

**IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE**

RESERVED ON: 25.11.2021

DELIVERED ON: 14.12.2021

CORAM:

**THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**I.A NO. GA/2/2017(Old No. GA/2021/2017)
In
ITAT 230 of 2017
PRINCIPAL COMMISSIONER OF INCOME TAX, ASANSOL
Vs
M/S. EASTERN COALFIELDS LTD.**

**Appearance:-
Mr. S.N. Dutta, Adv.
Mr. Manabendranath Bandyopadhyay, Adv.
....for the appellant.**

**Mr. J.P. Khaitan, Sr. Adv.
Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
.....for the respondent.**

JUDGMENT***(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)*****ITAT 230 of 2017**

1. This appeal filed by the revenue under section 260 A of the Income Tax Act, 1961 (the act for brevity) is directed against the order dated 27.07.2016 passed by the Income Tax Appellate Tribunal, "C" Bench Kolkata (Tribunal) in ITA No. 462 to 464/Kol/2009 for the Assessment Years 2003-2004, 2004-2005 and 2005-2006.
2. The revenue has raised the following substantial questions of law for consideration: -
 - a) *Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, "C" Bench, was justified in reversing the finding of CIT (Appeals) in holding that depreciation of Rs. 7,19,12,000/- for the A.Y. 2003-04, Rs. 5,82,73,000/- for the A.Y. 2004-05, and Rs. 5,92,06,000/- for the A.Y. 2005-06 respectively claimed separately under the head "Social Overhead" over and above depreciation of Rs. 1,38,03,89,764/- Rs. 1,22,80,02,789/- and Rs. 1,48,84,39,000/- respectively already claimed u/s 32 of the Act as not double claim of depreciation?*
 - b) *Whether of the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, "C" Bench,*

was justified in reversing the finding of CIT (Appeals) in deleting the addition of Rs. 1,35,87,000/- for A.Y. 2003-04 and Rs. 1,50,00,000/- for the A.Y. 2005-06 respectively against 'IICM Contribution' claimed under section 40A(9) of the Act?

- c) Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, "C" Bench, was justified in reversing the finding of CIT (Appeals) in deleting the addition of Rs. 1,09,53,935/- for the A.Y. 2003-04, Rs. 10,29,46,358/- for the A.Y. 2004-05 and Rs. 26,91,71,670/- for the A.Y. 2005-06 respectively on account of closing stock of coal?*
- d) Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, "C" Bench, was justified in reversing the finding of CIT (Appeals) in deleting the addition of Rs. 15,00,000/- for the A.Y. 2003-04, Rs. 25,00,000/- for the A.Y. 2004-05 and Rs. 11,58,000/- for the A.Y. 2005-06 respectively on account of 'Guest House Expenses'?*
- e) Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, "C" Bench, was justified in reversing the finding of CIT (Appeals) in deleting the addition of Rs. 43,80,000/- for the A.Y. 2003-04, Rs. 47,28,000/- for the A.Y. 2004-05 and Rs. 61,31,000/- for the A.Y. 2005-06 respectively on account of 'Grant to sports*

and recreation' being non-incidental to the business of the assessee?

- f) Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, "C" Bench, was justified in reversing the finding of CIT (Appeals) in deleting the addition of Rs. 16,38,000/- for the A.Y. 2003-04, Rs. 67,03,000/- for the A.Y. 2004-05 and Rs. 1,38,23,000/- for the A.Y. 2005-06 respectively on account of 'Environmental Expenditure'?*
- g) Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, "C" Bench, was justified in reversing the finding of CIT (Appeals) in deleting the addition of Rs. 19,97,000/- for the A.Y. 2003-04, Rs. 57,13,000/- for the A.Y. 2004-05 respectively on account of 'Miscellaneous Expenses'?*
- h) Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, "C" Bench, was justified in reversing the finding of CIT (Appeals) in deleting the addition of Rs. 6,28,25,18,000/- on account of 'Current Liabilities'?*
- i) Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, "C" Bench, was justified in reversing the finding of CIT (Appeals) in deleting the addition of Rs. 4,35,22,000/- for the A.Y. 2004-05 on account of 'HRA Expenses Arrear'?*

3. The assessee company filed its return of loss on 21.10.2003 disclosing the total loss of Rs. 97,36,94,328/- which was processed under section 143(1) on 08.01.2004. The assessment was taken up for scrutiny and accordingly notice under section 143(2) was issued on 07.10.2004. Subsequently, notice under section 142(1) along with a questionnaire was issued on 31.12.2004, the case was discussed with the authorized representative of the assessee. The Assessing Officer on considering the following issues completed the Assessment by order dated 30.03.2006. The different heads under which the assessments were completed are as here under:-

- (i) Depreciation
- (ii) IICM contribution
- (iii) Closing Stock of Coal
- (iv) Guest House Expenses
- (v) Grant to Sports and Recreation
- (vi) Environmental Expenditure
- (vii) Hire Charges of bus/cars/ambulances and school bus
- (viii) Miscellaneous expenses under schedule 12(sub heads others)
- (ix) And other liabilities shown under Schedule 8.

4. Aggrieved by the order of assessment, the respondent assessee preferred appeal to the Commissioner of Income Tax (Appeals) (CITA) which was dismissed by order dated 19.01.2009. Aggrieved by the same, the respondent assessee preferred appeal to the tribunal. The

tribunal except for one of the issues namely issue No. (vii) (hire charges of bus, cars, ambulance and school bus) decided all issues in favour of the respondent assessee and so far as issue no. (vii) the matter was remanded to the Assessing Officer for fresh consideration.

5. Aggrieved by the same, the revenue is before us by way of this appeal Mr. S.N. Dutta, Learned Senior Standing Counsel appearing for the revenue contended that the tribunal was not justified in reversing the findings of the CITA and should have confirmed the disallowance of depreciation which was charged to profit and loss account and added back by the assessee itself in the return of income with cogent reasons as the assessee failed to produce any details before the Assessing Officer and also before the CITA. Further, it is submitted that the tribunal committed an error in reversing the findings of the CITA and the deduction claimed as expenditure for contribution to IICM when the same in question is already hit by the provisions of Section 40 A (9) of the Act. Further it is contended that the tribunal ought not to have deleted the addition in respect of closing stock of coal as the assessee failed to produce any evidence to support their contention that there was no saleable value or realisable value of the said closing stock of coal. Further the Learned Standing Counsel contended that the tribunal ought not to have deleted the addition on account of Guest House Expenses as the assessee had failed to produce details or produce any reliable and convincing material to allow such claim. Further the tribunal ought not to have deleted the addition on account of grant to sports and recreation being non

incidental to the business of the assessee. Similarly, the tribunal committed an error in deleting the addition on account of environmental expenditure as no details of such expenditure had been furnished to allow such claim by the assessee. The Learned Senior Standing Counsel contended that the tribunal ought to have confirmed the order passed by the CITA in respect of the miscellaneous expenses as no details for such expenses had been furnished to allow such claims by the assessee. Similarly, is the case in respect of the current liabilities, HRA Expenses Arrear. With the above submissions the Learned Senior Standing Counsel submitted that the order passed by the tribunal is a vitiated on account of perversity and prayed for setting aside the order and answering the substantial questions of law in favour of the appellant revenue.

6. Mr. J.P. Khaitan, Learned Senior Counsel appearing for the respondent assessee submitted that the issues which are now raised by the revenue before this Court are entirely factual and there are no questions of law much less substantial questions of law arising for consideration in this appeal and prayed for dismissal of the appeal filed by the revenue.
7. We have elaborately heard the Learned Counsels for the parties and carefully perused the materials placed on record. As pointed out earlier the Assessing Officer considered the loss return filed by the assessee on various heads which have been enumerated above. The Assessing Officer was of the view that the sufficient documents have not been produced by the assessee to sustain the various claims

under the above heads. The Learned Senior Counsel for the respondent assessee pointed out that all the documents and records were placed before the Assessing Officer as well as before the CITA and the tribunal, the Assessing Officer and the CITA did not properly appreciate the contention put forth by the assessee and rejected their case. Further, the tribunal being as last fact finding authority had elaborately discussed the matter and granted relief to the respondent assessee on the different heads as mentioned above.

8. To examine as to whether the contention advanced by the appellant revenue was justified or whether the respondent assessee are right, we had carefully perused the orders passed by the Assessing Officer, CITA as well as the tribunal. From the order passed by the tribunal we find that the tribunal at the first instance noted the findings recorded by the CITA on all issues, and thereafter proceeded to consider the submissions of the assessee, and the relevant documents which were already available on record and granted relief to the assessee. It may not be necessary for us to deal with all the issues raised as if we are satisfied that the matters are entirely factual, we would refrain from interfering with the order of the tribunal. Only if we are not convinced with the same and we find that substantial questions of law arise for consideration then we have to elaborately discuss each and every issue which have been framed for consideration.
9. The first issue was with regard to the disallowance of depreciation. The CITA confirmed the order of the Assessing Officer on

the ground that the assessee failed to furnish any details either before Assessing Officer or before him and failed to produce any reliable and convincing material to reverse the findings of the Assessing Officer and therefore confirmed the findings of the Assessing Officer. The documents referred to by the assessee were taken note of by the tribunal and after carefully considering the computation of total income for all the three Assessment Years, found that the depreciation claimed in the profit and loss account was depreciation claimed as per the Companies Act 1956 and that depreciation has been added to the profit and loss as per profit and loss account and depreciation as admissible under the provisions of section 32 of the Income Tax Act, 1961 was claimed by providing the relevant depreciation schedule which was given as annexure to the computation of total income in all the three years. In this regard the tribunal noted the depreciation chart at Page No. 3 read with Page Nos. 73 to 75 of the paper book which was filed by the assessee before the tribunal containing the records which were already available on file. On going through the records, the tribunal was satisfied that the assessee has added back the depreciation as per profit and loss account to the loss as per the profit and loss account and thereafter claimed depreciation which is permissible under section 32 of the Act. Thus, the tribunal concluded that the action of the Assessing Officer in disallowing the claim is based on the premise that the assessee has made a double claim which was found to be factually incorrect by the tribunal. Accordingly, the disallowance was directed to be deleted.

10. The second ground relates to the IICM contribution. The CITA while considering the said issue held that it was not ascertainable as to how and under what circumstances such big amounts have been debited as IICM contribution in the profit and loss account, and it is not ascertainable as to whether claim of such expenses was incidental to the business activities carried on by the assessee or not as per relevant provisions of section 40 A (9) and therefore the expenditure was not allowable. The tribunal considered the submissions of the assessee who had pointed out that the Indian Institute of Coal Management (IICM) is a society registered under the Societies Registration Act, it is known as a Centre of Excellence having state of art facilities for providing continuing education and training requirements of different corporate bodies in general and companies in coal sector in particular. Further they contended that the executives at different levels of Coal India Limited and its subsidiaries including the appellant company are sent to IICM for participating in management and technical development programmes, workshops and seminars conducted with a view to improve their skills and expertise. The assessee further stated that their executives are also sent for intensive training. The IICM raised the bill on Coal India Limited, the holding company, which distributes the total expenditure to all its subsidiaries at Rs. 50 per ton of coal produced and the amount of expenditure so apportioned to the appellant company is accounted on the basis of advice received from Coal India Limited. It was further contended that the amount paid by the assessee company to Coal

India Limited is shown under the head Miscellaneous Expenses. The assessee further contended that though these details were furnished to the Assessing Officer and the CITA, however they have stated that there was a note in the tax audit report in Form No. 3CD that contribution to IICM is the sum paid by the assessee as an employer which was not allowable under section 40 A (9). The assessee pointed out that the said observation/findings of the Assessing Officer and CITA is factually incorrect and the tax auditor has not reported that the said sum has to be disallowed under section 40 A (9) of the Act. Further, the Assessing Officer and the CITA failed to take note of the vital facts that IICM is not a firm/trust/association/company set up for the general welfare of the employees. Further, the amount paid by holding company to IICM and subsequent payment made by the assessee company represent fee for participation in training programmes, organised by IICM. Further the contribution made by the assessee company towards training has direct nexus with the nature of business of the assessee and therefore allowable as expenditure wholly and exclusively for the purpose of business of the assessee. The tribunal examined the factual position as well as the documents which were placed by the assessee and held that the said sum paid to IICM was crystalised as liability of the assessee during the relevant previous year and the sum in question is revenue expenditure incurred for training of the employees/executives and the sum is not hit by the provisions of Section 40 A (9) of the Act.

Therefore, the contention advanced by the assessee was accepted and the deduction was directed to be allowed.

11. The next issue is with regard to the addition on account of closing stock of coal. The CITA confirmed the order of the Assessing Officer on the ground that the assessee failed to produce any evidence to prove their contention that there is no saleable value or realizable value of the closing stock of coal. The assessee while challenging the finding contended that on the basis of technical evaluation of coal mixed with Matti the assessee company has valued such stock at NIL, since it is of the view that such coal is not saleable in the open market. The tribunal held that the assessee is justified in taking a decision whether coal mixed with Matti can be sold in the open market or whether it would fetch any price, if sold in the open market and the Income Tax Authorities cannot decide as to whether such coal can be sold in the open market or can be used for other purposes. Therefore, the tribunal held that the value of the coal as determined by the Assessing Officer does not have any basis and accordingly accepted the contention advanced by the assessee. Furthermore, the tribunal pointed out that the technical evaluation based on which the coal mixed with Matti etc. has been valued at NIL by the assessee has not been challenged as incorrect by the revenue authorities. Further it was pointed out that in the event of the coal being mixed with Matti, and any sum realized by the assessee on such sale the same would be offered to tax by the assessee under section 28 of the Act or the same sum brought to tax by the revenue under section 41 (1) of the Act.

12. We have perused the findings recorded by the tribunal on the other issues as well. The tribunal has proceeded to deal with the issues one after another. As noted above while dealing with each of the issue the tribunal has given the gist of the findings of the CITA who concurred with the Assessing Officer thereafter took note of the submissions of the assessee and decided the same for its correctness. While dealing so the tribunal considered the factual position in its entirety and granted relief to the assessee wherever admissible and permissible. Therefore, we are fully satisfied that the case before us is entirely factual and the materials which were available on record were re-examined by the tribunal and relief has been granted to the assessee. The revenue cannot dispute the position of law that the tribunal is the last fact finding authority and this court exercising jurisdiction under section 260 A of the Act is not expected to re-examine the facts and record a different conclusion merely because it may be of the view that different conclusion would be appropriate. The jurisdiction under section 260 A of the Act is to ascertain as to whether any substantial question of law arises for consideration in the appeal and if it is so arises, then decide and answer the substantial questions of law one way or the other. As all the issues are entirely factual and we being satisfied that the tribunal has re-examined the facts and rendered the findings on the above issues after re-examining the records, we are not here to upset such factual findings under section 260 A of the Act.

13. Though the expression “substantial questions of law” is not defined in the Act, the tests laid down by the Constitution Bench of the Hon’ble Supreme Court in *Sir Chunilal V. Mehta and Sons Ltd. Versus Century Spinning and Manufacturing Co. Ltd.* AIR 1962 SC1314, for determining whether a question raised in a case is a “substantial questions of law” or not could be applied. On going through the entire facts placed before us, we find that none of the five tests laid down therein stand satisfied in the case on hand. Thus we concluded, that there are no “substantial questions of law” arising in this appeal.
14. For all the above reasons we find that there is no question of law much less substantial question of law arising for consideration in this appeal. Accordingly, the appeal fails and it is dismissed. Connected miscellaneous petitions, if any are dismissed. No costs.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

(P.A- SACHIN)