IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR

[Coram: Pramod Kumar AM and C M Garg JM]

I.T.A. No.: 99/BLPR/2012
Assessment year: 2008-09

Assistant Commissioner of Income Tax
Circle 1(1), Bilaspur ***.....Appellant***

Vs.

Jindal Power Limited ***……Respondent***
Tanmar, Raigarh 496 107
[PAN: AABCJ4683J]

Appearances by:
Rajiv K Singh *for the appellant*
Ramesh K Singhania *for the respondent*

Date of concluding the hearing : June 21, 2016
Date of pronouncing the order : June 23, 2016

O R D E R

Per Pramod Kumar, AM:

1. This departmental appeal challenges the order dated 2nd March 2012 passed by the CIT(A), in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2008-09.

2. In the first two grounds of appeal, in substance, the Assessing Officer has called into question correctness of learned CIT(A)'s deleting **the disallowance of Rs 63,14,66,537, on account of overburden removal, by holding that overburden removal expense is revenue expenditure in nature**. Grievance of the assessee is

that ñ**since coal can be extracted from the quarries only after removal of overburden, the expenditure is directly bringing the quarry in its working condition and thus it gives enduring advantage over several years** *(and)* **therefore the said expenditure should be capitalized to the cost of coal quarries and so it is capital in nature**ò While ground of appeal accepts that the issue is covered by the decision of a coordinate bench, grievance of the Assessing Officer is that the CIT(A) ought not to have followed the said decision as ñ**the issue is not settled and** *(appeal against this coordinate bench decision)* **is pending before the Hon'ble High Court**ò

3. Briefly stated, the relevant material facts, as discernible from material on record, are like this. The assessee is engaged in the business of generation of thermal power, and the assessee has also taken the coal mines on lease from the State Government. The assessee extracts coal from the mines, and the process used in the extraction of coal mines in open cast coal lines. During the course of the scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed deduction of Rs 63,14,66,537 on account of ómine development expensesô As he probed the matter further, it was noticed that this expense represents expenses on removal of overburden to mine the coal om mines. It was explained by the assessee that ñ**the coal is found under the earth under different seams having soil/stone layer in between**ò and that ñ**these expenses are revenue in nature because these expenses were made basically to remove the overburden in order to reach the minerals which would be use in the process of generation of power, as a fuel**ò The claim of the assessee was that this is a

revenue expenditure as no new asset came into existence and the removal of overburden was an ongoing process. It was also explained that while the coal seam is 3-4 meters in depth, the overburden varies from 1 meters to 10 meters, and that, after removal of coal, the excavated area is required to be filled back by removing overburden of new areas. The Assessing Officer, however, rejected these arguments and held the expenses of Rs 63,14,66,537 to be capital in nature, and, accordingly, not deductible in computation of business income. The reasoning adopted by the Assessing Officer was as follows:

> *"The assessee's submissions have been carefully considered by me. I have gone through the conditions in the Lease Agreement with the assessee and Chhattisgarh Government that the assessee has to return the land to the lessor by surface filling and plantation and worthy to the habitation since by way of removal of overburden the assessee makes a permanent access to the coal. Hence, access to the coal itself cannot be of the nature which can be debited to the profit and loss account being durable in nature. The assessee has entered into the Agreement with the Government of Chhattisgarh that he had to return the land to the Govt. duly habitable and usable by the public, hence such overburden removal has to be virtually the reserve for future development/improvement of the land and improvement of the land is always capital in nature as it adds the value to the land which is reduced due to extraction of coal. In a nutshell, erosion of the land by active mining reduces the cost of the land and filling the land for surfacing is the improvement of the land, hence it is capital in nature and cannot be allowed to be debited in the profit and loss account. Therefore, the entire amount of Rs.63.14 lakhs claimed in the return of income is disallowed and added to the income of the assessee. Penalty u/s. 271(1)(c) of the Act is initiat4ed separately."*

4. Aggrieved by the disallowance so made by the Assessing Officer, assessee carried the matter in appeal before the CIT(A). While doing so, learned CIT(A) observed as follows:

> *"I considered the submission made by the Ld. AR carefully. The Assessing Officer has disallowed ongoing expenses on OBR by treating it as capital in*

nature. The same has been incurred for exploitation of each successive coal seam present in multiple layers. It is a continuous process even for the same layer. The procedure for extracting coal by removing over burden in open cast mine is similar to what has been adopted by the subsidiaries of Coal India Limited and other coal mines. The issue has been settled in favour of the Western Coalfields Ltd. by Hon'ble Tribunal, Nagpur in favour of Northern Coalfield Limited by Hon'ble Tribunal, Delhi. That apart, overburden removal expenses in open cast mining has been held as revenue in nature in the case of ***CIT, Bihar & Orissa Vs Kirkend Coal Co. 77 ITR 530 (SC), CIT vs. J.A. Trivedi Bros. 117 ITR 983 (Bom), CIT, West Bengal vs. Amalgamated Jambad Syndicate Pvt. Ltd. 117 ITR 698, CIT, West Bengal III vs. Katras Jharia Coal Company. Ltd. 118 ITR 6 (Cal.), CIT vs. Rajendra Trading Company (P) Ltd. 146 ITR 637 (Cal.), R.J. Trivedi (HUV) vs. CIT 116 ITR 856 (MP), Bikaner Gypsum Ltd. Vs. CIT 187 ITR 39 (SC), Empire Jute Company. Ltd. Vs. CIT, 124 ITR 1 (SC).”***

5. The Assessing Officer is aggrieved of the relief so granted by the CIT(A) and is in appeal before us.

6. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case in the light of the applicable legal position.

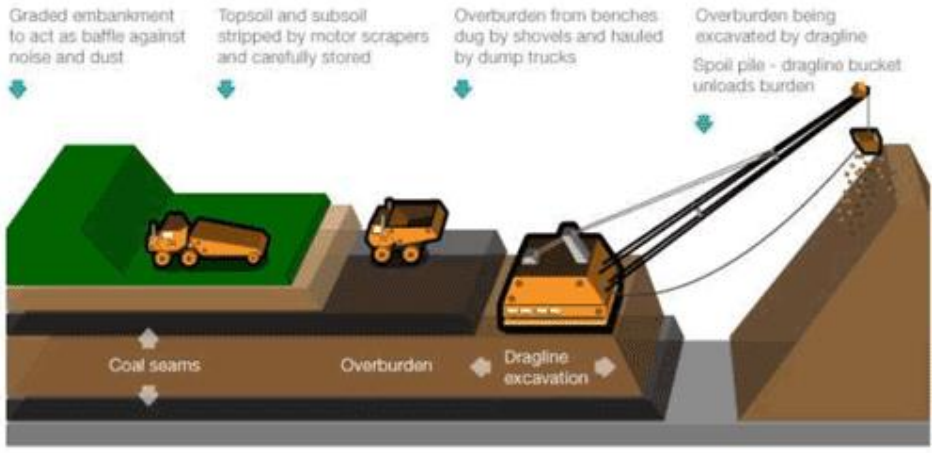
7. We find that the question whether removal of overburden expenses, in the case of mining by open cast mines, can be treated as revenue expenditure recently came up for a consideration of a coordinate bench of this Tribunal, in the case of **Northern Coalfield Ltd Vs ACIT [(2015) 69 SOT 637 (Jab)]**. While adjudicating on this issue, and speaking through one of us (i.e. the Accountant Member), the coordinate bench has held as follows:

16. Coming to the merits of the impugned disallowance, it is first of all necessary to understand as to what is the nature of 'open cast meaning' and the activity of 'overburden removal' in this process. We have had the benefit of

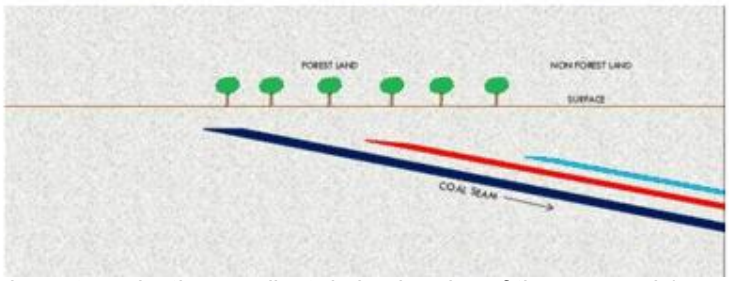
perusing the visuals in the paper book filed by the Assessing Officer, as also the benefit of presentations by the assessee on this aspect, in addition to, whatever its worth, our own research on this process.

17. Open cast coal mining, in sharp contrast with underground mining or, for that purpose, any extractive method requiring tunnelling into the earth, is a method whereby coal is extracted from an open pit after removal of the overburden i.e. surface material covering the coal. This surface material could be plants and vegetation, top soil, rocks and other material covering the coal. Obviously, open cast mining is economic when the coal seam is not much below the surface level. Such large opencast mines can cover an area of many square kilometres, as indeed in the case of this assessee.

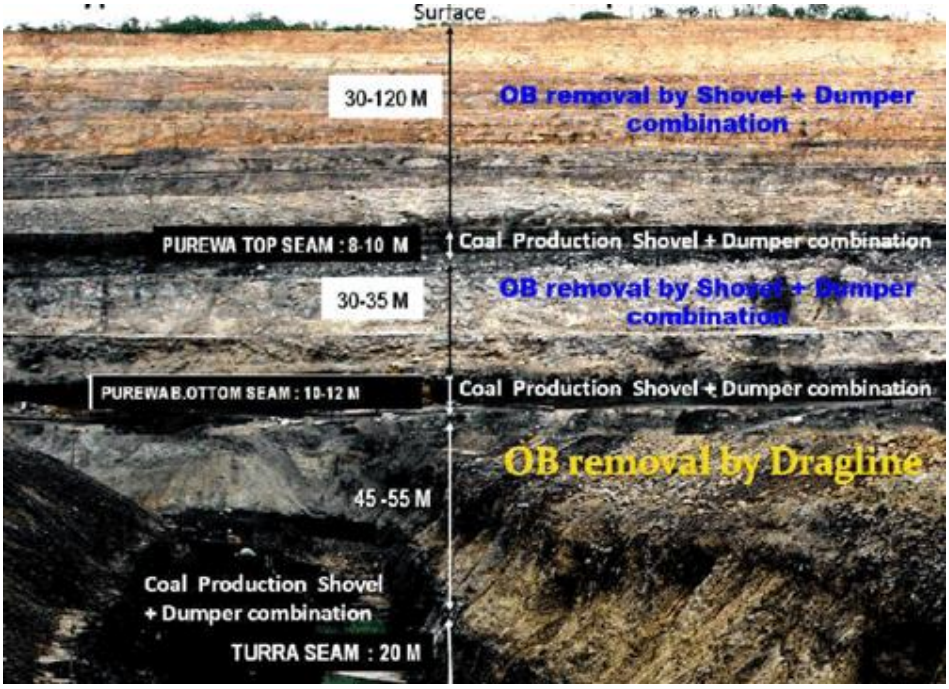
18. What is very crucial, however, is to appreciate the fact that overburden removal process is not a onetime process in one coal mining site because even in between the coal seams below the surface levels, there could be unrelated layers of soil or rocks which are required to be removed before one can reach the second or third coal seam, and because the same coal seam may be at different levels below the surface as it need not be parallel to the surface level all along. These aspects could be appreciated with the help of following diagrams:



(http://www.worldcoal.org/coal/coal-mining/)



(Diagram shown to us by the appellant during hearing of these appeals)



(This diagram, as shown by the appellant during the hearing, shows different coal seams and intervening layers of overburden which are required to be removed before reaching the next level of coal seam. In between Purewa top seam and Purewa bottom seam, shown on the left, there are layers of overburden which is required to be removed before the coal extraction can be done from the next coal seam level)

19. Let us, at this stage, go back to the line of reasoning adopted by the Assessing Officer. She has justified the disallowance, inter alia, on the ground that, ""it is undeniable that removal of overburden is a prior necessary condition before removal of coal" and that "in any given unit, the condition of removing overburden first, before extraction of coal, shall always remain unaltered, and, unless the coal is exposed, profit earning process cannot be said to have taken place". Learned Commissioner has upheld this action by observing that "The appellant is having 11 projects of coal mining, which are contiguous to one another" and that "Therefore, the OBR in project, being contiguous to others, cannot be treated as revenue merely because the process of coal mining has started in one of the projects ". Quite clearly, these observations show that, in the understanding of the authorities below, once overburden is removed so as to reach the coal seam that is end of the overburden removal so far as that site is concerned. The Assessing Officer proceeds on this assumption as she is of the view that removal of overburden is an activity which take place prior to, and only prior to, "extraction of coal" and, for this reason, it is a capital expenditure. The CIT(A) also follows the same path as he assumes that once coal seam is reached at a particular place, the overburden removal could only take place at a contiguous place in that site or, what he terms as, a contiguous project.

> *20. However, this fundamental factual assumption seems to be incorrect because, as the preceding discussions show, there are layers of material such as rocks and soil, between the two or more coal seams at the same place, which are required to be removed before coal can be extracted from the next coal seam level, and also because even to reach other segments of the same coal seam, which need not always be parallel to the surface, overburden is required to be removed. Overburden removal process does not, therefore, come to a halt upon reaching the coal level……..*

8. Learned representatives fairly agree that the issue before us is squarely covered, in favour of the assessee, by this judicial precedent as well, even though learned Departmental Representative rather dutifully relied upon the stand of the Assessing Officer. There are, of course, certain dissimilarities in the case before us vis-à-vis the facts of the above case, inasmuch as overburden in the present case is stated to be much less, at 1- 10 meters, as against 30-120 meters in the case of illustration reproduced above, but then the coal seam being much closer to the earth surface does not at all improve the case of the Assessing Officer. The fact that, under lease agreement with the Government of Chattisgarh, the assessee has to return the land in a habitable stage, shows that removal of overburden is a part of the process in as much as what is removed is to be filled back and then plantations are to be done. The overburden removal is a continuous process even as the coal extraction is on and there is removal of overburden from between the coal seams as well. It is not a onetime process that the removal of overburden takes the assessee to a stage where the coal can be extracted without any further activities to be carried out so far as overburden removal is concerned. The mechanism of open cast mining, on the first principles, is such that removal of overburden is a continuous process. For these reasons also, removal of overburden cannot seen in an isolated manner

as a capital expenditure. Ironically, even as the case involves substantial tax revenue, the manner in which the authorities below have dealt with the matter, as would be evident from extracts reproduced earlier, is somewhat superficial and leaves a lot to be desired. The authorities below have not even set out, or dealt with, break up or the exact nature of expenses or the complete details of nature of work carried out under, what is termed as, mine development. Be that as it may, under the scheme of the Act, it is not for this Tribunal to supplement the work of the Assessing Officer or to go the areas which he has left untouched. Given this legal position, the views of the coordinate bench are equally applicable on the facts before us as well. We, therefore, see no reasons to take any other view of the matter than the view taken by the coordinate bench in the case of Northern Coalfield Ltd *(supra).* Similar are the conclusions arrived at by another coordinate bench in the case of Western Coalfield Limited. Revenue's grievance that the CIT(A) ought not to have followed the decision of the coordinate bench as the said decision was under challenge before Hon'ble High Court is devoid of any merits as a mere challenge to binding judicial precedent does not affect its binding nature unless, of course, the challenge is successful and the judicial precedent is overturned or reversed. That's not the case before us.

9. In view of the above discussions, in our considered view, learned CIT(A) was quite correct in following the binding judicial precedents by way of decisions of this Tribunal, and thus deleting the impugned disallowance. We approve and confirm his action, and decline to interfere in the matter.

10. Ground no. 1 and 2 are thus dismissed.

11. In ground no. 3, the Assessing Officer is aggrieved of learned CIT(A) deleting the disallowance of Rs 24,45,434 on account of corporate social responsibility expenses. Grievance of the Assessing Officer is that ñ**the CIT(A) erred in deleting the disallowance made on account of CSR as ratios of the cases, on which the CIT(A) has relied upon to delete the disallowances made on account of Corporate Social Responsibility Expenses, were erroneously applied in this case, as** *(facts of)* **most of the cases ae distinguishable from** *(facts of the)* **present case**ò

12. So far this grievance of the Assessing Officer is concerned, the relevant material facts, as discernible from material on record, are like this. During the course of the scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed a deduction of Rs 24,45,435 on account of expenses incurred on discharging corporate social responsibility. In response to the questions of the Assessing Officer, it was explained by the assessee that this expenditure mainly related to expenses incurred on construction of school building, devasthan/ temple, drainage, barbed wire fencing, educational schemes and distributions of clothes etc voluntarily. In this background, and without much of a discussion on the factual aspects, the Assessing Officer disallowed the claim of deduction by observing as follows:

"On going through the above submission, it is found that no material has been placed to substantiate the claim that the entire expenses of Rs.732.98 lakhs was incurred on purposes shown in the written reply. Particular of villages and communities where such development activities were carried out and nature of each and every activity with the quantum of expenditure incurred thereon also has not been furnished. No material whatsoever has been placed in support of existence of such facts. It is mentioned here that the South Eastern Coalfields Limited deals with the mining and extraction of coal only whereas assessee mines the coal as well as produces the power. Similar nature of claims had been made by South Eastern Coalfields Limited, the Government controlled company and disallowed for last several years by the department and confirmed by ITAT Bench, Patna vide their order in the case of Central Coalfields Ltd., Ranchi (which is also a subsidiary of Coal India Limited) for the A. Yr. 1983-84 to 1986-87 (common order) dated 18/10/2000 had upheld the order of the CIT(A), who had upheld the total disallowance made by the Assessing Officer for those years on similar issue considering the expenses were in the nature of charity and though laudable, they could not be said to have been incurred for the purpose of business. In view of the above facts and circumstances of the case the amount of ***Rs.24.45 lakhs*** *stated to have been incurred for corporate social responsibility is disallowed and added back to the income returned. Penalty proceedings u/s. 271(1)(c) of I.T. Act, 1961 are also initiated for furnishing inaccurate particulars as responsibility is voluntary and not mandatory and not for business purposes."*

13. Aggrieved, assessee carried the matter in appeal before the learned CIT(A) who gave partial relief in the matter by observing, inter alia, as follows:

"I heard the Ld. AR at length. **Corporate social responsibility,** *also called* **corporate conscience, corporate citizenship, social performance,** *or* **sustainable responsible business/ Responsible Business** *is a form of corporate self-regulation integrated into a business model. CSR policy functions as a built-in, self-regulating mechanism whereby a business monitors and ensures its active compliance with the spirit of the law, ethical standards, and international norms. The goal of CSR is to embrace responsibility for the company's actions and encourage a positive impact through its activities on the environment, consumers, employees, communities, stakeholders and all other members of the public sphere who may also be considered as stakeholders. CSR is titled to aid an organization's mission as well as a guide to what the company stands for and will uphold to its consumers. Development business ethics is one of the forms of applied ethics that examines ethical principles and moral or ethical problems that can arise in a business environment. The Govt, of India has been trying to make it mandatory to spend at least 2% of net profit on CSR, though some corporates vehemently oppose its mandatory nature, made the spending voluntary. But the*

debate continues. CSR is not philanthropy and CSR activities are purely voluntary. To provide companies with guidance in dealing with the above mentioned expectations, while working closely within the framework of national aspirations and policies, voluntary guidelines for CSR and their implementation have been developed. While the guidelines have been prepared for the Indian context, enterprises that have a transnational presence would benefit from using these guidelines for their overseas operations as well. Since the guidelines are voluntary and not prepared in the nature of a prescriptive roadmap, they are not intended for regulatory or contractual use.

The CSR policy of the appellant company includes adoption of more than 42 villages for overall up-gradation, 10+2 co-educational O.P. Jindal School, O.P. Jindal Institute of Technology having state-of-the-art infrastructure, spread over 25 acres and AICTE affiliated, O.P. Jindal Institute of Power Technology - CEA affiliated, diploma courses to be started from September 2008. Other initiatives include adoption of various government run ITIs in Chhattisgarh, Multi-specialty O.P. Jindal Hospital & Research Centre. The expenses incurred on water supply for perennial availability of portable water, roads and culverts, toilets and others, water tanks, other community works, temple renovation, school building renovation etc. in the villages for up-gradation are part of implementation of CSR policies of the company. The expenses were made for the welfare of the employees as well. Similar expenses on community development and welfare of employees were allowed as admissible expenses by the Hon'ble ITAT Nagpur Bench, Nagpur in the case of SECL [Reported in 85 ITD 608 (Nag.)]. The expenditure on construction of school building, contribution to school, etc. have been held as admissible business expenditure in the case of **CIT Vs. Travencore Cochine Chemicals Ltd. 243 ITR 284 (Ker.), Palani Andavar Mills Vs. CIT 110 ITR 284 (Ker.), Mysore Kirloskar Ltd. Vs. CIT 166 ITR 836 (Mad.), CIT Vs. Rajasthan Spinning & Weaving Mills Ltd. 281 ITR 408 (Raj.), Bhatar Heavy Electrical Ltd. Vs. DCIT 98 TTJ 565 (Del.), Simbholi Sugar Mills Ltd. Vs. CIT 45 ITR 125, etc..** *Similarly, construction of roads and culverts for providing easier access for its workman and movement of goods are admissible expenditure u/s 37 of the Act. [Relied on* **CIT Vs. Coats Viyella India Ltd. (2002) 253 ITR 667 (Mad.), Sugar Factory & Oil Mills Pvt. Ltd. Vs. CIT (1980) 125 ITR 293 (SC), etc***.]. The expenditure under the above heads incurred by the appellant company as a good corporate citizen and as measure of gaining goodwill of the people living in and around its industries through the aforesaid activities are admissible expenditures as held in* **CIT Vs. Refineries Ltd. (2004) 266 ITR 170 (Mad.)** *and other judicial pronouncement relied on by the Ld. AR. However, the financial assistance claimed to have been given to villagers and various samities amounting to Rs.12,40,809/- include expenses on purchase of lac for cultivation program, financial assistance to O.P. Jindal Samaj Kalyan Samiti, pooja expenses and such expenses were neither substantiated with proper evidences nor have any nexus with the CSR policies of the appellant company. In the given facts and circumstances of the case, such expenses totaling to Rs. 3,71,650/- are held as inadmissible. The appellant gets a partial relief on this count."*

14. The Assessing Officer is aggrieved of the relief so granted by the CIT(A) and is in appeal before us.

15. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

16. We have noted that fundamental objection of the Assessing Officer is that the expenses is voluntary, not mandatory and not for business purposes. As for the contention that the expenses being in the nature of voluntary expenses, which are not mandatory, and which the assessee was not statutorily required to incur, are not admissible deduction in computation of business income, we are of the considered view that as long as expenses are incurred wholly and exclusively for the purposes of earning the income from business or profession, merely because some of these expenses are incurred voluntarily, i.e. without there being any legal or contractual obligation to incur the same, those expenses do not cease to be deductible in nature. In other words, it is not necessary that every expense that could be allowed as a deduction should be such as a hardnosed, and perhaps devoid of senses of compassion, businessman alone would incur in furtherance of his business pursuits. We find guidance from a passage from the judgment of House of Lords in the case of Atherton vs. British Insulated & Helsbey Cables Ltd. (1925) 10 Tax Cases 155 (HL), referred to with approval by the Hon'ble Supreme Court in the case of **CIT vs. Chandulal Keshavlal & Co. (1960) 38 ITR 601 (SC),** which reads as follows: **"It was made clear in the above cited cases of Usher's Wilshire Brewery vs. Bruce (supra) and Smith vs. Incorporated Council of Law Reporting (1914) 6 Tax Cases 477 that a sum of money expended not with a necessity and with a view**

to direct and immediate benefit to the trade, but voluntarily and on the grounds of commercial expediency and in order to indirectly facilitate, carrying on of business may yet be expended wholly and exclusively for the purpose of the trade; and it appears to me that the findings of the CIT in the present case, bring the payment in question within that description. They found (in words which I have already quoted) that payment was made for the sound commercial purpose of enabling the company to retain the existing and future members of staff and for increasing the efficiency of the staff; and after referring to the contention of the Crown that the sum of Sterling Pound 31,784 was not money wholly and exclusively laid out for the purpose of the trade under the rule above referred to, they found deduction was admissible-thus in effect, though not in terms, negativing the Crowns contentions. I think that there was ample material to support the findings of the CIT, and accordingly hold that this prohibition does not apply." It will, therefore, be clear that even if an expense is incurred voluntarily, it may still be construed as 'wholly and exclusivelyô Explaining this principle, Honôble Supreme Court has, in the case of **Sassoon J David & Co. (P) Ltd. vs. CIT [(1979) 118 ITR 261 (SC)]** *inter alia* observed that :**"It has to be observed here that the expression "wholly and exclusively" used in s. 10(2)(xv) of the Act does not mean "necessarily". Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits, the assessee can claim deduction under s. 10(2)(xv) of the Act even though there was no compelling necessity to incur such expenditure. It is**

relevant to refer at this stage to the legislative history of s. 37 of the IT Act, 1961, which corresponds to s. 10(2)(xv) of the Act. An attempt was made in the IT Bill of 1961 to lay down the "necessity" of the expenditure as a condition for claiming deduction under s. 37. Sec. 37(1) in the Bill read "any expenditure.. laid out or expended wholly, necessarily and exclusively for the purposes of the business or profession shall be allowed." The introduction of the word "necessarily" in the above section resulted in public protest. Consequently, when s. 37 was finally enacted into law, the word "necessarily" came to be dropped. The fact that somebody other than the assessee is also benefited by the expenditure should not come in the way of an expenditure being allowed by way of deduction under s. 10(2)(xv) of the Act if it satisfies otherwise the tests laid down by law."

17. The next issue is whether it is for the purposes of business or not. We may, in this regard, usefully refer to the observations of a coordinate bench of this Tribunal, speaking through one of us (i.e. the Accountant Member) and in the case of **Hindustan Petroleum Corporation Ltd Vs DCIT [(2005) 96 ITD 186 (Bom)]**, as follows:

> *7. We find that as held by Hon'ble Karnataka High Court in the case of Mysore Kirloskar Ltd. v. CIT [1987] 166 ITR 836 1, while 'the basic requirements for invoking sections 37(1) and 80G are quite different', 'but nonetheless the two sections are not mutually exclusive'. Thus, there are overlapping areas between the donations given by the assessee and the business expenditure incurred by the assessee. In other words, there can be certain amounts, though in the nature of donations, and nonetheless, these amounts may be deductible under section 37(1) as well. Therefore, merely because an expenditure is in the nature of donation, or, to use the words of the CIT(A), 'promoted by altruistic motives', it does not cease to be an expenditure deductible under section 37(1). In Mysore Kirloskar Ltd.'s case*

(supra), Their Lordships have observed that even if the contributions by the assessee is in the forms of donations, but if it could be termed as expenditure of the category falling in section 37(1), then the right of the assessee to claim the whole of it as a deduction under section 37(1) cannot be declined. What is material in this context is whether or not the expenditure in question was necessitated by business considerations or not. Once it is found that the expenditure was dictated by commercial expediencies, the deduction under section 37(1) cannot be declined. As to what should be relevant for examining this aspect of the matter, we may only refer to the observations of Hon'ble Supreme Court in the case of Sri Venkata Satyanarayna Rice Mill Contractors Co. v. CIT [1997] 223 ITR 101 2:

> **. . . any contribution made by an assessee to a public welfare fund which is directly connected or related with the carrying on of the assessee's business or which results in the benefit to the assessee's business has to be regarded as an allowable deduction under section 37(1) of the Act. Such a donation, whether voluntary or at the instance of the authorities concerned, when made to a Chief Minister's Drought Relief Fund or a District Welfare Fund established by the District Collector or any other fund for the benefit of the public and with a view to secure benefit to the assessee's business, cannot be regarded as payment opposed to public policy. It is not as if the payment in the present case had been made as an illegal gratification. There is no law which prohibits the making of such a donation. The mere fact that making of a donation for charitable or public cause or in public interest results in the Government giving patronage or benefit can be no ground to deny the assessee a deduction of that amount under section 37(1) of the Act when such payment had been made for the purpose of assessee's business.*

8. In the case of CIT v. Madras Refineries Ltd. [2004] 266 ITR 170 1, Hon'ble Madras High Court has upheld deductibility of the amount spent by the assessee even on bringing drinking water to locality and in aiding local school. While doing so, Their Lordships observed as follows:

> *The concept of business is not static. It has evolved over a period of time to include within its fold the concrete expression of care and concern for the society at large and the locality in which business is located in particular. Being a good corporate citizen brings goodwill of the local community as also with the regulatory agencies and society at large, thereby creating an atmosphere in which the business can succeed in a greater measure with the aid of such goodwill . . . .*

9. Let us now take a look at the undisputed facts of this case. The assessee is a company owned by the Government of India and working under the control and directions of the Government of India. As the statement of facts clearly sets out, the expenditure on 20-Point Programmes was incurred in view of specific directions of the Government of India. This factual aspect is not even

disputed or challenged by the Revenue at any stage. It cannot but be in the business interest of the assessee-company to abide by the directions of the Government of India which also owns the assessee-company. In any event, as observed by the Hon'ble Madras High Court in Madras Refineries Ltd.'s case (supra), monies spent by the assessee as a good corporate citizen and to earn the goodwill of the society help creating an atmosphere in which the business can succeed in a greater measure with the help of such goodwill. The monies so spent therefore are required to be treated as business expenditure eligible for deduction under section 37(1) of the Act. What is the expenditure for the implementation of 20-point plant after all? It is solely for the welfare of the oppressed classes of society, for which even the Constitution of India sanctions positive discrimination, and for contribution to all around development of villages, which has always been the central theme of Government's development initiatives. An expenditure of such a nature cannot but be, to use the words employed by the Hon'ble Madras High Court in Madras Refineries Ltd.'s case (supra), 'a concrete expression of care and concern for the society at large' and an expenditure to discharge the responsibilities of a 'good corporate citizen which brings goodwill of with the regulatory agencies and society at large, thereby creating an atmosphere in which the business can succeed in a greater measure with the aid of such goodwill'.

18. We have also take note of the fact that in view of insertion of Explanation 2 to Section 37(1), with effect from 1st April 2015, which provides that **"for the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession**", the expenses incurred in discharging corporate social responsibility are not deductible in computation of business income. Learned Departmental Representative submits that this amendment should be treated as clarificatory in nature, as it is stated to be in so many words, and we should, therefore, hold that the expenses in discharging

corporate social responsibility were outside the ambit of expenses deductible under section 37(1).

19. We are unable to see legally sustainable merits in this plea either. The amendment in the scheme of Section 37(1), which has been introduced with effect from 1st April 2015, cannot be construed as to disadvantage to the assessee in the period prior to this amendment. This disabling provision, as set out in Explanation 2 to Section 37(1), refers only to such corporate social responsibility expenses as under Section 135 of the Companies Act, 2013, and, as such, it cannot have any application for the period not covered by this statutory provision which itself came into existence in 2013. Explanation 2 to Section 37(1) is, therefore, inherently incapable of retrospective application any further. In any event, as held by Hon'ble Supreme Court's five judge constitutional bench's landmark judgment, in the case of **CIT Vs Vatika Townships Pvt Ltd [(2014) 367 ITR 466 (SC)]**, the legal position in this regard has been very succinctly summed up by observing that "**Of the various rules guiding how legislation has to be interpreted, one established rule is that unless a contrary intention appears, legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known *as lex prospicit non respicit*: law looks forward not backward. As was observed in**

Phillips vs. Eyre [, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law." It may appear to be some kind of a dichotomy in the tax legislation but the well settled legal position is that when a legislation confers a benefit on the taxpayer by relaxing the rigour of pre-amendment law, and when such a benefit appears to have been the objective pursued by the legislature, it would a purposive interpretation giving it a retrospective effect but when a tax legislation imposes a liability or a burden, the effect of such a legislative provision can only be prospective. We have also noted that the amendment in the scheme of Section 37(1) is not specifically stated to be retrospective and the said Explanation is inserted only with effect from 1st April 2015. In this view of the matter also, there is no reason to hold this provision to be retrospective in application. As a matter of fact, the amendment in law, which was accompanied by the statutory requirement with regard to discharging the corporate social responsibility, is a disabling provision which puts an additional tax burden on the assessee in the sense that the expenses that the assessee is required to incur, under a statutory obligation, in the course of his business are not allowed deduction in the computation of income. This disallowance is restricted to the expenses incurred by the assessee under a statutory obligation under section 135 of Companies Act 2013, and there is thus now a line of demarcation between the expenses incurred by the assessee on discharging corporate social responsibility under such a statutory obligation and under a voluntary assumption of responsibility. As for the former, the disallowance under Explanation 2 to Section 37(1) comes into

play, but, as for latter, there is no such disabling provision as long as the expenses, even in discharge of corporate social responsibility on voluntary basis, can be said to be ñwholly and exclusively for the purposes of businessò There is no dispute that the expenses in question are not incurred under the aforesaid statutory obligation. For this reason also, as also for the basic reason that the Explanation 2 to Section 37(1) comes into play with effect from 1st April 2015, we hold that the disabling provision of Explanation 2 to Section 37(1) does not apply on the facts of this case.

20. Ground no. 3 is also thus dismissed.

21. In the result, the appeal is dismissed. Pronounced in the open court today on 23rd day of June, 2016.

Sd/- Sd/-

C M Garg **Pramod Kumar**
(Judicial Member) (Accountant Member)
Dated: 23rd day of June, 2016.

Copies to: *(1)* *The appellant* *(2)* *The respondent*
(3) *Commissioner* *(4)* *CIT(A)*
(5) *Departmental Representative* *(6)* *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Raipur bench, Raipur