expenses booked under the head the Mine Development Expenditure incurred by the respondent and the decision of the ld. CIT(A) for allowing deduction of expenses booked under the Mine Development Expenditure u/s 37(1) may kindly be upheld.

15. We after hearing the rival submission of the parties and also perused the relevant material available on record find that the instant issue is covered in favour of the assessee in assessee's own case as decided by the Hon'ble Jurisdictional High Court dated 10.12.2021 by dismissing the appeal of the revenue. Therefore, we do not find any merit in the appeal filed by the revenue. Accordingly, the instant issue challenged by the revenue is hereby dismissed.

16. Similarly in ITA No. 893/Kol/2012 ground no. 2 of the appeal is similar to the issue no. 3 & 4 as we decided against the revenue in ITA No. 824/Kol/2012 of the appeal. Therefore, view taken in ITA No. 824/Kol/2012 in respect of ground no. 3 & 4 would apply mutantis mutandis in ITA No. 893/Kol/2012 relating to issue no. 2 of the appeal. Accordingly, ground no. 2 in ITA No. 893/Kol/2012 taken by the revenue is hereby dismissed.

17. In the result, all the appeals of the revenue are dismissed.

Order pronounced in the open court on 22.04.2024.

**Sd/-**  
**(RAJESH KUMAR)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SONJOY SARMA)**  
**JUDICIAL MEMBER**

Kolkata, Dated: 22.04.2024.  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: JCIT (OSD), Circle-5, Kolkata.
2. The Respondent: M/s. Hindusthan Copper Ltd., 1, Ashutosh Chowdhury Avenue, Kolkata-700019.
3. The CIT, Concerned,
4. The CIT (A) Concerned,
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata