CHAPTER III: MINISTRY OF COAL

Eastern Coalfields Limited

3.1 Avoidable loss due to short payment of advance income tax

Incorrect estimation of taxable income and consequent short payment of advance income tax by Eastern Coalfields Limited resulted in avoidable payment of interest of ₹ 12.38 crore for the financial years 2013-14 and 2014-15.

Under Section 208 read with Section 211 of the Income Tax Act, 1961 (Act), each company is required to pay advance tax at the prescribed rates on due dates in quarterly instalments pertaining to a financial year, in case the amount of income tax payable by the company during that year exceeds ₹ 10,000. In the event of short payment of advance tax, the company is liable for payment of interest under the provisions of the Act. According to Section 234(B) of the Act, if the advance tax paid is less than 90 *per cent* of the assessed tax, simple interest at the prescribed rate is leviable for every month or part thereof, from first April of the assessment year to the date of determination of income under the Act, on the amount by which the advance income tax paid falls short of the assessed tax. Section 234(C) of the Act also provides for payment of interest at the prescribed rate on the amount of short paid installments of advance tax for a period of three months in case of default made in payment of first, second and third installment and for one month in case of shortfall in payment of last installment.

Audit observed (August 2015) that Eastern Coalfields Limited (ECL), a subsidiary of Coal India Limited, engaged in coal mining activities, failed to correctly assess the amount of advance income tax during the financial years 2013-14 and 2014-15. As a result, ECL paid less advance income tax and eventually had to pay interest of ₹ 4.83 crore and ₹ 3.00 crore under Section 234(B) for the financial years 2013-14 and 2014-15 respectively for short payment of advance tax. Similarly, under Section 234(C), ECL paid ₹ 3.05 crore and ₹ 9.53 crore for the financial years 2013-14 and 2014-15 respectively for short payment of individual instalments of advance tax. Thus, ECL paid interest amounting to ₹ 20.41 crore to Income Tax Department, due to incorrect estimation of taxable income and delayed payment of advance tax during the financial years 2013-14 and 2014-15, of which ₹ 12.38 crore was avoidable which is detailed as under:-

Year	**Interest u/s 234(B) in ₹**	**Interest u/s 234(C) in ₹**	**Total**
2013-14	4.83 crore	₹ 3.05 crore (including ₹ 60.35 lakh for the last quarter)	₹ 7.88 crore
2014-15	3.00 crore	₹ 1.50 crore for the 4th quarter	₹ 4.50 crore
Total			**₹ 12.38 crore**

While admitting the facts, the Management stated (November 2015/ January 2016) that:

- Payment of interest under section 234(B) and 234(C) of the Act was due to unanticipated additional gain of ₹ 226.15 crore on sale of coal as per Memorandum of Understanding (January 2014) with NTPC and write-back of very old liabilities at the fag end of the financial year 2013-14.
- Till the financial year 2013-14, ECL was not liable to pay tax under the provision of Minimum Alternate Tax (MAT) of the Act. In February 2015, the Board for Industrial and Financial Reconstruction (BIFR) declared ECL out of its sickness considering the fact that the paid up capital of ECL and free reserves as on 31 December 2014 exceeded the accumulated losses, resulting in applicability of MAT for the financial year 2014-15. Thus ECL became liable to pay tax under MAT only in the month of February 2015, although ECL paid advance tax without considering the MAT as on 15 June/September/December 2014.
- Though ECL paid interest at the rate of 12 *per cent* per annum under section 234(B) and 234(C) for default in payment of income tax, the actual loss was only one-fourth of the amount of interest paid, considering the fact that ECL earned interest from its investment at an average rate of more than 9 *per cent* per annum on the short amount of advance Income Tax paid. Further, for all practical purposes, the interest paid on belated payment of Income Tax was contributing to the national exchequer.
- ECL, however, assured that proper care would be taken in future to avoid any such occurrences.

The Ministry in its reply (February 2016) endorsed the view of the management.

The above contentions of the Management/Ministryare not tenable in view of the following:

- MOU forsale of coal was executed between ECL and NTPC on 9 January 2014. ECL realised advance amount of ₹ 575 crore from NTPC on account of MOU within 10 March 2014 (₹ 165 crore in January 2014, ₹ 325 crore in February 2014 and ₹ 85 crore on 10 March 2014). Hence, ECL could have estimated the receipts for payment of advance income tax which was due on 15 March 2014, as by 10 March, 2014, 80*per cent* of release had already taken place (₹ 575 crore out of ₹ 717.50 crore) and ECL could estimate the lifting in the ensuing 21 days.
- For the purpose of Section 234 (B), ECL could easily estimate 90 *per cent* of the assessed tax for the financial year 2013-14 but the company did not do so. Consequently, ECL also paid interest of ₹ 4.83 crore as per section 234(B) for delayed payment of advance income tax for the financial year 2013-14.
- It is pertinent to mention that due to failure in making correct estimation of advance Income Tax by ECL management for the financial year 2013-14, ECL paid interest of ₹ 3.05 crore as per section 234(C) for the whole year out of which only ₹ 60.35 lakh was for delayed payment of 4th quarter instalment of advance income tax. While there was no justification for inability to estimate the receipts for the first three quarters, even for the fourth quarter the receipts were estimable as per audit's view.

