आयकर अपीलीय अधीकरण, न्यायपीठ –"B" कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
[Before Hon'ble Shri J.Sudhakar Reddy, AM and Hon'ble Shri A. T. Varkey, JM

ITA Nos. 890 & 891/Kol/2019
Assessment Year: 2009-10 & 2012-13

Assistant Commissioner of Income-tax, Circle-2, Asansol	Vs.	Eastern Coalfields Ltd. (PAN: AAACE7590E)
Appellant		Respondent

&

ITA Nos. 985 & 986/Kol/2019
Assessment Year: 2009-10 & 2012-13

Eastern Coalfields Ltd.	Vs.	Deputy Commissioner of Income-tax, Circle-2, Asansol
Appellant		Respondent

Date of Hearing (Virtual)	15.09.2020
Date of Pronouncement	24.09.2020
For the Revenue	Shri Imokaba Jamir, CIT & Smt. Ranu Biswas, Addl. CIT
For the Assessee	Shri Arvind Agarwal, AR

ORDER

Shri A. T. Varkey, JM

These are cross appeals of the revenue and assessee respectively against the separate orders of the Ld. CIT(A)-Asansol dated 02.01.2019 for AYs. 2009-10 and 2012-13 respectively. Since issues are interconnected and arises out of the same order of Ld. CIT(A) and also heard together, we dispose of all these four appeals by this consolidated order for the sake of convenience.

2. Ground nos. 1 and 2 of the assessee's appeals are dismissed as not pressed.

3. Ground no. 3 of the revenue's appeal for AY 2009-10 is against the action of the Ld. CIT(A) in deleting the addition of Rs.22,43,24,000/- which was added by the AO

taking into consideration the difference between opening and closing value of non-vendible coal of Rs.22,43,24,000/-.

4. At the outset, the Ld. AR of the assessee submitted that the assessee is a Public Sector Undertaking and on this issue the Ld. CIT(A) has given relief to the assessee by relying on the Tribunal's order in assessee's own case for AYs. 2003-04 to 2005-06. We note that the Ld. CIT(A) has given relief to the assessee by taking note of the decision of this Tribunal in assessee's own case for AY 2003-04 to 2005-06 in ITA No. 462 to 469/Kol/2019 dated 27.10.2016 which is seen placed at pages 8 and 9 para 12 to 14 of the Tribunal's order wherein we note that this issue is covered in favour of the assessee. We note that the Ld. CIT(A) at page 6 has decided this issue as under:

> *"The value of this 472 M. T. of non-vendible col was shown as closing stock in hand in the balance sheet of the previous year i.e. during the AY 2008-09. However, for the current year i.e. 2009-10 the value of this non-vendible coal was not shown in the opening stock as well as in the closing stock as its value was considered was nil. For the previous AY 2008-09, the ITAT Kolkata bench vide ITA No. 2266/Kol/2014 dated 09.02.2018 took the value of the 472 M. T of coal as nil. As the ITAT has taken the value of this non-vendible coal as nil, the value of opening and closing stock will be nil for the AY 2009-10. Hence, there is no increase in the cost of this stock. Hence, the addition is deleted and the appeal is allowed."*

5. Since the revenue has not been able to show that there is any change in facts or law, we are bound by the decision of the Tribunal on this issue and respectfully following the same we confirm the order of Ld. CIT(A), this ground of appeal of revenue is dismissed.

6. Ground no. 4 of the revenue & ground no. 3 of the assessee for AY 2009-10 are against the action of the Ld. CIT(A) in allowing 80% of the additional depreciation claimed u/s. 32(1)(iia) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"). At the outset, the Ld. Counsel for the assessee submitted that the AO did not allow the full claim of additional depreciation u/s. 32(1)(iia) of the Act of Rs.26,46,80,400/- and allowed only 50% thereof at Rs.13,23,40,200/-. Aggrieved, both the revenue and the assessee preferred appeals before the Ld. CIT(A) who has discussed this issue at page 6 para 4 and allowed 80% of the claim of additional depreciation. Aggrieved by the action

of the Ld. CIT(A), both the revenue as well as assessee is before us. Before us, the Ld. DR submitted that on this issue assessee failed to give full details and break up before the AO and he also objected to the action of the Ld. CIT(A) allowing 80% of the claim of additional depreciation. Assessee is also in appeal before us against the action of the Ld. CIT(A) in not allowing the full claim of additional depreciation.

7. During the hearing the Ld. AR drew our attention to the fact that on the very same issue the Tribunal has set aside this issue for verification by passing the consolidated order in ITA No. 1010/Kol/2015, ITA No. 1015/Kol/2018 and ITA No. 916 & 999/Kol/2017 for AY 2009-10 which is found placed at pages 5 to 17 of the paper book. Further, it was brought to our notice that while giving effect to the Tribunal's order in assessee's own case, the ACIT, Circle-2, Asansol vide his order passed u/s. 143(3)/254 of the Act dated 27.12.2019 for AY 2009-10 after verification as directed by the Tribunal has allowed 100% of the claim of additional depreciation. The Ld. AR drew our attention to the copy of the AO's order found placed at pages 18 to 29 of the paper book. It was also brought to our notice that for AY 2008-09, the ACIT in his giving effect order dated 27.12.2019 after verification has allowed full claim of depreciation and AO's order is found placed at paged 32 to 33. In the light of the aforesaid facts which are not disputed and since the AO has allowed the claim of the assessee for 100% additional depreciation after verification for earlier years, in the normal course, we could have allowed it. However, since the main grievance of the revenue is that the assessee failed to justify the admissibility of additional depreciation by producing the break up of assets and also taking note of the action of the Tribunal in assessee's own case for AYs 2008-09 and 2009-10 we set aside the issue back to the AO with a direction for fresh adjudication after considering the details of plant and machinery used by the assessee for the purpose of extraction of coal. We note that the assessee has claimed to have produced the audited financial statement which gave all the required particulars before the authorities below. Since we are remanding the issue back to the AO, we direct the assessee to once again produce all the details as required by the AO in support of its claim for deduction of additional depreciation. It is to be kept in mind by the AO that the assessee is a Public

Sector Undertaking and its accounts are audited by the Comptroller of Auditor General of India (CAG) and such audited statements have its own strength and has survived the scrutiny of the premier constitutional body. Needless to say that additional depreciation needs to be granted on such plant and machinery if it has been used for production of coal. With the aforesaid observation, this ground of assessee's appeal and revenue's appeal are allowed for statistical purposes.

8. Ground no. 5 of the revenue for AY 2009-10 is against the action of the Ld. CIT(A) in deleting the addition made by the AO on stowing subsidy difference of Rs.98.79 lacs. We note that the AO has made the addition by noting as under:

"5. Addition of less showing of stowing subsidy. It is seen from the available records that during the relevant assessment year the amount of stowing subsidy was considered less in computing total income. The amount of stowing subsidy during the relevant assessment year worked out as under:

Subsidy received for the first six months	*Rs.2521.56 Lakhs (para 12.3 of Notes of account refers)*
Subsidy receivable	*Rs.2647.52 lakhs (Schedule K of Balance Sheet refers)*
Less Stowing subsidy received amount shown less	*Rs.5070.29 Lakhs (Schedule 5 of P&L a/c refer)*
Total	*Rs.98.79 lakhs*

5.1. From the above statement it is quite clear that the amount of Rs.98.79 lakhs was to be added back to the total income of the assessee company which was not done during the relevant assessment year. Thus there was under assessment of income to the tune of Rs.98.79 lakhs during the assessment u/s. 143(3) of the I. T. Act.

5.2. In response to the above issue/reason the assessee company submitted a on 11.06.2015 but reply of the assessee could not established that there was no escapement of income during the relevant assessment year under this head. Further, this office letter vide No. DCIT/Cir-3/Asl/AAACE7590E/2015-16/336 dated 15.07.2015 issued to the assessee company and requested to furnish proof of received of stowing subsidy during the year with documentary evidence.

5.3 In response to the above letter the assessee company submitted a reply along with working note on stowing subsidy. But failed to submit any documentary evidence in this regards as the proof of subsidy received.

5.4. Hence, in the light of the above fact, less showing of stowing subsidy amounting to Rs.143.41 lakhs added to the income of the assessee company."

9. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who has given relief to the assessee by holding as under:

"The A.O. had added Rs.252.56 lakhs and Rs.2647.52 lakhs to arrive at the subsidy accrued to the appellant during the relevant assessment year. But the amount of Rs.2647.52 lacs shown as subsidy receivable, is not the subsidy receivable for the current year only but also includes the subsidy receivable for the earlier years as well. The total subsidy due for the AY 2009-10 was Rs.50,70,29,057/-, which has been shown in the P& L Account under the head "other receipts". The AO, in the assessment order, had reduced from subsidy receivable of Rs.2647.52 lakhs, this amount of Rs.50.70 lakhs being subsidy received. But this amount of Rs.2647.52 lakhs is not the subsidy received but is the subsidy receivable for the current AY, out of which Rs.2521.56 lakhs have been received in the first six months. The subsidy due at the beginning of the year was Rs.29,89,97,877/-, out of which rs.28,81,19,093/- was received hence the balance to be received on account of last year was Rs.98.79 lakhs. Out of the total subsidy receivable for the current year amounting to Rs.5070 lakhs, an amount of Rs.2521.56 lakhs was received and the balance to be received or due is Rs.2548 lakhs for the current year. Thus the amount due of Rs.98.79 lakhs in respect of the earlier year and the amount of rs.2548 lakhs due for the current year aggregating to Rs.2647 lakhs, is the balance receivable which has been shown in the balance sheet. Hence, the amount of Rs.98.79 lakhs added by the AO is the amount due in respect of the last year's subsidy receivable. Thus the AO has erred in treating this amount as the concealed income of the appellant. Hence, the addition is deleted and the appeal is allowed."

Aggrieved by the aforesaid decision of the Ld. CIT(A), the revenue is in appeal before us.

10. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the AO has made the addition on the basis of note no. 12.3 of the notes on account found placed in page no. 173 of the Audited Annual Reports of Accounts. It was brought to our notice that receipt on account of stowing subsidy are accounted for on the same basis from the inception of assessee and there has been no change in the practice adopted by the assessee while accounting on this issue and for the first time such an addition has been made by the department. According to Ld. AR, on the principle of consistency this issue/accountancy practice which was regularly followed by the assessee and which is permeating in all these years from inception should not have been disturbed. We note that the assessee's accounting policy for recording the amount receivable has been consistently followed since its inception. It is noted that total amount receivable for AY 2009-10 was determined at Rs.49,83,32,000/- against which amount the assessee received during the year was Rs.25,21,55,986/- leaving balance amount of Rs.24,66,76,034/- which was receivable as on 31.03.2009. It was brought to our notice that the total amount of stowing subsidy disclosed in the P&L Account is

Rs.507,70,29,057/- details which are filed before us as well as before the lower authorities. It was pointed out to us that an amount of Rs.26,47,52,000/- is the balance amount to be received on account of all the years as on 31.03.2009 and the AO failed to appreciate that in the ledger head *"subsidy receivable includes all the subsidy receivable*". It was brought to our notice that from the details of receivable accounts it is revealed that opening balance as on 01.04.2008 was Rs.29,89,57,887/- out of which subsidy the assessee received against opening balance was Rs.28,91,19,093/- and the amount receivable against FY 2008-09 was Rs.25,48,73,091/- which means that Rs.98,78,794/- (rounded of Rs.98,79,000/-) was the amount receivable from earlier FYs prior to FY 2008-09 which has already been offered as income in the relevant years. We note that the Ld. CIT(A) has rightly noted that the total subsidy due for the year under consideration (AY 2009-10) was Rs.50,70,29,057/- which has been shown in the P&L Account under the head '*other receipts*'. The Ld. CIT(A) has rightly noted that Rs.2647.52 lacs is not the subsidy received. Subsidy due at the beginning of the year was Rs.29,89,97,877/- out of which Rs.28,91,19,093/- was received. Hence, the balance was to be received on account of loan was Rs.98.79 lacs which is in respect of earlier year and the amount of Rs.2548 lacs due to the current year aggregate to Rs.2647 lacs. Balance receivable which has been shown in the Balance Sheet. Therefore, the Ld. CIT(A) has rightly deleted the addition of Rs.98.79 lacs since its last year's subsidy receivable and not pertaining to this year. Therefore, this ground of appeal of the revenue is dismissed.

11. Now coming to AY 2012-13. Ground nos. 1 and 2 of the revenue are against the action of the Ld. CIT(A) deleting the addition of Rs.4,71,00,000/- under the head hire charges of bus, ambulance etc. and Rs.38,00,000/- being grant to sports and recreation clubs. At the outset, the Ld. AR drew our attention to the fact that the ld. CIT(A) has given relief to the assessee by relying on the decision of the Tribunal for AYs 2003-04 to 2007-08. We note that the Ld. CIT(A) has discussed about this issue at page 4 and has given relief to the assessee by following the decision of the Tribunal in assessee's own case for AYs 2005-06 to 2006-07 in ITA No.1636/Kol/2014 and 1654/Kol/2014 dated 26.07.2017 found placed at pages 13 to 213 (page 16 para 9 to 11). This decision was

followed in assessee's own case for Ay 2007-08 in ITA No. 2130/Kol/2014 and ITA No. 2199/Kol/2014 dated 18.10.2017 copy of the order is found placed at pages 24 to 32 (page 27 para 8 to 10). We also note that the assessee's own case for AY 2003-04 to 2005-06 dated 27.07.2016 placed at pages 34 to 70 (page 53 para 29 to 31) the Tribunal has sent this issue back to AO and the Ld. CIT(A) has given relief to the assessee. We note that the Tribunal in assessee's own case for AYs 2003-04 to 2005-06 and other assessment years referred to above have adjudicated this issue and Tribunal vide para 3.1 has held as under:

> *"9. Ground no. 3 of the revenue is against the action of the Ld. CIT(A) deleting the addition of Rs.2,05,86,000/- made by the AO on account of hire charges of bus and ambulance.*
>
> *10. At the outset itself, the Ld. AR brought to our notice that the coordinate bench of the Tribunal has decided this issue in assessee's own case for AYs 2003-04 to 2005-06, supra, at page 20 para 24. We note that the similar issue was adjudicated by the Tribunal and the Tribunal vide para 31 has held as under:*
>
> > *"31. After considering the rival submissions we are of the view that incurring of the expenses by the Assessee cannot be disputed and in fact has not been disputed by the revenue. There appears to be only a dispute with regard to the evidence of incurring of the expenses. The details to which our attention was drawn by the learned counsel for the assessee, in our view, requires to be verified by the AO. We therefore set aside the order of the CIT(A) on this issue and remand the question of incurring of these expenses to the AO for fresh consideration, with liberty to the Assessee to let in evidence to substantiate its claim for deduction of the aforesaid expenditure. For statistical purposes the relevant grounds of appeal are treated as allowed."*
>
> *11. Since the Tribunal has set aside the order or the Ld. CIT(A) and remanded the question of incurring these expenses to the AO for fresh consideration with the liberty to assessee to adduce evidence to substantiate its claim for deduction of the aforesaid expenditure, we also set aside the order of the Ld. CIT(A) and remand the matter back to the file of AO to be decided afresh as ordered in AY 2003-04 to 2005-06. This ground of appeal of revenue is allowed for statistical purposes."*

12. Since the Tribunal has set aside the order or the Ld. CIT(A) and remanded the question of incurring these expenses to the AO for fresh consideration with the liberty to assessee to adduce evidence to substantiate its claim for deduction of the aforesaid expenditure, we also set aside the order of the Ld. CIT(A) and remand the matter back to the file of AO to be decided afresh as ordered in AY 2003-04 to 2005-06. This ground of appeal of revenue is allowed for statistical purposes.

13. Ground No. 3 of the revenue appeal for AY 2012-13 as well as ground no.2 of the assessee's appeal for AY 2012-13 is against the action of the Ld. CIT(A) in allowing 50% of the donation of Rs.17 lacs claimed by the assessee. According to revenue the AO has disallowed the donation mainly on the ground that the assessee failed to furnish any proof in support of its claim of deduction as recorded in the assessment order. We note that the AO on perusal of note 31 of Annual Report of Accounts observed that the assessee company incurred an amount of Rs. 17 lacs towards donation and subscription. So, when asked by the AO as to whether the expenditure under this head qualify for deduction, the assessee company replied that Rs. 17 lacs has been spent on donation and subscription for AY 2012-13 and had furnished the area/service unit wise details of such expenses as annexure 13 for AO's reference. The assessee replied that *expenses were incurred as subscription to various clubs and organization operating in the vicinity of the mining operations of the assessee* besides donation to philanthropic organization like Ram Krishna Mission and Bharat Sevasram Sangha which according to the assessee was renowned for their commitment to society. According to the assessee it had made these donations for smooth running of business activity and claimed that it is allowable u/s. 37(1) of the Act. After perusal of the reply of the assessee, *the AO was of the opinion that the assessee company has made payments to various local clubs and organizations as subscription/donation and this kind of expenses does not qualify for deduction under the Act*. Further, according to AO, the donation to Ram Krishna Mission and Bharat Sevasram Sangha the assessee failed to furnish any proof in support of its claim of deduction, therefore, the entire amount under the head was disallowed and Rs.17 lacs was added to the total income of the assessee. On appeal, the Ld. CIT(A) has restricted the disallowance at 50% of the claim. Aggrieved, the revenue as well as the assessee is before us.

14. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the donations were given to local clubs as well as to Ram Krishna Mission and Bharat Sevasram Sangha , which has been disallowed by AO. On appeal the Ld CIT(A) gave partial relief by allowing 50% of the expenditure claimed as donation.

Against the said action of Ld CIT(A) both parties are before us. We note that on similar issue of expenditure claim in respect of donation given to the local clubs during Durga Puja etc. was before the Hon'ble Calcutta High Court in CIT Vs. Bata India Ltd. 201 ITR 884 (Cal) wherein it was held to be an allowable expense. However, we find that even though the assessee in its reply has stated that certain donations were given to the local clubs etc. the amount given as donation to the local clubs are not discernible from the materials placed before us, so it has to be verified by the AO and the AO to allow 100% deduction on the claim of expenditure in respect of donations given by the assessee to the local clubs. Coming to the assessee's donation to the Ram Krishna Mission and Bharat Sevashram Sangha is concerned again the facts are not clear. So it needs verification by AO and if the donee societies have 80G certification, then deduction in accordance to law should be given to the assessee in respect of the donation given to it. So, we remand this issue back to the file of the AO for factual verification and to pass orders in accordance to law. Therefore, the assessee's ground no. 2 and revenue's ground nos. 3 & 4 are set aside back to the AO. Thus, these grounds are allowed for statistical purposes.

15. Ground no. 1 of the assessee's appeal is against the action of the AO in sustaining the ad hoc disallowance of Rs.4,55,50,000/- made by the AO on account of CSR expenses.

16. We have heard rival submissions and gone through the facts and circumstances of the case. It is noted that the assessee is a Public Sector Undertaking and its accounts are audited by the CAG. It has been brought to our notice that the expenditure were made after approval of the competent authority and expenditure is towards the contribution to school and development of infrastructure for the welfare of the employees and workmen of the company. It is brought to our notice that in assesse's own case no such disallowance on CSR expenditure was made in the earlier and subsequent years. It was also brought to our notice that this expenditure is also necessary in view of the National Coal Wage Agreement between the management and the employees' Union. It was clarified by the Ld. AR that the CSR expenses incurred by the assessee is not covered by

the amendment in section 37(1) of the Act and the Explanation 2 to section 37(1) comes into play w.e.f. 01.04.2015 and is not retrospective in operations. It was brought to our notice that the coordinate bench of this Tribunal Nagpur Bench in the case of assessee's sister concern Southern Coalfields Vs. JCIT reported in 260 ITR (AT) 1 had an occasion to adjudicate similar issue and at pages 83-85 has directed to allow such expenditure as revenue expenditure. We note that the expenditure was incurred by the assessee company to comply with the contractual obligation as per National Coal Wage Agreement which is joint by-partite committee for the coal industry dated 15.07.2005 in para 10.8 wherein it was agreed by the assessee to carry out welfare activities. We note that the assessee expended CSR expenses of Rs.9.11 cr. However, the AO has disallowed 50% of the expenditure and made an addition of Rs.4,55,50,000/- being 50% of the expenses on account of CSR. The AO has disallowed the claim on the ground that the assessee did not file ledger copy of the expenses booked under the CSR. According to the AO, in the absence of date wise expenses with detail narration, the expenses remained unverifiable and as such resorted to estimated disallowance of 50% of such expenses. According to the Ld. AR, the books of the assessee are audited by different auditors as well as the CAG. It was pointed out by the assessee that contributions made with the proper approval of the competent authority to develop proper educational infrastructure not only for the children of the workmen of the company but also for the benefit of public at large. This expenditure are made partly as staff welfare expenditure and partly as social cause as per its commitment to the society in the form of CSR activities which the assessee is duty bound to oblige as per the Companies Act, 1956. We note that the assessee is a Public Sector Undertaking and since its operational base are located in remote areas, the assessee company is under obligation to incur expenses on education, sports and recreation activities for welfare of the employees as well as to the local persons residing nearby the company. It was also pointed out that this expenditure is also for maintenance of good health on the part of the employees as well as for the general development of the locality and for facilities for medical etc. which in turn contributes to the growth of the assessee's business. We note that the expenditure claimed by the assessee is also necessary in view of the National Coal Wage Agreement entered into between the management and

employees' union and also as per the Companies Act, 1956 as well as Companies Act, 2013. We note that the amendment in section 37(1) of the Act has been introduced w.e.f. 1st April, 2015 and does not apply on the facts of the case and the disabling provision as stated in Explanation 2 to section 37(1) refers only to such corporate social responsibility expenditure as u/s. 135 of the Companies Act, 2013 and as such it cannot have any application for the period not covered by the statutory provision which itself came into existence in the year 2013. And any way this disabling provision cannot be held to be retrospective in operation. Therefore, taking note of the decision of the Tribunal Nagpur Bench in southern Coal Field on this issue wherein the Tribunal held as under:

> *"We have considered the rival submissions and also perused the relevant material on record. We have also gone through the various case laws cited by the learned representatives of both the sides. It is observed that the expenditure incurred by the assessee-company for providing basic amenities like road widening, street lighting, better drinking water facilities, etc., for the residential areas in and around the company's area of operations in which mainly the workers of the assessee-company were residing, was disallowed by the Assessing Officer considering that the same has been incurred by the assessee to discharge its social obligation towards the community as a whole and there is no nexus between such expenditure and the business of the assessee-company. In this regard, we find that the Assessing Officer, however, ignored a very relevant and material fact that the population residing in the area which was benefited by the provision of such basic amenities mainly comprised of the workers of the assessee-company and their families. He also appears to have overlooked the fact that such basic amenities could not have been provided to the assessee's employees in isolation as the said expenditure in any case had to be incurred for the entire area as a whole. Before us, learned counsel for the assessee has contended that over 90 per cent of the population residing in that area constituted assessee's own workers and their families and it appears from the record that this fact has not been disputed by the Revenue at any stage. Moreover, in the absence of such facilities in that area, it would not have been possible for the assessee-company to get the proper work force for its operation without which it was not possible to carry on its business effectively and efficiently. The labour by itself is an important input for any type of business, more particularly for the business of the assessee company of mining operation and, therefore, the expenditure incurred mainly for the welfare of the labour force has to be treated as incurred wholly and exclusively for the purpose of its business. It is observed that the learned Commissioner of Income-tax (Appeals) has confirmed the disallowance made by the Assessing Officer on this count for lack of nexus between the said expenditure and the business of the assessee, relying heavily on the decision of the Supreme Court in the case of CIT vs. Amalgamations (P) Ltd. [1997] 226 ITR 188. A perusal of the said judgement, however, reveals that the expenditure in that case was incurred by the assessee-company on payment of managerial remuneration to the directors of the subsidiary companies and considering that the assessee-company was entitled only to the dividend from the subsidiary company as and when declared even without incurring such expenditure, the apex court held that such expenditure cannot be said to have a direct and immediate connection with the business of the assessee-company and proceeded to disallow the same. In the present case, the assessee-company has incurred the expenditure mainly for the purpose of welfare of its employees and in our opinion the same cannot be equated with the expenditure in question before the Supreme Court in the case of*

Amalgamations (P.) Ltd. [1997] 226 ITR 188 which was -incurred entirely in the different circumstances mentioned above.

On the other hand, in the case of CIT v. Premier Cotton Spinning Mills Ltd. (1997) 223 ITR 440 (Ker), the expenditure was incurred by the assessee on the construction of roads, digging of wells and laying pipelines for housing scheme formulated for its employees and considering the nature of such expenditure being for the welfare of its employees, the Kerala High Court held the same to be an expenditure incurred wholly and exclusively for the purpose of the assessee's business. Although the said expenditure was incurred by the assessee in that case for the housing scheme formulated exclusively for its employees, in our opinion, the ratio of the said decision can very well be applied to the present case wherein a similar expenditure has been incurred by the assessee-company mainly for the benefit of its own employees as discussed above. Moreover, it is observed that the facts involved in the case of CIT v. Rupsa Rice Mill [1976] 104 ITR 249 (Orissa) cited by learned counsel for the assessee are almost similar to the facts of the present case inasmuch as the assessee running a rice mill therein incurred an expenditure for contribution to a primary health center building located near its mill and despite the fact that the said primary health center was meant for the benefit of public at large, the Orissa High Court allowed the said expenditure as a business expenditure considering that the same was going to result in providing treatment to the ailing workmen of the assessee also and the assessee was under an obligation to provide such benefits. In the present case, although there is nothing on record to show that such an obligation was there on the assessee-company, the incurring of such expenditure was very much warranted from the point of view of business expediency, as already mentioned. In the case of Sanghameshwar Coffee Estates Ltd. v. State of Karnataka [1986] 160 ITR 203 (Karn), the expenditure incurred by the assessee towards salary paid to the teachers of the school was held undoubtedly to be in the interest of the children of its employees and the same being a welfare measure, was allowed as business expenditure. In the case of ITAT v. B Hill and Co. (P) Ltd. [1983] 142 ITR 185 (All), the expenditure incurred on donations made to the schools with a view to provide educational facilities to the labourers and their children was considered to be for the purpose of facilitating the smooth running of the assessee's business and, therefore, was held to be an admissible business expenditure by considerations of commercial expediency. As such considering all the facts of the case and the legal position emanating from the aforesaid judicial pronouncements, we are of the considered opinion that the community development expenditure incurred by the assessee-company mainly for the welfare of its employees was an expenditure incurred wholly and exclusively for the purpose of its business by considerations of commercial expediency and the learned Commissioner of Income-tax (Appeals) was not justified in confirming the disallowance of the same made by the Assessing Officer. We, therefore, reverse the impugned order on this issue and direct the Assessing Officer to allow this expenditure."

17. Respectfully following the ratio of the coordinate bench (supra)we direct the AO to allow the claim of expenditure of assessee on account of CSR expenses.

18. In the result, all the appeals of the assessee as well as the revenue is partly allowed for statistical purposes.

Sd/- Sd/-

(J. Sudhakar Reddy) (Aby. T. Varkey)
Accountant Member Judicial Member

Dated : 24th September 2020

PP/JD (Sr.P.S.)
Copy of the order forwarded to:

1. Appellant –ACIT, Circle-2, Asansol
2 Respondent – Eastern Coalfields Ltd., O/o Chairman cum Managing director, Sanctoria, Dishergarh, W. Burdwan-713333
3. CIT(A)-, Asaansol(sent through e-mail)
4. CIT- , Asansol.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy, Assistant Registrar