Form No.(J2)

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

Present :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

A N D

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

IA NO.GA/1/2017
(Old GA/2346/2017)
ITAT/268/2017

COMMISSIONER OF INCOME TAX, (LARGE TAXPAYER UNITS), KOLKATA
Vs
M/S HINDUSTAN COPPER LIMITED

For the Appellant: ***MR. Smarajit Roy Chowdhury, Adv.***
Mr. Manabendranath Bandopadhyay, Adv.
Mr. Sushil Kuamr Mishra, Adv.

For the Respondent: ***Mr. J. P. Khiatan, Sr. Adv.***
Mr. Sourav Chunder, Adv.
Mr. Biman Kumar Saha, Adv.
Mr. Jayanta Datta, Adv.
Mr. Atanu Mondal, Adv.

Heard on : 10.12.2021

Judgment on : 10.12.2021

T. S. SIVAGANANAM, J. : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 9th December, 2016 passed by the Income Tax Appellate Tribunal, Kolkata "C" Bench (the 'Tribunal' in short) in ITA No.2583/Kol/2013 for the assessment year 2007-08. The revenue has raised the following substantial questions of law for consideration:

(a) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate tribunal, "c" Bench Kolkata erred in law by deleting the excess disallowance of expenditure of Rs.19,00,87,300/- shown under the head "Mine Development Expenditure" without considering the applicability of Section 35E of the Income Tax Act, 1961 ?

(b) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, "C" Bench Kolkata erred in law by holding that the Expenditure aggregating to Rs.62,46,60,000/- shown under "Mine Development Expenditure" as allowable expenditure under Section 37(1) of the Income Act, 1961?

(c) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, "c" Bench Kolkata erred in law in applying Accounting Standard-12 for the particular nature of case without considering the fact that machinery is only restricted to utilized portion of receipt?

(d) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, "C" Bench Kolkata erred in law in holding that the disbursement of the VRS compensation as revenue expenditure and thus they are should not any applicability of in Section 35DDA of the Income Tax Act, 1961?"

We have heard Mr. Smarajit Roy Chowdhury, learned standing Counsel for the appellant/revenue and Mr. J. P. Khaitan, learned senior Counsel for the respondent/assessee.

The two major issues which have been raised as substantial questions of law with regard to disallowance as expenditure shown under the head "Mine Development Expenditure". This disallowance was made by the Assessing Officer which has been reversed by the CIT(Appeal)[CIT(A)] and such order has been upheld by the Tribunal. Dissatisfied with the order passed by the CIT(A) revenue is before us by way of this appeal.

On reading of the impugned order passed by the Tribunal, we find that the issue with regard to Mine Development charges had come out of the earlier assessment years, that is, 2004-05 and 2008-09 and relief was granted to the assessee in their own case by the CIT(A) and such order attained finality since the Committee of Disputes (COD) had not permitted the department to file an appeal against the said order. The Tribunal had taken note of the earlier orders which were noted by the CIT(A) and held that such expenditure was clearly covered under Section 37(1) of the Act.

We find no reasons to interfere with the finding of the Tribunal which in fact had followed the decision in the assessee's own case for the earlier years which had attained finality.

The second issue is with regard to the disallowance of the VRS expenses in terms of Section 35DDA of the Act. The Tribunal noted that the assessee had claimed VRS expenses in the earlier year which was also adjusted with the amount of grant-in-aid receive from Central Government and no disallowance was warranted. This finding of the Tribunal also does not call for any interference.

In the result, the appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

With the dismissal of the appeal, the connected application is also dismissed.

A typographical mistake crept in our order dated 25th November, 2021 in recording the name of the Advocate for the respondent. The names of Mr. J. P. Khiatan, Sr. Adv, Mr. Sourav Chunder, Adv, Mr. Biman Kumar Saha, Adv, Mr. Jayanta Datta, Adv, Mr. Atanu Mondal, Adv. be recorded deleting the name of "Mr. Subash Agarwal, Adv. Let such incorporation be made in our earlier order dated 25th November, 2021.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

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