

IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA No. 156/Nag./2019
(Assessment Year : 2015-16)

Assistant Commissioner of Income Tax,
Circle-2, Nagpur

..... Appellant

v/s

Western Coalfields Ltd.,
Coal Estate, Civil Lines, Nagpur
PAN – AAACW1578L

..... Respondent

Assessee by : Shri Prakash Nanwani, CA
Revenue by : Shri Rajeev Benjwal, CIT DR.

Date of Hearing – 09/07/2024

Date of Order – 09/07/2024

ORDER

PER K.M.ROY, A.M.

The present appeal has been preferred by the department challenging the impugned order dated 26/03/2019, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax, (Appeals)-2, Nagpur, [*learned CIT*], for the assessment year 2015-16.

2. The department has raised the following grounds of appeal:–

“1. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) was correct in deleting the addition made by the AO u/s 32AC of the I.T. Act, 1961 in view of the fact that the assessee claimed the benefit of section 32AC of the I.T. Act to the Plant and Machinery which are utilized by the assessee in the office premises and places other than production and manufacturing sites and thus defeating the intent of section 32AC of the I.T. Act, 1961?.

2. Whether on facts and in the circumstances of the case and in law, the Ld CIT(A) was correct in interpreting the Section 32AC relating to Investment in New Plant and Machinery while granting relief to the assessee?

3. The fact of the case of the assessee as culled out from the order of the CIT(A) is as follows;

“2. The appellant company is a public sector undertaking engaged in production of coal. The day to day expenditure incurred in the course of carrying on business activity is under supervision of Ministry of Coal, Government of India. Return income was filed on 29-12-2015 declaring total income of Rs.7,13,98,69,840/- Later the case was selected for scrutiny and impugned order was passed on 29-12-2017 u/s 143(3) of the Act. In this order following three additions were made:

[1] Rs. 12,18,02,228/- on account of disallowance of CSR expenses (discussed in para 3).”

[2] Rs.14,89,46,696/- on account of disallowance of deduction u/s 32AC of the Act (discussed in para 4)

[3] Rs. 15,97,00,000/- on account of disallowance Over Burden Removal (OBR) adjustment (discussed in para 5)

As regards Nos. [1] and [3] above, the Id. CIT(A) has granted relief for which the department is not before us. We have only to adjudicate upon Sr.no.[2] i.e.

“2.2 – The appellant is engaged in production of coal and thus is eligible for benefit of deduction available u/s 32AC in respect of acquisition of plant and machinery in excess of Rs.25 Crores as specified u/s 32AC of Income Tax Act, 1961. The deduction in respect of 32AC was claimed in the return at Rs.14.89 crores which has been disallowed by AO by observing that assessee is not eligible for claim u/s 32AC of Income Tax Act, 1961.”

4. We have gone through the detailed written submission and thought it fit to reproduce the relevant paragraphs thereof, as follows:

“3. A.O. has discussed the addition at para 4 of assessment order. A.O. has observed that the assessee company has not made any extra investment in plant & machinery as compared to previous years trend of capital expenditure with intention of investment in high cost plant & machinery as per the legislative intent and aim and objective of section 32AC. A.O. with these observation held that assessee is not eligible for claim u/s 32AC and thus proceed to make addition of Rs. 14.89 crores by not accepting the claim of assessee u/s 32AC of I.T. Act 1961.

4. It is respectfully submitted that the addition made by A.O. by denying the deduction us/ 32AC of I.T. Act 1961 is unjustified, unwarranted and bad in law. Assessee requests to consider the following submissions in respect to same.

- A) Assessee company is public sector undertaking engaged in the production of coal from various Coal Mines which are being operated in the Region. Assessee company is wholly owned subsidiary company of Coal India Ltd. Assessee company has maintained regular books of account in respect to manufacturing and production of coal which has been accepted without inviting any adverse observation.*
- B) The assessee during the year under consideration has made investment in plant & machinery to the tune of Rs.101.61 crores as evident from Balance Sheet of assessee. Assessee in terms of provision to section 32AC has identified the plant & machinery at Rs.99.30 crores which qualifies as new asset as provided under sub-section (4) of section 32AC for which deduction is allowable at the hands of assessee-company. Assessee in respect to plant & machinery of Rs.99.30 crores has claimed deduction at 15% of such value at Rs.14.89 crores. The claim of assessee is in terms of provisions of section 32AC of I.T. Act 1961 and there is no justification for non-grant of the same as concluded by A.O.*
- C) It is respectfully submitted that reasoning of A.O. that there is no substantial investment and plant & machinery must have nexus/connection to manufacturing activity is unfounded and there is no such requirement under provisions of section 32AC of I.T. Act 1961. The bare reading of section 32AC would make it evident that the reasons given by A.O. cannot be read into provisions of section 32AC and thus same are no valid reasons in eyes of law for making disallowance of claim of deduction u/s 32AC of I.T. Act 1961.*
- D) The details of plant & machinery submitted before A.O. are enclosed herewith and it is specifically asserted that assessee has not claimed any deduction in Plant & Machinery except Telecommunication System which is liable to be excluded in terms of definition of new assets provided under section 32AC(4) of I.T. Act 1961. The claim made by assessee is clearly*

allowable and there is no justification for non-allowance of the same in the assessment framed.

E) The A.O. in assessment order at page 14 observed that assessee has purchased certain machineries for other than manufacturing and production site for which deduction u/s 32AC has been claimed. The A.O. observed following five items in Plant & Machinery which are used for other than manufacturing and production site.

- i) Railway Sidings*
- ii) Computer and Software*
- iii) Telecommunication System*
- iv) First Aid Station*
- v) Civil Work for Road Weigh Bridge.*

F) It is respectfully submitted that assessee is engaged in production of coal. The process of production of coal is to win coal from Mines which are located deep in earth. After winning the coal it is required to be brought at surface and for movement requires Railway Sidings and Locomotives are thus integral part of machinery which is required for production of coal. The computer and software are used for running Plant & Machinery at production site. The computer or software are not installed at office premises as office appliances as provided in sub-section 4(iii) of section 32AC of I.T. Act 1961. The first aid station is Rescue and Safety Equipment which are used at production site as an aid and facility for production of coal. Mining activities carry extraordinary risk and in order to carry rescue operation in case of accidents at Mining Sites the specific and specialized equipments are required. It is a part of operation of production of coal. The Civil Work for Road Weigh Bridge is foundation work for installation of machinery and is integral part of Plant & Machinery. The assessee for this places reliance on decision of Hon'ble ITAT, Ahmedabad Bench in the case of Parry Engineering & Electricals Pvt. Ltd. in ITA No.3317/Ahd/2011. In view of above, all the above assets qualifies as new asset as provided under sub-section (4) of section 32AC of I.T. Act 1961 and there is no requirement under provision of section 32AC of I.T. Act 1961 that such asset must have direct nexus/connection to manufacturing activity. In fact bare perusal of sec. 32AC would make it evident that condition for eligibility as observed by A.O. cannot be read into for eligibility of claim. In view of above, assessee is eligible for deduction u/s 32AC in respect to investment made by assessee in Railway Sidings, Computer & Software, First Aid Station and Civil Work for Road Weigh Bridge.

G) The assessee during the consideration has made investment in Plant & Machinery to the tune of Rs.101.61 crores as is evident from fixed assets schedule of Balance Sheet attached herewith. Assessee has classified Plant & Machinery at Rs.99.30 crores which qualifies as new asset as per sub-section (4) of section 32AC of I.T. Act 1961. It is respectfully submitted that an account of inadvertent bonafide mistake of accountant of assessee

Telecommunication System at Rs.6,32,361/- installed at office premises is considered as Plant & Machinery eligible for deduction u/s 32AC instead of Rescue Equipments at Rs.8,78,682/- which has been remained to be considered as eligible for deduction u/s 32AC. The assessee has given details of rescue equipment purchased at Rs.8,78,682/-. Perusal of details clearly indicates that Plant & Machinery being Rescue Equipments qualifies as new asset as per sub-section (4) of section 32AC. In view of above assessee request to consider deduction u/s 32AC in respect of Rescue Equipments in place of Telecommunication System.

Considering the submission made hereinabove it is humbly submitted that disallowance of claim of deduction u/s 32AC is unjustified, unwarranted and bad in law. In view of above, it is humbly prayed that A.O. be directed to grant deduction u/s 32AC at Rs. 14.89 crores as made in return of income.

