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

ITAT 199 OF 2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX 1
-Versus-
SHRI RAMESH PRASAD SAO

BEFORE:

The Hon'ble T.S. SIVAGNANAM, CHIEF JUSTICE

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 4th October, 2023

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

The Court : This appeal has been filed by the revenue challenging the order passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata in ITA 572/Kol/2019 for the assessment year 2014-15.

There is a delay of 965 days in filing the appeal. Notice has been served on the respondent assessee but none appears for respondent assessee. Though we are not fully convinced with the explanation offered, yet taking note of the fact that this appeal had been preferred by the Income Tax department under 260A of the Income Tax Act, 1961 (the Act) and we are required to consider as to whether any substantial questions of law arise for

consideration, we exercise discretion in the matter and condone the delay in filing the appeal.

The assessee is a company engaged in the business of mining iron ore and manganese. It filed its return of income for the assessment year under consideration i.e. A.Y. 2014-15 and the assessment was completed under Section 143(3) of the Act by order dated 29th December, 2006. During the course of assessment proceedings the Assessing Officer raised a query with regard to the proposal to disallow the periphery development expenses. The only ground on which such a proposal was made is by referring to a letter dated 16th August, 2008, issued by the Collector and Chairman, Periphery Development Society, Keonjhar, in which it was stated that all mining houses have to pay 5% of their net profit as contribution towards periphery development of the concerned District. The Assessing Officer questioned the debit made by the assessee in the profit and loss account amounting to Rs.4,22,38,097/- and this was in excess of the amount which was required to be paid in terms of the letter of the Periphery Development Society. Admittedly, the assessee did not furnish any explanation to the query raised by the Assessing Officer. However, the assessee furnished the ledger copy of its expenses. The Assessing Officer proceeded to confirm his proposal and accordingly disallowed a sum of Rs.4,22,38,097/-. The assessee carried the matter on appeal before the Commissioner of Income Tax (Appeals) 1, [CIT(A)] contending that the periphery development expenses which were incurred are

exclusively for the purpose of business and the same are fully supported by vouchers and receipts and they are necessary for the smooth conduct of the business and to maintain cordial relationship with the local villagers where mining activity is being done. Further, it was contended that such expenses are incurred for the territorial welfare as well as the welfare of the local people either for development of roads, construction of well, distribution of clothes, flood relief etc. to the local people as per the direction of the local administration and taking into consideration the welfare of the locality. Before the CIT(A) it was contended by the assessee that the periphery development expense was nothing but a corporate social responsibility (CSR) of the assessee company which was carrying out the mining operations in Joda, Orissa State. Further, it was mandatory for the mining industries to look after the development of the area in which mines were operating on account of creating employment opportunities, providing educational facilities to the children etc. Further, it was contended that the expenses incurred by the assessee were on welfare schemes only namely, malaria eradication, distribution of mosquito nets, construction of mandaps etc. which were wholly and exclusively for business purposes. The CIT(A) after considering the facts held that the activity done by the assessee is undoubtedly a CSR activity and their business expenditure. Further, the CIT(A) observed that the expenditure is also part of ledger account of the assessee and the expenditure is incurred in consultation with the State Government Authorities. Furthermore, the CIT(A) noted that the

Assessing Officer has not doubted any of the vouchers and memos which were submitted by the assessee to substantiate the nature of expenses incurred by them. Further, after taking note of the decision of the Hon'ble Supreme Court in *Thakur Prasad Sao Vs. Member, Board of Revenue*, in Civil Appeal No.819-823, 824-827, 1105 of 1975, dated 18th December, 1975, the appeal filed by the assessee was allowed. The revenue carried the matter on appeal before the Learned Tribunal. The Learned Tribunal after reconsidering and re-appreciating the facts of the case also noted that it is mandatory for the assessee, which is a mining industry, to look after the development of the area in which the mines were operating to create employment opportunities, provide educational facility to children etc. Furthermore, the expenses incurred for the welfare schemes were also taken into consideration and found to be justified. The Learned Tribunal also noted that the expenditure having been claimed by the assessee as of deduction for the assessment year 2014-15 and the mining which was made by adding explanation to Section 37(1) of the Act would not be applicable as it was with effect from the assessment year 2015-16.

Thus, on a factual re-appraisal the Learned Tribunal was satisfied that the CSR expenditure incurred prior to the assessment year 2015-16 are allowable as business expenditure as the same are wholly and exclusively incurred for the purpose of business. Thus, on being satisfied with the factual matrix the Learned Tribunal dismissed the appeal filed by the revenue.

Thus, we find that in this appeal no question of law, much less substantial question of law, arises for consideration.

Accordingly, the appeal fails and is dismissed.

The connected applications also stand dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)