



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.300/CTK/2014**  
Assessment Year : 2009-2010

Mahanadi Coalfields Ltd., Jagriti Vihar, Burla, Sambalpur	Vs.	ACIT, Circle 2(1), Sambalpur
PAN/GIR No.AABCM 5188 P		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

**ITA No.329/CTK/2014**  
Assessment Year : 2009-2010

ACIT, Circle 2(1), Sambalpur	Vs.	Mahanadi Coalfields Ltd., Jagriti Vihar, Burla, Sambalpur
PAN/GIR No.AABCM 5188 P		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri S.S.Podar/ N.Kedia, ARs  
Revenue by : Shri Saad Kidwai, CIT DR

**Date of Hearing : 06/03/ 2018**  
**Date of Pronouncement : 19/03/ 2018**

**ORDER**

**Per Pavan Kumar Gadale, JM**

The cross appeals filed by the assessee are directed against the order of the CIT(A), Cuttack dated 9.5.2014 for the assessment year 2009-2010.

2. Ground No.4 of appeal was not pressed by Id A.R. of the assessee, hence, same is dismissed as not pressed.



3. Although the assessee has raised various grounds of appeal but the effective issue agitated before us as to whether the CIT(A) was justified in confirming the reassessment order passed u/s.147/251/154/143(3) of the Act.

4. The brief facts of the case are that the assessee filed its return of income for the assessment year 2009-2010 on 23.9.2009 disclosing taxable income of Rs.275926.69 lakhs. Thereafter, the assessee filed revised return of income on 29.7.2010 disclosing taxable income of R.275926.69 lakhs. The Assessing Officer, on perusal of the assessment record, noticed that income chargeable to tax has escaped assessment on account of incorrect valuation of closing stock of coal and incorrect allowance of depreciation on WDV of capitalized expenses of earlier years- and Section 35E deduction not claimed by the assessee in its original return or in the revised return of income filed, non-application of statutory provision of Section 40(a) to expenses from which tax deductible at source was not deducted, non-application of provisions of section 43B of the Act, non-application of statutory provision of section 40(a)(ia) and incorrect claim of penalty expenses towards Service Tax. Therefore the Assessing Officer issued notice u/s.148 of the Act to the assessee on 01.07.2013. In response to the notice u/s.148 of the Act, the assessee submitted an objection to reopening of the assessment and furnished details to the Assessing Officer. The Assessing Officer passed order under



section 147/251/154/143(3) of the I.T.Act dated 21.1.2014 and assessed the income of the assessee at Rs.289232.18 lakhs.

5. Aggrieved by the order of the Assessing Officer, the assessee filed appeal with the CIT(A) challenging the reopening of assessment and also against various additions made by the Assessing Officer.

6. The CIT(A) rejected the ground taken by the assessee with regarding to reopening of assessment u/s.147 and partly allowed the appeal of the assessee.

7. On appeal to the Tribunal by the assessee, before us, Id A.R. of the assessee vehemently objected to reopening of assessment by the Assessing Officer. Ld A.R. submitted that the issue of notice u/s.148 of the Act is based on change of opinion only as no new fact has come to the notice of the Assessing Officer. Ld A.R. submitted that the Assessing Officer has not disposed the objection filed by the assessee with regards to reasons recorded by the Assessing officer for reopening the assessment. It was also submitted that the issues on which the reassessment u/s.147 was proposed, were very much available at the time of completion of Regular assessment u/s.143(3) of the Act. Hence, Id A.R. of the assessee prayed for quashing of the reassessment order passed by the Assessing Officer.

8. Contra, Id D.R. supported the orders of lower authorities.

9. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. Before going to the merits



of the case, we consider it necessary to deal with the legal ground challenged by the assessee in reassessment proceedings. Ld A.R. submitted that the CIT(A) has not considered the submissions of the assessee and also the assessment was based on the same set of facts and change of opinion and the CIT(A) has erred in confirming the reassessment order and consequently the additions. Ld A.R. emphasised that in earlier assessment year i.e. 2008-09, the revenue has taken the stand that the reopening of assessment u/s.147 was made on the basis of audit objection. This year also, the revenue has reopened the assessment on the basis of same set of facts which were available to the Assessing Officer in the original assessment u/s.143(3) of the Act. On perusal of record, we found that notice u/s.148 of the Act was issued on 1.7.2013 and the original assessment u/s.143(3) was completed on 30.12.2011. We found that the reassessment proceedings have been initiated within four years from the date of order u/s.143(3) of the Act. On a query from the bench to Id A.R. to explain the reasons recorded for reopening the assessment, the Id A.R. demonstrated with copy of reasons recorded for reopening of assessment, which is as under:

"REASONS RECORDED FOR RE-OPENING THE ASSESSMENT U/S.147.

In the instant case, an assessment was framed u/s.143(3) on 30.12.2011 on a total income of Rs.277887.33 lakhs and thereafter it was rectified u/s.154 on 28.03.2012 reducing the assessed income to Rs.276372.97 lakhs.



On perusal of record, the following issues has been escaped income to tax which is point-wise described below.

1. Non-deduction of tax at source.

The tax auditor in form No.3CD in column-27(b)(i) certified that no tax has been deducted against IICM charges of Rs.481.68 lakhs and rehabilitation charges of Rs.5476.67 lakhs paid to its holding company Coal India Limited (CIL). Non-deduction of tax at source attracted the provision of section-40(a)(ia) of the I.T. Act,1961 which is not considered in the scrutiny assessment.

2. Valuation of closing stock.

Schedule -3 to Profit & Loss account disclosed the value of stock of raw coal at Rs.41440.84 lakhs. In schedule-P to 'Notes on Account' at para No.6.2.2, the Auditor has furnished the details of stock of coal and value separately for each mine at cost or net realized value whichever is less. It is noticed that the stock of coal in some of the mines was valued at cost and some other mines it was valued at net realized value. The accountant had also certified that the value of coal stock would have been Rs.46689.15 lakhs, if valuation of stock was done as a whole rather than valuing it unit-wise as per the uniform accounting policy of Coal India Ltd.. Thus, there is undervaluation of stock to the tune of Rs.5248.31 lakhs which has escaped assessment.

3. Depreciation on brought forward WDV of earlier years.

On perusal of record, it is seen that while rectifying u/s.154 of the I.T. Act,1961, the Assessing • Officer had allowed depreciation on brought forward WDV of capital expenditure of earlier years of Rs.434.45 lakhs and deduction u/s.35E in respect of 'Prospecting & Boring Expense' of earlier years of Rs.718.71 lakhs, totaling of Rs.1153.16 lakhs. The above expenses were not disallowed by the Assessing. Officer at the time of framing assessment u/s.143(3) of the I.T. Act,1961, dt.30.12.2011. Thus, the above referred expenses has escaped assessment.

4. TDS u/s.195(1) on foreign currency remittance.

Schedule-? to the 'Notes on Account' at para No.20(D)(others), the Auditor had certified that the assessee incurred expense in foreign currency to the tune of Rs.459.67 lakhs against which no tax was deducted u/s.195(1) of the I.T. Act,1961. Therefore, the same attracted the provision of section 40(a)(ia) of the I.T.Act,1961 and escaped assessment.

5. Disallowance u/s. section-43B .

As per column-21(B) and annexure-7A to form No.3CD , the tax auditor had certified that an amount of Rs.3845.34 lakhs Of the statutory dues was remained unpaid on the due date of filing of return. But, in the statement of computation of income, the amount of Rs.3469.04 lakhs (3845.34 lakhs -376.30 lakhs) was added back.



Since the amount of Rs.376.30 lakhs of statutory dues was not actually paid into the Government account as certified by the tax auditor on or before the due date of submission of return, such expense is not deductible u/s.43B of the I.T. Act, 1961. Thus, the amount of Rs.376.30 lakhs has escaped assessment.

6. Claim of expense towards penalty for service tax.

The Tax Auditor in his certificate in form No.3CD at column-17(e)(i) had certified that Rs.355.47 lakhs being penalty for service tax which is debited in P&L account. As per the provision contained in sec-37(1) of the I.T. Act,1961, no amount paid by way of penalty for violation of any law is an allowable expense. Thus, the amount of Rs.355.47 lakhs has escaped assessment.

Considering the above discussion, I have reason to believe that there is escapement of income on the above issues within the meaning of section 147 of the I.T. Act,1961. Hence, reassessment proceeding is initiated u/s.147 of the I.T. Act, 1961. Office is directed to issue notice u/s. 148 and serve on the assessee immediately."

10. We after verifying the reasons found that the Assessing Officer has recorded the reasons on six aspects and all these reasons recorded are based on the tax audit report and financial statements., which were verified by the Assessing Officer in the original assessment proceedings and the Assessing Officer has passed order u/s.143(3) of the Act after making additions and determined the total income. We found that the reassessment made by the Assessing officer are on the same set of information and facts, which were very much available before the Assessing Officer at the time of original assessment proceedings and we rely on judicial decisions in deciding the present case as under:



11. The Full Bench of the Hon'ble Delhi High Court in the case of **CIT v.**

**Usha International Ltd. 348 ITR 485 (Del)** has held as under:

39. In view of the above observations we must add one caveat. There may be cases where the Assessing Officer does not and may not raise any written query but still the Assessing Officer in the first round/ original proceedings may have examined the subject matter, claim etc, because the aspect or question may be too apparent and obvious. To hold that the assessing officer in the first round did not examine the question or subject matter and form an opinion, would be contrary and opposed to normal human conduct. Such cases have to be examined individually. Some matters may require examination of the assessment order or queries raised by the Assessing Officer and answers given by the assessee but in others cases, a deeper scrutiny or examination may be necessary. The stand of the Revenue and the assessee would be relevant. Several aspects including papers filed and submitted with the return and during the original proceedings are relevant and material. Sometimes application of mind and formation of opinion can be ascertained and gathered even when no specific question or query in writing had been raised by the Assessing Officer. The aspects and questions examined during the course of assessment proceedings itself may indicate that the Assessing Officer must have applied his mind on the entry, claim or deduction etc. It may be apparent and obvious to hold that the Assessing Officer would not have gone into the said question or applied his mind. However, this would depend upon the facts and circumstances of each case."

12. The Hon'ble Delhi High Court in the case of **Commissioner of Income Tax v. Eicher Ltd.**, (2007) 294 ITR 310 (Delhi), after making reference to different judgments of various High Courts, observed that if the entire material had been placed by the assessee before the Assessing Officer at the time when the original assessment was made and the Assessing Officer applied his mind to that material and accepted the view canvassed by the assessee, then merely because he did not express this in the assessment order, that by itself would not give him a ground to



conclude that income has escaped assessment and, therefore, the assessment needed to be reopened. On the other hand, if the Assessing Officer did not apply his mind and committed a lapse, there is no reason why the assessee should be made to suffer the consequences of that lapse.

13. Further, the Hon'ble apex Court in **CIT v. Kelvinator of India Ltd. : 320 ITR 561 (SC)** has held as under:

"On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the- Act [with effect from 1<sup>st</sup> April, 1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. **Therefore, post-1<sup>st</sup> April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to reassess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1<sup>st</sup> April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief."**





14. We applying the ratio of decisions in the present case found that the Assessing Officer has initiated reassessment proceedings on the same facts which were available before him at the time of making assessment u/s.143(3) of the Act and no new tangible material has come on the basis of which it could be said that the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment on account of failure on the part of the assessee to disclose truly and fully material of facts in the assessment.

15. We considering the overall aspects and the reasons recorded for reopening the assessment are of the substantive view that the Assessing Officer has not brought on record any new tangible material to initiate reassessment proceedings but relied only on tax audit report and financial statements, which were already filed before the Assessing Officer in the scrutiny proceedings. Accordingly, we support our view based on judicial decisions and factual circumstances that the Assessee has disclosed fully and truly all material facts in the original assessment proceedings and we are inclined to set aside the order of the CIT(A) on this ground and quash the reassessment order.

16. Since we have quashed the reassessment order, other grounds of appeal by the assessee have become infructuous.

17. Consequently, the appeal filed by the revenue in ITA No.329/CTK/2014 is also dismissed.



ITA No.300/CTK/2014  
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Assessment Year : 2009-2010

18. In the appeal of the assessee is partly allowed and the appeal of the revenue is dismissed.

Order pronounced on 19/03/2018.

Sd/-

sd/-

(N.S Saini)  
ACCOUNTANT MEMBER

(Pavan Kumar Gadale)  
JUDICIALMEMBER

Cuttack; Dated 19/03/2018  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant/assessee : Mahanadi Coalfields Ltd., Jagriti Vihar, Burla, Sambalpur
2. The Respondent. /revenue: ACIT, Circle 2(1), Sambalpur
3. The CIT(A)- Cuttack
4. Pr.CIT- Cuttack
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
ITAT, Cuttack