

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER

ITA Nos.4155 & 4156/Del/2019
Assessment Years: 2014-15 & 2015-16

Bokaro Power Supply Co. Pvt. Ltd., 4 th Floor Ispat Bhavan, Lodhi Road, New Delhi 110003 PAN AABCB8976G	vs.	Addl. CIT Special Range- 2, New Delhi 110002
(Appellant)		(Respondent)

For Assessee :	Shri M.P. Rastogi, Advocate
Revenue For :	Shri Kanav Bali, Sr. DR

Date of Hearing :	30.11.2022
Date of Pronouncement :	13.12.2022

ORDER

PER CHANDRA MOHAN GARG, J.M.

These appeals filed by the assessee is directed against the order dated 22.02.2019 of the Ld. CIT(A), New Delhi, relating to Assessment Years 2014-15 & 2015-16.

2. The grounds of appeal raised by the assessee read as under:-

“1.1 The Learned CIT(A) has erred in confirming disallowance of Corporate Social Responsibility (CSR for short) expenses of Rs. 95.10 Lakhs-incurred under the directions of DPE Govt. of India requiring Companies to spend a prescribed percentage of its profits on CSR-and also made mandatory under the Companies Act 2013.

1.2 The learned CIT(A) has erred in confirming disallowance of CSR expenses of Rs. 95.10 lakhs- in utter disregard to the appellate decisions holding that Explanation 2 to section 37(1) of the Act is not applicable to years till A.Y. 2015-16.

Ground nos.2 & 3 are general in nature.

3. Learned counsel of the assessee submitted a copy of the Tribunal order dated 25.02.2020 in ITA No. 3647/Del/2017 for A.Y 2013-14 in assessee's own case and submitted that under identical facts and circumstances, identical issue has been decided in favour of the assessee by observing that the Explanation 2 to section 37(1) of the Act is applicable from A.Y. 2015-16 and onwards and not prior to the amendment, therefore the identical ground of the assessee for A.Y. 2013-14 has been decided in favour of the assessee. Replying to the above the Ld. Senior Departmental Representative although strongly supported the orders of the

authorities below. However, in all fairness, he did not controvert that the identical has been decided in favour of the assessee. In assessee's own appeal for A.Y. 2013-14 by the coordinate bench of the Tribunal by the order dated 25.02.2020.

4. We find it appropriate and necessary to reproduced the relevant part of the Tribunal for A.Y. 2013-14 which read as follows:-

5. Ld. CIT(A) in so far as disallowance of CSR expenses is concern held that though these expenditure may incur as per the guidelines issued from Bureau of Public Enterprises, but there were no commercial expediency and after invoking Explanation 2 to Section 37(1) and held that Assessing Officer was justified in making the disallowance. Similarly, he has confirmed the disallowance of interest on TDS default.

6. Before us, Id. counsel for the assessee submitted that first of all, Explanation 2 to Section 37 has been brought in the statute from 01.04.2015, that is, from the assessment year 2015-16 and hence such an expense cannot be disallowed for prior assessment years. He further submitted that, various Tribunals have held that these expenses are allowable expenses. In support, Id. counsel placed reliance upon the decision of Delhi Bench in the case of The National Small

Industries Corporation Ltd. in ITA No. 1367/Del/2016 and NTPC-SAIL Power Company Pvt. Ltd. vs. ACIT in ITA No.5687 and 6501/Del/2014.

7. Regarding interest u/s. 201(1A), the Id. counsel submitted that, assessee has not claimed the TDS and in fact already fresh form 26AS has been issued which has been rectified and no default has been found. In support, he drew our attention to the revised form 26AS placed at the paper book from pages 67 to 69. Thus, no interest should be charged when there is no default.

8. On the other hand, Id. DR has strongly relied upon the order of the Ld. CIT (A) and submitted that CS expenses cannot be held to be for the purpose of business and they have specifically prohibited in view of Explanation-2 to Section 37(1).

9. After considering the rival submissions and on perusal of the relevant findings given in the impugned orders and material placed on record, we find that assessee is a public sector undertaking and being a PSU, Government of India has directed that certain specified percentage of annual profit should be spent for achieving the national objectives / goals as their social responsibilities. The Bureau of Public Enterprises, Government of India, which is authorized to direct the PSUs had issued direction to spent specified percentage of the profit for CSR. Assessee, being a PSU, has to follow instruction and carry out

such responsibilities. Incurring of such expenditure has been allowed as revenue expenditure by following various

High Court judgments:-

- (i) CIT vs. Madras Refineries Ltd., (2004), 266 IT 170 (Mad.)*
- (ii) CIT vs. Kamal & Co., (1993) 203 ITR 1038 (Raj.)*

Further, there are various decisions of ITAT that such expenditure are allowable as business expenditure and it has been held that Explanation 2 to Section 37(1) is applicable from Assessment Year 2015-16 and not prior to amendment. Thus, we hold that such an expenditure in the Assessment Year 2013-14 cannot be disallowed by invoking the Explanation 2 to Section 37(1) as has been held by the Ld. CIT(A), and therefore, the addition made by the Assessing Officer is directed to be deleted.

5. Respectfully following the order of coordinate bench of ITAT Delhi for A.Y. 2013-14 (supra). We hold that the Explanation 2 to section 37(1) of the Act is applicable from A.Y. 2015-16 and onwards and not prior to the amendment including A.Y. 2014-15, therefore ground no. 1.1 & 1.2 are allowed.

Assessee Appeal for A.Y. 2015-16

6. The grounds of appeal raised by the assessee read as under:-

“1.1 The Learned CIT(A) has erred in confirming disallowance of Corporate Social Responsibility (CSR for short) expenses of Rs. 84.92 Lakhs-incurred under the directions of DPE Govt. of India requiring Companies to spend a prescribed percentage of its profits on CSR-and also made mandatory under the Companies Act 2013.

1.2 The learned CIT(A) has erred in confirming disallowance of CSR expenses of Rs. 84.92 lakhs- in utter disregard to the appellate decisions holding that Explanation 2 to section 37(1) of the Act is not applicable to years till A.Y. 2015-16.

2. The leaned CIT(A) has erred in upholding the interest charged u/s. 234A, without appreciating to submit audit report in Form 3CEB and thus the due date u/s. 139(1) is 30th November.

Ground nos. 3 & 4 are general in nature.

7. The learned counsel for the assessee regarding ground no. 1.1 and 1.2 submitted that the Explanation 2 to section 37(1) of the Act is applicable for A.Y. 2015-16, therefore assessee does not pressed ground no. 1.1 and 1.2 and hence the same are dismissed as not pressed.

Ground No. 2

8. In the written submissions the assessee has also agitated second ground of appeal regarding charging of interest of Rs. 48,069/- u/s. 234 A of the Act and submitted that the company has electronically uploaded form 3CEB on 30th November 2015, vide acknowledgment No. 89597074130115, as well as the Income Tax Return on same date which are within the due date prescribed in Explanation 2 to section 139(1) of the Act. Therefore interest u/s. 234(A) has been charged erroneously assuming the date of filing of return as 30.09.2015.

9. Replying to the above the Ld. Senior D.R. supported the orders of the authorities below.

10. On carefully consideration of submissions of the assessee undisputedly assessee company is a joint venture company owned equally 50% each by Steel Authority of India Ltd (SAIL) and Damodar Valley Corporation Ltd (DVC) which are Central Public Sector undertakings. Therefore due date for filing of return as per Explanation 2 to section 139(1) of the Act for A.Y. 2015-16 was 30.09.2015. This fact has been controverted by the Ld. Senior D.R. that the company has electronically uploaded its return of income

and from 3CEB on 30.09.2015, as also has been mentioned in assessment order para 1. Therefore interest u/s. 234A of the Act is not liable of the assessee hence ground no 2 is allowed.

6. In the result, appeals of the assessee are allowed. .

Order pronounced in the open court on 13.12.2022.

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated 13th December, 2022.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi

		Date
1.	Draft dictated on	09.12.2022
2.	Draft placed before the author	09.12.2022
3.	Draft placed before the other Member	.12.2022
4.	Approved Draft comes to the Sr.PS/PS	.12.2022
5.	Order uploaded on	.12.2022
6.	File sent to the Bench Clerk	.12.2022
7.	Date on which file goes to the Head Clerk.	
8.	Date on which file goes to the AR	
9.	Date of dispatch of Order.	