

IN THE INCOME TAX APPELLATE TRIBUNAL  
JAIPUR BENCH "B", JAIPUR  
**BEFORE Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**  
**ITA Nos. 452 to 455/JPR/2023 (A.Ys. 2016-17 to 2018-19 & 2020-21)**

**DCIT, Circle-6,**

Jaipur, NCRB, Jaipur – 302 001

PAN No.: AADCB 0574G

..... Appellant

Vs.

**M/s. Barmer Lignite Mining Company Limited**

Udyog Bhawan Campus, Khanij Bhawan,

Tilak Marg, C-Scheme, Jaipur-302 005

..... Respondent

**ITA Nos. 460 to 463/JPR/2023 (A.Ys. 2016-17 to 2018-19 & 2020-21)**

**M/s. Barmer Lignite Mining Company Limited,**

Udyog Bhawan Campus, Khanij Bhawan,

Tilak Marg, C-Scheme, Jaipur-302 005.

PAN No.: AADCB 0574G

..... Appellant

Vs.

**DCIT, Circle-6,**

Jaipur, NCRB, Jaipur – 302 001.

..... Respondent

Appellant by : Mr. P. C. Parwal, CA, Ld. AR  
Respondent by : MS. Alka Gautam, CIT, Ld. DR  
Date of hearing : 10/12/2024  
Date of pronouncement : 16/12/2024

**ORDER**

**PER GAGAN GOYAL, A.M:**

These are cross appeals by the revenue and assessee both are directed against the order of NFAC, Delhi dated 29.05.2023 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Ys. 2016-17 to 2018-19 & 2020-21.

**The revenue has raised the following grounds of appeal:-****In ITA No. 452/JP/2023**

*1. Whether in the facts and circumstances of the case and in law the Ld. CIT (A) has erred in upholding the assessee's claim for Mines Closure Plan of Rs.9, 06, 00,000/- as admissible expenditure in the year under consideration without appreciating the fact that the said amount set apart by the assessee was in the nature of a provision and thus not allowable as expenditure?*

*2 Whether in the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting addition made by the AO for amount of Rs. 6, 05, 00,000/- by treating the interest earned during pre-operative period as income chargeable to tax under other sources, while such interest income earned during pre operative period is not business income and cannot set off from other business expense of pre operative period*

**In ITA No. 453/JP/2023**

*1. Whether in the facts and circumstances of the case and in law the Ld. CIT (A) has erred in upholding the assessee's claim for Mines Closure Plan of Rs. 4, 65, 19,308/- as admissible expenditure in the year under consideration without appreciating the fact that the said amount set apart by the assessee was in the nature of a provision and thus not allowable as expenditure?*

*2 Whether in the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting addition made by the AO for amount of Rs. 5, 32, 00,000/- by treating the interest earned during pre-operative period as income chargeable to tax under other sources, while such interest income earned during pre operative period is not business income and cannot set off from other business expense of pre operative period*

**In ITA No. 454/JP/2023**

1. *Whether in the facts and circumstances of the case and in law the Ld. CIT (A) has erred in upholding the assessee's claim for Mines Closure Plan of Rs. 11, 43, 00,000/- as admissible expenditure in the year under consideration without appreciating the fact that the said amount set apart by the assessee was in the nature of a provision and thus not allowable as expenditure?*

2. *Whether in the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting addition made by the AO for amount of Rs. 3, 12, 69,094/- by treating the interest earned during pre-operative period as income chargeable to tax under other sources, while such interest income earned during pre operative period is not business income and cannot set off from other business expense of pre -operative period.*

**In ITA No. 455/JP/2023**

1. *Whether in the facts and circumstances of the case and in law the Ld. CIT (A) has erred in upholding the assessee's claim for Mines Closure Plan of Rs. 16, 32, 11,811/- as admissible expenditure in the year under consideration without appreciating the fact that the said amount set apart by the assessee was in the nature of a provision and thus not allowable as expenditure?*

**The assessee has raised the following grounds of appeal:-**

**In ITA No. 460/JP/2023**

1. *The Ld. CIT(A), NFAC has erred on facts and in law in upholding the order of AO in not allowing the claim of amortization/depreciation of surface rights of Rs. 19,76,00,000/-. He has further erred in confirming the disallowance by not following the direction/finding of Hon'ble ITAT on this issue for A.Y. 2012-13.*

2. *The Ld. CIT(A), NFAC has erred on facts and in law in upholding the action of AO in levying interest u/s. 234A of Rs.16,34,544/- for delay in filing the return by one month by not considering the fact that when assessee has entered into specified domestic transaction and obtained report u/s. 94E of the Act, due date of filing of return is 30th November, 2016 and therefore return filed on 29.11.2016 is within due date not warranting levy of interest u/s. 234A of the Act.*

3. *the appellant craves to alter, amend and modify any ground of appeal.*

4. *Necessary cost to be awarded to the assessee.*

**In ITA No. 461/JP/2023**

1. Ld. CIT(A), NFAC has erred on facts and in law in upholding the order of AO in not allowing the claim of amortization/depreciation of surface rights of Rs. 17,99,09,899/-. He has further erred in confirming the disallowance by not following the direction/finding of Hon'ble ITAT on this issue for A.Y. 2012-13.
2. *the appellant craves to alter, amend and modify any ground of appeal.*
3. *Necessary cost to be awarded to the assessee."*

**In ITA No. 462/JP/2023**

1. The Ld. CIT(A), NFAC has erred on facts and in law in upholding the order of AO in not allowing the claim of amortization/depreciation of surface rights of Rs. 20,49,93,079/-. He has further erred in confirming the disallowance by not following the direction/finding of Hon'ble ITAT on this issue for A.Y. 2012-13.
2. The Ld. CIT (A), NFAC has erred on facts and in law in upholding the order of AO in making disallowance of Rs. 4, 32, 88,800/- under Explanation 2 to section 37 of the Act ignoring that assessee has not claimed any expenditure on Corporate Social Responsibility (CSR) but claimed expenditure on Corporate Environment Responsibility (CER) which being a condition precedent for carrying out mining activity is allowable u/s. 37(1) of the Act.
3. The Ld. CIT (A), NFAC has erred on facts and in law in upholding the order of AO in making addition of Rs. 7,88,184/- on account of interest on income tax refund pertaining to A.Y. 2016-17 by not appreciating that the same was withdrawn while completing the assessment u/s. 143(3) of the Act dt. 13.11.2018.
4. The Ld. CIT (A), NFAC has erred on facts and in law in rejecting the claim of assessee for interest u/s. 244A of the Act at Rs. 9, 64,419/- as against Rs. 5, 05,170/- allowed by AO without any justification.
5. *The appellant craves to alter, amend and modify any ground of appeal.*
6. *Necessary cost to be awarded to the assessee."*

**In ITA No. 463/JP/2023**

1. The Ld. CIT(A), NFAC has erred on facts and in law in upholding the order of AO in not allowing the claim of amortization/depreciation of surface rights of Rs. 31,43,96,392/-. He has further erred in confirming the disallowance by not following the direction/finding of Hon'ble ITAT on this issue for A.Y. 2012-13.
2. The Ld. CIT (A), NFAC has erred on facts and in law in upholding the order of AO in making disallowance of Rs. 5, 42, 74,770/- under Explanation 2 to section 37 of the Act ignoring that assessee has not claimed any expenditure on Corporate Social Responsibility (CSR) but claimed expenditure on Corporate Environment Responsibility (CER) which being a condition precedent for carrying out mining activity is allowable u/s. 37(1) of the Act.
3. *The appellant craves to alter, amend and modify any ground of appeal.*
4. *Necessary cost to be awarded to the assessee."*

2. For sake of convenience, we are taking the appeals of the assessee's first as an adjudication based on the facts and law is required by this tribunal whereas the grounds of appeal taken by revenue are already settled by the Hon'ble Jurisdictional High Court and appeal of the revenue further dismissed by Hon'ble Supreme Court.

3. Assessee company was incorporated on 19.01.2007 as a Joint Venture Company (JV) under the Companies Act, 1956 with M/s. Rajasthan State Mines and Minerals Ltd. (RSMML) (a Government of Rajasthan Undertaking) and M/s. Raj West Power Limited (RWPL) as shareholders (in the ratio of 51:49 voting power) to carry out lignite mining activities at Kapurdi and Jalipa at Barmer District for captive use of lignite based thermal power plant of RWPL. It is thus a subsidiary of RSMML and therefore, a Government Company. The assessee commenced its lignite mining activities from October, 2011 at Kapurdi Mines.

4. The Government of Rajasthan (GOR) decided to allow power projects in the private sector and invited international competitive solicitations for setting up a lignite mining cum thermal power project at village Jalipa and Kapurdi, District Barmer in Rajasthan. Under an Implementation Agreement (IA) dated 29th May 2006 (**PB 1-38**), RWPL was allowed to set up its power plant and a separate JV company was to be formed as a mining company for mining lignite to be supplied for the thermal power plant of RWPL. As per clause 3.5(i) of IA (**PB 9**), the mining lease of captive lignite mine was granted to M/s. RSMML by Government of Rajasthan and as per clause 3.5(ii) (**PB 10**) the mining lease was to be transferred to JV Company after obtaining prior approval of Government of India. However, M/s. RSMML was not to take any financial obligation on this account.

5. Under the provisions of IA, GOR took unto itself obligation to grant requisite permissions, provide land (both Govt. owned and acquired from third parties), water supply, rehabilitation, assistance in obtaining necessary licenses viz. explosives, fuel, import license, visas, etc. and to act as a facilitator in implementation of the project. RWPL's obligation was to implement the project, compliance with regulatory affairs and arrangement of finances to implement the project without any financial obligation on GOR or its nominated agencies.

6. To give effect to the IA, a Joint Venture Agreement (JV) was executed on 27th December, 2006 between M/s. RSMML and M/s. RWPL (PB 39-61) to form a 'Mining Entity' with the principal objective (Para 2 & 3.1, PB 45) to develop and operate the mines for the purpose of supply of lignite and fuel for the power plants of RWPL. The JV Company was to be formed as a Government Company

and the JV agreement provides for the manner in which mining leases over the mines were to be transferred to JV Company, subscription of shares in company by the partners, define the mutual rights and obligations and set out the terms and conditions governing the relationship between the parties.

7. In terms of the JV agreement, M/s. RSMML and GOR would after obtaining the mining leases for the mines, transfer such mining leases, surface rights and any other rights for the development, operation and management of the mines in favour of the JV company and will contribute its local knowledge, technical knowledge and other expertise in relation to the mines. RWPL shall provide management support and the entire investment to the JV Company. As per clause 4.1 of JV agreement (PB 48), M/s. RSMML will hold 51% equity in the JV company with no financial liability on it. Further, the authorized share capital of the JV Company shall be Rs. 120 crores and the initial paid up capital shall be Rs. 20 crores. The remaining promoter contribution would be brought in by way of unsecured subordinate loans or other instruments as per the approval of the lenders to the project.

8. In compliance with the JV agreement, the assessee company was formed as JV Company wherein 51% holding is of M/s. RSMML and 49% is of M/s. RWPL. M/s. RSMML in compliance of its responsibilities under JV agreement and obligations of GOR under IA, executed many actions in respect of Kapurdi Mining Project such as applying and obtaining for mining lease and its subsequent transfer of user right to JV company for a period of 30 years, acquisition of land under the Land Acquisition Act, environmental clearance from Ministry of

Environment & Forest (MOEF), getting NOC from GOR for carrying out mining activity by JV company, etc. M/s. RSMML was also taking necessary steps during A.Y. 2012-13 to secure another lignite mining lease at Village Jalipa, Barmer which is also transferred to assessee with associated rights following the same process vide agreement dated 25th May, 2015. **However, GOR refused to transfer the mining land acquired by M/s. RSMML to the assessee vide letter dated: 14.09.2012 (PB 62) and thus assessee has only the right to extract the mineral over a period of 30 years on such mining land.**

9. To execute its obligations under IA and JV agreement for acquiring and transferring mining lease, obtaining various approvals and permissions and acquisition of land for the Kapurdi mining project and Jalipa mining project, M/s. RSMML incurred expenditure on payment of compensation to the land losers and other expenses. As per the JV agreement, assessee reimbursed entire expenditure as above by way of transferring the amount as demanded from time to time by M/s. RSMML into designated escrow account mechanism as provided therein (Para 3.3(ii), PB 46). Assessee further incurred expenses being administrative and pre operating expenses for acquiring the aforesaid mining rights over Kapurdi/Jalipa lignite mining lease and also incurred net interest and finance cost in respect of funds borrowed for aforesaid expenditure. The entire expenditure incurred by the assessee for acquiring mining lease and operational rights over the aforesaid mining project for a period of 30 years without acquiring any right in the land has been capitalized in the balance sheet as "Surface Rights on Kapurdi Mines" and "Surface Rights on Jalipa Mines". The

year wise amortized amount reflected in the balance sheet under the head other intangible asset is as under:-

1. A.Y.	2. Surface right of Kapurdi mine amortized	3. Amortization of shares issued to M/s. RSMML without cost	4. Surface right of Jalipa mine amortized	5. Amortization of shares issued to M/s. RSMML without cost	6. Total Amount
2016-17	Rs. 19.58 Cr.	Rs. 18 Lacs	NIL	NIL	Rs. 19.76 Cr.
2017-18	Rs. 17.80 Cr.	Rs. 16 Lacs	NIL	NIL	Rs. 17.96 Cr.
2018-19	Rs. 18.41 Cr.	Rs. 17 Lacs	Rs. 1.94 Cr.	Rs. 1 Lac	Rs. 20.53 Cr.
2020-21	Rs. 12.45 Cr.	Rs. 12 Lacs	Rs. 18.89 Cr.	Rs. 7 Lacs	Rs. 31.53 Cr.

10. AO observed that though the land is not registered in the name of assessee but it has ownership right over the land. Land is not a depreciable asset; therefore, depreciation is not allowable on the same. Further, the acquisition of mining land does not fall in the ambit of section 32(1) (ii) of the Act to qualify as an intangible asset in as much as the rights referred in this provision are that which are granted by the Government authorities only whereas the right acquired in normal course of business are not eligible for depreciation under this provision. Accordingly AO disallowed the claim of amortization.

11. The Ld. CIT (A) discussed this issue at Para 5, Page 7-16 of its order wherein after verbatim reproducing the set aside assessment order for A.Y. 2012-13 at Pg 7-12, it held at Para 5.1 that in view of the observation of AO, the claim of assessee is not found to be justifiable and thus upheld the order of AO.

12. In view of the facts it is unchallenged facts that to carry on mining operation the assessee company which is a joint venture between M/s. Rajasthan State Mines and Mineral Ltd., RSMML, (Govt. of Rajasthan under taking) and M/s. Raj West Power Ltd. (RWPL) Paid charges to the owners of land so that minerals i.e. lignite can be extracted for a period of 30 years. It is also observed that the owner ship of land will not be transferred to the assessee or the joint venture partner, i.e. M/s. Raj West Power Ltd. (RWPL). In view of this, the right of extraction of lignite by the assessee are in the nature of mining lease with a certain period and as per geological survey there is a definite quantity of lignite exists in the mines and only a certain quantity each year can be extracted.

13. The minerals extracted by the assessee is to be used in their captive power plant for generation of power means the lignite extracted will contribute as raw material for production of power. The assessee earned revenue from the sale of power which is duly refracted in the financial of the assessee and not under challenge by the revenue in that case how the cost of procuring raw material can be disallowed. Here we are applying the concept of matching revenues with relevant costs to earn the revenue. If the same is being disallowed it will be detrimental to the interest of the assessee, as he has to pay undue taxes on notional income. Further, with this action of revenue will distort the picture of revenue earned by the assessee alongwith losing the character of being true and fair.

14. In contradistinction to this fact even if it is a assumed for the time being, that instead of extracting the raw material from the mines under consideration the assessee has to by the goods being raw material from the market in that case

also cost of purchase has to be allowed to match the revenue with the cost hence we are not in agreement with the orders of the AO and Ld. CIT (A) that amortization of mining lease charges are not allowable. We further observed the provisions of section 35E of the Act as under:

***Deduction for expenditure on prospecting, etc., for certain minerals.***

**35E.** (1) *Where an assessee, being an Indian company or a person (other than a company) who is resident in India, is engaged in any operations relating to prospecting for, or extraction or production of, any mineral and incurs, after the 31st day of March, 1970, any expenditure specified in sub-section (2), the assessee shall, in accordance with and subject to the provisions of this section, be allowed for each one of the relevant previous years a deduction of an amount equal to one-tenth of the amount of such expenditure.*

(2) *The expenditure referred to in sub-section (1) is that incurred by the assessee after the date specified in that sub-section at any time during the year of commercial production and any one or more of the four years immediately preceding that year, wholly and exclusively on any operations relating to prospecting for any mineral or group of associated minerals specified in Part A or Part B, respectively, of the Seventh Schedule or on the development of a mine or other natural deposit of any such mineral or group of associated minerals :*

**Provided** that there shall be excluded from such expenditure any portion thereof which is met directly or indirectly by any other person or authority and any sale, salvage, compensation or insurance moneys realised by the assessee in respect of any property or rights brought into existence as a result of the expenditure.

**(3) Any expenditure—**

- (i) on the acquisition of the site of the source of any mineral or group of associated minerals referred to in sub-section (2) or of any rights in or over such site;**
- (ii) on the acquisition of the deposits of such mineral or group of associated minerals or of any rights in or over such deposits; or**
- (iii) of a capital nature in respect of any building, machinery, plant or furniture for which allowance by way of depreciation is admissible under section 32,**

**Shall not be deemed to be expenditure incurred by the assessee for any of the purposes specified in sub-section (2).**

(4) *The deduction to be allowed under sub-section (1) for any relevant previous year shall be—*

- (a) an amount equal to one-tenth of the expenditure specified in sub-section (2) (such one-tenth being hereafter in this sub-section referred to as the instalment); or*
- (b) such amount as is sufficient to reduce to nil the income (as computed before making the deduction under this section) of that previous year arising from the commercial exploitation [whether or not such commercial exploitation is as a result of the operations or development referred to in sub-section (2)] of any mine or other natural deposit of the mineral or any one or more of the minerals in a group of associated minerals as aforesaid*

*in respect of which the expenditure was incurred, Whichever amount is less:*

**Provided** that the amount of the instalment relating to any relevant previous year, to the extent to which it remains unallowed, shall be carried forward and added to the instalment relating to the previous year next following and deemed to be part of that instalment, and so on, for succeeding previous years, so, however, that no part of any instalment shall be carried forward beyond the tenth previous year as reckoned from the year of commercial production.

(5) For the purposes of this section,—

- (a) "operation relating to prospecting" means any operation undertaken for the purposes of exploring, locating or proving deposits of any mineral, and includes any such operation which proves to be infructuous or abortive;
- (b) "year of commercial production" means the previous year in which as a result of any operation relating to prospecting, commercial production of any mineral or any one or more of the minerals in a group of associated minerals specified in Part A or Part B, respectively, of the Seventh Schedule, commences;
- (c) "Relevant previous years" means the ten previous years beginning with the year of commercial production.

(6) Where the assessee is a person other than a company or a co-operative society, no deduction shall be admissible under sub-section (1) unless the accounts of the assessee for the year or years in which the expenditure specified in sub-section (2) is incurred have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288, before the specified date referred to in section 44AB and the assessee furnishes for the first year in which the deduction under this section is claimed, the report of such audit by that date] in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(7) Where the undertaking of an Indian company which is entitled to the deduction under sub-section (1) is transferred, before the expiry of the period of ten years specified in sub-section (1), to another Indian company in a scheme of amalgamation—

- (i) no deduction shall be admissible under sub-section (1) in the case of the amalgamating company for the previous year in which the amalgamation takes place; and
- (ii) the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the amalgamation had not taken place.

(7A) Where the undertaking of an Indian company which is entitled to the deduction under sub-section (1) is transferred, before the expiry of the period of ten years specified in sub-section (1), to another Indian company in a scheme of demerger,—

- (i) no deduction shall be admissible under sub-section (1) in the case of the demerged company for the previous year in which the demerger takes place; and
- (ii) the provisions of this section shall, as far as may be, apply to the resulting company as they would have applied to the demerged company, if the demerger had not taken place.]

(8) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure specified in sub-section (2), the expenditure in respect of which

*deduction is so allowed shall not qualify for deduction under any other provision of this Act for the same or any other assessment year.*

15. In view of the provisions of sub-section (3) of the section 35E of the Act, it is categorically been dealt with the situation under consideration and denied the claim of the expenses on deferred revenue basis. But as we discussed (supra) vide Para 14 of this order, If the assessee would have buy the goods from market, that also would have been included all these expenses as well as expenses mentioned in section 35E and 37 of the Act. To substantiate our view we further rely on the judicial pronouncement of the Hon'ble Apex Court in the case of **[1997] 225 ITR 802 (SC.) Madras Industrial Investment Corporation Ltd. Vs. CIT**, wherein the Hon'ble Apex Court held as under:

*“Expenditure is not necessarily confined to the money which has been actually paid out. It covers a liability which has accrued or which has been incurred, although it may have to be discharged at a future date. However, a contingent liability which may have to be discharged in future cannot be considered as expenditure. Although expenditure primarily denotes the idea of spending or paying out, it may, in given circumstances, also cover an amount of loss which has not gone out of the assessee's pocket but which is all the same, an amount which the assessee has had to give up. It also covers a liability which the assessee has incurred in praesenti although it is payable in futuro. A contingent liability that may arise in future is, however, not 'expenditure'. It would also cover not just a one-time payment but a liability spread out over a number of years.*

*When a company issues debentures at a discount, it incurs a liability to pay a larger amount than what it has borrowed, at a future date. It is not necessary to go into the question whether this additional liability equivalent to the discount, which is incurred in praesenti but is payable in future, represents deferred interest or not. That may depend upon the totality of circumstances relating to the issue of debentures, including its terms. The liability, to pay the discounted amount over and above the amount received for the debentures, is a liability which has been incurred by the company for the purposes of its business in order to generate funds for its business activities. The amounts so obtained by issue of debentures are used by the company for the purposes of its business. This would, therefore, be expenditure. In the light of the ratio laid down by the Court in the case of India Cements Ltd. v. CIT [1966] 60 ITR 52 (SC) liabilities incurred for the purpose of obtaining the loan would be revenue expenditure.*

*The Tribunal, however, held that since the entire liability to pay the discount had been incurred in the accounting year in question, the assessee was entitled to deduct the entire amount of Rs. 3 lakhs in that accounting year. This conclusion was not justified looking to the nature of the liability. It was true that the liability had been incurred in the accounting year. But the liability was a continuing liability which stretched over a period of 12 years. It was, therefore, a liability spread over a period of 12 years. Ordinarily, the revenue expenditure which is incurred wholly and exclusively for the purpose of business, must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years. However, the facts may justify an assessee who has incurred expenditure in a particular year to spread and claim it over a period of ensuing years. In fact, allowing the entire expenditure in one year might give a very distorted picture of the profits of a particular year.*

*Issuing debentures at a discount is another such instance where, although the assessee has incurred the liability to pay the discount in the year of issue of debentures, the payment is to secure a benefit over a number of years. There is a continuing benefit to the business of the company over the entire period. The liability should, therefore, be spread over the period of the debentures.*

*The appellant, therefore, had, in its return, correctly claimed a deduction only in respect of the proportionate part of discount of Rs. 12,500 over the relevant accounting period in question. The view taken is also in conformity with accounting practice of showing the discount in 'discount on debentures account' which is written off over the period of the debentures.*

*The appellant was, therefore, entitled to deduct a sum of Rs. 12,500 out of the discount of Rs. 3 lakhs in the relevant assessment year. The balance expenditure of Rs. 2, 87,500 could not be deducted in the assessment year in question."*

16. The payment made by the assessee to land owners via its joint venture partner, i.e. M/s. Rajasthan State Mines and Mineral Ltd., RSMML, (Govt. of Rajasthan under taking) for facilitating routine operations and smooth functioning of the business of the assessee. It was held in the case of CIT v. Excel Industries Ltd.[1980] 122 ITR 995/4 Taxman 89 (Bom.) *"That the power line remained the property of the District Board and the assessee had not acquired any capital asset or any enduring benefit or advantage. The payment was made for commercial expediency. Therefore, the Commissioner (Appeals) had rightly held the expenditure as revenue expenditure.*

*"Regarding expenditure incurred on construction of link road on Government lands it was found that the expenditure on road had been incurred for facilitation of routine operations and smooth functioning of transport system. These roads had been constructed on the Government land. No new asset had been acquired by the assessee. It was held in the case of Hindustan Machine Tools Ltd. v. CIT [1989] 175 ITR 220/[1988] 40 Taxman 43 (Kar.) that the construction*

*of the road which was not the property of the assessee was undoubtedly connected with and advantageous to the business activity of the assessee. Though it conferred upon the assessee an enduring advantage for the benefit of its business, it did not secure to the assessee any tangible, or intangible asset and further the enduring advantage gained by the assessee was chiefly to facilitate the assessee's business operations with greater efficiency and profitability without touching fixed capital of the assessee and there was no addition to or expansion of the profit-making apparatus. Keeping in view, the discussion above the Bench declined to interfere with the order of the Commissioner (Appeals) on this ground also."*

**17. In view of the discussions (supra), ground taken by the assessee for Financial Year 2016-2017 to 2018-19 & 2020-21 is allowed and the AO is directed to allow the same.**

18. **Ground No. 2 (A.Y. 2016-17)** The Ld. CIT(A), NFAC has erred on facts and in law in upholding the action of AO in levying interest u/s. 234A of the Act amounting to Rs. 16,34,544/- for delay in filing the return by one month by not considering the fact that when assessee has entered into specified domestic transaction and obtained report u/s. 94E of the Act, due date of filing of return is 30<sup>th</sup> November, 2016 and therefore return filed on 29.11.2016 is within due date not warranting levy of interest u/s. 234A of the Act.

19. It is observed that the assessee filed its return of income on 29.11.2016 (PB 147). The AO levied interest u/s. 234A of the Act for one month at Rs. 16, 34,544/- by considering the due date of filing the return as 31.10.2016.

20. Before Ld. CIT (A) it was explained that assessee has entered into specified domestic transaction and therefore the due date for filing of return under

Explanation 2(aa) of section 139(1) of the Act is 30<sup>th</sup> November of that assessment year. The Ld. CIT(A), however, at Pg 39, Para 11 held that except making general claim assessee could not submit any statutory compliance involving such audit report and its filing as per law and thus upheld the levy of interest

21. It is submitted that for the year under consideration assessee has entered into specified domestic transaction covered by section 92BA of the Act being expenditure in respect of payment made to persons referred to in section 40A(2)(b). Therefore it has obtained a report from an accountant u/s. 92E of the Act in Form 3CEB and also e-filed the same on 28.11.2016 (PB 148-156).

22. Therefore, the observation of Ld. CIT (A) that it has not submitted the evidence of statutory compliance is factually incorrect. Thus the return filed by assessee on 29.11.2016 is within the specified time and therefore no interest u/s. 234A of the Act can be levied. In view of above, AO is directed not to charge interest u/s. 234A of the Act. **Ground taken by the assessee is allowed.**

23. **Ground No. 2 (A.Y. 2018-19 & 2020-21)** The Ld. CIT(A), NFAC has erred on facts and in law in upholding the order of AO in making disallowance of Rs. 4,32,88,800/- for A.Y. 2018-19 and Rs. 5,42,74,770/- for A.Y. 2020-21 under Explanation 2 to section 37 ignoring that assessee has not claimed any expenditure on Corporate Social Responsibility (CSR) but claimed expenditure on Corporate Environment Responsibility (CER) which being a condition precedent for carrying out mining activity is allowable u/s. 37(1) of the Act.

24. It is observed that the assessee in computation of total income has claimed a sum of Rs. 4,32,88,800/- in A.Y. 2018-19 (Rs. 3,07,88,800/- for Kapurdi Mines and Rs. 1,25,00,000/- for Jalipa Mines) and Rs. 5,42,74,770/- in A.Y. 2020-21 (Rs. 2,42,74,770/- for Kapurdi Mines and Rs. 3,00,00,000/- for Jalipa Mines) as CER expenses. The AO held that prima facie the expenses claimed is in the nature of application of income not allowable u/s. 37(1) of the Act. Further the claim of the assessee that the same has been allowed by Hon'ble Rajasthan High Court in assessee's own case for A.Y. 2012-13 to 2014-15 is irrelevant as Explanation 2 to section 37 effective from 01.04.2015 specifically disallows such expenses. Against the decision of Hon'ble Rajasthan High Court revenue has preferred appeal before Hon'ble Supreme Court and the matter has not reached finality. Accordingly he disallowed the claim of assessee.

25. The Ld. CIT(A) at Pg 37-49, para 10 & 10.1 of the order after verbatim reproducing the finding of AO for A.Y. 2018-19 upheld the order of AO. It is observed that Ministry of Environment and Forest (MOEF), Government of India while according its environment clearance for Kapurdi Mines vide letter no. J-11015/472/2007-IA-II (M) dated: 10.12.2008 as amended from time to time (PB 158-181) imposed a specific condition vide point no. A (xxi) (PB 161) of mandatory yearly provision to be made towards construction of bio mass plants, solar heaters etc. for the surrounding villages till end of mine life. Similarly MOEF, GOI while according its environment clearance vide letter no. J-11015/568/2007-IA. II (M) dt. 29.04.2010 for Jalipa Mines (PB 182-188) imposed a specific condition vide point no. 2(A)(xxv) (PB 185) for mandatory provision of at least Rs.3 crores per annum or Rs. 5 per tonne of coal consumed (whichever is higher) towards the

same purposes. It is also observed that the Ministry of Environment, Forest and Climate Change vide its Office Memorandum dated: 01.05.2018 (PB 189-192) at para 3 observed that **section 135 of Companies Act, 2013 is not applicable on Corporate Environment Responsibility (CER) since liability u/s. 135 of Companies Act arises only when company is making net profit whereas CER is to be incurred even if company is not having any net profit.**

26. Thus, it is observed that the provision for CER which is made in compliance to the statutory provisions is wholly and exclusively for carrying out the mining activities. The provision so made is a crystallized liability in as much as if the assessee fails to carry out the CER activities in accordance with the direction of MOEF, the same may result in withdrawal of the environment clearance and attract the provisions of Environment (Protection) Act, 1986 as stipulated in Para 4 of the aforesaid letter. Further the provision so created cannot be equated with the CSR expenditure incurred as per section 135 of the Companies Act, 2013 for the reason that as per this section only companies having net profit are required to incur CSR whereas the CER expenditure are as per the guidelines of Ministry for Environment Protection is mandatorily required to incur irrespective of profit or loss of the company and levied on a lump sum basis or per tonne of extraction done by the assessee. Further Hon'ble Rajasthan High Court in assessee's own case for A.Y. 2012-13 in DBITA No.54/2018 order dated: 24.07.2018 (PB 254-268), A.Y. 2013-14 in DBITA 96/2019 dated: 14.10.2019 (PB 286-287) and A.Y. 2014-15 in DBITA 94/2019 dated: 14.10.2019 (PB 288-289) after considering the various decisions has allowed the provision made for CER expenditure in compliance to the guidelines of Environment Ministry.

27. Hence, only because revenue has filed appeal before Hon'ble Supreme Court cannot be a reason to disallow the claim of assessee. It is further bring to the notice of the bench that the appeal of the Revenue before the Hon'ble Supreme Court has also been dismissed and this fact is on record and accepted by both the parties concerned. **In view of above, disallowance confirmed by Ld. CIT (A) is set-aside and the AO is directed to allow the same. Ground No. 2 (A.Y. 2018-19 & 2020-21) is allowed for both the years.**

28. **Ground No. 3 (A.Y. 2018-19)** The Ld. CIT (A), NFAC has erred on facts and in law in upholding the order of AO in making addition of Rs. 7, 88,184/- on account of interest on income tax refund pertaining to A.Y. 2016-17 by not appreciating that the same was withdrawn while completing the assessment u/s. 143(3) of the Act dated: 13.11.2018.

29. It is observed that the assessee filed the return for A.Y. 2016-17 on 29.11.2016 at nil income under normal provisions of the Act and at book profit of Rs. 14, 07, 63, 643/- u/s. 115JB. As per the return tax payable was Rs. 3,04,80,822/- against which tax paid was Rs. 3,92,38,518/-. Thus refund of Rs. 87, 57,700/- was claimed.

30. It is observed that the return of the assessee was processed on 07.09.2017 where refund of Rs. 95, 45,880/- was determined (Principal amount Rs. 87, 57,700/- + Interest u/s. 244A of the Act Rs. 7, 88,180/-). The AO observed that interest u/s. 244A of the Act of Rs.7, 88,180/- is received in the A.Y. under

consideration but not offered for tax. The assessee other than providing wrong information failed to substantiate its explanation. Accordingly AO made addition of Rs. 7, 88,184/-. The Ld. CIT (A) confirmed the same at Para 9, Pg 35-36 of the order.

31. It is observed through the paper book filed by the assessee that in the year under consideration assessee has not received any refund in as much as this refund was adjusted against the demand for A.Y. 2012-13 (PB 193-194). Thereafter the assessment for A.Y. 2016-17 was framed u/s. 143(3) of the Act, dated: 13.11.2018, in which additions were made. As a result the refund of Rs. 95, 45,880/- was withdrawn and the demand was raised. Copy of computation sheet dt. 13.11.2018 is filed before us. Thus the interest which was granted on 07.09.2017 has been withdrawn on 13.11.2018. These facts required verification of the assessment records and orders passed time to time, in view of the above; we restore the matter back to the file of the AO with a direction that an opportunity be given to the assessee for substantiating its contentions and verification of the facts involved. **This ground of the assessee is allowed for statistical purposes.**

32. **Ground No. 3 (A.Y. 2018-19)** The Ld. CIT (A), NFAC has erred on facts and in law in rejecting the claim of assessee for interest u/s. 244A of the Act at Rs. 9,64,419/- as against Rs. 5,05,170/- allowed by AO without any justification.

33. The assessee filed its return on 29.10.2018 declaring Nil income and claiming refund of Rs. 91, 84,945/-. The return was processed on 06.08.2019

where the interest u/s. 244A of the Act on refund was calculated for the period 01.04.2018 to 06.08.2019 i.e. for 17 months at Rs.7, 80,717/- (PB 195). However this refund of Rs. 99, 65,662/- (Rs. 91, 84,985/- + Rs. 7, 80,717/-) was adjusted against the demand of A.Y. 2012-13 on 18.12.2019 (PB 194, 196-197).

34. Thereafter assessment u/s. 143(3) of the Act was made on 23.04.2021 at NIL income but interest u/s. 244A was calculated at Rs. 5,05,170/- and on that basis demand of Rs. 2,75,545/- (Rs. 7,80,717/-(-) Rs. 5,05,170/-) was raised.

35. It is observed that the assessee before the Ld. CIT(A) also submitted that interest u/s. 244A should be computed from 01.04.2018 to 18.12.2019, i.e. for 21 months on Rs. 91,84,945/- which comes to Rs. 9,64,419/- but AO has incorrectly calculated it at Rs. 5,05,170/-. The Ld. CIT(A), however, at Para 12, Pg 40 observed that AO has not made any manual computation while allowing interest u/s. 244A of the Act and the same was computed as per e-filed return. The appellant failed to substantiate the claim with detailed working and thus dismissed the ground of assessee.

36. It is observed that the AO appears to have calculated interest u/s. 244A of the Act in the computation sheet enclosed attached with order u/s. 143(3) of the Act at Rs. 5, 05,170/- for a period of 11 months from 01.11.2018 to 06.08.2019 i.e. for the period after filing the return of income instead of from 01<sup>st</sup> April of the relevant A.Y. This has resulted in reducing the amount of interest u/s. 244A of the Act. Thus the calculation of interest is prima facie incorrect.

37. The interest u/s 244A of the Act is required to be calculated from 1<sup>st</sup> April of the relevant A.Y. to the date of grant of refund. The relevant section 244A of the Act reads as under:-

*244A. (1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely :—*

*(a) where the refund is out of any tax collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period,—*

*(i) from the 1st day of April of the assessment year to the date on which the refund is granted, if the return of income has been furnished on or before the due date specified under sub-section (1) of section 139;*

38. The refund has been granted by way of adjustment against the demand in A.Y. 2012-13 on 18.12.2019. Therefore, interest u/s. 244A of the Act is to be calculated from 01.04.2018 to 18.12.2019 i.e. for 21 months. All these facts were explained before the Ld. CIT (A) but the same were ignored by him. In view of above, matter is restored back to the AO. These facts required verification of the assessment records and orders passed time to time, in view of the above; we restore the matter back to the file of the AO with a direction that an opportunity be given to the assessee for substantiating its contentions and verification of the facts involved. **This ground of the assessee is allowed for statistical purposes.**

**Grounds of Departmental Appeal**

39. **Ground No. 1 (A.Y. 2016-17 To 2018-19 & 2020-21)** Whether in the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in upholding the assessee's claim for mine closure plan as admissible expenditure without appreciating the fact that the said amount set apart by the assessee was in the nature of a provision and thus not allowable as expenditure?

<u>A.Y.</u>	<u>Amount</u>
2016-17	Rs. 9, 06, 00,000/-
2017-18	Rs. 4, 65, 19,308/-
2018-19	Rs. 11, 43, 00,000/-
2020-21	Rs. 16,32,11,811/-

40. The Ministry of Coal has issued mine closure guidelines dated: 07.01.2013 (PB 97-109) which is mandatorily required to be adopted to provide for mine closure plan. The annual mine closure cost is to be estimated as per the guidelines provided in the Para 5.2 and 5.3 of the said guidelines.

41. As per the guidelines, a sum of Rs. 6 lakhs per hectare (base rate for August 2009) of total project area for an open cast mine with escalation based on WPI as notified by Government from time to time was determined as the mine closure cost of an open cast mine. Further the guidelines mandate that annual closure cost is to be computed considering the total leasehold area at the above mentioned rates and dividing the same by entire life of the mine in years.

42. Accordingly the assessee started making provision for mine closure cost from A.Y. 12-13 and onwards on the total mine area of 3223.51 hectares and deposited the said amount in an Escrow Account compounded @ 5% annually. The assessee till 31.03.2016 has made the provision for mine closure cost and deposited the same in Escrow account maintained with PNB (PB 110) as under:-

F.Y.	Provision for mine closure cost	Cumulative provision	Amount deposited in Escrow Account
2011-12	Rs. 7,45,56,667/-	Rs. 7,45,56,667/-	-
2012-13	Rs. 7,82,84,500/-	Rs. 15,28,41,167/-	-
2013-14	Rs. 8,21,98,725/-	Rs. 23,50,39,892/-	Rs. 23,50,39,966/- (Up to March 2015)
2014-15	Rs. 8,63,08,661/-	Rs. 32,13,48,553/-	Rs. 8,63,08,688/- (On 20.11.2015)
2015-16	Rs. 9,06,24,094/-	Rs. 41,19,72,647/-	Rs. 9,06,24,123/- (On 23.03.2016)

43. For A.Y. 2017-18 in terms of clarification received from Coal Controller of India and the CAG observation, the assessee reworked the revised mine closure cost by taking the revised mining area at 2914.36 hectares by excluding the green belt and undistributed area of 309.15 hectares. Accordingly the mine closure cost was revised to Rs.7.17 lakhs per hectare to be spread over the mining period of 31 years. Thus the revised mine closure cost which was to be spread over the period of 31 years was determined at Rs. 2,08,95,96,120/- of this the mine closure cost till 31.03.2017 was worked out at Rs. 45,84,91,956/- as against the provision already made of Rs. 41,19,72,647/- and therefore the balance amount of Rs. 4,65,19,309/- was provided during the year as per the following working:-

S. No.	Financial Year	Revised Amount of MCC (Taking Area 2914.36 hectares)
1.	2011-2012	Rs. 6,74,06,326 ( 2,08,95,96,120 / 31)
2.	2012-2013	Rs. 7,07,76,643 (6,74,06,326*1.05)
3.	2013-2014	Rs. 7,43,15,475 (7,07,76,643*1.05)
4.	2014-2015	Rs. 7,80,31,249 (7,43,15,475*1.05)
5.	2015-2016	Rs. 8,19,32,811 (7,80,31,249*1.05)
6.	2016-2017	Rs. 8,60,29,452 (8,19,32,811*1.05)
	Total	Rs. 45,84,91,956/-
	Less: Provided till 31.03.2016	Rs. 41,19,72,647/-
	Balance provided during the year	Rs. 4,65,19,309/-

44. For A.Y. 2018-19 the mine closure cost was worked out as under:-

S. No.	Financial Year	Revised Amount of MCC (Taking Area 2914.36 hectares)
1.	2011-2012	Rs. 6,74,06,326 ( 2,08,95,96,120 / 31)
2.	2012-2013	Rs. 7,07,76,643 (6,74,06,326*1.05)
3.	2013-2014	Rs. 7,43,15,475 (7,07,76,643*1.05)
4.	2014-2015	Rs. 7,80,31,249 (7,43,15,475*1.05)
5.	2015-2016	Rs. 8,19,32,811 (7,80,31,249*1.05)
6.	2016-2017	Rs. 8,60,29,452 (8,19,32,811*1.05)
7.	2017-2018	Rs. 9,03,30,925 (8,60,29,452*1.05)
	Total	Rs. 54,88,22,880/-
	Less: Provided till 31.03.2017	Rs. 45,84,91,956/-
	Balance provided during the year	Rs. 9,03,30, 924/-

In this A.Y. provision was also made for mine closure cost of Jalipa mines at Rs.5.77 crores.

45. For A.Y. 2020-21 the mine closure cost was worked out as under:-

S. No.	Financial Year	Revised Amount of MCC (Taking Area 2914.36 hectares)
1.	2011-2012	Rs. 6,74,06,326 ( 2,08,95,96,120 / 31)
2.	2012-2013	Rs. 7,07,76,643 (6,74,06,326*1.05)
3.	2013-2014	Rs. 7,43,15,475 (7,07,76,643*1.05)
4.	2014-2015	Rs. 7,80,31,249 (7,43,15,475*1.05)
5.	2015-2016	Rs. 8,19,32,811 (7,80,31,249*1.05)
6.	2016-2017	Rs. 8,60,29,452 (8,19,32,811*1.05)
7.	2017-2018	Rs. 9,03,30,925 (8,60,29,452*1.05)
8.	2018-2019	Rs. 9,48,47,471 (9,03,30,925*1.05)
9.	2019-2020	Rs. 9,95,89,845 (9,48,47,471*1.05)
	Total	Rs. 74,32,60,197/-
	Less: Provided till 31.03.2019	Rs. 64,36,70,352/-
	Balance provided during the year	Rs. 9,95,89,845/-

In this A.Y. provision was also made for mine closure cost of Jalipa mines at Rs.6.37 crores.

46. All the above amount was deposited in the escrow account maintained with PNB (PB 110-118). The AO disallowed the claim of mine closure cost by making the following observations:-

- (i) The amount deposited in the Escrow account is interest bearing and realizable after every five years in line with periodic examination of the closure plan. Hence, the said amount is in the nature of deposit and not expenditure.
- (ii) The assessee's contention that disallowance will lead to double taxation as mine closure charges forms part of selling price of lignite is not acceptable as by simply filing the petition with RERC for determination of Transfer price which includes component of mine closure charges, is not enough.**
- (iii) The contention that appellate authorities have ruled in its favour is not acceptable as issue has not reached finality since department has filed appeal before the Hon'ble Supreme Court.

47. The Ld. CIT(A) at Pg 20-23 of the order after verbatim reproducing the assessment order for A.Y. 2016-17 & submission of assessee at Para 6.2 held that issue stands covered in favour of the assessee as per the order of Hon'ble ITAT/Hon'ble High Court in A.Y. 2012-13 to 2014-15 and accordingly allowed the appeal of assessee.

48. It is observed that the provision made for mine closure cost is as per the guidelines issued by the Ministry of Coal and is an ascertained liability which is required to be deposited in an Escrow Account and thus assessee has no control over this amount to utilize the same in any manner it wishes. Therefore the

amount claimed is not a deposit but is an expenditure for which liability is provided which would be discharged subsequently out of the amount kept in the Escrow Account. Hence the observation of AO that the amount claimed is not expenditure but deposit is prima facie incorrect.

49. It is also observed that in terms of the guidelines, for financial assurance to the Coal Controller (on behalf of the Central Government), the amount calculated as above remains deposited in the Escrow account wherein the beneficiary is the Coal Controller (PB 107-108). Also in terms of the said guidelines, as and when the assessee carries out progressive mine closure activities; a prescribed amount gets released to the assessee. On satisfactory closure of the mine towards the end of the lease period, amount if any, pending in the Escrow account will be released to the assessee. Thus, the provision so made is of an ascertained liability allowable u/s. 37(1) of the Act. In view of the decision of Supreme Court in case of *Bharat Earth Movers Limited Vs. CIT 112 Taxman 61*, *Rotork Controls India Pvt. Ltd. Vs. CIT 314 ITR 62* and the decision of Rajasthan High Court in case of *Udaipur Mineral Development Syndicate (P) Ltd. Vs. DCIT & Anr. 261 ITR 706*.

50. The Ld. CIT(A) in assessee's own case for A.Y. 2012-13 considering the decision of coordinate bench, Jaipur in the case of *M/s. RSMM Ltd. Vs. ACIT in ITA No.144/JP/2014 & 124/JP/2014* dated: 12.02.2016, allowed the claim of the assessee. Against this decision the department preferred an appeal before coordinate bench. The coordinate bench, Jaipur vide order dated: 12.10.2017 in *ITA No.510/JP/17* has dismissed the ground of department on this issue as per the discussion at Pg 49-52 of the order (PB 246-249). Against the said order department

preferred an appeal before the Hon'ble High Court which has also been dismissed vide order dated: 17.04.2018 (PB 251-253).

51. It is observed that the mine closure cost is claimed as expenditure for fixation of the transfer price of lignite by Rajasthan Electricity Regulatory Commission (RERC). This is evident from the fact that the assessee has filed an application before RERC for determination of transfer price of lignite for Kapurdi Mine for F.Y. 2015-16. In this application at Para 15(E) (PB 130) and in Annexure 13 (PB 135) the mine closure cost has been taken into consideration for price fixation of lignite. Considering the same the RERC vide order dt. 01.04.2015 has determined the Interim Transfer Price for F.Y. 2015-16 (PB 136-141), at which rate the assessee is raising invoices to the customer. Thus it is a fact on record that the mine closure cost is recovered by way of price for lignite. Hence the AO has incorrectly observed that by simply filing the petition with RERC for determination of Transfer price which includes component of mine closure charges, is not enough to hold that by disallowing the mine closure cost there is no double taxation here.

52. We are agreed with the contentions of the assessee that the liability discussed and mentioned (supra) are statutory liabilities and are unavoidable in nature, secondly the same has already been recovered in the revenue of the assessee and duly offered for tax. Hence, disallowing the same will tantamount to double taxation and otherwise also the same is not liable for disallowance. **In view of the above discussion, Ground No. 1 (A.Y. 2016-17 to 2018-19 & 2020-21) raised by the revenue is dismissed.**

**Ground No.2 (AY 2016-17, 2017-18 & 2018-19)**

53. Whether in the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting addition made by the AO by treating the interest earned during pre-operative period as income chargeable to tax under other sources while such interest income earned during pre-operative period is not business income and cannot be set off from other business expenses of pre-operative period

<b><u>A.Y.</u></b>	<b><u>Amount</u></b>
2016-17	Rs. 6, 05, 00,000/-
2017-18	Rs. 5, 32, 00,000/-
2018-19	Rs. 3, 12, 69,094/-

54. M/s. RSMML, in terms of JV agreement has undertaken the process of acquisition of land under the Land Acquisition Act through Land Acquisition Officer (LAO). For such acquisition of land and other related expenses, the assessee is obliged to open an Escrow Account to be operated by M/s. RSMML exclusively for each of the mines. Therefore whenever M/s. RSMML needs the fund for acquisition of land and to incur other expenses, it shall intimate the assessee and on receipt of such requirement the assessee will be obliged to provide funds in the Escrow Account. Once the fund is deposited in the Escrow account, it is under the exclusive control of M/s. RSMML who will utilize the same for payment of compensation, for acquisition of land and other related expenses. In this process the fund remained unutilized with M/s. RSMML for few days intermittently, i.e. from the date of deposit by the assessee till the date of payment to the land owners by M/s. RSMML. Such fund because of auto sweep

facility is transferred to FDR A/c. which earned interest as per the terms of escrow account.

55. It is observed that since the interest accrues in such Escrow Account, Government of Rajasthan (GOR) has given the direction vide order dated: 30.03.2011 (PB 142) that the interest earned by M/s. RSMML be refunded to the assessee. This was done with a view that the same would reduce the cost of the project so that the ultimate tariff cost of power to the consumers reduces. The interest expenditure capitalized on the borrowed funds in respect of Jalipa Project (as the same commenced operation in A.Y. 2018-19) and the amount of interest received from RSMML credited to CWIP Account is tabulated as under:-

A.Y.	Interest expenditure capitalized on the borrowed funds	Interest received from M/s. RSMML credited to CWIP Account
2016-17	Rs. 123.92 crores	Rs. 6.05 crores
2017-18	Rs. 127.68 crores	Rs. 5.32 crores
2018-19	Rs. 77.79 crores	Rs. 3.13 crores

56. AO taxed the entire interest income refunded by M/s. RSMML which is earned on the borrowed funds given by the assessee to M/s. RSMML, but lying in the Escrow Account till it is utilized by giving the following findings:-

- (a) The interest income has been earned on the deposit amount with M/s. RSMML kept in a separate account maintained by it on behalf of the assessee who has no inextricable link with setting up of the capital structure. Further, such interest income has been earned and transferred

by M/s. RSMML at the instruction of the government which remained idle with M/s. RSMML.

(b) Though there was no motive of the assessee to invest the funds with an intention to earn the income by way of interest, it has earned the interest on idle funds. This income has no relevance with the business activity of the assessee and is not capital receipt eligible to be deducted from the project cost. Funds have neither been invested with any time frame periodicity nor having borrowed funds for the purpose of investment but interest income has been earned due to non-utilization of the funds as and when demanded by M/s. RSMML.

(c) In view of the decision of Supreme Court in case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (1997) 227 ITR 172, the interest on FDR is chargeable to tax under the head income from other sources.

(d) The contention that appellate authorities have ruled in its favour is not acceptable as issue has not reached finality since department has filed appeal before the Hon'ble Supreme Court.

57. The Ld. CIT(A) at Pg 23-30 of the order after verbatim reproducing the assessment order for A.Y. 2016-17 & submission of assessee at Para 7.1 held that issue stands covered in favour of the assessee as per the order of coordinate bench/Hon'ble High Court in earlier years and accordingly allowed the appeal of assessee.

58. It is observed that most of the funds of the assessee are borrowed funds. The share capital of the assessee is only Rs. 20 crores out of which 51% capital (i.e. Rs.10.20 crores) is allotted to M/s. RSMML in form of shares issued for consideration other than cash and 49% capital (i.e. Rs. 9.80 crores) is allotted to M/s. RWPL in cash. The borrowed funds represent borrowing from the banks or the subordinate loans from M/s. RWPL. Thus the entire project has been funded out of interest bearing funds. The term loan has been obtained from bankers/ financial institutions at an average borrowing cost of 10.16% to 11.37% p.a. and the subordinate loan has been taken at rate of 10% p.a. (PB 144-146).

59. It is the above borrowed funds which have been utilized for depositing in Escrow Account for the purpose of acquiring land by M/s. RSMML and interest paid on such borrowing has been charged to CWIP. On the amount so deposited in the Escrow Account in the name of M/s. RSMML, the interest received is inextricably linked to the cost of the project and therefore, such interest receipt cannot be charged to tax as income from other sources but needs to be reduced from the cost of the project. Even the Government in its letter dated: 11.07.2011 (PB 143) has stated that expenditure related to land acquisition and expenditure incurred by M/s. RSMML can be adjusted against the interest accrued on the amount deposited by the assessee. Thus, it is a case of borrowed funds advanced to M/s. RSMML (the entity authorized to acquire the land for the assessee for its mining project as per Implementation Agreement) yielding interest income, till it is utilized towards the project. The case of the assessee is therefore, directly

covered by the ratio of decision of Supreme Court in case of CIT Vs. Bokaro Steels Ltd. 236 ITR 315 where at Para 5 it is held as under:-

*“The activities of the assessee in connection with all three receipts viz. Rent charged by the assessee to its contractors for housing workers and staff employed by the contractor for the construction work of the assessee including certain amenities granted to the staff by the assessee; secondly, hire charges for plant and machinery which was given to the contractors by the assessee for use in the construction work of the assessee and thirdly, interest from advances made to the contractors by the assessee for the purpose of facilitating the work of construction are directly connected with or are incidental to the work of construction of its plant undertaken by the assessee. Broadly speaking, these pertain to the arrangements made by the assessee with its contractors pertaining to the work of construction. To facilitate the work of the contractor, the assessee permitted the contractor to use the premises of the assessee for housing its staff and workers engaged in the construction activity of the assessee’s plant. This was clearly to facilitate the work of construction. Had this facility not been provided by the assessee, the contractors would have had to make their own arrangements and this would have been reflected in the charges of the contractors for the construction work. Instead, the assessee has provided these facilities. The same is true of the hire charges for plant and machinery which was given by the assessee to the contractor for the assessee’s construction work. The receipts in this connection also go to compensate the assessee for the wear and tear on the machinery. The advances which the assessee made to the contractor to facilitate the construction activity of putting together a very large project was as much to ensure that the work of the contractors proceeded without any financial hitches as to help the contractors. The arrangements which were made between the assessee-company and the contractors pertaining to these three receipts are arrangements which are intrinsically connected with the construction of its steel plant. The receipts have been adjusted against the charges payable to the contractors and have gone to reduce the cost of construction. They have, therefore, been rightly held as capital receipts and not income of the assessee from any independent source.”*

60. In the above decision, Hon’ble Supreme Court distinguished the decision in case of Tuticorin Alkali Chemicals & Fertilizers Ltd. Vs. CIT by giving the following findings at Para 7 of his order:-

*“The appellant, however, relied upon the decision of this Court in Tuticorin Alkali Chemicals & Fertilizers Ltd. vs. CIT (supra). That case dealt with the question whether investment of borrowed funds prior to commencement of business, resulting in earning of interest by the assessee would amount to the assessee earning any income. This Court held that if a person borrows money for business purposes, but utilises that money to earn interest, however temporarily, the interest so generated will be his income. This income can be utilised by the assessee whichever way he likes. Merely because he utilised it to repay the interest on the loan taken, will not make the interest income as a capital receipt. The Department relied upon the observations made in that judgment (at p. 179) to the effect that if the company, even before it commences business, invests surplus funds in its hands for purchase of land or house property and later sells it at profit, the gain made by the company will be assessable under the head “capital gains”. Similarly, if a company purchases rented house and gets rent, such rent will be assessable to tax under s. 22 as income from house property. Likewise, the company may have income from other sources. The company may also, as in that case, keep the surplus funds in short-term deposits in order to earn interest. Such interest will be chargeable under s. 56 of the IT Act. This Court also emphasised the fact that the company was not bound to utilise the interest so earned to adjust it against the interest paid on borrowed capital. The company was free to use this income in any manner it liked. However, while interest earned by investing borrowed capital in short-term deposits is an independent source of income not connected with the construction activities or business activities of the assessee, the same cannot be said in the present case where the utilisation of various assets of the company and the payments received for such utilisation are directly linked with the activity of setting up the steel plant of the assessee. These receipts are inextricably linked with the setting up of the capital structure of the assessee-company. They must, therefore, be viewed as capital receipts going to reduce the cost of construction. In the case of Challapalli Sugars Ltd. vs. CIT 1974 CTR (SC) 309 : (1975) 98 ITR 167 (SC) : TC 17R.834, this Court examined the question whether interest paid before the commencement of production by a company on amounts borrowed for the acquisition and installation of plant and machinery would form a part of the actual cost of the asset to the assessee within the meaning of that expression in s. 10(5) of the Indian IT Act, 1922, and whether the assessee will be entitled to depreciation allowances and development rebate with reference to such interest also. The Court held that the accepted accountancy rule for determining cost of fixed assets is to include all expenditure necessary to bring such assets into existence and to put them in working condition. In case money is borrowed by a newly started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of production on such borrowed money can be capitalised and added to the cost of the fixed assets created as a result of such expenditure. By the same reasoning if the assessee receives any amounts which are inextricably linked*

*with the process of setting up its plant and machinery, such receipts will go to reduce the cost of its assets. These are receipts of a capital nature and cannot be taxed as income.”*

61. Hon’ble Supreme Court in the following cases has also held that where any receipt is inextricably link to the funds borrowed for the purpose of capital investment, such receipt is in the nature of capital receipt which would go to reduce the capital asset. Respectfully, following the decision of Hon’ble Apex Court in the cases of CIT vs. Bokaro Steels Ltd. 236 ITR 315 and Challapalli Sugars Ltd. vs. CIT 1974 CTR (SC) 309 and further relying on:

CIT vs. Karnataka Power Corporation Ltd. 247 ITR 268 (SC)

*Hire charges for plant and machinery given to contractors for use in construction work and interest on advances made to them. These are receipts in the nature of capital receipts which would go to reduce the capital cost.*

CIT vs. Shree Rama Multi Tech Ltd. (2018) 403 ITR 426 (SC)

*Assessee was engaged in manufacture of multi-layer tubes and other specialty packaging and plastic products. Assessee company came out with initial public issue during year under consideration and amount of share application money received by assessee was deposited with banks on which interest was earned and same was shown in return of income as income from other sources. Assessee claimed for set off of interest income from share application money against public issue expenses. AO did not allow set off of interest income from share application money. Ld. CIT (A) affirmed order of AO. Tribunal allowed claim of assessee holding that interest income earned out of share application money was liable to be set off against public issue expenses. High Court upheld order of Tribunal. Held, interest earned was inextricably linked with requirement of company to raise share capital and was thus adjustable towards expenditures involved for share issue. Interest earned from share application money statutorily required to be kept in separate account was being adjusted towards cost of raising share capital. If share application money received was deposited in bank in light of statutory mandatory requirement then accrued interest was not liable to be taxed and same was eligible for deduction against public issue expenses. Issue of share related to capital structure of company hence expenses incurred in connection with issue of*

*shares were to be capitalized because purpose of such deposit was not to make some additional income but to comply with statutory requirement, and interest accrued on such deposit was merely incidental. High Court was right in holding that interest accrued to such deposit of money in bank was liable to be set-off against public issue expenses because interest earned was inextricably linked with requirement of company to raise share capital and was thus adjustable towards expenditure involved for share issue.*

62. Therefore in view of the later decision of Supreme Court referred above, the interest on FDR is a capital receipt to be reduced from the cost of the project and therefore the same cannot be taxed as income from other sources. It is observed that the coordinate bench, Jaipur in assessee's own case for A.Y. 2012-13 in ITA No.510/JP/17 order dated: 12.10.2017 (PB 201-208) denied the claim of the assessee by relying on the decision of Hon'ble Supreme Court in case of CIT Vs. Tuticorin Alkali Chemicals and Fertilizers Ltd. (supra). Against the said order assessee filed an appeal before the Hon'ble High Court. The Hon'ble Rajasthan High Court in assessee's own case for A.Y. 2012-13 in DBITA No.54/2018 order dated: 24.07.2018 (PB 254-268) after considering the decision of Supreme Court in case of Bokaro Steel Ltd. and other decisions decided the issue in favour of assessee. Therefore, the interest receipt cannot be charged to tax as income from other sources but is to be reduced from the cost to be capitalized in respect of Jalpa mines.

63. It is further submitted that the Hon'ble ITAT in assessee's own case for A.Y. 2013-14 in ITA No.774/JP/2018 order dated: 14.02.2019 after relying on the decision of Hon'ble High Court (supra) allowed the appeal of the assessee (PB 276-278). **Considering the order of the coordinate bench placed before us and ratio lay down by the Hon'ble Jurisdictional High Court in favour of the assessee, we**

**confirm the order of the Ld. CIT (A) and the ground raised by the revenue Ground No.2 (A.Y. 2016-17, 2017-18 & 2018-19) is dismissed.**

**64. In nutshell, appeals of the Revenue are fully dismissed and appeals of the assessee are allowed for statistical purposes in view of our detailed order (supra).**

Sd/-

(Dr. S. SEETHALAKSHMI)  
JUDICIAL MEMBER

Jaipur, दिनांक/Dated: 16/12/2024

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., Sr.DR., ITAT,
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Jaipur**

	Details	Date	Initials	Designation
1	Draft dictated on PC on	16.12.2024		Sr.PS/PS
2	Draft Placed before author	16.12.2024		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			