

O-71

ITAT/155/2022
IA No.GA/2/2022

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

PRINCIPAL COMMISSIONER OF
INCOME TAX, ASANSOL

-Versus-

M/S. EASTERN COALFIELDS LTD.

Appearance:
Ms. Smita Das De, Adv.
...for the appellant.

Mr. Rajeev Kumar Agarwal, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 16th November, 2022.

The Court: This appeal filed by the revenue under Section 260A of the Income Tax Act, is directed against the order dated 24th September, 2020 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA No.985 & 986/Kol/2019 for the assessment year 2012-13.

The revenue has raised the following substantial questions of law for consideration:

- (i) *Whether on the facts and circumstances of the case that the expenses incurred on the activities relating to CSR shall not be deemed to be an expenditure u/s 37 of the income Tax Act, 1961 which deals with allow ability of only such expenditure laid out wholly and exclusively for the purpose of business or profession and not otherwise ?*
- (ii) *Whether on the facts and circumstances of the case that the assessee company's claim of CSR expenses being part of 'Employees Welfare' as negotiated under National Coal Wage Agreement from time to time forms part of business expenditure, is bad in law and not in good fait of 'welfare' as substantiated by disallowability of all such expenses under the head 'CSR' as business expenditure through amendment of Section 37(1) of the Income Tax Act, 1961 in Finance Act, 2013 ?*
- (iii) *Whether on the facts and circumstances of the case that why all such expenses shall not be disallowed by treating it as Capital Expenditure as it mostly caters to creation of new assets of company like hospitals, schools, drinking & sanitation facilities for its employees ?*

We have heard Ms. Smita Das De, learned standing counsel appearing for the appellant/revenue and Mr. Rajeev Kumar Agarwal, learned Advocate for the respondent/assessee.

The short question involved in this case is whether the assessing officer was justified in making a disallowance

with regard to the Corporate Social Responsibility (CSR) expenses incurred by the assessee. The sole reason for which the assessing officer disallowed part of such expenses was on the ground that the expenses under the relevant head could not be verified for want of details. The assessee carried the matter on appeal before the Commissioner of Income Tax (Appeals), Asansol (CIT(A)) and placed all materials in support of their contention that they are bound to undertake certain works as part of CSR and this arose under the National Coal Wage Agreement and it is a contractual obligation on the part of the assessee. However, the CIT(A) did not agree with the assessee for the self-same reason as mentioned by the assessing officer that details could not be verified. The assessee filed appeal before the Tribunal.

On going through the order passed by the learned Tribunal, we find that the Tribunal has made an elaborate exercise to consider the factual matrix and noted that the assessee was bound to comply with the obligation. National Coal Wage Agreement which is a joint bi-partite agreement for the coal industries dated 15th July, 2005. That apart, the learned Tribunal has noted that similar expenses incurred by another public sector undertaking like that of the respondent/assessee namely, Southern Coal Fields, where relief was granted by the learned Tribunal in the case of *Southern*

Coalfields vs. JCIT reported in 260 ITR (AT) 1. Accordingly, the appeal stood allowed. Aggrieved by the same, the revenue is before us.

After elaborately hearing the parties for the parties and carefully perusing the materials placed on record, we fully subscribe to the view taken by the learned Tribunal. We support such conclusion for the following reasons:

It is not in dispute that sufficient material was available on the file at the time when the assessment was done by the assessing officer under Section 143(3) of the Act. The annual report of the respondent for the assessment year 2011-12 clearly shows what are the activities undertaken under CSR during the said year. Furthermore, the audited final statement for the financial year 2011-12 also shows that the welfare expenses forms part of it. More importantly, the Government of India has framed guidelines on Corporate Social Responsibility for Central Public Sector Enterprises and every public sector enterprise is bound to formulate a policy in terms of the said guidelines issued by the Government of India which has been down by the respondent/assessee by framing its policy, copy of which has been placed before us for consideration. Thus, it is clearly seen that there is an obligation on the respondent/assessee to fulfil such responsibility which is not only to take care of his employees but also to rehabilitate the

entire area where operations are being carried on by the respective public sector undertaking. The decision rendered in the case of *Commissioner of Income Tax vs. Tamil Nadu Tourism Development Corporation Ltd.* reported in [2016] 71 taxmann.com 333 (Mad.) will aid the assessee's case, wherein the expenses incurred by the said assessee for maintenance of Thiruvalluvar statue at Kanyakumari was held to be allowable deduction under Section 37(1) of the Act. On more or less identical facts the High Court of Gujarat in the case of *Commissioner of Income Tax vs. Gujrat Narmada Valley Fertiliser and Chemicals Ltd.* reported in [2020] 121 taxmann.com 82 (Guj.) dismissed the revenue's appeal affirming the relief granted to the assessee therein by the learned Tribunal. In the said case the question was whether the assessee-company, a State Government undertaking, which had incurred expenses towards contribution/donation made to educational institution, trusts, local bodies for discharging its corporate social responsibility was allowable as a deduction under Section 37(1) of the Act. The Hon'ble Court, after elaborately considering various decisions on the point held as follows:

"10. Thus, the sum and substance of the principle discernible from the above noted decisions is that the concept of business is not static. It has evolved over a period of time to include within its fold the concrete expression of care and concern

for the society at large and the people of the locality in which the business is located in particular. The assessee-company in the case on hand is engaged in the business of manufacturing chemicals and chemical products. It has been fairly admitted by the learned counsel appearing for the assessee-company that its client is a polluting company. The assessee-company is conscious of its social obligations towards the society at large. The assessee-company is a government undertaking and, therefore, is obliged to ensure all the protective principles of State policy as enshrined in the Constitution of India. The moneys has been for various purposes as enumerated above cannot be regarded as outside the ambit of the business concerns of the assessee. The approval needs to be that of a practical and prudent businessman rather than from the Revenue's strict classification of a right. The correct test should be of commercial expediency and not whether the payment was compulsory for the assessee to make or not."

At this juncture, it would be immensely beneficial to refer to the decisions of the hon'ble Supreme in the case of *S.A. Builders Ltd. vs. Commissioner of Income Tax* reported in [2007] 158 Taxman 74 (SC) wherein it was held that an expenditure made may not have been incurred under any legal obligation, yet it is allowable as business expenditure if it is incurred on the ground of commercial expediency.

The facts of the case on hand is much better as there was a legal obligation on the part of the respondent/assessee to incur such expenses. Thus, we find that the learned Tribunal rightly allowed the assessee's appeal and granted relief.

Accordingly, appeal filed by the revenue (ITAT/155/2022) is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the connected application for stay (IA No.GA/2/2022) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)