

ITA/133/2012

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX,
KOLKATA -II, KOLKATA

-Versus-

BIRLA CORPORATION LTD.

BEFORE :

THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI

And

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

Date : 16th January, 2024

Appearance :

*Sri Vipul Kundalia, Adv.
Smt. Oindrilla Ghosal, Adv.
...for the appellant.*

*Sri J.P. Khaitan, Sr. Adv.
Sri Sanjoy Bhaumik, Adv.
Smt. Swapna Das, Adv.
...for the respondent.*

1. Heard Sri Vipul Kundalia, learned senior standing counsel for the appellant/revenue and Sri J.P. Khaitan, learned senior advocate assisted by Sri Sanjoy Bhaumik and Smt. Swapna Das, learned advocates for the respondent/assessee.
2. This appeal was admitted by this Court by an order dated 30.11.2012 on the following substantial questions of law:

"1) Whether in view of the facts and circumstances of the instant case the Tribunal erred by not considering that subsidies which may be used freely,

are operational subsidies and not capital subsidies and thus the same are taxable as revenue income?

2) Whether the Hon'ble ITAT has erred in law as well as on facts by deleting the disallowance made by Assessing Officer on account of claim of deduction of proportionate amount of lease hold land written off of Rs.20,50,052?

3) Whether the Hon'ble ITAT has erred in law as well as on facts by deleting the addition made by the Assessing Officer on account of profit on sale of machinery of a closed down unit for Rs.2,41,44,000/-?

4) Whether the learned Tribunal was incorrect in rejecting the appeal preferred by the Revenue Department, on the issue of treatment of accounting profit from sale of certain depreciable fixed assets chargeable of tax on the basis that the accounting treatment cannot effect the operation of the statutory provisions contained in Section 43(6) of the said Act and for the purpose of income tax the block of assets concept was followed as per the statutory provisions?"

Substantial Question of Law No.1

3. So far as the afore-quoted substantial question of law no.1 is concerned, we find that this issue has been decided in favour of the revenue and against the assessee by a judgment and order dated 18.12.2023 in ITA No.158/2010 (Commissioner of Income Tax, Kolkata - II, Kolkata Vs. M/s. Birla Corporation Limited). Following the aforesaid judgment, the substantial question of law

no.1, as afore-quoted, is answered in favour of the revenue and against the assessee. The present appeal of the revenue stands allowed in respect of the substantial question of law no.1 and to that extent the impugned order of the Tribunal dated 29.7.2011 in ITA No.1936(Kol) of 2010 (Assessment Year 2006-07) is set aside.

Substantial Question of Law No.2

4. Briefly stated facts of the present case having bearing on the afore-quoted substantial question of law no.2 are that the respondent/assessee had acquired mining lease of 9.99 kilometer land in village- Chittorgarh for mining of lime stone for use as raw material for manufacture of cement. To carry out mining operation/business operation, in terms of the lease deed as well as pursuant to the provision of Section 89 of the Rajasthan Land Revenue Act, the compensation for damages caused to the surface of the lease area or for infringement of rights of any person by the occupation or disturbance of the surface of such land, was to be paid. In the matter of the respondent/assessee, the compensation for damages caused to the surface or infringement of rights was determined by the Collector and it was paid by the assessee. Accordingly, the respondent/assessee claimed Rs.20,55,052/- as expenditure deductible from income, which was disallowed by the assessing officer relying

upon a decision of the Hon'ble Supreme Court in the case of *Enterprising Enterprises v. Deputy Commissioner of Income Tax*, reported in (2007) 293 ITR 437. Aggrieved by the aforesaid disallowance made by the assessing officer, the respondent/assessee filed an appeal before the Commissioner of Income Tax (Appeals). Before the CIT(A), the respondent/assessee restricted its claim for deduction to Rs.19,38,232/-. The CIT(A) had set aside the disallowance made by the assessing officer and accepted the contention of the assessee that the compensation paid was an expenditure incidental to the business activity. Aggrieved by the order of the CIT(A), the revenue had filed the ITA No,.1936(Kol)/2010 which was dismissed by the impugned order passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata.

5. Learned senior standing counsel for the revenue has submitted that the compensation paid by the assessee to land owners for damage caused to the surface of the land falling in mining lease area for carrying out mining operation or allied activity, is a capital expenditure and not a business expenditure and the CIT(A) has committed a manifest error of law to set aside the disallowance of Rs.19,38,232/-.
6. Learned counsel for the respondent/assessee has submitted that once it is undisputed that the compensation paid to land owners was for carrying out business activity by the

assessee in mining lease area, then necessarily it is an expenditure for carrying out business operation. Therefore, the CIT(A) and the Tribunal have not committed any error of law to hold that the aforesaid amount is a business expenditure and its deduction from income was lawfully claimed by the respondent/assessee. Therefore, the appeal of the revenue deserves to be dismissed on this question and the question deserves to be answered in favour of assessee and against the revenue.

7. We have carefully considered the submissions of learned counsel for the parties and perused the records of the appeal.
8. It is undisputed that the assessee acquired a mining lease of 9.99 kilometers situated in village- Chittorgarh for obtaining lime stone used as raw material for manufacture of cement. To carry out the mining operation/business activity, the assessee has paid the amount in question to land owners for damage caused to the surface of the land or for infringement of rights of land owner by conducting mining operations and the business operations. The amount paid by the assessee was determined by the Collector in terms of the statutory provision of Rajasthan Revenue Act read with the Rajasthan Land Acquisition Act. The event to pay compensation arose to the assessee only on account of damage caused to the surface of the land falling in

mining lease area during mining operation/business operation. There was no requirement to pay had there been no damage caused to the surface of the land by mining/business operation. Thus, the payment in question made by the respondent/assessee was in the nature of expenditure for carrying out business operations. No interest in land has been acquired by the respondent/assessee by payment of such compensation. Thus, the payments are in the nature of incidental expenditure to conduct the mining and business operation. Therefore, the expenditure so incurred by the respondent/assessee is revenue in nature. Consequently, the CIT(A) and the Income Tax appellate Tribunal have not committed any error of law to hold the aforesaid expenditure of Rs.19,38,232/- as revenue in nature and accordingly allowed the deduction.

9. The judgment of the Hon'ble Supreme Court in the case of *Enterprising Enterprise (supra)* relied upon by learned counsel for the appellant has no bearing on facts of the present case inasmuch as the controversy involved in that case was as to whether the lease rent paid by the mining lessee for acquiring leasehold right for extracting minerals from mineral bearing land would be a capital expenditure or a revenue expenditure ? In the present set of facts there is no such controversy and, instead, the controversy is with regard to the expenditure in the

form of compensation incurred by the respondent/assessee during the course of mining/business operation. Therefore, the judgment relied upon by the learned counsel for the appellant is clearly distinguishable and is of no help.

10. In view of the aforesaid, the substantial question of law no.2 is answered in favour of the assessee and against the revenue. To this extent, the appeal of the revenue deserves to be dismissed.

Substantial Question of Law Nos.3 & 4

11. These two substantial questions of law are interconnected. Briefly stated facts having bearing on the substantial question of law nos.3 and 4 are that the respondent/assessee reduced the written down value of its block assets by Rs.2,41,44,000/- in terms of Section 43(6)(c)(i)(B) of the Income Tax Act, 1961. The aforesaid amount represented the sale of part of some block assets. Section 43(6)(c)(i)(B) is reproduced below:

43. Definitions of certain terms relevant to income from profits and gains of business or profession.-

(1) ...

(6) "written down value" means -

(a)...

(b)...

(c) in the case of any block of assets,-

(i) in respect of any previous year relevant to the assessment year commencing on the 1st day of April, 1988, the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year and adjusted,-

(A)...

(B) by a reduction of the moneys payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year together with the amount of the scrap value, if any, so, however, that the amount of such reduction does not exceed the written down value as so increased;"

12. Thus, reducing the block assets by the amount in question representing the sale of some of the assets out of the block assets is in terms of the afore-quoted provisions of Section 43(6)(c)(i)(B) of the Act, 1961 which permits reduction of money in respect of any asset falling within that block which is sold or discarded or demolished or destroyed during the previous year together with amount of scrap value, if any, so, however, that the amount of such deduction does not exceed the written down value as so increased. The deduction by the amount in question is undoubtedly under the aforesaid provisions of Section 43(6)(c)(i)(B) of the Act, 1961. Therefore, the CIT(A)

and the Income Tax Appellate Tribunal have not committed any manifest error of law to reduce the sale proceeds from the written down value and allowed the depreciation on reduced written down value.

13. In view of the aforesaid, the substantial question of law nos.3 and 4 are answered in favour of the assessee and against the revenue. To this extent the appeal deserves to be dismissed.
14. For all the reasons afore-stated, the substantial question of law no.1 is answered in favour of the revenue and against the assessee. The substantial question of law nos.2, 3 and 4 are answered in favour of the assessee and against the revenue.
15. Thus, the appeal (ITA/133/2012) is partly allowed to the extent indicated above.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)