Singareni Collieries Company ... vs Acit., Circle-1, Khammam on 12 June, 2025

ITA Nos 283 284 286 and 300 301 and 308 of 2024
Singareni Collieries Company Ltd

,

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' DB-A ' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
AND
Shri Manjunatha, G. Accountant Member

. . /ITA Nos.283, 284 & 286/Hyd/2024
(/Assessment Years: 2015-16, 2016-17 & 2020-21)

Singareni Collieries Company Limited Kothagudem PAN:AAACT8873F	Vs.	ACIT, Circle - 1 Khammam and ACIT, Circle 13(1) Hyderabad and

. . /ITA Nos.300, 301 & 308/Hyd/2024
(/Assessment Years: 2015-16, 2016-17 & 2020-21)

Dy. CIT, Circle 13(1) Hyderabad (Appellant)	Vs.	Singareni Collieries Company Limited Kothagudem PAN:AAACT8873F (Respondent)

/Assessee by:
Shri M.V.Anil Kumar, Advocate
/Revenue by:: Shri B Balakrishna, CIT (DR)

/Date of hearing:
10/06/2025
/Pronouncement: 12/06/2025

/ORDER

Per Bench:

These 3 sets of cross appeals filed by the assessee as well as the Revenue are directed against the 3 separate orders all dated 30/01/2024 of the learned CIT (A)-NFAC Delhi, for the A.Ys 2015-16, 2016-17 and 2020-21 respectively. The assessee as well as the Revenue have raised the following grounds of appeals for 3 A.Ys:

ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd

2. Ground Nos.1 to 4 for the A.Y 2015-16, 2016-17 and 2020-21 of the assessee's appeals are common and involving the issue of disallowance of payment/grant made to Singareni Educational Society u/s 40A(9) of the I.T. Act, 1961. For the A.Y 2015-16, the assessee has claimed the deduction of Rs.37,39,77,452/- towards grant made to Singareni Educational Society. The Assessing Officer asked the assessee to show cause as to why this expenditure should not be disallowed by invoking the provisions of section 40A(9) of the Act. In response the assessee submitted that the said educational society is a body constituted for running educational institutions established by the assessee for the benefit of its employees. The entire infrastructure required by the socitt was provided by the assessee and therefore, the entire expenditure of the society over and above the grant received from government and fees collected is met by the assessee. The assessee company funds gap in the expenditure incurred by the society by deducting the grant in aid received from the government and fee collected by the society. Thus, the assessee submitted that the expenditure incurred by it is for reimbursement of the expenses incurred by the educational society towards administrative and other operating expenses. The assessee also pointed out that the assessee is under the obligation as per the National Coal Wages Agreement (NCWA) entered into between the management of the assessee and the joint bipartite committee of Coal Industry (JBCCI) which consists of representative of State Govt, representative of the Central Govt and Members of various recognized trade unions. The Assessing Officer did not accept this contention of the assessee and disallowed the said claim of deduction u/s 40A(9) of the Act.

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3. The assessee challenged the action of the Assessing Officer before the learned CIT (A) but could not succeed.

4. Before the Tribunal, the learned Counsel for the assessee submitted that the assessee is engaged in the business of extraction and sale of coal and power generation in the State of Telangana. The assessee is primarily governed by Mines Act, 1952. The operation of the assessee are spread across various remote area in the State of Telangana. In view of the compelling working conditions under which the workers of the assessee are working, the assessee provides with certain welfare benefits to the employees/workers and their family members/children. The service conditions of the workers and employees of the assessee are governed by the National Coal Wages Agreement (NCWA) and therefore, the assessee was under the obligation to establish infrastructure like, hospital, educational institutions and township etc. for its employees as per the employment terms to make available good manpower who are willing to stay in the remote areas. Earlier, the assessee had used to run schools and colleges for their employees incurring expenditure, however, in the year 1999, the

assessee formed an educational society namely Singareni Educational Society to run the schools and colleges more efficiently. Thus, the grant made by the assessee towards making up the shortfall of the funds of the educational society after considering the grant-in-aid received from the govt. and fees collected for the expenditure incurred in education to the employees/children of the employees. The learned Counsel for the assessee has further submitted that the NCWA is a recognized agreement having a binding effect in the terms of the definition of "settlement" under the provisions of the Industrial Disputes Act, ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd 1947 as held by the Hon'ble Supreme Court in the case of Mohan Mahto vs. Central Coal Field Ltd (2007) (8) SCC 549. Thus, the learned Counsel for the assessee has submitted that the Hon'ble Supreme Court has held that the NCWA is a statutory document and it has binding force of law so far its enforceability is concerned. He has further submitted that the provisions of section 40A(9) of the Act are not attracted in the case of the assessee as this expenditure is not incurred directly or indirectly for setting up or formation or towards contribution to any funds, trust, society etc., but it was only an expenditure towards providing educational facility to the employees as well as local public residing in the area. The learned Counsel for the assessee has pointed that this issue is covered by the decision of the Hon'ble jurisdictional High Court in assessee's own case for the A.Ys 2006-07 to 008-09 respectively in ITTA Nos. 85, 87 and 88 of 2021, dated 15/02/2024 whereby the issue has been decided in favour of the assessee.

5. On the other hand, the learned DR has submitted that the educational society is an independent entity and maintaining separate books of account. He has referred to the income & expenditure account placed at page No.36 of the paper book and submitted that the said society is not only providing education to the employees of the assessee but to the other local residents in the area and therefore, the expenditure incurred by the assessee cannot be considered as laid out wholly and exclusively for the purpose of the business of the assessee. He has relied upon the orders of the Assessing Officer as well as the learned CIT (A).

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6. We have considered the rival contentions as well as the relevant material available on record. The Assessing Officer has disallowed the claim of the assessee by holding that the payment in question made by the assessee to the educational society would not be an allowable expenses u/s 40A(9) of the I.T. Act, 1961 as this payment is not made for the expenses provided u/s 36(1)(iv) &(iv) of the Act. The relevant finding in para 9.2 are as under:

7. The learned CIT (A) has confirmed the order of the Assessing Officer. At the outset, we note that this issue has been now considered and decided by the Hon'ble jurisdictional High Court in assessee's own case for the A.Ys 2006-07 to 2008-09 vide judgment dated 15/02/2024 in ITTA No.85,87 and 88 of 2021 in para 10 to 17 as under:

> "10. The contention of the Assessing Officer was that firstly, the benefit so provided being a welfare measure, the expenditure would fall squarely within the ambit of Clause E of sub-section 2 of Section 115WB and hence, it becomes taxable. Second condition was that the NCWA is only a settlement between the employer and

employees where there ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd is only a contractual obligation for the employer towards its employees. That it is not a statutory document nor does the settlement have any statutory force of law so as to avail the benefits under the explanation to Section 115WB(2)(E) both under the un- amended provision and as also under the amended provision.

11. It is necessary at this juncture to take note of the couple of decisions rendered on the said subject issue. The first being the judgment of the Hon'ble Supreme Court in case of Mohan Mahto v. Central Coal Field Ltd. 1, where considering the provisions of NCWA while determining whether it has binding force of law or not, the Hon'ble Supreme Court in paragraph No.2 and paragraph No.10 held as under:

"2. ..... The terms and conditions of the service of the workmen working in coal mines are inter alia governed by a "settlement" known as National Coal Wage Agreement (NCWA) V. Indisputably, the said settlement, in terms of sub-

section (3) of Section 18 of the Industrial Disputes Act, 1947 is binding on the parties.....".

1 (2007) 8 Supreme Court Cases 549 "10. A settlement within the meaning of sub-section (3) of Section 18 of the Industrial Disputes Act is binding on both the parties and continues to remain in force unless the same is altered, modified or substituted by another settlement.....".

12. A similar issue came up for consideration before the Jharkhand High Court at Ranchi in L.P.A.No.17 of 2018 which has been decided on 23.04.2019 and where the Division Bench of the Jharkhand High Court, in paragraph 6, relying upon the aforesaid judgment of the Hon'ble Supreme Court, held as under:

"6. We are in agreement with the contention of the appellant that National Coal Wage Agreement is statutory in nature. It is an outcome of tripartite agreement among the Coal Company, Labour Unions and Central Government. It has been held by the Hon'ble Supreme Court in Mohan Mahto Vs. Central Coalfields Ltd. reported in (2007) 8 SCC 549, that it has statutory force. Learned Single Judge came to the aforesaid findings due to following facts and reasons which have been depicted in paragraph 7 of the impugned judgment which reads hereunder:

7. (i) Admittedly, after the death of the deceased-

employee, late Laxmi Ravidas on submission of application for compassionate appointment of her eldest son by Samudri Devi (nominee of the petitioner's father), the Management- Company considered the case of the eldest brother of the petitioner, namely, Santosh Ravidas in the year 2004, but, by ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd that time, the said Santosh Ravidas has died, so it cannot be construed that the respondents did not consider the case of the legal heir of the deceased employee, late Laxmi Ravidas for consideration of

compassionate appointment. It appears that the mother of the petitioner had applied for appointment of the petitioner on compassionate ground in the year 2011. Due to indecisiveness on the part of the mother of the petitioner, it was not possible on the part of the respondents to consider the case of the petitioner for compassionate appointment.

(ii) It is a settled position that the compassionate appointment is not a matter of right, rather, it is a matter of concession. On perusal of the impugned Annexure-19 to the writ application, the same does not suffer from any infirmity or irregularity so as to warrant interference of this Court.

(iii) So far as the claim of the petitioner for grant of monetary compensation as admissible under the relevant provisions of the N.C.W.A. is concerned, the mother of the petitioner is entitled, provided that she files an application for grant of the same".

13. Two similar issues under the provisions of the Income Tax itself came up before the Nagpur Bench of the Bombay High Court, first in Income Tax Appeal No.40 of 2015. In the case where it was an appeal filed by the Commissioner of Income Tax against M/s. Western Coalfields Ltd., Nagpur, the Division Bench took the following stand:

> "6. Two additional questions, to be looked into here are:
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> (i) Whether on the facts and in the circumstances of the case in law, the ITAT is justified in holding that the expenditure of Rs.342.42 lacs on account of donation to educational institutions is an allowable expenditure under corporate social responsibility even though it is only application of income?
>
> (ii) Whether on the facts and in the circumstances of the case in law, the ITAT is justified the disallowance of contract charges of Rs.6,25,000/- paid to Nagindevi Agarwal u/s.40(a)(ia) of Income Tax Act, 1961 on account of non-deduction of TDS?

Accordingly, we have heard Advocate Parchure for the Department Advocate Dewani for assessee. We find that the provision for educational facilities is being made by assessee as a part of its obligation under various National Coal Wage Agreement (NCWA), which are legally enforceable in terms of Section 18 of the Industrial Dispute Act. The said provision is also accepted and allowed by Department since 1992. In fact, assessment order itself records that for assessment year 1995-96, appeal filed by Department in this ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd respect before ITAT was withdrawn. It is not the case of Department that aims and objects of assessee do not permit such expenditure. Fact show that, to provide education towards of its employees who are working at sites which are otherwise away from town, schooling facility is being provided by employer. To provide better facility, the central school organization an undertaking of Union of India is requested to offer it at such site. In this situation, we find that no substantial questions of law as sought to be raised arise out of concurrent finding of CIT and ITAT".

14. The same view was further reiterated in yet another appeal preferred by the Income Tax Department in ITA No.24 of 2019 again before the Division Bench of Nagpur Bench of the High

Court of Bombay. Dealing with the fringe benefits and expenses made in the context of value of free issue of coal, medical facilities, educational facilities, grants to school and institutions, sports and recreational facilities, the Nagpur Bench of the Bombay High Court, wherein the deliberation substantially was what is reflected in paragraph 2 and paragraph 3 of the said judgment and the finding of the Bench is reflected in paragraph 5, as under:

> "2. Addition of fRs.597.22 Lacs being value for fringe benefits in respect of expenditure on the welfare of employees by the Assessment Officer and maintained by the Commissioner of Income Tax [Appeals] but reversed by the Income Tax Appeal Tribunal is the subject matter of challenge in this appeal filed at the instance of the Revenue. These fringe benefits pertain to expenditure made in the context of value of free issue of coal, medical facilities, educational facilities, grants to school and institutions, sports and recreational facilities. The Tribunal has held that in view of the provisions of the National Coal Wage Agreement, the provision of such benefits were made being statutory obligations and hence were not exigible to Fringe Benefit Tax.
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> 3. Shri A. Parchure, learned counsel for the appellant submitted that notwithstanding the National Coal Wage Agreement, with regard to the head Sports and Recreation Facilities, the provisions of Section 115 WB(2)(E) and explanation thereto introduced by virtue of Finance Act of 2008 such expenditure made was not to be considered as expenditure for employees welfare. He, therefore, submits that since the present proceedings pertain to the assessment year 2006-07, the explanation cannot be given retrospective effect".

5. On hearing the learned counsel for the parties, it is clear that the implementation of the National Coal Wage Agreement has been held to a statutory obligation which is binding on the assessee. The expenditure towards sports and recreation facilities is also a part of that agreement as is clear from Clause 10.8.1".

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15. From the plain reading of the facts and circumstances of those cases dealt with by the Hon'ble Supreme Court, as also by the High Court of Jharkhand and again that of the two cases by the High Court of Bombay, when we compare the facts of the present case, undisputedly in the instant cases also, the issue is in respect of the benefits provided to the employees by way of supply of electricity to their residence, township and street lights. The question again would be whether this so called benefit is one which is for the welfare of the employees or not and whether it is not part of the statutory obligation. The other undisputed fact is that the said benefit extended by the appellant/employer is in terms of the clauses that are reflected in the NCWA. The judgments referred to in the preceding paragraphs clearly indicate and lay to rest the issue as to whether it is a statutory document or not, where all the judgments referred to above have clearly held that NCWA is a statutory document and it has binding force of law so far as its enforceability is concerned.

16. Under the circumstances, if we look into the un-amended "Explanation" to Section 115WB(2)(E) of the Act, it would further make it clear that any expenditure which was incurred in order to fulfill a statutory obligation would not be considered as an expenditure for employees welfare. So also, when we look into the subsequent amendment brought to the "Explanation" to Clause E of Sub-Section 2 of Section 115WB, sub-clause (i) it also clearly excludes expenses incurred or payments made to fulfill any statutory obligation. So, under both the circumstances i.e. even prior to the amendment to the explanation w.e.f. 01.04.2009, the expenditure incurred towards the supply of electricity by the appellant to its employees would be excluded for the purpose of treating it as an expenditure towards the employees benefit is concerned.

17. For all the aforesaid reasons, we are of the considered opinion that the view taken by the Assessing Officer, so also by the Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal are not sustainable and the same is accordingly set aside/quashed. It is held that the expenditure so incurred by the appellant towards the supply of electricity would be excluded from being treated as an expenditure towards the employees welfare."

8. Thus, the Hon'ble High Court has held that the benefit extended by the assessee as per the NCWA was an obligation under the statutory document as held by the Hon'ble Supreme Court in case of Mohan Mahto v. Central Coal Field Ltd (Supra) and therefore, the same is not considered as an expenditure ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd incurred towards employees welfare but for discharging the statutory obligation. Following the judgement of the Hon'ble jurisdictional High Court where the assessee has incurred the expenditure towards electricity expenditure of the employees/ workers as per the terms of the said NCWA, the education provided by the assessee to the employees in terms of the NCWA cannot be given a different treatment and therefore, the issue is now covered by the judgment of the Hon'ble jurisdictional High Court in favour of the assessee. Accordingly, the addition made by the Assessing Officer and sustained by the learned CIT (A) is deleted.

8.1 Since this issue is common for all the 3 appeals of the assessee, therefore, Ground Nos. 1 to 4 raised by the assessee in the appeals for the A.Ys 2015-16 to 2016-17 and 2020-21 are allowed.

9. Ground Nos. 5 to 8 are regarding the Investment Allowance claimed by the assessee u/s 32AC were disallowed by the Assessing Officer and confirmed by the learned CIT (A).

10. The learned AR has submitted that during the year under consideration, the assessee has claimed deduction of Rs.240 crores u/s 32AC(1) of the Act on the investment of Rs.1600/- crores made in new plant & machinery installed at the new power plant situated at Jaipur Mandal, Telangana State @ 15% on the total investment. However, the claim of the assessee was disallowed by the Assessing Officer by holding that the generation of electricity is not production of any article or thing as per section 32AC of the I.T. Act, 1961 and therefore, in the ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd absernce of inclusion of the power generation in the purview of section 32AC of the Act, the benefit of the said provisions has been excluded to the power generation company. The learned AR has submitted that on a plain reading of section 32AC(1) of the Act, if the assessee satisfy the conditions being a company engaged in the

business of manufacture or production of any article or thing and acquire/install new assets during the period 1.4.2013 to 31.03.2014, the benefit u/s 32AC is available to the assessee. The learned AR has further submitted that the Hon'ble Supreme Court as well as Hon'ble High Courts have held that the generation and distribution of electricity falls within the meaning of expression "goods" for the purpose of sale tax and therefore, the claim of the assessee cannot be denied on the ground that generation of electricity does not fall in the ambit of provisions of section 32AC(1) of the Act being not in the nature of production or manufacturing of goods and articles. He has relied upon the judgment of the Hon'ble Supreme Court in the case of Tata Consultancy Services vs. State of A.P (271 ITR 401) as well as the judgement in the case of Commissioner of Sales Tax, Madhya Pradesh vs. Madhya Pradesh Electricity Board (1969) (SCR)(2)

939. The learned AR has also relied upon the decision of the Chennai Bench of the Tribunal in case of ACIT vs. M. Satish Kumar (33 Taxmann.com 396) and submitted that the process of generation of electricity is akin to manufacturing of an article or thing and therefore, qualifies for the benefit u/s 32(1)(iia) of the Act. A similar view has been taken by the Bangalore Benches of the Tribunal in case of Dy. CIT vs. Hutti Gold Mines Co. Ltd (26 ITR (T) 600 (Bang.Trib). He has also relied upon the following decisions:

> ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd
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> i) Damodar Valley Corporation vs Dy.CIT (50 ITR 583(Trib.) Kolkata
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> ii) Vedanta Ltd vs. ACIT in ITA No.12/Del/2020
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> iii) Coordinate Bench of the Tribunal in the case of Telangana Power Generation Corporation vs. ACIT in
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> 11. Thus, the learned AR has submitted that the assessee is entitled for the investment allowance u/s 32AC(1) of the I.T. Act, 1961.
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> 12. On the other hand, the learned DR has submitted that the Assessing Officer has not only disallowed the claim of the assessee by treating the same as not falling in the ambit of manufacturing/production of goods or article but also on the factual aspect that the assessee has failed to prove that the alleged plant & machinery was set up/installed during the period relevant to the A.Y 2015-16 and 2016-17. He has referred to the findings of the Assessing Officer for the A.Y 2016-17 and particularly in para 7.9 to 7.15 of the assessment order wherein the Assessing Officer has given factual finding that the assessee has not proved that the Plant & Machinery was set up and commenced for generation of power during the period relevant to the A.Y 2015-16 to 2016-17. The learned DR has also referred to the finding of the learned CIT (A) wherein a remand report was called for and the Assessing Officer has again examined the facts relating to the setting up of plant & machinery and given a factual report that the assessee has failed to prove that the plant & machinery was set up

during the period relevant to the A.Ys 2015-16 & 2016-17. He has referred to the bills raised by the ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd BHEL bearing the dates of the month of May, 2016 which shows that the work of setting up of the plant & machinery was not completed even before 31/03/2016. The learned DR relied on the decision of the Coordinate Bench of the Tribunal in the case of ACIT vs. M/s. Hinduja National Power Corporation Ltd in ITA No.235/Hyd/2023, dated 08/01/2025.

13. In rejoinder, the learned AR of the assessee has submitted that the bills referred by the learned DR are in respect of the escalation claimed by the BHEL and not the original invoice/ bills for the supply of plant & machinery and setting up of the same. He has referred to the certificate issued by the Telangana State Power Coordination Committee dated 19/01/2024 regarding the injection of the power generation into State Grid on 12 to 13th March, 2016.

14. We have considered the rival submissions as well as relevant material available on record. For the A.Y 2015-16, the Assessing Officer has considered this issue in para 10.3 as under:

15. For the A.Y 2016-17 the Assessing Officer apart from disallowing the claim as not falling in the ambit of section 32AC of ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd the Act also rejected the claim on the ground that the plant & machinery was not installed during the period 1/4/2014 to 31/03/2016. The relevant part of the finding of the Assessing Officer in para 7.9, 7.12 to 7.15 as under:

"7.9 In the instant case, the assessee has claimed Investment allowance u/s 32AC which clearly specifies that the said asset should have been acquired and installed during the period 1-4-2014 to 31-3-2016. In this background, the assessee was given a questionnaire dated on 28.09.2018 to examine conditions to its claim of investment allowance.

The assessee in his reply dated 10.12.2018 could not produce any details regarding the dates of acquisition and also dates of installation of new assets were not established. Despite of giving several opportunities assessee could not comply with any of requisitions. In order to obtain basic details regarding the acquisition and installation of new assets income tax inspector of this office has been deputed to the business premises of the assessee and also where the new assets have been installed. Even at this stage also assessee could not comply by giving complete details of acquisition and installation of new assets on investment allowance under section 32AC of income-tax act 1961.

7.10.....

7.11 .....

7.12 Vide this office letter dated 18.12.2018 assessee has been asked to submit details as stated in BTG contract agreements dated 06.09.2012 with BHEL and BOP contract agreements with M/s McNally Bharat Engineering Co. Limited dated 28.09.2013. In reply to specific queries raised with reference to the said agreements the assessee could not furnish any documentary evidences. Assessee also failed to furnish original certificates of installation for verification. The certificate of Chartered Engineer dt.8-1-2018 is very vague and does not contain any details of the dates of the individual plants. Despite of asking further evidence in this respect assessee could not substantiate the installation of new asset. Vide this office letter dt.18-12-2018, assessee was asked to submit various certificates which were not complied with.

7.13 i) The assessee could not produce details of type test charges amounting to Rs.23.98 crores, therefore the dates of acquisition/installation of assets could not be established. It is relevant to note that the asset should have been both acquired and installed in the given period as allowed in the Act.

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ii) The assessee could not produce certificate as given by project manager on physical verification of Boiler Turbine Generator therefore the date of acquisition could not be established.

iii) The assessee could not produce Project manager certificate which verified physical verification BOP supply, therefore the date of acquisition could not be established.

7.14 The information submitted by the assessee indicates only dates of installations of the various new assets and doesn't speak about any dates of acquisition of said assets. Since the construction of power projects takes a minimum period of three to five years. There is likely possibility that the said new assets would have been acquired before the dates mentioned under Section 32AC of the Income Tax Act, 1961. This specific incident of acquisition and installation of new assets as per the dates mentioned in section 32AC could not be proved by the assessee 7.15 In view of the above the assessee could not fulfill the conditions under section 32AC of Income Tax Act, 1961, by way of not submitting complete details of acquisition and installation of new assets. Since there is ambiguity in proving their claim of investment allowance by not establishing date of acquisition, hence the claim is disallowed. The Hon'ble Supreme Court overruling a 1971 judgment in the Sun Export case held that "when there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee, and it must be interpreted in favour of the revenue". The Hon'ble Supreme Court held in the case of Commissioner of Customs Vs Dilip Kumar Company and others. Holding that the ratio in Sun Export case "is not correct and all the decisions which took similar view stand overruled, ".The relevant provisions of the Hon'ble Supreme Court judgment in Civil Appeal No.3327 of 2007 in the case of Commissioner of Customs (Import), Mumbai Vs M/s Dilip Kumar and Company & Ors. reproduced as under :

> Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

1. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

2. The ration in Sun Export Case is not correct and all the decisions which took similar view as in Sun Export case stands over-ruled".

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3. In view of the above arguments the clam of the assessee under the provisions of section 32AC of Income Tax Act, 1961 do not stand merit on both legal and factual basis hence same is disallowed and added to the total income.

Addition: Rs.272,15,43,386/-"

16. We further note that for the A.Y 2016-17, the learned CIT (A) has called for a remand report on this issue and after considering the remand report has confirmed the action of the Assessing Officer when the assessee has failed to establish that the plant & machinery was installed before 31/03/2016. The assessee has relied upon various judgments and most of them are not in respect of the investment allowance u/s 32AC but are on the point of either the generation of power to be considered as production of goods under sales tax or production of goods/articles u/s 32(1)(iia) of the Act. However, in the latest decision, the Coordinate Bench of this Tribunal in case of ACIT vs. Hinduja National Power Corporation Ltd (Supra) has considered this issue and analyzed the provisions of section 32AC visa-vis the provisions of section 32(1)(iia) of the Act in para 15 to 26 as under:

"15. We have heard the rival submissions and perused the material on record. Before we deal with the respective contentions and the impact of the decisions cited by both the parties, it is essential to delineate the scheme of the Act, which provides the manner in which the computation of income of business is required to be made. Firstly, we refer to section 32(1)(iia) of the Act, which reads as under :

32. Depreciation.

(1)In respect of depreciation of--(i)buildings, machinery, plant or furniture, being tangible assets;(ii)know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998, [not being goodwill of a business or profession]owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd be allowed--(i)in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be

> prescribed;(ii)in the case of any block of assets, such percentage on the written down value thereof as may be prescribed: Provided that no deduction shall be allowed under this clause in respect of--(a)any motor car manufactured outside India, where such motor car is acquired by the assessee after the 28th day of February, 1975 but before the 1st day of April, 2001, unless it is used--(i)in a business of running it on hire for tourists ;

or(ii)outside India in his business or profession in another country ; and(b)any machinery or plant if the actual cost thereof is allowed as a deduction in one or more years under an agreement entered into by the Central Government under section 42 :Provided further that where an asset referred to in clause (i) or clause (ii) or clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) or clause (iia), as the case may be :Provided also that where an asset referred to in clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year, and the deduction under this sub-section in respect of such asset is restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (iia) for that previous year, then, the deduction for the balance fifty per cent of the amount calculated at the percentage prescribed for such asset under clause (iia) shall be allowed under this sub-section in the immediately succeeding previous year in respect of such asset: Provided also that where an asset being commercial vehicle is acquired by the assessee on or after the 1st day of October, 1998 but before the 1st day of April, 1999 and is put to use before the 1st day of April, 1999 for the purposes of business or profession, the deduction in respect of such asset shall be allowed on such percentage on the written down value thereof as may be prescribed. Explanation.--For the purposes of this proviso,--(a)the expression "commercial vehicle" means "heavy goods vehicle", "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle"

> and "medium passenger motor vehicle" but does not include "maxi-cab", "motor-cab", "tractor" and "road-roller";(b)the expressions "heavy goods vehicle", "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle", "medium passenger motor vehicle", "maxi-cab", "motor-cab", "tractor" and "road roller" shall have the meanings ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd respectively as assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988):Provided also that, in respect of the previous year relevant to the assessment year commencing on the 1st day of April, 1991, the deduction in relation to any block of assets under this clause shall, in the case of a company, be restricted to seventy-five per cent of the amount calculated at the percentage, on the written down value of such assets, prescribed under this Act immediately before the commencement of the Taxation Laws (Amendment) Act, 1991:Provided also that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents,

copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii), clause (xiiib) and clause (xiv) of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the demerged company and the resulting company in the case of demerger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the demerger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.

Explanation 1.--Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work in or in relation to, and by way of renovation or extension of, or improvement to, the building, then, the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee.

Explanation 2.--For the purposes of this sub-section "written down value of the block of assets" shall have the same meaning as in clause* (c) of sub-section† (6) of section 43.

Explanation 3.--For the purposes of this sub-section, the expression "assets" shall mean--(a)tangible assets, being buildings, machinery, plant or furniture;(b)intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature [, not being goodwill of a business or profession].

ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd Explanation 4.--For the purposes of this sub-section, the expression "know-how" means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a mine, oil-well or other sources of mineral deposits (including searching for discovery or testing of deposits for the winning of access thereto).

Explanation 5.--For the removal of doubts, it is hereby declared that the provisions of this sub-section shall apply whether or not the assessee has claimed the deduction in respect of depreciation in computing his total income;(iia)in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation,

transmission or distribution of power, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii) :

Provided that where an assessee, sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after the 1st day of April, 2015 in any backward area notified by the Central Government in this behalf, in the State of Andhra Pradesh or in the State of Bihar or in the State of Telangana or in the State of West Bengal, and acquires and installs any new machinery or plant (other than ships and aircraft) for the purposes of the said undertaking or enterprise during the period beginning on the 1st day of April, 2015 and ending before the 1st day of April, 2020 in the said backward area, then, the provisions of clause (iia) shall have effect, as if for the words "twenty per cent", the words "thirty-five per cent" had been substituted :Provided further that no deduction shall be allowed in respect of--(A)any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or(B)any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house; or(C)any office appliances or road transport vehicles; or(D)any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year;(iii)in the case of any building, machinery, plant or furniture in respect of which depreciation is claimed and allowed under clause (i) and which is sold, discarded, demolished or destroyed in the previous year (other than the previous year in which it is first brought into use), the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, fall short of the written down value ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd thereof :Provided that such deficiency is actually written off in the books of the assessee.

Explanation.--For the purposes of this clause,--(1)"moneys payable" in respect of any building, machinery, plant or furniture includes--(a)any insurance, salvage or compensation moneys payable in respect thereof;(b)where the building, machinery, plant or furniture is sold, the price for which it is sold, so, however, that where the actual cost of a motor car is, in accordance with the proviso to clause (1) of section 43, taken to be twenty-five thousand rupees, the moneys payable in respect of such motor car shall be taken to be a sum which bears to the amount for which the motor car is sold or, as the case may be, the amount of any insurance, salvage or compensation moneys payable in respect thereof (including the amount of scrap value, if any) the same proportion as the amount of twenty-five thousand rupees bears to the actual cost of the motor car to the assessee as it would have been computed before applying the said proviso;(2)"sold" includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force but does not include a transfer, in a scheme of amalgamation, of any asset by the amalgamating company to the amalgamated company where the amalgamated company is an Indian company or in a scheme of amalgamation of a banking company, as referred to in clause (c) of section 5 of the Banking Regulation Act, 1949

(10 of 1949) with a banking institution as referred to in sub- section (15) of section 45 of the said Act, sanctioned and brought into force by the Central Government under sub- section (7) of section 45 of that Act, of any asset by the banking company to the banking institution.

(2)Where, in the assessment of the assessee, full effect cannot be given to any allowance under sub-section (1) in any previous year, owing to there being no profits or gains chargeable for that previous year, or owing to the profits or gains chargeable being less than the allowance, then, subject to the provisions of sub-section (2) of section 72 and sub- section (3) of section 73, the allowance or the part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance, or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year, and so on for the succeeding previous years.

16. Similarly, 32AC and 32AD of the Act provides as under:

> 32AC. Investment in new plant or machinery.--
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> ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd (1) Where an assessee, being a company, engaged in the business of manufacture or production of any article or thing, acquires and installs new asset after the 31st day of March, 2013 but before the 1st day of April, 2015 and the aggregate amount of actual cost of such new assets exceeds one hundred crore rupees, then, there shall be allowed a deduction,--
>
> (2) (a) for the assessment year commencing on the 1st day of April, 2014, of a sum equal to fifteen per cent. of the actual cost of new assets acquired and installed after the 31st day of March, 2013 but before the 1st day of April, 2014, if the aggregate amount of actual cost of such new assets exceeds one hundred crore rupees; and
>
> (b) for the assessment year commencing on the 1st day of April, 2015, of a sum equal to fifteen per cent. of the actual cost of new assets acquired and installed after the 31st day of March, 2013 but before the 1st day of April, 2015, as reduced by the amount of deduction allowed, if any, under clause (a).

[(1A) Where an assessee, being a company, engaged in the business of manufacture or production of any article or thing, acquires and installs new assets and the amount of actual cost of such new assets [acquired during any previous year exceeds twenty-five crore rupees and such assets are installed on or before the 31st day of March, 2017], then, there shall be allowed a deduction of a sum equal to fifteen per cent. of the actual cost of such new assets for the assessment year relevant to that previous year:

> [Provided that where the installation of the new assets are in a year other than the year of acquisition, the deduction under this sub-section shall be allowed in the year in which the new assets are installed:] [Provided further that] no deduction under

this sub-section shall be allowed for the assessment year commencing on the 1st day of April, 2015 to the assessee, which is eligible to claim deduction under sub- section (1) for the said assessment year.

(1B) No deduction under sub-section (1A) shall be allowed for any assessment year commencing on or after the 1st day of April, 2018.] (2) If any new asset acquired and installed by the assessee is sold or otherwise transferred, except in connection with the amalgamation or demerger, within a period of five years from the date of its installation, the amount of deduction allowed under sub-section (1) [or sub-

section (1A)] in respect of such new asset shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd year in which such new asset is sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of such new asset.

(3) Where the new asset is sold or otherwise transferred in connection with the amalgamation or demerger within a period of five years from the date of its installation, the provisions of sub-section (2) shall apply to the amalgamated company or the resulting company, as the case may be, as they would have applied to the amalgamating company or the demerged company.

(4) For the purposes of this section, "new asset" means any new plant or machinery (other than ship or aircraft) but does not include--

i) any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;

(ii) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

(iii) any office appliances including computers or computer software;

(iv) any vehicle; or

(v) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.] [32AD. Investment in new plant or machinery in notified backward areas in certain States.--

(1) Where an assessee, sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after the 1st day of April, 2015 in any backward area notified by the Central Government in this behalf, in the State of Andhra Pradesh or in the State of Bihar or in the State of Telangana or in the State of West Bengal, and acquires and installs any new asset for the purposes of the said undertaking or enterprise during the period beginning on the 1st day of April, 2015 and

ending before the 1st day of April, 2020 in the said backward area, then, there shall be allowed a deduction of a sum equal to fifteen per cent. of the actual cost of such new asset for the assessment year relevant to the previous year in which such new asset is installed.

(2) If any new asset acquired and installed by the assessee is sold or otherwise transferred, except in connection with the amalgamation or demerger or re-organization of business ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd referred to in clause (xiii) or clause (xiiib) or clause (xiv) of section 47, within a period of five years from the date of its installation, the amount of deduction allowed under sub- section (1) in respect of such new asset shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which such new asset is sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of such new asset.

(3) Where the new asset is sold or otherwise transferred in connection with the amalgamation or demerger or re- organization of business referred to in clause (xiii) or clause (xiiib) or clause (xiv) of section 47 within a period of five years from the date of its installation, the provisions of sub-section (2) shall apply to the amalgamated company or the resulting company or the successor referred to in clause (xiii) or clause (xiiib) or clause (xiv) of section 47, as the case may be, as they would have applied to the amalgamating company or the demerged company or the predecessor referred to in clause (xiii) or clause (xiiib) or clause (xiv) of section 47. (4) For the purposes of this section, "new asset" means any new plant or machinery (other than a ship or aircraft) but does not include--

(a) any plant or machinery, which before its installation by the assessee, was used either within or outside India by any other person;

(b) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

(c) any office appliances including computers or computer software;

(d) any vehicle; or

(e) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.]

17. Firstly, we will deal with the issue under Section 32(1)(iia) of the Act. A bare reading of the said provision, make it abundantly clear that in case, any new machinery or plant (other than ships and aircraft), acquired and installed after 31.03.2005 by an assessee engaged in the business of manufacture or production of any article or thing, or in the business of generation, transmission or distribution of power qualifies for an additional depreciation of 20% of the actual cost of such machinery or plant. Clause (ii) of Section ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd 32 deals with the calculation of depreciation on the written down value of the block of assets. Under Section 32(1)(iia), the assessee is entitled to an additional

deduction of 20% over and above the normal depreciation, provided the new machinery or plant is acquired after 31.03.2005. Further, an amendment effective from 01.04.2016 inserted by way of proviso to Section 32(1)(iia), a beneficial provision applicable to the states of Andhra Pradesh, Bihar, Telangana, and West Bengal. This proviso allows an enhanced additional depreciation of 35% instead of 20% for undertakings or enterprises engaged in manufacturing or producing any article or thing, provided they were set up on or after 01.04.2015. However, upon a closer scrutiny of the proviso to Section 32(1)(iia) and the main Section 32(1)(iia) of the Act, it is evident that "the business of generation, transmission, and distribution of power" has not been included within the scope of the enhanced benefit of 35%. The enhanced rate of depreciation was specifically restricted to undertakings or enterprises set up for the manufacturing or production of any article or thing in the specified states.

18. In light of the above, we are of the opinion that the language used in Section 32 is a plain, simple and unambiguous. Each word of the section is required to be given due interpretation and meaning. In our view, the proviso to Section 32(1)(iia) of the Act is conspicuously silent on including the "business of generation, transmission, and distribution of power" within the scope of the proviso, and such exclusion of Parliament cannot be ignored by including "business of generation, transmission, and distribution of power" by interpretation or by way of stretching the definition of 'manufacturing' or 'article' to include what is not explicitly included in the Proviso to Section 32(1)(iia) of the Act.

18.1 At this stage, we would like to reproduce the scope of proviso to the provision. In this regard, the scope of proviso to the Provision has been discussed by Bennion on Statutory Interpretation Book at page 674 as under :

> "Section 242 The proviso A proviso is a formula beginning 'Provided that .....', which is placed at the end of section or subsection of an Act, or of a paragraph or sub-paragraph of a Schedule, and the intention of which is to narrow the effect of the preceding words."

18.2 Similarly, Justice G.P. Singh in his book Principle of Statutory Interpretation, at pages 185 to 187, after referring various judgments had discussed the scope of proviso to the Provision and written as under :

> 9. PROVISO
>
> (a) Its real nature The normal function of a proviso is to except something out of the investment or to qualify ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd something enacted therein which but for the proviso would be within the purview of the enactment. As stated by LUSH, J., "When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso." In the words of LORD MACMILLAN:

> "The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. The proviso may, as LORD MACNAGHTEN laid down, be "a qualification of the preceding enactment which is expressed in terms too general to be quite accurate".

The general rule has been stated by HIDAYATULLAH, J., in the following words:

> "As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso interpreted as 15 not rule 12 And in the words of KAPUR, J stating a general rule". "The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment." Further, a proviso is not normally construed as nullifying the enactment or as taking away completely a right conferred by the enactment. As a consequence of the aforesaid function of a true proviso certain rules follow.
>
> 18.3. From the reading of the above, it is clear that proviso to provision is restricting/qualifying the scope of the main Provision. In other words, proviso creates an exception to what is included in the main section. In the present case, the Section 32(1)(iia) of the Act is available for an assessee who has set up any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation, transmission or distribution of power. However, the Proviso as only given the benefit to an assessee who sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after the 1st day of April, 2015 in any backward area notified by the Central Government in this behalf, in the State of Andhra Pradesh or in the State of Bihar or in the State of Telangana or in the State of West Bengal.
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> 18.4. Thus, the Proviso has restricted the grant of benefit of 35% only to an undertaking or enterprise for manufacture or ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd production of any article or thing, whereas, in the main Provision, the benefit of 20% was available to business of manufacture or production of any article or thing or in the business of generation, transmission or distribution of power.
>
> 19. In the present case, the assessee is engaged in the business of generation, transmission, and distribution of power. Consequently, it does not qualify for the enhanced additional depreciation of 35% under the proviso to Section 32(1)(iia). The assessee is entitled only to the additional depreciation of 20% as specified in the main

provision of Section 32(1)(iia). In view of the above, the argument raised by the Revenue is valid, and the appeal on this ground is required to be allowed.

20. The Ld.A.R. while referring to the decisions in Vedanta Ltd Vs. ACIT (supra), and ACIT Vs. M. Satishkumar (supra), has argued that the generation of electricity constitutes the manufacturing of an article or thing. It was emphasized that electricity has been recognized as an article or thing by the Hon'ble Supreme Court in judgments such as Commissioner of Sales Tax, Madhya Pradesh vs. Madhya Pradesh Electricity Board, Jabalpur (supra), State of Andhra Pradesh vs. NTPC (supra), and CIT vs. Sesa Goa Ltd. (supra). Therefore, it was contended that the manufacturing of electricity attracts the provisions of Section 32, entitling the assessee to claim depreciation at the enhanced rate of 35% under the proviso to Section 32(1)(iia) of the Act.

21. The next issue came for our consideration is deduction claimed u/s 32AC and 32AD. The bare reading of the provisions reproduced herein above make it abundantly clear that the language used in Section 32AC and 32AD are parametria similar to the language used in Proviso to Section 32(1)(iia) of the Act. In our view the Legislature deem it appropriate to restrict the benefit of Section 32AC and 32AD only to such class of assessee, which are engaged in the business of manufacture or production of any article of thing acquires any new assets etc. and had not deliberately extended to "business of power generation, transmission and distribution. The benefit of Section 32AC and 32AD of the Act, were extended only to the assessee engaged in the business of manufacture of production of any article of thing acquires any new assets etc. and was not extended to the assessee which are engaged in the "business of power generation, transmission and distribution". As held by us, that "business of power generation, transmission and distribution" is altogether a different class of assessee, for which the restrictive / limited benefit have been given by the Legislature. Quite contrary to this, the benefit under Proviso to Section 32(1)(iia), 32AC and 32AD of the Act has been given to the first class i.e., the assessee which are engaged in the ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd business of manufacture of production of any article of thing acquires any new assets etc. In our view, the law is required to be read in context and is required to be applied for the purposes it was enacted. The Tribunal or the Court are not permitted to extend the benefit of this beneficial/deduction/exemption provision to the class of assessee which do not specifically fall in the specified category. Therefore, following the same logic and reasoning given hitherto while discussing the scope and ambit of Section 32(1)(iia) of the Act, we are of the opinion that the assessee which is engaged in the business of generation, transmission and distribution of power is not entitled to the benefit as available to other Sections 32AC and 32AD of the Act.

22. The amendment to Section 32(1)(iia) of the Act was carried out w.e.f. 01.04.2013 whereby a distinct class i.e., "the business of generation, transmission, and

distribution of power" was added to the already existing class of assessee engaged in "the business of manufacturing or production of any article or thing". However, despite this, when the legislature introduced Sections 32AC and 32AD w.e.f. 01.04.2014 and 01.04.2016, it deem it appropriate not to extend the benefit of Section 32AC and 32AD of the Act to the assessee engaged in "generation, transmission, and distribution of power sector" and had only given the benefit the assessee engaged in "the business of manufacturing or production of any article or thing". Therefore, in our considered opinion, the Ld. CIT(A) has not considered the above said important aspect of the provisions and had wrongly decided the issue by relying on the judgment of the Hon'ble Supreme Court rendered in different context and dealing with the other law.

23. The law has evolved significantly since the passing of the judgment in the case of State of Andhra Pradesh Vs. NTPC (supra) and also in the case of Commissioner of Sales Tax, Madhya Pradesh. These two judgments, as referred to by the CIT- DR as well as Ld.A.R. were focused on the specific provisions related to the interpretation of duties on the sale of electricity and did not address the issue of deduction or additional depreciation under Sections 32, 32AC, or 32AD of the Act.

24. The Hon'ble Supreme Court in the cases of Commissioner of Customs Vs. Dilip Kumar (supra) and PCIT Vs. Wipro (supra) had held that, for an assessee seeking exemption, deduction, or additional benefits, the conditions prescribed by the statute must be fulfilled fully and completely in their entirety, and the deduction or additional benefit cannot be granted based merely on interpretation. We may rely on the following observations of the Hon'ble Supreme Court in the case of PCIT Vs. Wipro (supra), as under:

ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd "7. It is the case on behalf of the Revenue that as there was a non- compliance of twin conditions under Section 10B (8) of the IT Act, namely, the declaration under Section 10B (8) was not submitted along with the original return of income, the assessee shall not be entitled to the exemption/benefit under Section 10B (8) of the IT Act. According to the Revenue, furnishing of declaration under Section 10B (8) before the due date of filing original return of income is also mandatory. On the other hand, it is the case on behalf of the assessee, which has been accepted by the High Court, that the requirement of submission of declaration under Section 10B (8) is mandatory in nature, but the time limit within which the declaration is to be filed is directory in nature. While considering the issue involved, whether the time limit within which the declaration is to be filed as provided under Section 10B (8) is mandatory or directory, Section 10B (8) is required to be referred to, which reads as under:

"10B (8) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, before the due date for furnishing the return of income

under sub-section (1) of Section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years." On a plain reading of Section 10B (8) of the IT Act as it is, i.e., "where the assessee, before the due date for furnishing the return of income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of Section 10B may not be made applicable to him, the provisions of Section 10B shall not apply to him for any of the relevant assessment years", we note that the wording of the Section 10B (8) is very clear and unambiguous. For claiming the benefit under Section 10B (8), the twin conditions of furnishing the declaration to the assessing officer in writing and that the same must be furnished before the due date of filing the return of income under sub-section (1) of section 139 of the IT Act are required to be fulfilled and/or satisfied. In our view, both the conditions to be satisfied are mandatory. It cannot be said that one of the conditions would be mandatory and the other would be directory, where the words used for furnishing the declaration to the assessing officer and to be furnished before the due date of filing the original return of income under sub- section (1) of section 139 are same/similar. It cannot be disputed that in a taxing statute the provisions are to be read as they are and they are to be literally construed, more particularly in a case of exemption sought by an assessee.

9. In such a situation, filing a revised return under section 139(5) of the IT Act claiming carrying forward of losses ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd subsequently would not help the assessee. In the present case, the assessee filed its original return under section 139(1) and not under section 139(3). Therefore, the Revenue is right in submitting that the revised return filed by the assessee under section 139(5) can only substitute its original return under Section 139(1) and cannot transform it into a return under Section 139(3), in order to avail the benefit of carrying forward or set-off of any loss under Section 80 of the IT Act. The assessee can file a revised return in a case where there is an omission or a wrong statement. But a revised return of income, under Section 139(5) cannot be filed, to withdraw the claim and subsequently claiming the carried forward or set- off of any loss. Filing a revised return under Section 139(5) of the IT Act and taking a contrary stand and/or claiming the exemption, which was specifically not claimed earlier while filing the original return of income is not permissible. By filing the revised return of income, the assessee cannot be permitted to substitute the original return of income filed under section 139(1) of the IT Act. Therefore, claiming benefit under section 10B (8) and furnishing the declaration as required under section 10B (8) in the revised return of income which was much after the due date of filing the original return of income under section 139(1) of the IT Act, cannot mean that the assessee has complied with the condition of furnishing the declaration before the due date of filing the original return of income under section 139(1) of the Act. As observed hereinabove, for claiming the benefit under section 10B (8), both the conditions of furnishing the declaration and to file the same before the

due date of filing the original return of income are mandatory in nature.

10. Even the submission on behalf of the assessee that it was not necessary to exercise the option under section 10B (8) of the IT Act and even without filing the revised return of income, the assessee could have submitted the declaration in writing to the assessing officer during the assessment proceedings has no substance and the same cannot be accepted. Even the submission made on behalf of the assessee that filing of the declaration subsequently and may be during the assessment proceedings would have made no difference also has no substance. The significance of filing a declaration under section 10B (8) can be said to be co-

terminus with filing of a return under section 139(1), as a check has been put in place by virtue of section 10B (5) to verify the correctness of claim of deduction at the time of filing the return. If an assessee claims an exemption under the Act by virtue of Section 10B, then the correctness of claim has already been verified under section 10B (5). Therefore, if the claim is withdrawn post the date of filing of return, the accountant's report under section 10B (5) would become falsified and would stand to be nullified.

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11. Now so far as the reliance placed upon the decision of this Court in the case of G.M. Knitting Industries Pvt. Ltd. (supra), relied upon by the learned counsel appearing on behalf of the assessee is concerned, Section 10B (8) is an exemption provision which cannot be compared with claiming an additional depreciation under section 32(1) (ii-a) of the Act. As per the settled position of law, an assessee claiming exemption has to strictly and literally comply with the exemption provisions. Therefore, the said decision shall not be applicable to the facts of the case on hand, while considering the exemption provisions. Even otherwise, Chapter III and Chapter VIA of the Act operate in different realms and principles of Chapter III, which deals with "incomes which do not form a part of total income", cannot be equated with mechanism provided for deductions in Chapter VIA, which deals with "deductions to be made in computing total income". Therefore, none of the decisions which are relied upon on behalf of the assessee on interpretation of Chapter VIA shall be applicable while considering the claim under Section 10B (8) of the IT Act.

12. Even the submission on behalf of the assessee that the assessee had a substantive statutory right under Section 10B (8) to opt out of Section 10B which cannot be nullified by construing the purely procedural time requirement regarding the filing of the declaration under Section 10B (8) as being mandatory also has no substance. As observed hereinabove, the exemption provisions are to be strictly and literally complied with and the same cannot be construed as procedural requirement."

25. Similarly, in the case of Commissioner of Customs Vs. Dilip Kumar (supra), the Hon'ble Supreme Court in paragraph 40 has held as under :

"40. After considering the various authorities, some of which are adverted to above, we are compelled to observe how true it is to say that there exists unsatisfactory state

of law in relation to interpretation of exemption clauses. Various Benches which decided the question of interpretation of taxing statute on one hand and exemption notification on the other, have broadly assumed (we are justified to say this) that the position is well settled in the interpretation of a taxing statute: It is the law that any ambiguity in a taxing statute should ensure to the benefit of the subject/assessee, but any ambiguity in the exemption clause of exemption notification must be conferred in favour of revenue - and such exemption should be allowed to be availed only to those subjects/assesses who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and that the claimants satisfy all the conditions precedent for availing exemption. Presumably for this reason the Bench which decided Surendra Cotton Oil ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd Mills Case (supra) observed that there exists unsatisfactory state of law and the Bench which referred the matter initially, seriously doubted the conclusion in Sun Export Case (supra) that the ambiguity in an exemption notification should be interpreted in favour of the assessee."

26. Similarly, the Delhi Tribunal in the case of Vedanta Ltd. Vs. ACIT (supra) has relied on the decision of NTPC reported in AIR 2002 SC 1895 (supra), and concluded that the assessee is entitled to a deduction under Section 32AC of the Act. However, as mentioned earlier, the Hon'ble Supreme Court in the case of Sesa Goa Ltd (supra), was not called upon to interpret either the proviso to Section 32 or Section 32AC of the Act whether the provision of electricity, transmission, and distribution would amount to production or not. At no point did the Hon'ble Supreme Court consider whether the generation, transmission, and distribution of power would fall within the scope of manufacturing or production of any article or thing. As stated earlier, when the Legislature has specifically used different terms for "manufacturing and production of any article or thing" and separate treatment has been given for business of generation, transmission or distribution of power, then it will be against the cardinal principle of interpretation to wrongly assume that business of generation, transmission or distribution of power were subsumed in "manufacturing and production of any article or thing". In our view, no provision of law can be interpreted which may result in rendering the word/s used in the provision as superfluous or redundant. It is not permissible to add words or filling the gap or lacuna, by this Tribunal as argued by the ld.AR. On the other hand, the Tribunal is duty bond to make efforts to give meaning to each and every word used by the Legislature. The Legislature has inserted the words "in the business of generation, transmission or distribution of power" for a purpose and the legislative intention is that every part of the statute should be given effect and no part of it can be surplusage or in vain. The exclusion of business of generation, transmission or distribution of power from the Proviso to Section 32(1)(iia), 32AC and 32AD, were not mere surplusage but carved out and exclusion for the purposes of restricting the benefit only for a limited class of eligible assessee. Therefore, the decision in these cases is not applicable here. We are of the considered opinion that the judgments of the Hon'ble Supreme Court were not based on the interpretation of the relevant statutory provisions, and the questions posed to the Court were not concerning the statute in its present context. In light of the above, the grounds raised by the Revenue are allowed."

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17. Thus, it was held that despite the amendment in section 32(1)(iia) of the Act, no corresponding amendment is made in section 32AC of the Act and therefore, the intention of the Legislature is clear that the benefit of section 32AC(1) is not available to a company engaged in the business of generation of power. To maintain the rule of consistency, we follow the earlier decision in the case of ACIT vs. Hinduja National Power Corporation Ltd and consequently, this issue is decided against the assessee and the impugned order of the learned CIT (A) for the A.Ys 2015-16 and 2016-17 are upheld.

REVENUE's APPEALS

18. In Revenue's appeal, Ground Nos 1 for all the 3 A.Ys is general in nature and does not require any specific adjudication.

19. Ground No.2 for the A.Ys 2015-16 and 2016-17 is regarding the disallowance made by the Assessing Officer u/s 40(a)(ia) of the Act which was deleted by the learned CIT (A).

20. We have heard the learned DR as well as the learned AR and considered the relevant material available on record. At the outset, we note that this issue is covered by the decision of this Tribunal in assessee's own case for the A.Y 2009-10 to 2011- 12 and further for the A.Ys 2012-13 to 2014-15 vide orders dated 20/05/2021, 25/10/2021 and 27/05/2021 respectively. The learned CIT (A) has deleted the addition in para 7.1.1 to 7.1.2 for the ay 2015-17 as under:

> "7.1.1 The appellant filed submissions and relied on case laws to support its ground of appeal and pleaded that the issue is decided in favour of the assessee by the Hon'ble ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd ITAT, Hyderabad in its orders for the AY 2009-10 to AY 2011-12 (Para 9 in the Page No.24 to 33), AY 2012-13 (Para 3 in the Page No.3) and AY 2013-14 & AY 2014-15 (Para 5 in the Page No.2 to 9) dated 20th May, 2021, 25th October, 2021 and 27th May, 2021 respectively in appellant's own case. The relevant part of the order dated 20.05.2021 for the AY 2009-10 to AY 2011-12 is reproduced as following:
>
> "9. As regards the ground relating to TDS on interest on land compensation deposited in court as per court order raised in AYs 2009-10 to 2011-12, the AO observed that the assessee company paid 'interest on land compensation as per court order' with a remark "amount deposited in courts as per Court orders". When the assessee asked to substantiate its claim for allowance, it filed written submissions vide letter dated 09/01/2014, which is as under:
>
> "In respect of disputes raised by the pattadars against the compensation offered by the SCC Ltd., the Hon'ble Courts have directed SCC Ltd., as an interim/final orders to deposit with the courts the enhanced compensation along with interest and the amount was to be deposited on or before the specified date mentioned in the orders. In compliance with the court orders, SCC Ltd have deposited enhanced compensation and also deposited an amount of Rs.4.75 crores towards interest on enhanced

> compensation in F. Y. 2010-11. Further, the amount was deposited with courts directly drawing Cheques/DDs in the name of the courts/designation of principal officer of the court in compliance with various court orders. Therefore, the amount to the tune of Rs.4.75 crores was dealt by the courts. As per the directives in the case, the courts/principal officers of the courts have directly disbursed the payments to the beneficiaries out of the deposits held by them, as per the provisions laid down in Civil Rules in practice. In view of the above, the amounts deposited by SCCL with the courts directly fall under para-4(a) of the Circular No: 08/2011 (F. No: 275/30/2011-IT(B), dated 14/10/2011 and do not attract TDS provisions."

9.1 After considering the submissions of the assessee, the AO held that the contention of the assessee that the responsibility of making TDS vests with the authority distributing the compensation to the end beneficiary is not acceptable and, therefore, the interest debited to the P&L Account is disallowed by invoking provisions of section 40(a)(ia) wherein it was stated that any amount of interest exceeding prescribed limit paid or credited without deducting tax at source or deducting tax at source but failed to remit the TDS to the Govt. account, such interest has to be disallowed.

.....

ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd 9.5 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The assessee has deposited the interest as per the court directions on the enhanced compensations to be paid to the pattadars. There is no doubt that the assessee was much aware in regard to the payment of interest to the pattadars, but, the assessee has not paid directly to the pattadars. From the submissions made by the assessee, it is clear that this amount has to be deposited as per the directions of the Court order. A circular has been issued by the Board in regard to the responsibility of the TDS deduction on the interest payment on compensation/enhanced compensation which is as under:

> "18/05/2021 Circular No. 526, dated 05-12-1988 1055.
>
> Whether interest payments under Land Acquisition Act are covered by section on 194A According to section 194A of the Income-tax Act, 1961, any person, not being an individual or HUF, who is responsible for paying to a resident any income by way of interest other than income by way of "Interest on securities" shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force. The provisions contained therein are however subject to the exceptions provided in the said section. According to the provisions of section 200 of the Income-tax Act, any person deducting any sum in accordance with the provisions of section194A shall pay, within the prescribed time, the sum so deducted to the credit of Central Government. If he fails to deduct tax at source or after deducting fails to pay the tax to the credit of Central Government, he

shall be liable to action in accordance with the provisions of section 201. In this connection attention is also invited to the provisions of section 276B of the Income-tax Act, as substituted by the Direct Tax Laws (Amendment) Act, 1987 according to which if a person fails to pay to the credit of the Central Government the tax deducted at source by him, he shall be punishable with rigorous imprisonment for a term which shall be between 3 months and 7 years and with fine. 2. It has come to notice that various State Development Authorities, the Housing Boards, Public Works Department, etc., acquire immovable property from the public for the purpose of their developmental activities. Huge amounts are disbursed on behalf of these departments as payments of compensation for land acquired including considerable amount of interest on excess compensation as per the Land Acquisition Act. The interest payment made under the Land Acquisition Act are covered by the provisions of section 194A. As a result, tax will have to be deducted at source ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd under section 194A from the interest payments made to the public under the Land Acquisition Act.

Circular : No. 526, dated 5-12-1988. JUDICIAL ANALYSIS EXPLAINED IN -

In Special Tehsildar and Land Acquisition Officer v. Dandu Saraswatamma [1994] 205 ITR 587 (AP), the Commissioner addressed a D.O. letter dated 1-3-1987 to the then Revenue Secretary requesting him to issue instructions to all the officers concerned with land acquisition to deduct income- tax on payment of interest and to follow the provisions as laid down under section 194A and other provisions of the Act. In paragraph 2 of that D.O. letter, it was stated that while paying interest, income-tax was deductible at the rates in force during that financial year with effect from 1-4- 1975, if the amount exceeded Rs. 1,000.

Pursuant to those instructions, the Land Acquisition Officers, while depositing the enhanced compensation amounts in various execution petitions filed before the Subordinate Judge, Kovvur, had deducted income-tax on the interest accrued on the compensation amount. The Court held that the Supreme Court in Rama Bai v. CIT [1990] 181 ITR 400 held that the interest on enhanced compensation for land compulsorily acquired under the Land Acquisition Act awarded by the Court on a reference under section 18 of the Land Acquisition Act or on further appeal has to be taken to have accrued not on the date of the order of the Court granting enhanced compensation but as having accrued year after year from the date of delivery of possession of the land till the date of such order and such interest cannot be assessed to income-tax in one lump sum in the year in which the order is made. The above decision of the Supreme Court in Rama Bai's case (supra) has set at rest the conflict of decisions among some High Courts on the above issue. The effect of the decision of the Supreme Court referred to above is that on the enhanced compensation, for land compulsorily acquired under the Land Acquisition Act, awarded by the Court on a reference under section 18 of the Land Acquisition Act, interest is payable to the claimants. If so, section 194A of the Act empowers the person who is responsible for

making the payment to deduct income-tax. But the direction given in the D.O. letter dated 1-3-1987, of the Commissioner of Income-tax stating that while paying interest, income-tax was deductible at the rates in force during that financial year (Emphasis supplied) with effect from 1-4-1975, if the amount exceeded Rs. 1,000 was not and could not be valid. Such a direction did not get support from section 194A under which Department sought deduction of income-tax at source. The proviso to section 194A of the Act empowers the assessee to receive the income by filing an affidavit or statement in writing ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd declaring that his estimated total income assessable to tax for the assessment year next following the financial year in which the income is credited or paid will be less than the minimum liable to income-tax. The orders under revision did not disclose the break-up in each execution petition about the compensation amount awarded and the interest payable thereon. The orders also did not disclose as to when possession of the land concerned in each execution petition was taken by the Government and the date of depositing the compensation amount. In the absence of those details, it was not possible to determine whether the individual claimants were liable to pay income-tax or not. In view of above it was further held that Circular No. 526, dated 5-12-1988, which is on same line as D.O. stated above, will not have binding effect on Civil Court unless provisions of the Act are made applicable.

CLARIFICATION TWO I am directed to say that it had recently come to the notice of the Board that there was no uniform practice in vogue in the matter of the deduction of tax at source from interest payments awarded by the Courts of Law in land acquisition cases. At certain places such deduction was being made by the land acquisition authority who was responsible for paying the compensation (along with interest) to the persons whose land had been acquired under the Land Acquisition Act, while at other places, such deduction was being made by the Court of Law which awarded the compensation (with interest), after the concerned authority had deposited the entire amount with the Court, for payment to the concerned parties in accordance with the decree passed by the Court. In the latter case, it is observed that certain Courts were seeking assistance of the concerned Income-tax Authorities for effecting tax deduction at source. It has now been decided in consultation with the Ministry of Law & Justice that the responsibility for making deduction of tax at source undersection 194A of the Income-tax Act, 1961, should be that of the Collector (Land Acquisition) or any other authority empowered under the Land Acquisition Act, 1894, to acquire land for the public purpose as laid down by that Act. When the concerned parties, whose land has been acquired, go to the Court of Law, seeking higher compensation (with interest) and the Court allows their claims the concerned authority which had acquired their land, shall, while paying the compensation, deduct tax at source from the amount of interest forming part of the compensation ,and deposit the remaining amount with the Court of Law, for disbursement to the successful litigants. The same authority shall also issue the TDS certificates to the concerned parties in the prescribed Form 16A.

ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd Order : F.No. 275/109/92-IT(B), dated 21-9-1994. ANNEX - MINISTRY OF LAW, JUSTICE & C.A. (DEPARTMENT OF LEGAL AFFAIRS) ADVICE (B) SECTION The question for consideration is as to who is the person responsible for deduction of tax at source for the purpose of section 204 of the Income-tax Act, 1961 in the case of payment of compensation under the Land Acquisition Act. A prima facie view was expressed by us in the matter on the assumption that Collector, Land Acquisition is the person making payment and as such he is responsible for making deduction at source in terms of section 204(iii) of the Income-tax Act. However, we had requested the Department to confirm the factual position from the Ministry of Rural Development. The Department of Rural Development have stated that the person responsible for payment of compensation under Land Acquisition Act is the Collector. In Baldeep Singh v. UOI [1993] 199 ITR 628 the Punjab and Haryana High Court held that "the Court is not the person responsible for paying any income by way of interest...As per the legal incidents, the legal person responsible for paying income by way of interest is the Land Acquisition Collector who had the money in his possession and was responsible for making the payment of that income to the petitioners....The Court is acting only as a conduit for getting the payment to the petition er in execution of a decree passed in his favour." In view of the above, we confirm the views expressed by us earlier, referred to above.

The Administrative Department have stated that while there may be no objection to TDS being made by Collector, in such cases a practical difficulty that may arise is that the Collector would be required by the court to deposit the entire amount of compensation and interest with it and if the Collector deducts tax from that amount it would be regarded as disobedience of the Court's order. In this connection the following observation made by the Supreme Court in Lt. Col. K.D. Gupta v. UOI [1989] 46 Taxman 124 is considered very relevant :

"We see no justification to initiate any contempt proceeding against the respondents for withholding a sum of Rs. 1,20,000 out of the sum of Rs. 4 lakhs directed to be paid to the petitioner. Rs. 1,20,000 have been withheld on the plea that under Chapter XVII of the Income-tax Act, 1961 ('the Act'), the Union of India has the obligation to deduct income- tax at source. The intention of the payer in the facts of the case for withholding the amount cannot be held to be either malafide or is there any scope to impute that the respondents intended to violate the direction of this Court."

If out of the decretal amount the Land Acquisition Officer pays the TDS amount to the Central Government and ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd deposits only the balance amount with the Court, in view of the aforesaid ruling, the Court may not hold it as disobedience of its orders.

9.6 Later on the Board has also issued a Circular a CIRCULAR NO. 8/2011 [F.NO. 275/30/2011- IT (B)], DATED 14-10-2011 [SUPERSEDED BY CIRCULAR NO. 23/2015, DATED 28-12- 2015]. 9.7 In this regard, we also refer to section 145A(b) is as under:

> "Interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be in the income of the year in which it is received." 9.8 Now coming to the case on hand, it is clear that the assessee has deposited the amount with the Court, but, it has not actually paid to the actual recipients directly i.e., pattadars. On analysis of the above cited section and Circulars, it is clear that the assessee is not responsible for deducting tax deduction at source and assessee is also not sure that when the amount shall be paid to the actual recipients/pattadars. In our considered opinion, the addition made in this regard is not sustainable in the eyes of law and, therefore, the addition is deleted. Accordingly, grounds raised on this issue are allowed in favour of the assessee."

7.1.2 All the facts of the case, Grounds of appeal, statement of facts, online submissions of the appellant, the case laws cited and the assessment order are considered. The submission of the appellant is examined. It is noted that the Hon'ble ITAT, Hyderabad bench in appellant's own case in earlier years has adjudicated the issue in appellant's favour. In view of the decision reproduced as above and respectfully following the higher authorities decision on the issue, the grounds of appeal no. 1 to 3 are allowed."

21. The learned DR has submitted that the Department has not accepted the decision of this Tribunal for the earlier A.Ys and filed appeals before the Hon'ble jurisdictional High Court. He has also referred to the Circular No.23/2015 dated 28/12/2015 of CBDT whereby it is clarified the applicability of provisions of section 194A in respect of the interest on the fixed deposit made as per the directions of the Court and observed that tax would not be required to be deducted at source but the TDS is required once ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd the ownership is decided by the Govt. For ready reference, we reproduce the relevant para 2 & 3 of the said circular as under:

22. Accordingly, in view of the earlier decision of this Tribunal in assessee's own case, we do not find any error or illegality in the impugned orders of the learned CIT (A) qua this issue. Hence, Ground No.2 of the Revenue's appeals for the A.Ys 2015-16 and 2016-17 are dismissed.

23. Ground Nos.3 to 5 for the A.Y 2015-16 as well as 2016-17 and Ground Nos. 2 to 4 of the A.Y 2020-21 are common regarding the disallowance of expenditure incurred by the assessee for the development of the coal mines which was abandoned.

24. We have heard the learned DR as well as the learned AR and considered the relevant material available on record. At ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd the outset, we note that this issue is also considered and decided by this Tribunal in assessee's own case for the A.Y 2005-06 to 2012-13 and the learned CIT (A) has considered and decided this issue by following the decisions of this Tribunal in assessee's own case in para 7.2.1 to

7.2.2 of the impugned order for the A.Y 2015-16 as under:

> "7.2.1 The appellant filed submissions and relied on case laws to support its ground of appeal and pleaded that the issue was decided in favour of the assessee by the Hon'ble ITAT, Hyderabad in its orders for the AY 2005-06 to AY 2011-12 (Para 5 in the Page No.3 to 11) and AY 2012-13 (Para 3 in the Page No.3) dated 20th May, 2021 and 25th October, 2021 respectively. The relevant part of the order dated 20th May, 2021 is reproduced as following:
>
> "5. As Regards ground Nos. 1 to 4 regarding capital work in progress raised (in AYs 2005-06 to 2011-12), which has been raised in all the appeals under consideration, the facts as taken from AY 2005-06 are that the assessee had debited a sum of Rs. 4.24 crores towards 'assets written off' and the same was included under the head 'provisions and write off was debited to the P&L A/c. Out of the said amount, the assessee had added back a sum of Rs. 4,09,97,398/- in the income computation statement as the same did not represent an allowable deduction in arriving at the total income as per the provisions of the IT Act. The balance amount of Rs. 14,54,302/- had not been added back by the assessee in the income computation statement. In this regard it was mentioned in Col. 17(a) of the tax audit report enclosed to the return that the said balance amount represents the value of work-in progress written off and that the same is eligible for deduction.
>
> 5.1 The AO after considering the submissions of the assessee and analyzed the issue elaborately with case law, inter-alia, observed that the contentions of the assessee in this regard are treated as untenable and held that the deduction claimed for the expenditure represented by mine development work-in-progress written off due to closure of the mine is not in accordance with the and accordingly, disallowed the assessee's claim of deduction amounting to Rs. 14,54,302/-, which was confirmed by the CIT(A) when the assessee preferred an appeal before him. .....
>
> 5.4 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. We find that substance in the ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd submissions made by the ld. AR. From the orders of the authorities below, it is clear that the assessee has debited to the capital expenditure in the P&L account in respect of those mines which are not in operation or the mines were unsuccessful for coal mines. It is also clear that the breakups were filed before the CIT(A) which has been incorporated by him in his order. We find that in most of the cases mines were closed and no operations could be carried out, the capital work in progress relating to that mine development expenditure could not be capitalized. Therefore, the capital work in progress relating to the mine development expenditure incurred was written off since no asset could be created. Any expenditure which does not bring any additional advantage to the business of the assessee is revenue expenditure. The

expenditure was basically of revenue nature and incurred wholly and exclusively for the purpose of business. The assessee had also filed detailed written submissions before the CIT(A) and had relied on number of judgments. Before us, the ld. AR also relied on the judgments as quoted supra. In support of our decision, we rely on the following judgements:

5.4.1 In case of CIT Vs. Binani Cements Ltd., vs CIT - 380 ITR 116 (Calcutta HC). In ITA No. 265 OF 2009, judgment dated 23/03/2015, similar issue was decided by the Hon'ble High Court of Calcutta wherein it has held as under:

"3. Mr. Bajoria, learned senior advocate, appearing for the appellant submitted that the question is partly covered by the decision in CIT v. Graphite India Ltd. [1996] 221 ITR 420 (Cal.). The relevant question referred by the Tribunal to this Court in that case was whether in the facts and circumstances of that case, the Tribunal was justified in holding that the expenditure incurred for the assessee's proposed Petro-chemical project was revenue expenditure and to be allowed as a deduction? This Court in answering the question, held as follows:

"So far as question No. 4 is concerned, the Tribunal recorded the finding that the assessee spent an amount of Rs. 56,665 as project expenditure. The expenditure represented fees paid to Engineering India Ltd. in connection with the petrochemical project report. The amount was paid by the assessee in order to explore the possibility of setting up of a petro-chemical project which could provide a captive plant for manufacture of raw material at the assessee's own factory which would help the assessee in getting continuous supply of raw material even during periods of acute shortage. In fact, the project did not materialize. The ITO as well as the CIT(A), therefore, held that the expenditure was capital in nature. However, the Tribunal found that the expenditure did not result in ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd bringing into existence any capital asset of enduring in nature. The Tribunal further found that the decision of the Calcutta High Court in the case of Hindustan Aluminum Corporation Ltd. v. CIT (1986) 55 CTR (Cal.) 237: (1986) 159 ITR 673 (Cal) was applicable and following that decision held that the expenditure was allowable as incurred wholly and exclusively for the purpose of the assessee's business. Therefore, the Tribunal deleted the disallowance. The case relied upon by the Tribunal was subsequently followed in the case of Asiatic Oxygen Ltd. v. CIT (1991) 190 ITR 328 (Cal). This Court in the said case reiterated the view taken in Hindustan Aluminum Corporation Ltd.'s case (supra).

According to us, question No. 4 in this reference stands concluded by the aforementioned two decisions. We, accordingly, answer question No. 4 in the affirmative and in favour of the assessee and against the Revenue."

2. Mr. Bajoria further relied on two decisions of the Supreme Court being respectively the decision in CIT v. A. Gajapathy Naidu [1964] 53 ITR 114 and CIT v. Swadeshi Cotton & Flour Mills (P.) Ltd. [1964] 53 ITR 134 (SC). In A. Gajapathy Naidu (supra) on the question of power of the ITO to relate back an income the apex Court was of the following view:

> "When an ITO proceeds to include a particular income in the assessment, he should ask himself, inter alia, two questions, namely : (i) what is the system of accountancy adopted by the assessee, and (ii) if it is the mercantile system, subject to the deeming provisions, when has the right to receive accrued? If he comes to the conclusion that such a right accrued or arose to the assessee in a particular accounting year, he should include the said income in the assessment of the succeeding assessment year. No power is conferred on the ITO under the Act to relate back an income that accrued or arose in a subsequent year to another earlier year, on the ground that that income arose out of an earlier transaction. Nor is the question of reopening of accounts relevant in the matter of ascertaining when a particular income accrued or arose."

5. In Swadeshi Cotton & Flour Mills (P.) Ltd. (supra) on a similar question the said Court held :

> "The system of reopening of accounts does not fit in with the scheme of the IT Act. As far as receipts are concerned there can be no reopening of accounts, and the position is the same in respect of expenses".

6. Mr. R.N. Bandopadhyay, learned advocate appearing on behalf of the Revenue relying upon the decision in Delhi Tourism & TDC Ltd. v. CIT [2006] 285 ITR 114/155 Taxman 10 (Delhi) submitted that the expenditure was rightly ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd disallowed by the learned Tribunal as it was made and related to earlier years.

7. We accept Mr. Bajoria's submission regarding the expenditure made for construction/acquisition of new facility subsequently abandoned at the work-in-progress stage was allowable as incurred wholly or exclusively for the purpose of assessee's business as covered by the decision in Graphite India Ltd. (supra). The issue whether such expenditure could be allowed in the relevant assessment year is however yet to be resolved.

8. The CIT(A) in his order had found as follows : "

> The company claimed as allowable the expenditure on this abandoned project. While it was found to be unviable, the expenditure on it was for the purpose of business. It was not claimed or allowed earlier as business expenditure because it was of capital nature entitled to depreciation after completion and on commencement of its use for business. But since that stage is not reached-no asset having come into existence-the capital-work-in-progress had to be written off as such."

9. There was no challenge to such finding on facts before the learned Tribunal or even before us.

10. The decision in Delhi Tourism & TDC Ltd. (supra) is distinguishable on facts in as much as in that case the Delhi High Court had held that the electricity charges for power consumed was a known expenditure and the assessee, on the basis of average, could make a provision for that expenditure in every year of assessment even if no bill was received in a particular year of assessment.

11. Following the judgment in the case of A. Gajapathi Naidu (supra) the question to be asked is when did the expenditure claimed by way of deduction arise? There would have been no occasion to claim the deduction if the work-in-progress had completed its course. Because the project was abandoned the work-in-progress did not proceed any further. The decision to abandon the project was the cause for claiming the deduction. The decision was taken in the relevant year. It can therefore be safely concluded that the expenditure arose in the relevant year.

12. Reference in this regard may be made to the decision in the case of CIT v. Indian Mica Supply Co. (P.) Ltd. [1970] 77 ITR 20 (SC) wherein the Supreme Court in considering a claim for deduction on arrear lease rents, ascertained subsequently consequent to a compromise arrived in the suit and paid in the relevant assessment year held, inter alia, as under :

> ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd "The Tribunal, in the present case, had clearly found that it was only as a result of the compromise that the respondent became entitled to remain in possession of the demised land. Its liability also became ascertained only at that point of time. It cannot be disputed that the respondent incurring the expenditure had acted in the interest of and for the purpose of its business. The expenditure was not laid out for any purpose other than that of carrying on the business. The deduction was properly admissible under section 10(2)(xv) of the Act and the matter being self-evident the High Court was fully justified in declining to accede to the prayer made under s. 66(2) of the IT Act, 1922."

13. Sec. 10(2)(xv) of the old Act corresponds to s. 37(1) of the present Act. Our above conclusion is fortified by the view expressed by the Supreme Court in the said decision. For the aforesaid reasons the question is answered in the affirmative in favour of the assessee. The appeal is thus allowed.

5.4.2 In the case of CIT Vs. Indian Oxygen Ltd., [1996] 218 ITR 337 (SC), the Hon'ble Supreme Court has held as under:

> "The Tribunal held that the certain amount paid by the assessee to the English company, in pursuance of the agreement, was a permissible deduction under section 37(1). On reference, the High Court found that the English company did not sell any information, processes and inventions to the Indian company; that under the agreement, the Indian company was not entitled to use them after the termination of this agreement; that the Indian company was prohibited from disclosing these information, processes and inventions during the currency and also after the determination of this agreement and that thought the agreement was for a period of

> ten years, it could be terminated earlier. The High Court, therefore, held that the Indian company had not incurred the expenditure for the purposes of bringing into existence any asset or advantage of an enduring nature and that this expenditure was not a capital but a revenue expenditure. On appeal to the Supreme Court, held as under: The understanding of the agreement was correct. Once it was so, the amount paid by the assessee to the British company could not be treated as capital expenditure. It was nothing but revenue expenditure and had been rightly held so by the High Court."

Respectfully following the above judgments, we set aside the order of the CIT(A) on this issue and accordingly, allow the grounds raised by the assessee on this issue in the respective AYs."

7.2.2 All the facts of the case, Grounds of appeal, statement of facts, online submissions of the appellant, the case laws ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd cited and the assessment order are considered. The submission of the appellant is examined. It is noted that the Hon'ble ITAT, Hyderabad bench in appellant's own case in earlier years has adjudicated the issue in appellant's favour. In view of the decision reproduced as above and respectfully following the higher authorities decision on the issue, the grounds of appeal no. 4 to 5 are allowed."

25. Accordingly, in view of the earlier decisions of this Tribunal in assessee's own case, we do not find any error or illegality in the impugned order of the learned CIT (A) qua this issue.

26. Ground No.6 for the A.Ys 2015-16 and 2016-17 and Ground No.5 for the A.Y 2020-21 are common regarding the claim of depreciation @ 15% was restricted by the Assessing Officer to 10% but allowed by the learned CIT (A).

27. We have heard the learned DR as well as the learned AR and considered the relevant material available on record. At the outset, we note that this issue is also covered by the decision of this Tribunal in assessee's own case for the A.Y 2011-12 to 2014-15. The learned CIT (A) has considered this issue in para 7.3.1 to 7.3.2 for the A.Y 2015-16 as under:

> 7.3.1 The appellant filed submissions and relied on case laws to support its ground of appeal and pleaded that the issue was decided in favour of the assessee by the Hon'ble ITAT, Hyderabad in its orders for the AY 2011-12 (Para 11 in the Page No.35) AY 2012-13 (Para 3 in the Page No.3) and AY 2013-14 & AY 2014-15 (Para 6 & 7 in the Page No.9 & 10) dated 20th May, 2021, 25th October, 2021 and 27th May, 2021 respectively. The relevant part of the order dated 20.05.2021 is reproduced as under:
>
> "11. As regards the ground relating to restriction of depreciation on mine development to 10% as against 15% claimed, as raised in AY 2011-12 as ground Nos. 9 & 10, the assessee has claimed depreciation @ 15% to the extent of Rs. 40,46,18,947/-, which was restricted by the AO to 10%, ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd which comes to Rs.

13,48,72,982/-. The CIT(A) confirmed the same.

.....

11.4 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The assessee is engaged in the business of coal mines and he is extracting coal from open cast mines as well as underground mines. As per details submitted by the AR of the assessee during the course of assessment proceedings and appellate proceedings, it is clear that the expenditure incurred by the assessee are to be treated as 'plant and machinery'. The civil works are relating to directly for the excavation of coal. Without doing these jobs, it is difficult to extract the coal from the mines. From the details submitted, it is clear that the expenditure incurred by the assessee company on construction of retaining wall for sand stowing, Dumper Working Platform, Construction of RCC Bridges, Land levelling, Sand Stowing, Bunker Stowing, construction of Inter Seam Tunnels, Construction of Steel Bunkers, Construction of Water Dams, construction of water tankers for sand stowing, building retention wall for sand stowing, construction bunkers in mines for workers, construction of check dams in mines to prevent water gushing etc. The entire expenditure was incurred within the mines, which are categorized as plant and machinery for the purpose of depreciation. Functionally the expenditure assumes the nature of plant and machinery in the coal mines. The rate of depreciation has been prescribed as per new Appendix -I - Part - A on tangible assets. Looking at the nature of business of the assessee the mine development expenditures spent by the assessee are to be treated as plant & machineries. There can be different type of expenditures for the different nature of business. In the Income Tax Act, the word "plant & machinery" has not been defined, but, the various courts have defined the plant and machinery as per the conditions existed in given cases. Further on perusal of the submission of the AR of the assessee it has been observed that in assessee's own case while granting investment allowance U/s 32A of the IT Act, similar expenditures incurred by the assessee under the head "plant and machinery" were decided in favour of the assessee and held that it was plant and machinery by the Hon'ble jurisdictional AP High Court as relied upon by the assessee. Further the assessee has relied on the decision of the Hon'ble SC in case of Karnataka Power Ltd. as quoted supra is squarely applicable to the facts of the present case. The Ld. CIT (A) has not accepted this judgement of Hon'ble SC holding that it relates to Investment Allowance U/s 32A of the Income Tax Act, 1 961. Once similar expenditures have been accepted by the Hon'ble SC as quoted supra, we are of the view that the expenditures incurred by the assessee were ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd necessary for excavation of coal from mines and shafts. In view of the above observations, we allow this ground of appeal of the assessee by holding that the assessee is entitled to charge depreciation @ 15% under the block of assets "plant and machinery", as against 10% made by the AO."

7.3.2 All the facts of the case, Grounds of appeal, statement of facts, online submissions of the appellant, the case laws cited and the assessment order are considered. The submission of the appellant is examined. It is noted that the Hon'ble ITAT, Hyderabad bench in appellant's own case in earlier years has adjudicated the issue in appellant's favour. In view of the decision reproduced as above and respectfully following the higher authorities decision on the issue, the grounds of appeal no. 6 to 7 are allowed."

28. The learned DR has submitted that the assets on which the assessee has claimed depreciation @ 15% are not in the nature of plant and machinery but are falling in the definition of building and therefore, eligible for depreciation @ 10% only. He has relied upon the decision of the Hon'ble Madras High Court in the case of M/s. Narmada Infrastructure Corporation Enterprises Ltd vs. ACIT and another in TCA No.868 to 870 of 2009 & Others. Thus, the learned DR has submitted that the Tribunal while deciding this issue for the preceding A.Ys has not considered the judgment of the Hon'ble Madras High Court. We find that the decision relied upon by the learned DR is in respect of construction of road under BOT wherein the assessee claimed depreciation @ 15% which was denied by the Assessing Officer and also confirmed by this Tribunal by holding that the roads/toll bridges do not fall in the ambit of plant & machinery but these do fall in the terms buildings and therefore, eligible for depreciation @ 10%. There is no dispute that as per the schedule of depreciation, the roads are falling in the asset as building and not as plant and machinery. However, in the case of the assessee, the work carried out by the assessee is within the Mines and very ITA Nos 283 284 286 and 300 301 and 308 of 2024 Singareni Collieries Company Ltd much part and parcel of the coal mines of the assessee. Undisputedly, the coal mines are considered as plant and machinery for the purpose of depreciation and therefore, any work carried out in the Mines which is essential for the operations of extraction of the coal from the Mines will partake the character of plant and machinery. Accordingly, we do not find any merits in the contention of the learned DR on this issue. Ground No.5 for the A.Ys 2015-16 and 2016-17 and Ground No.4 for the A.Y 2020-21 of the Revenue's appeal are dismissed.

29. In the result, assessee's appeals for the A.Ys 2015-16 and 2016-17 are partly allowed and for the A.Y 2020-21 is allowed and Revenue's Appeals for A.Ys 2015-16, 2016-17 and 2020-21 are dismissed.

Order pronounced in the Open Court on 12 th June, 2025.

Sd/-	Sd/-
(MANJUNATHA, G.)	(VIJAY PAL RAO)
ACCOUNTANT MEMBER	VICE-PRESIDENT

Hyderabad, dated June, 2025
Vinodan/sps
Copy to:

S.No	Addresses
1	Singareni Collieries Company Ltd, SCCL Head Office,

Kothagudem, Bhajan mandir SO Kothagudem 507101, Telangana 2 ACIT Circle-1 Khammam, Dy.CIT Circle 13(1) Hyderabad 3 Pr. CIT - Hyderabad 4 DR, ITAT Hyderabad Benches 5 Guard File By Order