5. At the time of hearing before us, the Ld. CIT DR relied upon the order of Assessing Officer, whereas the learned AR relied upon para 6.2 of the CIT(A) Order, which is reproduced below.

“6.2 – In light of submissions made and duly considering the facts of the case it is found that appellant is entitled to get the relief as 32AC investment allowance claim of the appellant is found to be tenable in view of the following facts :

- (i) Out of investment made this year amounting to Rs.100.02 crores, Rs.99.30 crores was identified as ‘new asset’ as provided in Sec.43AC,*
- (ii) 15% of such value of Rs.99.30 crores i.e. Rs. 14.89 crores was denied as deduction u/s 32AC(ii),*
- (iii) Connection of investment in plant & machinery with nexus of construction and manufacturing activity as held by AO does not flow from prima facie reading of legal provision u/s 32AC of the Act.*

6. We have perused the matter and found that the sole point of consideration is whether the assessee is entitled to the deduction u/s 32AC towards the investment in new plant & machinery. We reproduce section 32AC to have a holistic view of the impugned issue.

“32AC. (1) Where an assessee, being a company, engaged in the business of manufacture or production of any article or thing, acquires and installs new asset after the 31st day of March, 2013 but before the 1st day of April, 2015 and the aggregate amount of actual cost of such new assets exceeds one hundred crore rupees, then, there shall be allowed a deduction,--

(a) for the assessment year commencing on the 1st day of April, 2014, of a sum equal to fifteen per cent of the actual cost of new assets acquired and installed after the 31st day of March, 2013 but before the 1st day of April, 2014, if the aggregate amount of actual cost of such new assets exceeds one hundred crore rupees; and

(b) for the assessment year commencing on the 1st day of April, 2015, of a sum equal to fifteen per cent of the actual cost of new assets acquired and installed after the 31st day of March, 2013 but before the 1st day of April, 2015, as reduced by the amount of deduction allowed, if any, under clause (a).

[(1A) Where an assessee, being a company, engaged in the business of manufacture or production of any article or thing, acquires and installs new assets and the amount of actual cost of such new assets 12 [acquired during any previous year exceeds twenty-five crore rupees and such assets are installed on or before the 31st day of March, 2017], then, there shall be allowed a deduction of a sum equal to fifteen per cent of the actual cost of such new assets for the assessment year relevant to that previous year:

Provided that where the installation of the new assets are in a year other than the year of acquisition, the deduction under this sub-section shall be allowed in the year in which the new assets are installed:]

Provided [further] that no deduction under this sub-section shall be allowed for the assessment year commencing on the 1st day of April, 2015 to the assessee, which is eligible to claim deduction under sub-section (1) for the said assessment year.

(1B) No deduction under sub-section (1A) shall be allowed for any assessment year commencing on or after the 1st day of April, 2018.]

(2) If any new asset acquired and installed by the assessee is sold or otherwise transferred, except in connection with the amalgamation or demerger, within a period of five years from the date of its installation, the amount of deduction allowed under sub-section (1) 14[or sub-section (1A)] in respect of such new asset shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which such new asset is sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of such new asset.

(3) Where the new asset is sold or otherwise transferred in connection with the amalgamation or demerger within a period of five years from the date of its installation, the provisions of sub-section (2) shall apply to the amalgamated company or the resulting company, as the case may be, as they would have applied to the amalgamating company or the demerged company.

(4) For the purposes of this section, "new asset" means any new plant or machinery (other than ship or aircraft) but does not include-

- (i) any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;*
- (ii) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;*
- (iii) any office appliances including computers or computer software;*
- (iv) any vehicle; or*
- (v) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.]*

7. We find that the assessee being a reputed public sector company has complied with all the terms and conditions u/s 32AC and the Assessing Officer has only raised flimsy ground to disallow such deduction. He could not point out any legal infirmity in the claim so made by the assessee.

8. In view of above, we incline to accept the line of thinking adopted by the ld. CIT (A) and hold that the appellant is entitled to benefit u/s 32AC of the IT Act, 1961. Accordingly the appeal of the department is dismissed.

9. In the result, the departmental appeal is dismissed.

Order pronounced in the open Court on 09/07/2024.

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 09/07/2024.

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

True Copy

By Order

Rajesh V. Jalit
Private Secretary

Sr. Private Secretary
ITAT, Nagpur