IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

I.T.A. No. 95 & 103/Ran/2023
(Assessment Year-2016-17 & 2017-18)
(Virtual Hearing)

A.C.I.T./D.C.I.T., Circle-1, Dhanbad.	Vs.	M/s Bharat Coking Coal Limited, Koyla Bhawan, Koyla Nagar, Dhanbad-826001. **PAN No. AAACB 7934 M**
Appellant/ Assessee		Respondent/ Revenue

Department represented by	Shri Uday Bhaskar Jokke, CIT-DR.
Assessee represented by	Shri M.K. Choudhary, Adv. & Shri Devesh Poddar, A.R.
Date of hearing	19/03/2025
Date of pronouncement	07/04/2025

O R D E R

PER: BENCH

1. These appeals by the revenue are directed against the two separate orders of the National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) [in short, the ld. CIT(A)] dated 24/02/2023 and 23/03/2023 for the Assessment Year (AY) 2016-17 and 2017-18 respectively. These appeals of the revenue are having common facts and grounds except variation in the amounts of addition deleted by the ld. CIT(A), therefore, with the consent of parties, both these appeals are clubbed and heard together and being decided by this consolidated order. For appreciation of facts, we take ITA No. 103/Ran/2023 for A.Y. 2017-18 as a lead case. In this appeal, the revenue has raised following grounds of appeal:

> *"(i) Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) was correct in holding that the under-loading charges are not penal in nature even though as per provisions of Indian Railway Act, 1989, the under-loading charges are punitive charges.*

(ii) In the facts and circumstances of the case, whether the Ld. CIT(A) was correct in holding that the demurrage charges paid to Railways is not penal in nature and does not fall within the purview of explanation to Section 37(1)."

2. The facts of the case, in brief, are that, the assessee i.e. M/s Bharat Coking Coal Limited (BCCL) is an undertaking of Government of India. It is a subsidiary of Coal India Ltd. The assessee company is engaged in coal mining. Its collieries are scattered mainly in Dhanbad district in Jharkhand and in some part of West Bengal. The assessee company filed return of income declaring total income of ₹ 356,77,36,970/- for the A.Y. 2017-18. The assessment was completed under Section 143(3) of the Income Tax Act, 1961 (in short, the Act) on 24/12/2019 determining total income of ₹ 550,97,91,015/- by making following additions:

(a) Under Loading Charges : ₹ 121,08,01,000/-

(b) Demurrage Charges : ₹ 23,77,00,000/-

3. **Under-loading charges**: The Assessing Officer in his order under Section 143(3) of the Act dated 24/12/2019 for the assessment year under consideration, found that the BCCL, the assessee, has claimed expenses in its Profit & Loss Account under the head "under-loading charges" amounting to ₹121,08,1,000/-. Accordingly, notice under Section 142(1) of the Act was issued to the assessee to justify these expenses. In response to that the assessee mentioned that 'under-loading charges' has not been paid to the railway authorities by the BCCL but was actually paid by the coal buyers, who engage the railway wagon for the transportation of coal. As per the terms of Fuel Supply Agreement (FSA) between the BCCL and the coal buyers this under-loading charges are being adjusted in the sales bill raised by the BCCL.

Thus, such charge is not punitive in nature because, it is not paid due to failure in compliance of any statutory law. Rather, it is paid under the commercial agreement i.e. FSA between the BCCL and the coal buyer. It was further explained by the assessee that the railway charges this freight on the transportation of coal as per permissible carrying capacity of its wagons. Full freight as per the permissible carrying capacity (+/ - tolerance, if any) is charged by Railway, even if, less quantum of coal, in comparison to mentioned permissible carrying capacity of the wagon, is loaded in the wagon. Therefore, the freight related to under loading of coal represents the 'Under-Loading Charges' (ULC). ULC is equal to freight of the coal as per permissible carrying capacity minus (-) freight of actual loaded coal, if the quantum of loaded coal is less than carrying capacity. As per terms of FSA, the under-loading charge is to be borne by the seller. Thus, this is a normal business expenditure and allowable under Section 37 of the Act.

4. The assessee further submitted that 'under-loading charges' have already been allowed by the ITAT, Nagpur Bench in order in ITA No. 289 & 290/Nag/2006 dated 30/06/2009 for A.Y. 2002-03 and 2003-04 and order in ITA No. 475/Nag/2007 dated 10/08/2009 for the A.Y. 2004-05 in the case of the sister concern of BCCL i.e. Western Coalfields Ltd. Vs ACIT. It was further claimed by the assessee that these expenses have never been disallowed by the Assessing Officer in the case of BCCL in the past.

5. The Assessing Officer, however, was not convinced with the explanation offered by the assessee and disallowed a sum of ₹ 121,08,01,000/- under the head "under loading charges" under Section 37 of the Act and added back to

the total income of the assessee on the ground that there is no need of such type of FSA to load the goods in wagons because transportation including loading and unloading is a responsibility of buyers and not a responsibility of sellers. Further, the BCCL is not directly involved with the railways for transportation of coal. Parties/purchasers are booking the wagons and the BCCL is only filing up the wagons with coal. Indirectly, the BCCL is paid penalty to the railways for running of partly filled wagons by the coal buyers which are not incidental to the business of BCCL. The BCCL is allowing rebates in the bills of the party as penalty for irrelevant work. Besides above, the BCCL has not taken any concrete steps to fill up the wagons fully and complete it on time. BCCL has no mechanism to stop this type of unwanted penalty and unnecessary expenditure. It is, therefore, held that the charge demanded by the railway authorities is a penalty for failure of loading wagons fully. Thus, ULC is penal in nature for failure to load wagons fully and therefore, the same cannot be allowed as a business expenditure under Section 37 of the Act.

6. Aggrieved by the order of the Assessing Officer, the assessee company filed appeal before the ld. CIT(A), who vide impugned order dated 23/03/2023, deleted the addition on this count on the ground that the issue of disallowance of "under-loading charges" was a subject matter of appeal in the case of assessee for A.Y. 2016-17 which was allowed by the ld. CIT(A) vide its order dated 24/02/2023. The relevant para of the findings of the ld. CIT(A), NFAC is reproduced as under:

"6.1.7 The submission of the appellant, the case laws cited by it and the order appealed against have been perused. The judgment dated 10.08.2009 of

Hon'ble ITAT Nagpur Bench in ITA No. 475/Nag/2007 for AY 2004-05, in the case of M/s Western Coalfields Ltd Vs DCIT. Range-2, Nagpur has decided on the identical issue of under loading charges.

The first ground of appeal in the afore said case was

> *"On the facts and in the circumstances of the case, the Ld. CIT(A) has legally erred in confirming the disallowance of under loading charges of Rs. 547.68 lakhs"*
>
> *In the aforesaid judgment the Hon'ble ITAT has cited the judgment of Hon'ble ITAT in ITA No. 289 and 290/Nag/2006 order dated 30.06.2009 for AY 2002-03 and 2003-04. While allowing the appeal of the appellant on the issue of under loading charges, in para 7 of the Judgment the Hon'ble ITAT has mentioned para 25 of the order of the ITAT dated 30.06.2009. the relevant part of the order is reproduced as under:*
>
> *"7. We find that these issues also arose in earlier wherein the Tribunal decided the issue in favour of the assessee. The Finding of the Tribunal are as as under:*
>
> *25 We have considered rival submissions, orders of the authorities below and the materials available on record. We find that all the three charges have been clubbed together without analysing the exact nature of these items. As far as under loading charges and credit nots are concerned, these expenses have been incurred by the assessee as a consequence of agreement with its customers and these have not been paid to Railways like overloading charges, hence at the very outset, these are not covered within the ambit of Explanation 1 of section 37(1) of the ACTF. The fact of incurrence of these expenses for the purpose of business is also not in doubt. Accordingly, we hold that these are allowable expenses as incurred for the purpose of business. Thus, grounds no. 5 and 6 of the assessee's appeal are accepted."*

6.1.8 Further, vide is judgment dated 13.01.2016 in a consolidated order the Hon'ble Bombay High Court in ITA No. 3 of 2010, ITA No. 4 of 2010. ITA No. 73 of 2010, ITA No. 85 of 2010 and ITA no. 14 of 2015 has dismissed the appeal filed by the Department against the aforesaid orders of the Hon'ble ITA T. While dismissing the appeal, in para 4 of its judgment the Hon'ble High Court has observed as under:

> *"We have perused the said paragraph. In that paragraph the ITAT has relied upon its earlier judgment in paragraph nos. 25 and 26. It is not in dispute that those judgments are today impugned before us in connected matters. The overloading charges or under loading charges are payable in terms of contract between the parties and it is not an offence. It is purely a commercial transaction. In this situation, we do not find any substantial question of law arising as the ITAT has allowed payment of overloading charges as expenditure which can be deducted under Section 37 of the Income Tax Act, 1961."*

6.1.9 In view of the above discussion and also the judicial precedents cited by the appellant it is held that the underloading charge paid by the appellant was on account of its contractual obligations and the expenditure incurred under the head was exclusively for the purpose of business. Therefore, the expenses claimed by the Appellant of Rs. 148,1386,000/- is allowable expenditure u/s 37(l) of the Income Tax Act. Accordingly, the disallowance made by the AO of Rs.148,13,86,000/- under the head under loading charges is hereby deleted."

The ld. CIT(A), by following the findings given in the aforesaid appellate order in the case of assessee itself for the A.Y. 2016-17, deleted the disallowance made by the Assessing Officer of ₹ 121,08,01,000/- under the head 'under-loading charges'.

7. Aggrieved by the order of learned. CIT(A), this appeal has been preferred by the revenue before us.

8. The ld. CIT-DR for the revenue, in its submissions, justified the disallowance made by the Assessing Officer and stated that these expenses are penal in nature and thus, the same cannot be allowed under Section 37 of the Act because the assessee BCCL is discharging the liability on behalf of coal buyers and it was the primary responsibility of the coal buyers to bear this cost. The FSA entered into by the assessee and the coal buyer is an unnecessary

exercise and the payment made by BCCL to the railway authorities is unwarranted.

9. During the course of hearing before us, the learned Authorized Representative of the assessee filed paper book containing Fuel Supply Agreement, various other relevant documents and the copy of decisions of Hon'ble Tribunal and Hon'ble High Court on this issue. The ld. AR drew our attention towards Clause (10) of the FSA entered into between BCCL and the coal buyer, UP Rajya Vidyut Vitaran Ltd. dated 16/09/2011 which reads as under:

<u>"10. OVERLOADING AND UNDER-LOADING</u>

10.1 Any penal freight for overloading charged by the Railways for any consignment shall be payable by the Purchaser. However, if overloading is detected from any particular colliery, consistently during three (3) continuous months, on due intimation from the Purchaser to this effect, the Seller undertakes to take remedial measures.

10.2 For Grade A, Grade B, Steel Grade I, Steel Grade II, Washery Grade-I, Washery Grade-II, Semi-coking Grade I. Semi-coking Grade II and washed coal; and idle freight for under-loading below the stenciled carrying capacity, as shown on the wagon or carrying capacity based on the actual tare weight, as the case may be, shall be borne by the Seller. For all other Grades of Coal, any idle freight for under-loading below the stenciled carrying capacity, as shown on the wagon or carrying capacity based on the actual tare weight, as the case may be, plus two (2) tonnes shall be borne by the Seller.

10.3 Idle freight resulting from under loading of wagon, as per Clause 10.2. shall be adjusted in the bills. Idle freight shall be reckoned as:

(i) For Grade A. Grade B, Steel Grade-I. Steel Grade II, Washery Grade I, Washery Grade-II, Semi-coking Grade I, Semi-coking Grade II and washed Coal, the difference between the freight charges applicable for the stencilled carrying capacity, as Shown on the wagon or carrying capacity based on the actual tare weight, as the case may be, less the freight payable as per actual recorded weight of Coal loaded in the wagon; and/or

(ii) For all other Grades of Coal, the difference between the freight charges applicable for the stencilled carrying capacity, as shown on the wagon or

carrying capacity based on the actual tare weight, as the case may be, plus two (2) tonnes less the freight payable as per actual recorded weight of Coal loaded in the wagon."

The ld. Counsel then argued that as per the above conditions mentioned in the said FSA, the assessee company is bound to discharge its commitment of paying under-loading charges to Railway authorities and claimed that these expenses, being borne by the assessee, is a kind of reimbursement which is finally, finally adjusted in the books of the assessee. Thus, this expenditure cannot be termed as penal in nature.

It was further submitted by the AR that this issue of 'under loading charges' was a subject matter of disputes before the Hon'ble ITAT, Nagpur which decided these issues in its judgment dated 10/08/2019 in ITA No. 475/Nag/2007 for A.Y. 2004-05 in the case of Western Coalfields Limited Vs DCIT, Range-2, Nagpur in favour of assessee. The same Hon'ble ITAT Nagpur Bench vide its order dated in ITA No. 289 and 290/nag/2006 dated 30/06/2009 for A.Y. 2002-03 and 2003-04 (supra.) also decided the issue of under-loading charges in favour of the assessee. While allowing the appeal of the appellant on the issue of under loading charges, in para 7 of the judgement, the Hon'ble ITAT has mentioned para 25 of the order of the ITAT dated 30/06/2009. The relevant part of the order is reproduced as below:

"25. We have considered rival submissions, orders of the authorities below and the materials available on record. We find that all the three charges have been clubbed together without analyzing the exact nature of these items. As far as underloading charges and credit notes are concerned, these expenses have been incurred by the assessee as a consequence of agreement with its customers and these have not been paid to railways like overloading charges, hence, at the very outset, these are not covered

within the ambit of Explanation to S. 37(1) of the Act. The fact of incurrence of these expenses for the purpose of business is also not in doubt. Accordingly, we hold that these are allowable expenses as incurred for the purpose of business. Thus, ground Nos. 5 and 6 of assessee's appeal are accepted."

10. We have considered the facts of the case, rival submissions and the decisions of the Hon'ble ITAT, Nagpur Bench and also the decision of Hon'ble High Courts on this issue. It is found that the Hon'ble ITAT, Nagpur Bench has already decided this issue of "under-loading charges" in the case of assessee's sister concern i.e. M/s Western Coalfields Ltd. We have also examined Clause-10 of Coal Supply Agreement and it is found that this payment of under-loading charges is part of that agreement and the expenses is being borne by the assessee through book adjustments. We have also perused the order of Hon'ble ITAT Nagpur Bench in the case of sister concern of assessee i.e. Western Coalfields Ltd. and we find that the Hon'ble Nagpur Bench has already decided these issues in favour of the assessee and the additions made by the Assessing Officer were deleted. Thus, considering the specific clause-10 of the Coal Supply Agreement and the decisions of the Hon'ble ITAT, Nagpur Bench, Nagpur, there is no reason for this Bench to differ with that because the nature of expenses is same in both the BCCL and its sister concern M/s Western Coalfields Ltd. The ratio applied by the Hon'ble ITAT Nagpur Bench is also applicable in the case of the assessee. Thus, respectfully following the decision of the Hon'ble ITAT, Nagpur, we also hold that the disallowance made by the Assessing Officer under the head "under loading charges" treating it as a statutory penalty is not correct and same is

deleted. The impugned order of ld. CIT(A) is, therefore, upheld qua this issue.

11. **Demurrage Charges:** During the course of assessment proceedings, the Assessing Officer found that the assessee has debited demurrage expenses of ₹23,77,000,00/- and asked the assessee to justify the genuineness of these expenses. In response to that, the assessee i.e. BCCL stated "*demurrage is payable to railway for delay in loading and unloading at railway siding beyond a stipulated free loading/unloading time. At colliery siding, where loading of raw coal is done, the demurrage is payable on loading only. At washery siding, both unloading of raw coal and loading of washed coal occurs. Hence, at washery siding, demurrage is applicable on both loading as well as unloading."*

12. The Assessing Officer, however, was not convinced with the above explanation given by the assessee and added this demurrage charge of ₹23,77,000,00/- being penal in nature and disallowed the same under Section 37 of the Act on the ground that the delay in loading and unloading of wagons is a failure on the part of the company. The company has clearly failed to discharge his duty timely and paid this penalty, therefore, it cannot be considered as business expenditure.

13. Aggrieved by the order of Assessing Officer, the assessee filed appeal before the ld. CIT(A), who vide impugned order dated 23/03/2023, deleted the addition made by the Assessing Officer on the ground that the issue of disallowance of demurrage charges paid to railways, was also subject matter of appeal in the case of assessee itself for the A.Y. 2016-17 has been decided

vide order dated 24/02/2024 in appeal No. CIT(A) Dhanbad/10087/2018-19. The relevant para of the findings of the ld. CIT(A) NFAC is reproduced as under:

"6.2.4 The facts of the instant case are squarely covered by the Judgment of Hon'ble Delhi High Court in the case of Mahalakshmi Sugar Mills Co. Ltd. vs. Commissioner of Income-tax (1984) 19 Taxman 447 (Delhi). The Hon'ble High Court in para 9 of its judgment has observed as under:

9. Question No. 3 is common for the assessment years 1963-64 and 1964-65 and relates to the deductibility of the demurrage paid by the assessed-company to the Railways. For the assessment year 1963-64, the assessed had claimed a sum of Ps. 5.030 and for 196465 the assessed claimed Rs. 1,244 as demurrage paid to the Railways for not lifting the goods consigned to it in time. The Income-tax Officer disallowed the claim which was, however, allowed by the Appellate Assistant Commissioner in appeal. On appeal by the Department. the Tribunal held the claim of the assessed as correct and observed that the claim was allowed in earlier years as well. In doing so. the Tribunal applied its decision in relation to the allowability of the interest on the arrears of cess. On the other hand, it was contended by the Department before the Tribunal that this expenditure was of the same Mahalaxmi Sugar Mills Company vs Commissioner of Income-Tax on 29 May, 1984 Indian Kanoon- http://indiankanoon.org/doc/155561/3 nature as interest paid by the assessed on the arrears of sugarcane cess and purchase tax. It may at once be seen that the payment of demurrage was not in the nature of damage or penalty amount and that it was merely a charge made by the Railway administration to compensate itself for keeping the goods of the assessed in its custody beyond a particular time. The payment of demurrage was incidental to business and its impact was to increase the cost to the assessed of the goods transported. Shri S. N. Kumar, learned counsel for the assessed, referred to a decision of the Allahabad High Court in Nanhoomal Jyoti Prasad v. CIT [1980] 123 ITR 269. In this case, the port authorities charged demurrage for delay in clearing the

goods from the godowns of the port authorities which included charges for storage and safe custody of the good by the port authorities. It was held that when demurrage is paid by a trader, he pays the amount for storage and safe custody of the goods by the port authorities or the railways and also an additional amount for delayed clearance and the payment essentially is by way of liquidated damages for use of the port facilities beyond the period allowed under the port Rules. It was held that the demurrage paid was not a fine for infraction of any law but was by way of compensation for use of port facilities beyond the period allowed under the Port Trust Rules, and that the expenditure on this account was laid out wholly and exclusively for the assessees business. We would follow the reasoning adopted by the Allahabad High Court in this judgment. We thus answer question No. 3 in the affirmative, i.e.. in favor of the assessed and hold that the assessed is entitled to deduction of sums of Rs. 5,030 and Rs. 1.244, respectively, for the assessment years 1963-64 and 1964-65 paid by it by way of demurrage to the Railways in the computation of its business income for the assessment years in question.

6.2.5 *The assessing officer has made this disallowance by holding the demurrage charges as fine/penalty. This contention of the assessing officer has been considered and rejected by the aforesaid judgment of Hon'ble Delhi High Court. Further, charging of demurrage is widely prevalent practice in the business of transportation and storage of bulk goods. Therefore, the conclusion of the AO that the demurrage charges could have been avoided and these have occurred on account of the negligence of the appellant is also not sustainable in the eyes of law.*

6.2.5 *In view of the above discussion and also the judicial precedents cited by the appellant it is held that the demurrage charges paid by the appellant was on account of its contractual obligations with the railways for transportation and the expenditure incurred under the head was exclusively for the purpose of business. Therefore, the expenses claimed by the Appellant of Rs. 20,36,75,000/- is allowable expenditure u/s 37(1) of*

the Income Tax Act. Accordingly. the disallowance made by the AO of Rs. 20,36,75,000/- under the head demurrage charges is hereby deleted.

6.2.7 Thus the second ground of appeal is allowed."

14. Aggrieved by the order of ld. CIT(A), the revenue has filed this appeal before this Tribunal.

15. During the course of hearing before us, the revised grounds of appeal were filed by the revenue as under:

> *"(i) Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) was correct in holding that the under-loading charges are not penal in nature even though as per provisions of Indian Railway Act, 1989, the under-loading charges are punitive charges and deleting the disallowance of ₹ 1,48,12,86,000/- claimed as under loading charges during the year under consideration which is not covered u/s 37(1) of the Income-tax Act, 1961 (the Act), 1961.*
>
> *(ii) In the facts and circumstances of the case, whether the Ld. CIT(A) was correct in holding that the demurrage charges paid to Railways is not penal in nature and does not fall within the purview of explanation to Section 37(1) and deleting the disallowance of ₹ 20,36,75,000/- claimed as demurrage charges u/s 37(1) of the IT Act, 1961.*
>
> *(iii) That the applicant craves, leave to add, alter, delete and modify the grounds of appeal before the Hon'ble ITAT."*

16. During the course of hearing, the learned Authorised Representative of the assessee has reiterated the same argument as raised with regard to under-loading charges and submitted that both these issues of under loading charges and demurrage charges were subject matter of disputes in the judgment dated 10/08/2019 of Hon'ble ITAT, Nagpur Bench in ITA No. 475/Nag/2007 for A.Y. 2004-05 in the case of Western Coalfields Limited Vs DCIT, Range-2, Nagpur, has decided all the identical issue of under loading charges and Demurrage charges which was decided in favour of assessee by the Hon'ble ITAT Nagpur Bench vide order dated in ITA No. 289 and 290/Nag/2006 dated 30/06/2009 for A.Y. 2002-03 and 2003-04.

17. The ld. CIT-DR for the revenue, on the other hand, has relied on the order of Assessing Officer.

18. We have considered the facts of the case, rival submissions and the decisions of the Hon'ble ITAT, Nagpur Bench and also the decision of Hon'ble High Courts on this issue. It is found that the Hon'ble ITAT, Nagpur Bench has already decided this issue of demurrage charges in the case of assessee's sister concerned i.e. M/s Western Coalfields Ltd. We find no reason to differ with that because the nature of expenses as the same in both the cases i.e. in the case of this assessee and its sister concern M/s Western Coalfields Ltd., Thus, the ratio applied by the Hon'ble ITAT, Nagpur Bench is also applicable in the case of the assessee. Thus, respectfully following the decision of the Hon'ble ITAT, Nagpur, we also hold that the disallowance made by the Assessing Officer under the head "Demurrage" is not correct and same is deleted. The impugned order of ld. CIT(A) is, therefore, upheld qua this issue.

19. In the result, this appeal of revenue is dismissed..

20. Similarly in ITA No.95/Ran/2023 for the A.Y. 2016-17, we find that in this appeal, the revenue has raised similar grounds of appeal except variation of additions/disallowances made by the Assessing Officer. We also find that the facts of the case and the grounds of appeal as raised in ITA No. 95/Ran/2023 for the A.Y. 2016-17 are similar, where we have dismissed the appeal of revenue by upholding the order of ld. CIT(A). Therefore, keeping in view the principle of consistency on similar set of facts, this appeal of revenue is also

dismissed with similar direction. In the result, grounds of revenue's appeal are dismissed.

21. In the result, both these appeals of revenue are dismissed.

Order pronounced in open court on 07th April, 2025.

Sd/-	Sd/-
(GEORGE MATHAN)	(RATNESH NANDAN SAHAY)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Ranchi, Dated: 07/04/2025
**Ranjan*
Copy to:
1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi