IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.597/Mum./2023

(Assessment Year : 2014–15)

Dy. Commissioner of Income Tax
Circle–14(1)(2), Mumbai ……. Appellant

v/s

M/s. GMR Warora Energy Ltd.
701/704, 7th Floor, Naman Centre
A–Wing, Bandra Kurla Complex, Bandra
Mumbai 400 051 PAN – AABCE6299F ……. Respondent

Assessee by : Shri Yogesh Thar a/w
Ms. Hiloni Shah
Revenue by : Dr. Kishore Dhule

Date of Hearing – 07/06/2023	Date of Order – 15/06/2023

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 30/12/2022 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["*learned CIT(A)*"], for the assessment year 2014-15.

2. In this appeal, the Revenue has raised the following grounds:-

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs.2,43,98,882/- on the issue

of community development expenses made in the assessment order without appreciating the fact of the case and finding of the Assessing Officer.

1.1 Whether Ld. CIT(A) has erred in allowing the assessee's appeal on this issue without appreciating the decision of the Hon'ble Supreme Court in the case of Madras Refineries Ltd. Wherein, on the same issue, the Hon'ble Supreme Court has allowed the SLP (Civil) No(s), 7000/2005 filed by the Revenue?

2. Whether on the facts and in the circumstances of the case and in law, the Ld CIT (A) had erred in allowing additional depreciation Rs.200,80,07,557/- @ 10% (50% of applicable rate of 20%), since the plant and machinery was acquired and was put to use for less than 180 days in assessment year 2013-14, however, as per second proviso of section 32(1) of the Income Tax Act, 1961, additional depreciation is allowable only in the year in which new plant and machinery is acquired and put to use.

3. The appellant prays that the order of the CIT (A) on the above grounds 'be set aside and that of the Assessing Officer be restored.

4. The appellant craves leave to amend, or alter any grounds or add a new ground, which may be necessary."

3. The issue arising in ground no.1, raised in Revenue's appeal, is pertaining to the deletion of addition of Rs.2,43,98,882, on account of community development expenses.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a company engaged in the business of power generation and has commenced commercial operation of Unit-1 in the financial year 2012-13 and Unit-2 in the financial year 2013-14. During the year under consideration, the assessee filed its return of income on 30/11/2014, declaring a total income at Rs. nil. During the year, the assessee declared a loss of Rs.1400,05,73,040, under normal provisions, and a book loss of Rs.5,62,64,62,047, under section 115JB of the Act. During the assessment proceedings, on perusal of the profit and loss account, it was observed that the assessee has claimed expenses of Rs.2,43,98,882, towards community

development expenses under the head "*other expenses*". The assessee was asked to explain as to how the said expenses are allowable. In response thereto, the assessee submitted that the expenditure incurred on community development in and around the surrounding villages of the Plant is for the purpose of the business of the assessee and therefore is an allowable expenditure. The Assessing Officer ("*AO*") vide order dated 26/12/2016, did not agree with the submissions of the assessee and held that expenditure is not incurred wholly and exclusively for the purpose of business. The learned CIT(A), vide impugned order, allowed the appeal filed by the assessee and deleted the addition made by the AO on this issue. Being aggrieved, the Revenue is in appeal before us.

5. We have considered the submissions of both sides and perused the material available on record. The assessee is incorporated with the main object of development and implementation of coal-based thermal power project in Waroa Taluka, Chandrapur District of Maharashtra. The assessee, during the year under consideration, debited an amount of Rs.2,43,98,882, as community development and welfare expenses in its profit and loss account. Out of the aforesaid amount, Rs.61,28,827, is claimed to be incurred towards community development expenses, while Rs.1,82,70,055, was incurred towards environment health and safety expenses. As per the assessee, the amount of Rs.61,28,827, was incurred on community development of nearby villages around the Plant area, which needs to be developed for the purpose of development of power generation business. It is further the claim of the assessee that the above expenditure incurred on community development was

to further power generation business and was wholly and exclusively incurred in order to facilitate the business of the assessee to run in a smooth manner and to assist the employees of the assessee company. In this regard, it is the plea of the assessee that it incurred certain expenditures directly and some amount for community development was incurred through a charitable organisation, namely, GMR Varalakshmi Foundation. During the assessment proceedings, the assessee furnished the following details of the community development expenses incurred by the assessee, during the year under consideration:-

Sl. No.	*Particulars*	*Amount in Rupees*
A	*Community Development expenses*	
1.	*Ganesh Caterers*	*50,000*
2.	*GMR Varalakshmi Foundation*	*5,187,619*
3.	*Gopal Borwells*	*126,340*
4.	*Govind Sitaram Warghane*	*98,100*
5.	*Help Age India*	*1,325,000*
6.	*Kiran Enterprises*	*453,393*
7.	*Krishna Constructions*	*42,490*
8.	*Ravi Shankar*	*3,000*
9.	*Shamla Films*	*30,000*
10.	*Vidarbha Travel*	*160,088*
11.	*Vishal Nanaji Parkhi*	*7,200*
12.	*Vitthal Rukmai Devasthan*	*214,063*
13.	*Cbec- A/C Service Tax*	*32,822*
14.	*Regrouping of expenses*	*(1,601,288)*
	Total:–	*6,128,827*

6. In addition to the above, the assessee also incurred an amount of Rs.1,82,70,055 on environment health and safety expenses, the details of which are as under:-

Sl. No.	*Particulars*	*Amount in Rupees*
B	*Environment Health and Safety expenses*	
1.	*ASN Pest Control Services*	*24,806*
2.	*Balaji Medical And General Stores*	*29,574*
3.	*Bharat Nursery - Carpet grass development work and other plantation*	*443,000*
4.	*Cbec- A/C Service Tax*	*267,064*
5.	*Deotale Diagnostic Centre*	*21,600*
6.	*Dhayabhai Patel*	*4,300*
7.	*Global Industrial Products*	*138,240*
8.	*Gopal Borwells*	*31,499*
9.	*Hemant Traders - Safety items*	*287,626*
10.	*Jai Kissan Narsery – Plantation*	*225,000*
11.	*Khedkar & Associate Consultant Pvt. Ltd.*	*15,919*
12.	*Kunal Marketing & Services - Self contained breathing apprataus etc*	*340,011*
13.	*MD Safety Consultants Private*	*29,214*
14.	*Mahabal Enviro Engineers Pvt. Ltd. - Air quality, noise, groung water quality etc monitoring in the Plant*	*1,542,655*
15.	*NV Tadas Contractors - Tractor hire charges and providing manpower for watering of plants in the Plant at regular intervals*	*2,004,159*
16.	*Pest Control Ideal*	*58,079*
17.	*Pest Control Integrated*	*205,169*
18.	*Praveen Kumar Shetty*	*45,726*
19.	*Rajesh Rameshbhai Patil*	*4702*
20.	*Raxa Security Services Limited - Fire tender staff deployment*	*7,973,346*
21.	*S.S.Printers*	*151,578*
22.	*Sajaan Enterprices - Providing man–power for maintenance of plantation in the Plant*	*1,133,220*
23.	*Shiv Safety Solutions*	*40,500*
24.	*Shyamkant Joshi - Consultancy charges to paid to the Doctor on emergency services, heath check-up of workers engage etc.*	*767,550*
25.	*Spectrum Services*	*30,000*
26.	*Sulochana Joshi - Amublance hire charges*	*633,000*
27.	*Varsha R. Potdar*	*62,080*
28.	*Vinod Gaydhar*	*18,476*
29.	*Others*	*1,741,963*
	Total:	*18,270,055*

	Grand Total	*24,398,882*

7. We find that the AO, vide assessment order, did not dispute the fact that the expenditures have been incurred for the purpose of community development, and environment health & safety expenses. As is evident from the record, the AO disallowed the expenditure merely on the basis that the said expenditure are not incurred wholly and exclusively for the purpose of business. In this regard, it is pertinent to note that vide Finance (No.2) Act, 2014, w.e.f. 01/04/2015, Explanation-2 was inserted in section 37(1) of the Act, whereby expenses incurred on the activities relating to corporate social responsibility are specifically excluded from the purview of section 37(1) of the Act. Since the year under consideration is the assessment year 2014-15, therefore, the aforesaid amendment is not applicable to the present case. The learned CIT(A), vide impugned order, placed reliance upon various judicial pronouncements, as noted from pages 3-7 of the impugned order, wherein it has been held that expenditure incurred on community development/CSR are allowable under section 37(1) of the Act. Further, it cannot be disputed that the expenditure incurred on environment health and safety, as stated above, are relevant considering the business in which the assessee is engaged, i.e. development and implementation of coal-based thermal power project. Therefore, in view of the above, once the expenditure has been accepted to be for the community development, and environment health & safety expenses, the same cannot be held to be not incurred wholly and exclusively for the purpose of business in the year under consideration. Accordingly, we find no

infirmity in the impugned order passed by the learned CIT(A) on this issue. As a result, ground no.1 raised in Revenue's appeal is dismissed.

8. The issue arising in ground No. 2, raised in Revenue's appeal, is pertaining to the allowance of additional depreciation.

9. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee commenced commercial operation of Unit-1 on 09/03/2013 and the addition to plant and machinery was of Rs. 2008,00,75,571. The assessee claimed additional depreciation @10% amounting to Rs.200,80,07,557, being 50% of 20%, as the plant and machinery were put to use for less than 180 days in the financial year 2012-13. The assessee claimed the balance amount of additional depreciation @10% amounting to Rs.200,80,07,557, during the year in respect of the plant and machinery installed in the immediately preceding assessment. The AO, vide assessment order, did not agree with the claim of the assessee and held that the same is in contravention to the provisions of section 32(1)(iia) of the Act which allow additional depreciation only in the year in which the plant and machinery are acquired and put to use. Since, in the present case, the plant and machinery were acquired and put to use in the assessment year 2013-14, therefore, the AO was of the view that additional depreciation is allowable in that assessment year only and the assessee cannot claim the balance amount of additional depreciation in any subsequent assessment year. Accordingly, the AO disallowed the claim of additional depreciation of Rs.200,80,07,557, and added the same to the total income of the assessee. The learned CIT(A), vide impugned order, deleted the addition made by the AO and granted the balance

additional depreciation claimed by the assessee in the year under consideration. Being aggrieved, the Revenue is in appeal before us.

10. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee capitalised plant and machinery pertaining to Unit-1 (300 MW) and others aggregating to Rs.2008,00,75,571, on 19/03/2013, (i.e. the assessment year 2013-14). In the assessment year 2013-14, the assessee has claimed additional depreciation @10% (i.e. 50% of the applicable rate of 20% as per section 32(1)(iia)), since the plant and machinery were put to use for less than 180 days. In the year under consideration, the assessee claimed the balance 10% of additional depreciation on the amount. We find that in CIT v/s Rittal India (P) Ltd, [2016] 380 ITR 423 (Karn.), the following substantial questions of law came up for consideration before the Hon'ble Karnataka High Court:-

> *"i. Whether the Tribunal is correct in extending the benefit of Section 32(1)(iia) of the Act to the next assessment year when the income tax Act does not provide for such carryover, thereby violating the legal principles of "cassus omissus" which states that the courts cannot compensate for what the legislature has omitted to enact?*
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> *ii. Whether the Tribunal was correct in holding that additional depreciation allowed u/s.32(1)(iia) is a one time benefit to encourage industrialization and the relevant provisions has been construed reasonably and purposive without appreciating that the additional depreciation is allowed in the year of purchase and if in the year of purchase the assessee is eligible only for 50% depreciation, the balance 50% cannot be carried forward for the subsequent year on the claim cannot be allowed in any other year?"*

11. While deciding the aforesaid substantial questions of law in favour of the taxpayer, the Hon'ble Karnataka High Court held that if the plant and machinery eligible for additional depreciation under section 32(1)(iia) of the Act are put to use for less than 180 days in said financial year and, therefore,

only 50% of additional depreciation can be claimed in that year, balance 50% can be availed in the subsequent year. The relevant findings of the Hon'ble Karnataka High Court, in the aforesaid decision, are as under:-

> *"7. Clause (iia) of Section 32(1) of the Act, as it now stands, was substituted by the Finance Act, 2005, applicable with effect from 01.04.2006. Prior to that, a proviso to the said Clause was there, which provided for the benefit to be given only to a new industrial undertaking, or only where a new industrial undertaking begins to manufacture or produce during any year previous to the relevant assessment year.*
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> *8. The aforesaid two conditions, i.e., the undertaking acquiring new plant and machinery should be a new industrial undertaking, or that it should be claimed in one year, have been done away by substituting clause (iia) with effect from 01.04.2006. The grant of additional depreciation, under the aforesaid provision, is for the benefit of the assessee and with the purpose of encouraging industrialization, by either setting up a new industrial unit or by expanding the existing unit by purchase of new plant and machinery, and putting it to use for the purpose of business. The proviso to Clause (ii) of the said Section makes it clear that only 50% of the 20% would be allowable, if the new plant and machinery so acquired is put to use for less than 180 days in a financial year. However, it nowhere restricts that the balance 10% would not be allowed to be claimed by the assessee in the next assessment year.*
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> *9. The language used in Clause (iia) of the said Section clearly provides that "a further sum equal to 20% of the actual cost of such machinery or plant shall be allowed as deduction under Clause (ii)". The word "shall" used in the said Clause is very significant. The benefit which is to be granted is 20% additional depreciation. By virtue of the proviso referred to above, only 10% can be claimed in one year, if plant and machinery is put to use for less than 180 days in the said financial year. This would necessarily mean that the balance 10% additional deduction can be availed in the subsequent assessment year, otherwise the very purpose of insertion of Clause (iia) would be defeated because it provides for 20% deduction which shall be allowed.*
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> *10. It has been consistently held by this Court, as well as the Apex Court, that beneficial legislation, as in the present case, should be given liberal interpretation so as to benefit the assessee. In this case, the intention of the legislation is absolutely clear, that the assessee shall be allowed certain additional benefit, which was restricted by the proviso to only half of the same being granted in one assessment year, if certain condition was not fulfilled. But, that, in our considered view, would not restrain the assessee from claiming the balance of the benefit in the subsequent assessment year. The Tribunal, in our view, has rightly held, that additional depreciation allowed under Section 32(1)(iia) of the Act is a one time benefit to encourage industrialization, and the provisions related to it have to be construed reasonably, liberally and purposively, to make the provision meaningful while granting additional allowance. We are in full agreement with such observations made by the Tribunal.*

11. In view of the aforesaid, we do not find that any interference is called for with the order of the Tribunal, or that any question of law arises in this appeal for determination by this Court."

12. Therefore, respectfully following the aforesaid decision of the Hon'ble Karnataka High Court, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue. As a result, ground no.2 raised in Revenue's appeal is dismissed.

13. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 15/06/2023

Sd/-	**Sd/-**
AMARJIT SINGH	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 15/06/2023

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai