

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI

BEFORE SHRI O. P. KANT, ACCOUNTANT MEMBER
AND
SHRI K. N. CHARY, JUDICIAL MEMBER

ITA No.1859/DEL/2018
A.Y. 2014-15

NTPC-SAIL Power Co. Pvt. Ltd.
4th Floor, NBCC Tower, 15, Bhikaji
Cama Place, New Delhi
PAN No.AABCN5467A

Vs. ACIT
Circle - 18 (2)
New Delhi

Appellant by : Sh. M. P. Rastogi, Advocate
Respondent by : Sh. Gaurav Pundir, Sr. DR

Date of Hearing : 16.08.2021
Date of Pronouncement : 27.08.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 12/02/2018 passed by the Ld. Commissioner of Income-tax (Appeals)-6, Delhi [in short the Ld. CIT(A)] for assessment year 2014-15 raising following grounds:

- 1. The Learned CIT(A) has erred in confirming the disallowance of Rs.169.55 lakhs on Corporate Social Responsibility (CSR for short) by*

AO, the CSR expenses incurred under the directions of BPE Govt. of India requiring Companies to spend a prescribed percentage of its profits on CSR- and now also made mandatory under the Companies Act.

2. That the appellant seeks leave to add, amend, alter, abandon or substitute any of the above grounds at the time of heavy of appeal.

2. Briefly stated facts of the case are that the assessee company is a joint-venture company owned equally by NTPC Ltd and steel Authority of India. Both these joint-venture partners are public sector undertaking owned by Government of India. For the year under consideration, the assessee filed return of income on 26/09/2014 declaring total income of Rs.350,86,03,340/-. The return of income filed by the assessee was selected for scrutiny assessment. The assessment under section 143(3) of the Income-tax Act, 1961 (in short the Act) was completed on 16/12/2016 after making certain disallowances. On further appeal the Ld. CIT(A) allowed part relief to the assessee and sustained the disallowance of Rs.1,69,55,406/- on the issue of the Corporate Social Responsibility (CSR).

3. Aggrieved, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

4. Before us the parties appeared through videoconferencing facility and filed synopsis and case laws relied upon through email.

5. The learned Counsel of the assessee submitted that identical disallowance made in the earlier year has been deleted by the Tribunal in the case of the assessee and therefore issue in dispute is covered in favour of the assessee.

6. The Learned DR on the other and submitted that in view of the Explanation-2 inserted under section 37 (1) of the Act, expenses incurred on Corporate Social Responsibility (CSR) are not eligible for deduction under section 37 of the Act.

7. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that in the year under consideration the assessee has incurred Rs.169.55 lakhs on Corporate Social Responsibility (CSR) activities, the detail of which is as under:

(i)	Tree Plantation in the vicinity of plants	Rs.53,34,854/-
(ii)	Tree Plantation -	Rs.1,11,000/-
(iii)	Tree Plantation- Township	Rs.2,62,106/-
(iv)	Community Development	Rs.61,64,064/-
(v)	Other CSR expenses	<u>Rs.50,83,382/-</u>

8. We find that identical expenses incurred on corporate social responsibility has been allowed by the Tribunal in ITA 2146/Del/2017 for assessment year 2013-14 observing as under:

[E] As mentioned earlier, both sides have agreed before us at the time of hearing that the dispute regarding allowability of CSR expenses is covered in favour of the assessee by aforesaid orders dated 27.4.2018 and 29.11.2018 in assessee's own case, in identical facts and circumstances, in assessee's favour. Neither side has brought any distinguishable facts nor circumstances to our attention to persuade us to take a view different from the view taken in the aforesaid orders dated 27.4.2018 and 29.11.2018 of coordinate Benches of ITAT, Delhi. The relevant portions from the aforesaid ITA Nos. 5687/Del/2014 & 4733/Del/2015 of Coordinate Benches of ITAT Delhi are reproduced as under:-

ITA No. 5687/Del/2014

"7.1 Coming to ground no. 2 of the assessee's appeal which challenges the expenses incurred towards corporate social responsibility, we find that the Raipur Bench of ITAT in the case of ACIT vs. Jindal Power Ltd. In ITA No. 99/Del/2012 has allowed CSR expenses in assessment year 2008-09. The Raipur Bench has further held that Explanation (2) to section 37 of the Act, inserted by Finance Act, 2012 has been brought into the Statute w.e.f. 1.4.2013 and this amendment is prospective in nature and accordingly prior to 1.4.2013, CSR expenses are revenue in nature and allowable. We have gone through the details of CSR expenditure incurred by

