

**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND**  
**SHRI RAM LAL NEGI, JUDICIAL MEMBER..**

I.T.A. No. 143/Nag/2015  
Assessment Year : 2010-11.

M/s Western Coalfields Ltd.,  
Nagpur.

**PAN AAACW1578L.**

Appellant.

The Pr. Commissioner of Income Tax-2,  
Nagpur.

Vs. Nagpur.

Respondent.

Appellant by : Shri K.P. Dewani.  
Respondent by : Shri A.R. Ninawe.

Date of Hearing : 20-03-2017.  
Date of Pronouncement : 21<sup>st</sup> March, 2017.

**ORDER.**

**PER SHAMIM YAHYA, A.M. :**

This appeal by the assessee is directed against the order of learned Principal Commissioner of Income Tax-2, Nagpur dated 10-03-2015 and pertains to assessment year 2010-11. The grounds of appeal read as under :

1. The order passed under section 263 of I.T. Act, 1961 is illegal, invalid and bad in law.
  2. The learned CIT-2 erred in holding that order passed by A.O. u/s 143(3) is erroneous and prejudicial to the interest of revenue.
  3. The learned CIT-2 erred in setting aside the assessment even though due enquiries were made at the time of framing assessment while accepting the claim of expenditure in respect to corporate social responsibility & transmission line expenses.
2. In this case the learned CIT has passed the following order u/s 263 of the I.T. Act :

“Assessment in the above case for A.Y. 2010-2011 was completed u/s 143(3) on 22/02/2013 determining total income at Rs.1,54,854.74 lacs. Perusal of records reveal that assessee debited an amount of Rs.1576.18 lacs to the P&L Account (Schedule-II) on account of expenditure on corporate social responsibility. While completing the assessment u/s 143(3) the AO has disallowed only an amount of Rs.1092.48 lacs out of above stated claim. Thus balance amount of Rs.706.7 lacs incurred on educational institutions and Rs.385.73 lacs on community development and tribal welfare is not examined by the AO from 'the point of view' of disallowability of the claim. These expenses do not fall in the category of Sec. 30 to 36 as well as 37 of the I.T.Act, 1961. AO has not investigated the claim in the light of provisions of the I. T .Act, 1961. As the order has been passed by the AO without examination of the disallowability of expenses on educational institutions, community development and tribal welfare, a show cause notice u/s 263 of I.T.Act,1961 was issued by the CIT-I, Nagpur on 14/08/2014.

02. Similarly it was seen from the record that the assessee has debited an amount of Rs.4508 lacs under the head assets not belonging to the company. This amount is paid to Maharashtra State Electricity Transmission Company Ltd. for diversion of high tension lines at open cast mines of WCL. This item was also not examined by the AO, hence order is erroneous and prejudicial to the interest of revenue. In the show cause notice u/s 263 dated 14/08/2014 this item was also pointed out which made the order erroneous.

03. After change of jurisdiction due to restructuring of the department, a fresh show cause notice was issued to the assessee by this office on 15/01/2015. In compliance to the above, Shri P.S.R.K.Shastri, G.M.Finance and Shri V.L.Narkhede, Senior Manager of WCL, attended and filed written submissions. It is submitted that the expenditure on corporate social responsibility has been an issue of debate in earlier years also and orders passed u/s 263 of I.T.Act,1961 have been cancelled by the Hon'ble ITAT. With regard to the expenditure on assets not belonging to the company, it is submitted that expenditure is incurred for shifting high tension lines so that work of digging of coal could be started. It is claimed that these expenses are allowable u/s 37(1) of I.T.Act, 1961.

04. I have gone through the submissions and find that the AO has neither asked any question related to allowability of expenses on corporate social responsibility nor on assets not belonging to the company. AO has not also discussed anything in the assessment order. No reply is found placed in the record which shows that he allowed the claim without verification and examination of the issues. Moreover the issue of allowability of expenses on corporate social responsibility-is lying before the High Court as the appeal against the order of ITAT u s 263 is filed in High Court.

05. In view of discussions held above, order passed by the AO is considered erroneous insofar as prejudicial to the interest of revenue, hence stands set-aside. AO is directed to give opportunity of being heard to the assessee and pass the order denovo after proper verification.”

3. Against the above order the assessee is in appeal before us.

4. We have heard both the counsel and perused the records. Learned counsel of the assessee submitted that in this case learned CIT has exercised the jurisdiction u/s 263 on two counts, firstly on account of expenditure incurred on community development and tribal welfare under corporate social responsibility and secondly on account of expenditure debited amounting to Rs.4508 lakhs incurred in connection with diversion of high tension lines of Maharashtra State Electrical Transmission Co. Ltd. at open cast mines of W.C.L.

5. Learned counsel of the assessee submitted that the learned CIT has observed that these issues were not examined by the AO. However, learned counsel submitted that this is factually incorrect. As regards the issue of expenditure incurred on corporate social responsibility, learned counsel submitted that the learned CIT in her order has herself observed that out of the expenditure of Rs.1576.18 lakhs on this account the AO has disallowed Rs.1092.48 lakhs. Thus learned counsel submitted that the order of learned CIT itself shows that the issue was duly examined by the AO. Further more learned counsel referred to the questionnaire issued by the AO and the assessee's reply during the course of assessment submitted in the paper book whereby this issue was duly examined. Further learned counsel submitted that the issue of community development and tribal welfare expenditure is already covered in favour of the assessee by the decisions of ITAT in assessee's own cases in earlier years. He further submitted that the Revenue has not appealed against these orders of the ITAT before the Hon'ble High Court. As regards the issue of expenditure of Rs.4508 lakhs on account of diversion of high tension lines of MSETCL at open cast mines of WCL, learned counsel further submitted that this issue was also examined by the AO and the reply was also furnished during the course of assessment. Further more learned counsel submitted that in an

order u/s 154 dated 02-03-2015 the AO has further considered some of the expenditure on this issue and has added back the same. Learned counsel submitted that this order u/s 154 was passed prior to the date of order u/s 263 of the I.T. Act which is 10-03-2015. Hence learned counsel submitted that the issue was duly examined by the AO and it cannot be said that the issue was not examined. Further more learned counsel submitted that the amount was incurred in connection of diversion of high tension lines at open cast mines of WCL. The expenditure was wholly and exclusively incurred to facilitate the mining activity of the assessee company. In these circumstances there is no question of disallowing the expenditure on the ground that the electricity lines belong to Maharashtra State Electricity Transmission Co. Ltd.

6. Per contra learned D.R. relied upon the orders of learned CIT.

7. Upon careful consideration we find that on both the issues the learned CIT has exercised her jurisdiction on the ground that the AO has not examined these issues in the course of assessment. Upon examining the records and the paper book submitted by the assessee we find that the AO has duly issued the questionnaire on both the subjects and the assessee has duly replied. In the notice u/s 142(1) dated 04-10-2012 details of both the items has been sought by the AO in point No. 13 and 20 respectively. Submissions by the assessee placed in the paper book clearly demonstrate that assessee has given due details of explanation. Hence there is no question of learned CIT assuming jurisdiction u/s 263 and holding that the concerned expenditure were allowed without examination by the AO. Lack of appreciation of mind by the concerned authority exercising revisionary power is evident here. Secondly we find that the issue of community development and tribal welfare expenditure has already been decided by the ITAT in favour of the assessee in several decisions of earlier years. Further more we also note that on the issue of diversion of high tension lines the AO has disallowed some expenditure u/s 154 by an order

which is dated prior to the date of learned CIT's order. Hence this makes it also clear that the AO has duly examined this issue. Hence there is no question of learned CIT assuming jurisdiction u/s 263 with regard to the original order and directing for re-examination on the ground that the issue has not been examined earlier. Further more the issue of diversion of high tension lines of open cast mines of WCL is wholly and exclusively connected with facilitating the business of the assessee which is mining. Hence it also cannot be said that the expenditure is not allowable or there can be two opinion in this regard. In these circumstances, in our considered opinion, the order of learned CIT is not at all sustainable and is liable to be quashed. In this regard we note that assessee's counsel has placed reliance upon following case laws :

1. (2011) 141 TTJ 0084 (Del) Vodafone Essar South Ltd. vs. CIT.
2. (2010) 2 ITR 0428 (Del) Gupta International vs. ITO.
3. (1993) 203 ITR 0108 (Bom) CIT vs. Gabriel India Ltd.
4. (2007) 295 ITR 0282 (SC) CIT vs. Max India Ltd.
5. Hon'ble Bombay High Court decision in ITA No. 296 of 2013 in case of M/s Fine Jewellery (India) Ld. Vide order dated 03-02-2015.
6. Hon'ble Allahabad High Court decision in ITA No. 1 of 2015 in the case of M/s Krishna Capbox (P) Ltd.) vide order dated 23-02-2015.
7. ITAT order in ITA No. 241/Nag/2013 in the case of assessee vide order dated 21-08-2015.

8. In our considered opinion these case laws are germane and duly support the case of the assessee. Accordingly in the background of aforesaid discussion and precedent, we quash the order of learned CIT u/s 263 of the I.T. Act.

9. In the result this appeal filed by the assessee stands allowed.

Order pronounced in the Open Court on this 21<sup>st</sup> day of March, 2017.

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER.

Sd/-  
( SHAMIM YAHYA)  
ACCOUNTANT MEMBER.

Nagpur,  
Dated: 21<sup>st</sup> March, 2017.

<b>Copy forwarded to :</b>
1. M/s Western Coalfields Ltd. Civil Lines, Nagpur.
2. J.C.I.T., Range-2, Nagpur.
3. Pr. C.I.T.-2, Nagpur.
4. D.R., ITAT, Nagpur.
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By Order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Nagpur Bench, Nagpur.

Wakode.