- As ECL was under BIFR during the financial year 2013-14, the company got the above benefit and thereby MAT liability as per u/s 115JB was nil. However, ECL came out of BIFR in February 2015 on the ground that the net worth surpassed the accumulated loss of the company. Thus, ECL was not eligible to get the above deduction u/s 115JB for the financial year 2014-15. Further, it was also seen from the BIFR Report (February 2015) that ECL made requests to the Board to de-register the company from the purview of BIFR as the net worth of the company had turned positive based on its audited Balance Sheet as on 31 December 2014. Hence, the management was well aware of the fact that the MAT deduction u/s 115JB for the financial year 2014-15 would not be available as the company had positive net worth as on 31 December 2014. Though the company was discharged from BIFR in February 2015, but due to the above facts, the company had enough time and scope for payment of 90*per cent* of the assessed income tax as per section 234(B). However, the company was not able to assess the payment of advance income tax u/s 234(B) and 234(C) for the years 2013-14 as well as 2014-15. Had ECL paid advance tax for the financial year 2014-15 as per MAT, immediately after coming out from BIFR in February 2015, ECL could have saved at least ₹ 4.50 crore comprising ₹ 3.00 crore for payment of interest under Section 234(B) for short payment of advance tax during the financial year 2014-15 and ₹ 1.50 crore under Section 234(C) for short payment of fourth instalment of advance tax due as on 15 March 2015. Thus ECL could have avoided payment of interest of ₹ 12.38 crore (₹ 7.88 crore and ₹ 4.50 crore for the financial year 2013-14 and 2014-15 respectively) by prudent tax management.
- The reply of ECL that it earned interest is not tenable as the company is not in the business to earn interest on unpaid Govt dues. Further, the interest earned due to short payment of advance income tax is also taxable for the financial years 2013-14 and 2014-15 as per Income Tax Act.
- The company had the opportunity to review the unusual variation in annual profit before tax and other factors and revise their estimated taxable income while paying the quarterly instalments of advance income tax due in June, September, December and March of the respective years by closely monitoring its actual income and expenditure*vis-a-vis* the estimates which could reduce the difference to the minimum extent as possible.

Thus, due to absence of a well defined system for working out the taxable income based on realistic inputs, ECL incurred avoidable loss of ₹12.38 crore on account of short and delayed payment of advance income tax during the financial years 2013-14 and 2014-15.

Neyveli Lignite Corporation Limited

3.2 Avoidable expenditure

Drawal of loan far in advance of requirement and subsequent foreclosure resulted in an avoidable expenditure of ₹10.31 crore.

Government of India (Ministry of Coal) sanctioned (June 2011) a project for installation of a 2x500 MW Neyveli New Thermal Power Station (NNTPS) at Neyveli. The estimated cost of the project (₹ 5907.11 crore) comprised term loan (₹ 2500 crore), other borrowings (₹ 665.17 crore), foreign currency loan (₹ 969.81 crore) and equity (₹ 1772.13 crore). The Ministry also directed the Company to finance the project on 70:30 debt equity basis and to complete Unit I and Unit II within 48/54 months respectively i.e., by June 2015 and December 2015.

After retendering the project twice, the Company issued Letter of Award (LOA) to BHEL for erection of Steam Generator and Auxiliaries in October 2013 and for Steam Turbine Generator in December 2013 with the commissioning of the Project scheduled for October 2017 and April 2018.

In the meantime, the Company entered into (March 2012) an agreement with State Bank of India for a loan of ₹ 2500 crore.The company withdrew ₹100 crore (March 2012) out of which only ₹ 34.92 crore could be utilized up to December 2013. The Board subsequently decided (December 2013) to foreclose the loan and go in for a fresh loan later when the project gets momentum and to meet the current fund requirements from internal resources. Accordingly, the Company foreclosed the SBI loan on 23 February 2014, after payment ₹ 23.47 crore[1] as interest and other charges on the loan.

Audit observed that:

- The Company was aware that the Tender committee had recommended (February 2012) not to process one out of the two technically feasible bids and that in case the contract was to be retendered, it would take minimum of nine months; hence the LOA could not have been released as per the scheduled date.
- At the time of entering into the agreement with SBI, LOA was not issued to any of the packages of the NNTPS project.
- As on 31 March 2012, the Company had surplus funds of ₹ 3275.20 crore in short term deposits which could have been utilized to meet the temporary financial needs.

Thus, drawal of loan far in advance of the requirement led to an avoidable expenditure of ₹ 23.47 crore.

The Company stated (October 2015) that tendering activity of project activity was delayed and consequently the order for main plant packages to BHEL was released only in October 2013 and December 2013 with the revised scheduled commercial operation date as April 2018. In order to avoid restructuring of existing loan and avail the advantage of softening interest rate in the market, it had pre closed the existing loan.Further,it invested the loan amount in short term deposit and earned ₹13.16 crore as interest.

The reply of the company may be viewed in light of the following:

- The Company drew (March 2012) the loan even before the issue of LOA to BHEL in October and December 2013 and thus the drawal of loan was not need-based and in line with the progress of work.

[1] ***₹20.53 crore (Interest Paid)+₹2.76 crore (upfront fee paid) + ₹0.18 crore (legal charges paid)***

- The Company could have utilized its own surplus funds in term deposit even if it had anticipated delay in entering into alternative arrangement with banks.
- The purpose of the loan was to finance the project and not earn interest by investing the same in short term deposits.

Thus, drawal of loan far in advance of the requirement led to an avoidable expenditure of ₹ 10.31 crore[1], even after considering the interest earned thereon.

The matter was reported to the Ministry in December 2015; their reply was awaited (March 2016).

[1] ***₹23.47 crore minus ₹13.16 crore (interest earned on short term deposit)***