the assessee during the year under consideration i.e. assessment year 2011-12 and we find that the expenses have been incurred in respect of tree plantation/environment protection, construction of Zoology Lab in Rourkela, construction of Special Wings for cerebral palsy children in Rourkela, medical camps in Sirsa village in Bhilai, development of Dongia Pond in a village near Bhilai, construction of Bus stop shed in the city of Rourkela, creating awareness against drug abuse in Bhilai, construction of road in Durgapur etc. besides other expenses incurred under the head. It is not in dispute that these expenses have been incurred and the only reason they were disallowed by the Assessing Officer and so confirmed by the Ld. Commissioner of Income Tax (A) was that this expenditure was not expended wholly or exclusively for the purpose of business of the assessee. Although, it is undisputed that the assessee had incurred this expenditure on the basis of guidelines issued by Bureau of Public Enterprises, Govt. of India, the department was of the view that since the expenditure was not mandatory in nature, the same could not be allowed. However, we are unable to concur with the findings of the lower authorities on this issue and we hold that the disallowance under Explanation (2) to section 37(1) will not come into play and there is no such disabling provision even if the expenses in discharge of corporate social responsibility are incurred on voluntary basis. Explanation (2) to section 37(1) comes into play only w.e.f. 1.4.2015 allowable as revenue expenditure. Accordingly, we set aside the order of the Ld. Commissioner of Income Tax (A) on this issue and direct the Assessing Officer to allow the expenses incurred towards corporate social responsibility and accordingly, expenses incurred towards corporate social responsibility incurred prior to this date will necessarily be.”

ITA No. 4733/Del/2015

“2. Coming to ground no. 2 of the assessee’s appeal which challenges the expenses incurred towards corporate social

responsibility, we find that the Raipur Bench of ITAT in the case of AC1T vs. Jindal Power Ltd. In ITA No. 99/Del/2012 has allowed CSR expenses in assessment year 2008-09. The Raipur Bench has further held that Explanation (2) to section 37 of the Act, inserted by Finance Act, 2012 has been brought into the Statute w.e.f. 1.4.2013 and this amendment is prospective in nature and accordingly prior to 1.4.2013, CSR expenses are revenue in nature and allowable. We have gone through the details of CSR expenditure incurred by the assessee during the year under consideration i.e. assessment year 2011-12 and we find that the expenses have been incurred in respect of tree plantation/environment protection, construction of Zoology Lab in Rourkela, construction of Special Wings for cerebral palsy children in Rourkela, medical camps in Sirsa village in Bhilai, development of Dongia Pond in a village near Bhilai, construction of Bus stop shed in the city of Rourkela, creating awareness against drug abuse in Bhilai, construction of road in Durgapur etc. besides other expenses incurred under the head. It is not in dispute that these expenses have been incurred and the only reason they were disallowed by the Assessing Officer and so confirmed by the Ld. Commissioner of Income Tax (A) was that this expenditure was not expended wholly or exclusively for the purpose of business of the assessee. Although, it is undisputed that the assessee had incurred this expenditure on the basis of guidelines issued by Bureau of Public Enterprises, Govt, of India, the department was of the view that since the expenditure was not mandatory in nature, the same could not be allowed. However, we are unable to concur with the findings of the lower authorities on this issue and we hold that the disallowance under Explanation (2) to section 37(1) will not come into play and there is no such disabling provision even if the expenses in discharge of corporate social responsibility are incurred on voluntary basis. Explanation (2) to section 37(1) comes into play only w.e.f. 1.4.2015 and accordingly, expenses incurred towards corporate social responsibility incurred prior to this date will

necessarily be allowable as revenue expenditure. Accordingly, we set aside the order of the ld. CIT(A) on this issue and direct the Assessing Officer to allow the expenses incurred towards corporate social responsibility.”

[F] Respectfully following the aforesaid precedents vide orders dated 27.4.2018 and 29.11.2018 of Coordinate Benches of ITAT, Delhi; in assessee’s own case; in identical facts and circumstances; and further considering that both sides agree that the issue in dispute is squarely covered in favour of the assessee by aforesaid orders dated orders dated 27.4.2018 and 29.11.2018, we set aside the aforesaid impugned Appellate order dated 16.01.2017 of the learned CIT(A) and direct the Assessing Officer to allow the assessee’s claim for expenditure amounting to Rs. Rs. 237.80,958/- on account of Corporate Social Responsibility. The appeal is allowed.

9. We find that identical expenses on tree plantation etc have been allowed by the Tribunal (supra) under section 37 of the Act incurred as wholly and exclusively for the purpose of the business. Thus, respectfully following the same, the expenses incurred in the year under consideration are also eligible for deduction under section 37 of the Act.

10. As regard the contention of the Learned DR that in view of the Explanation-2 to section 37(1), the CSR expenses are not allowable,

is concerned, we find that said Explanation-2 has been inserted by way of Finance Act 2014 with effect from 01/04/2015, i.e. the assessment year 2015-16. The Tribunal in the case of ***ACIT Vs Jindal Power Ltd in ITA No.99//BLPR/2012 for AY 2008-09*** held that the Explanation No.2 to Section 37 (1) of the Income Tax Act 1961, is applicable from 1-4-2015 (i.e. AY 2015-16) onwards only . Therefore in the year under consideration, corporate social responsibility expenses cannot be disallowed invoking explanation-2 to section 37(1) of the Act.

11. In view of above discussion, the sole ground raised by the assessee, is allowed.

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

Order pronounced in the open court on 27.08.2021.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated:27.08.2021

Neha

Copy forwarded to:

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

Sd/-
(O.P KANT)
ACCOUNTANT MEMBER

Asst. Registrar
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	27.08.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	