

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'D', KOLKATA

[Before Shri P.M. Jagtap, AM and Shri S.S. Viswanethra Ravi, JM]

I.T.A. No. 738/Kol/2017
Assessment Year: 2013-14

M/s. Misrilall Mines Pvt. Ltd......*Appellant*
27A, Camac Street,
Kolkata - 700 016.
[PAN : AABCM 9928 P]

DCIT CIRCLE 5(1) Kolkata.....*Respondent*
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata - 700 069.

Appearances by:

Shri R.C. Gupta, AR appearing on behalf of the Assessee.

Shri A. Bhattacharjee, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : April 12, 2018

Date of pronouncing the order : June 15, 2018

ORDER

Per P.M. Jagtap, AM

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 2, Kolkata dated 30.01.2017 and the solitary issue involved therein relates to the disallowance of Rs. 36,92,842/- made by the AO and confirmed by the Ld. CIT(a) on account of peripheral development expenses.

2. The assessee in the present case is a company which is engaged in the business of mining, processing and export of chrome ore and manufacturing and export of ferro alloys. The return of income for the year under consideration was filed by it on 01.03.2014 declaring a total income of Rs. 34,78,59,899/-. In the said return, expenses incurred on peripheral development amounting to Rs. 36,92,842/- were claimed by the assessee as deduction. In this regard, it was

explained on behalf of the assessee before the A.O. that as per the Companies Act, the companies with a net worth of more than Rs. 500 crore or revenue of more than Rs. 1000 crore or net profit of more than 5 crore are required to spend 2% of their average net profit of the preceding 3 years on Corporate Social Responsibility (CSR) activities. On perusal of the scheme of the CSR, the A.O. noted that reserve was to be created by such companies from the net profit and it was not mandatory to spend the reserve so created during the year itself. He held that the creation of such reserve was appropriation of profits and even the utilisation of reserves created from profits was not allowable as business expenditure. He also held that the expenses incurred by the assessee on peripheral development as part of CSR were mainly incurred for construction of schools which was capital in nature. He also observed that the payments made by the assessee for construction of toilets and water supply, electrification of some school could not be considered as expenditure wholly or exclusively incurred for the purpose of assessee's business. He also relied on Explanation 2 to Section 37 inserted by the Finance Act whereby it was declared that any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be expenditure incurred by the assessee for the purpose of business or profession. He held that even though the said explanation was inserted in the statutory effect from 01.04.2015, the spirit of the same was to be considered in deciding the issue relating to allowability of CSR expenses. He accordingly disallowed the expenses of Rs. 36,92,842/- incurred by the assessee on peripheral development.

3. The disallowance made by the A.O. on account of peripheral development expenses was challenged by the assessee in the appeal filed before the Ld. CIT(A). During the course of appellate proceedings before the Ld. CIT(A), the following submissions were made on behalf of the assessee company in support of its claim for deduction on account of peripheral development expenses:

“The view of the assessing officer that the peripheral development and CSR expenses to the tune of Rs. 21,73,311 incurred for the construction of school are capital in nature which is not correct. The said expenditure cannot be treated as capital in nature as the neither the ownership of the school belong to the company nor it has any control over the running of the school expenditure for construction of a block by way of addition to the existing school building located in a village in the vicinity of the mines were incurred for the benefit of its workers and general public. Hence when the company does not own the school the block constructed in the said school cannot be considered as capital asset of the building. Further the said expenditure is also not of personal nature and has been incurred for the welfare of the workers and general public. Hence the peripheral development expenditure and CSR expenses not being of capital in nature and not personal expenditure nature and has been expended wholly and exclusively for the purposes of the business is allowable as deduction under section 37(1) of the Income Tax Act.

As per the direction of the local administration and department of mines company is under obligation to incur expenditure for the welfare of its employees and the residents residing in the adjoining areas where its mine is situated. The social welfare expenses incurred by the company were necessitated by the business considerations and expenditure. Hence the peripheral development and CSR expenses incurred by the company are wholly and exclusively for the purposes of the business cannot be disallowed under section 37(1) of the I.T. Act.

It is also not justified to apply Explanation 2 to Section 37(1) of the Income Tax Act inserted by the Finance Act, 2014 w.e.f. 01.04.2015 which is not retrospective. Hence it does not apply in the assessment year 2013-14.

It is conclusion any expenditure incurred which not in the nature of personal or of capital in nature and incurred wholly and exclusively for

the business purpose for the company to allowable under section 37(1) of the Companies Act.”

4. Reliance was also placed by the assessee on decision of Raipur Bench of this Tribunal in the case of ACIT vs Jindal Power Ltd. rendered on June 21, 2016 wherein it was held that expenditure on corporate social responsibility though voluntary, was allowable as business expenditure for A.Y. 2008-09 and the Explanation 2 to Section 37(1) inserted with effect from 01.04.2015 was not retrospective. The Ld. CIT(A) did not find merit in the submissions made by the assessee and proceeded to confirm the disallowance made by the A.O. on account of peripheral development expenses by adopting the same reasons as given by the A.O. in the assessment order. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the expenditure on peripheral development in question was incurred by the assessee as a part of corporate social responsibility as per the scheme framed under the Companies Act. As submitted by the learned counsel for the assessee, the said expenditure was actually incurred by the assessee during the year under consideration and it was not a creation of reserve by debit to the profit and loss account as alleged by the A.O. while treating the same as appropriation of profits. As a matter of fact, such expenditure on peripheral development as a part of CSR was incurred by the assessee even in the earlier years and the same was allowed by the A.O. even in the assessment made under

section 143(3) vide an order dated 31.03.2014 for A.Y. 2012-13. As regards the observation of the A.O. that the expenditure incurred for construction of schools, electrification of schools etc., it is submitted on behalf of the assessee before the Ld. CIT(A) as well as before the Tribunal that the said expenditure cannot be treated as capital in nature as neither the ownership of the school belonged to the assessee nor it had any control over the running of school. The said expenditure for construction of a block by way of addition to the school building located in a village in the vicinity of mines was incurred for the benefit of its workers and general public. As regards the reliance of the Assessing Officer placed on Explanation 2 to Section 37 of the Income Tax Act, the Raipur Bench of this Tribunal has held in the case of Jindal Power Ltd. (supra) that the said explanation inserted by the Finance Act, 2014 with effect from 01.04.2015 is not retrospective. Keeping in view all these aspects of the matter, we are of the view that the action of the A.O. in disallowing the claim of the assessee for peripheral development expenditure as a part of CSR was not well founded and the Ld. CIT(A) was not justified in confirming the said disallowance. We, therefore, delete the said disallowance and allow this appeal of the assessee.

5. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 15th June, 2018.

Sd/-

(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 15/06/2018
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Misrilall Mines Pvt. Ltd., 27A, Camac Street, Kolkata – 700 016.
2. DCIT, Circle 5(1), Aayakar Bhawan P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata