IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.585/Bang/2013
Assessment year : 2007-08

The Deputy Commissioner of Income Tax, Circle 1, Bellary.	Vs.	M/s. Sandur Manganese & Iron Ores Ltd., Lakshmipur, Sandur – 583 119. **PAN: AAACT 7495D**
APPELLANT		RESPONDENT

ITA Nos.558 & 559/Bang/2013
Assessment years : 2007-08 & 2008-09

M/s. Sandur Manganese & Iron Ores Ltd., Lakshmipur, Sandur – 583 119. **PAN: AAACT 7495D**	Vs.	The Deputy Commissioner of Income Tax, Circle 1, Bellary.
APPELLANT		RESPONDENT

Revenue by	:	Shri Harinder Kumar, CIT(A)-3
Assessee by	:	Shri S. Parthasarathi, Advocate

Date of hearing	:	28.07.2017
Date of Pronouncement	:	11.10.2017

O R D E R

Per Sunil Kumar Yadav, Judicial Member

These are cross appeals preferred by the assessee as well as revenue against the respective orders of CIT(Appeals). Since these appeals were heard together, these are being disposed of through this consolidated order. We, however, prefer to adjudicate these appeals one after the other.

ITA No.585/Bang/2013

2. This appeal is preferred by the revenue against the order of CIT(Appeals) on a solitary ground that CIT(Appeals) erred in deleting the addition of Rs.107,05,56,400 on account of capital expenditure being net present value paid to forest department.

3. The facts in brief borne out from the record in this regard are that the assessee is engaged in the business of extraction of manganese and iron ore and exporting the same in the name & style of M/s. Sandur Manganese & Iron Ores Ltd. During the course of assessment proceedings, the AO has noted that assessee has claimed a sum of Rs.107,05,56,400 as net present value (NPV) payable to forest department as a revenue expenditure, but the AO treated the same as capital expenditure and added to the total income of the assessee. While making the disallowance, the AO has observed that the sum paid by the assessee represents the Net Present Value and compensatory afforestation expenses paid to forest department. NPV is paid for transfer to Compensatory Afforestation

Management and Planning Agency (CAMPA). The payment is made by each user towards regeneration of forest for diversion of forest to non-forest use. It was further observed that one time lump sum payment of Rs.107.05 crores has to be made to the Conservator of Forests, Bangalore on the basis of decision of the Hon'ble Supreme Court. This expenditure is non-recurring in nature and the benefit of this expenditure will be enjoyed by the assessee over several years i.e., during the entire period of lease of the mine. It was also observed by the AO that this payment of NPV is not for removal of restriction or obstruction, but to facilitate the assessee to mine during the lease period and is inextricably linked to the mining rights of the assessee. Without payment of the NPV, the assessee cannot do the mining activities. He accordingly treated the same to be capital expenditure and added back to the total income of the assessee.

4. The assessee preferred an appeal before the CIT(Appeals) with the submission that payment of NPV was made in pursuance of Supreme Court judgment by the users of forest land for non-forest purposes at the specified rates depending upon the density of the forest land with regard to the presence of flora and fauna in the course of mining activities. The payment was required to be made at the time of renewal of lease for mining. The amount payable in pursuance of Supreme Court judgment crystallized during the year at Rs.107.05 crores which was claimed by the assessee. Reliance was placed upon the order of the Tribunal Bangalore Bench in the case of *M/s. Ramgad Minerals & Mining Pvt. Ltd. dated*

09.04.2009 in ITA No.1012/Bang/2008 in which it was held the expenditure to be a revenue expenditure and the Tribunal has allowed the same in the year when the demand was raised by the Government in pursuance of the judgment of the Supreme Court. It was further contended that revenue has challenged the order of the Tribunal in appeal before the High Court and the Hon'ble High Court was pleased to dismiss the appeal of the revenue vide its judgment dated 06.01.2012 in ITA No.5021/2009. A copy of the judgment was placed on record.

5. The CIT(Appeals) re-examined the issue in the light of the order of the Tribunal which was later on approved by the Hon'ble jurisdictional High Court in the case of *Ramgad Minerals & Mining Pvt. Ltd. (supra).* Following the judgment of the Hon'ble jurisdictional High Court, the CIT(Appeals) has allowed the claim of assessee to be revenue expenditure.

6. Aggrieved, the revenue has preferred an appeal before the Tribunal and placed heavy reliance on the order of the AO.

7. During the course of hearing, the ld. counsel for the assessee, on the other hand, besides placing reliance on the order of CIT(Appeals), has invited our attention to the order of the Tribunal in the case of *Ramgad Minerals & Mining Pvt. Ltd. (supra)* and the judgment of the Hon'ble jurisdictional High Court in the case of *Ramgad Minerals & Mining Pvt. Ltd. (supra).* Copy of the judgment of the Hon'ble High Court is placed on record, wherein the Hon'ble High Court has approved the order of the

Tribunal allowing the claim of the assessee. Our attention was also invited that against this judgment of Hon'ble jurisdictional High Court, the revenue has preferred SLP before the Hon'ble Apex Court and the SLP was also dismissed. Copy of SLP No.33057/2012 is also placed on record. Since the CIT(Appeals) has adjudicated the issue following the judgment of the Hon'ble jurisdictional High Court, which was later on approved by the Hon'ble Apex Court, we find no infirmity in the order of CIT(Appeals). We, however, extract the relevant portion of the order of CIT(Appeals) hereunder:-

> "I have gone through the facts of the case, contents of the assessment order, written submission of the assessee and case laws referred and relied by the AO and Assessee. The Hon'ble ITAT., B, Bench Bangalore in the case of M/s. Ramgad Minerals & Mining Private Ltd., Baladota Enclave, Hospet Vs. The ACIT, Circle- 1, Bellary, it was observed that, "we find force in the submission of the learned counsel that payments to the Government are to be paid once the mining lease is obtained and such payments are governed by various Acts along with the Apex Court making a ruling for State Governments to participate in the granting of mining lease by recovering compensation when their forests are uprooted. Therefore for this purpose, the funds are used for a natural regeneration which the assessee participates indirectly. Therefore at no point of time could it be said that the assessee had incurred a capital expenditure giving the assessee a benefit of enduring nature for the purpose of earning segmented income to render the same to income tax. In other words, the authorities below have not pointed out the income generated against the purported deferred revenue expenditure so proposed by them in their impugned orders. The amount was incurred as a revenue expenditure and is directed to be allowed in the year it has been incurred. Respectably following the judgment of the Hon'ble ITAT, the addition made by the AO disallowed and this ground of the appeal of the assessee is allowed."

8. Since no infirmity in the order of the CIT(Appeals) is noticed, we approve the order of the CIT(Appeals).

ITA 558/Bang/2013

9. This appeal is preferred by the assessee against the order of the CIT(Appeals) *inter alia* on the following grounds:-

> "1) On facts and circumstances of the case, the learned CIT (Appeals) erred in passing the order in the manner he did.
>
> 2) The learned CIT (Appeals) ought to have accepted the explanation offered by the Appellant and ought to have held that the compensatory afforestation expenditure of Rs 5,65,47,944/- was to be allowed as revenue expenditure as claimed by the Appellant.
>
> 3) The learned CIT (Appeals) ought to have appreciated that the expenditure incurred did not result in any acquisition of asset and the payments were for carrying on the mining operations and consequently they were liable to be allowed as revenue expenditure in full as claimed by the Appellant.
>
> 4) The learned CIT(Appeals) ought to have allowed the forest lease rentals of Rs 2,77,51,446/ - in full as claimed by the Appellant.
>
> 5) The learned CIT(Appeals) ought to have appreciated that the additional rentals were crystallized during the relevant year and consequently the Applicant was entitled to the deduction as claimed in full.
>
> 6) Without prejudice, the additions and disallowances are excessive, arbitrary and unreasonable and ought to be deleted in full.
>
> 7) The learned CIT(Appeals) erred in confirming the charging of interest under Sections 234B and 234D of the Act.

8) For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed."

10. Ground No.1 is general in nature. With regard to ground Nos. 2 & 3 which relate to disallowance of Rs.5,65,47,944, the facts borne out from the record are that it was noticed during the course of assessment proceedings that the assessee has claimed the compensatory afforestation expenses as revenue expenditure. The AO observed that payment was made by each of the user of the forest land for mining towards regeneration of forest for diversion of forest to non-forest use, thus it was inextricably linked to the mining rights of the assessee. Without payment of NPV and compensatory afforestation expenses, the renewal of mining lease would not be possible. The AO Accordingly treated this expenditure as capital expenditure and disallowed the claim of the assessee.

11. The assessee preferred an appeal before the CIT(Appeals) with the submission that the nature of the payment of this compensatory afforestation expenses is also similar to payment of NPV. Therefore, the reasons given for deleting the disallowance of NPV be applied here and this payment should also be treated as revenue expenditure.

12. The CIT(Appeals) re-examined the issue in the light of assessee's contentions and has confirmed the disallowance having observed that payment is made by each of the user of the forest land for mining towards

regeneration of forest for diversion of forest to non-forest use. Thus, it was inextricably linked to mining rights of the appellant. Without payment of compensatory afforestation expenses, the renewal of mining lease would not be possible. The assessee has made the payment for continuing his right of mining which is enduring, hence the payment made by the assessee is considered as capital expenditure.

13. Aggrieved, the assessee has preferred appeal before the Tribunal with the submission that the nature of payment of compensatory afforestation expenses is similar to that of payment of NPV. Therefore, payment of compensatory afforestation expenses should be treated as revenue expenditure.

14. The ld. DR, on the other hand, has contended that in the case of NPV, the payment was made on account of judgment of Apex Court. But in the instant case, the compensatory afforestation expenses are to be paid by the assessee as per the agreement of licence of mining, meaning thereby, the assessee knows since the beginning that this much of expenditure is to be incurred for obtaining licence of mining. Therefore, it is inextricably linked to the mining rights of the assessee. Therefore, it is a capital expenditure.

15. Having carefully examined the orders of lower authorities in the light of rival submissions, we find that NPV to the forest department was paid on account of the judgment of the Apex Court. The lesser of the land for

mining was not aware of the NPV payable to forest department at the time of obtaining the lease from the Government. It was paid on account of the judgment of the Apex Court during the pendency of the mining lease. But the amount paid under the head 'compensatory afforestation expenses' was known to the assessee at the time of leasing of the mining land. It is compulsory for each and every user of mining land to pay the afforestation expenses to forest department to compensate the use of forest land for mining towards regeneration of forest for diversion of forest to non-forest use. Since this payment is inextricably linked to the mining rights of the assessee, this payment is of capital nature and the lower authorities have rightly treated the same accordingly. We accordingly find no infirmity in the order of CIT(Appeals).

16. Apropos ground Nos. 4 & 5 relating to disallowance of lease rental payments, the facts borne out from the record in this regard are that the forest land was allotted for mining purpose by the forest department under lease to the assessee which were required to be renewed periodically. As per the lease agreement entered, the lease holder is required to pay the lease rent every year @ Rs.50,000/hectare and Rs.187.50/hectare as supervision charges to the forest department. The lease rental is payable annually. For actual usage of land, royalty is paid based on tonnage of ore mined and sold. Thus the lease rental becomes a fixed expenditure (the amount varying depending on the rates applied on the land allotted to the lease holder). The assessee claimed it to be revenue expenditure and

claimed an expenditure of Rs.3,10,63,145 on this account. Major part of lease relate to 1994 to 2006 not relevant to impugned assessment year i.e., AY 2007-08. The lease rent relatable to AY 2007-08 is only Rs.33,11,699. Considering this, balance amount of Rs.2,77,51,446 not relatable to impugned assessment year, the AO disallowed the same.

17. Aggrieved, the assessee has preferred an appeal before the CIT(Appeals) with the submission that the AO has failed to appreciate that the demand was raised only in the relevant year in which it got crystallized in accordance with the Government notification. Before the CIT(Appeals) the assessee has admitted that the demand stood vacated by the judgment of the High Court and therefore the same would be amenable to section 41(1) of the Act, when the dispute reaches finality and in that year the appellant may offer the income for taxation.

18. The CIT(Appeals) re-examined the issue, but was not convinced with the explanation of the assessee and he accordingly confirmed the order of the AO disallowing the claim of assessee, having observed that lease rental becomes a fixed expenditure every year and it is like any other revenue expenditure incurred by the company. Out of total claim for forest lease rental payments, major part of lease rent payable relate to 1994 to 2006 and not relevant to the AY 2007-08.

19. Aggrieved, the assessee has preferred an appeal before the Tribunal and during the course of hearing, it was observed that no doubt

lease rent is revenue expenditure and it should be debited to the account every year when it becomes due. The assessee was also asked to file some evidence in support of his contention that for certain reasons the lease rent was not paid and disputes were settled during the impugned assessment year. But no evidence was furnished on behalf of the assessee. Undisputedly lease rent is recurring expenditure and it should be paid every month. Since the assessee has been following mercantile system of accounting, the lease rental should be debited to its books of account in their respective years unless any dispute is raised. We therefore do not find any force in the contention of the assessee in the absence of any documentary evidence that crystallization was done in the impugned assessment year. Since the assessee had debited the entire expenditure in this regard in the impugned assessment year, we find no infirmity in the order of CIT(Appeals) who has rightly disallowed the prior period expenses.

ITA 559/Bang/2013

20. In this appeal, the assessee has assailed the order of CIT(Appeals) *inter alia* on the following grounds:-

> "1. On the facts and circumstances of the case, the learned CIT (Appeals) erred in passing the order in the manner he did.
>
> 2. The learned CIT (Appeals) ought to have appreciated that the Appellant having paid FBT on the provision of medical

expenses, the Appellant was entitled to the deduction of Rs.30,01,400/ - in full.

3. The learned CIT (Appeals) ought to have allowed the deduction of Rs.30,40,011 / - being the provision for leave travel allowance as the same was an ascertained liability and thus liable to be allowed under mercantile system of accounting as held by the Hon'ble Supreme Court in the case of Bharat Earth Movers Ltd. vs. CIT, 245 ITR 428 (SC).

4. The learned CIT (Appeals) ought to have allowed the foreign travel expenses to the tune of Rs.38,05,986/ - as the expenditure was in the course of business and for the purpose of business and also for the expansion of the business and accordingly liable to be allowed in full as revenue expenditure.

5. The learned CIT (Appeals) ought to have allowed stamp fee for registration and processing fee of the mining lease amounting to Rs.24,82,670/ - since the expenditure incurred was in the course of business and no new capital asset has emerged on account of the expenditure.

6. The learned CIT (Appeals) ought to have followed the ratio laid down by the Hon'ble Supreme Court in Empire Jute Co.Ltd vs. CIT, 124 ITR 1 (SC) and allowed the stamp fee for registration and processing fee incurred in full.

7. The learned CIT (Appeals) ought to have allowed the mining lease rent to the tune of Rs.21,81,32,476 / - since the expenditure having got crystallized during the relevant assessment year, the same was required to be allowed in full as claimed by the Appellant.

8. Without prejudice, the disallowances are excessive, arbitrary and unreasonable and ought to be deleted in full.

9. The learned CIT (Appeals) erred in confirming the levy of interest under Sections 234B & 234C of the Act.

10. For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed."

21. Ground No.1 is general in nature. Apropos ground No.2, it is noticed that the AO has disallowed the provision for medical expenses having observed that the company is reimbursing the medical expenses based on the employees claim and liability against medical reimbursement accrues on submission of medical reimbursement claim by employees and hence the amount of provision made in the P&L account at Rs.30,01,400 towards medical eligibility for future claim is contingent liability and not an accrued liability. The AO accordingly proposed to disallow the said amount. The AO has also observed that assessee is not making payment towards medical allowance based on percentage of salary as contended and in that there is no need to make a provision towards medical eligibility for future claim. It was also ascertained by the AO that the amount of provision made at Rs.30,01,400 has not been considered to be part of salary and it was not considered as income from salary in the hands of employees for deducting tax u/s. 192 for the year 31.03.2008. It was explained to the AO that the assessee has reimbursed medical expenses as claimed by the employees during the year to the extent of Rs.47,63,680 and this amount has been adjusted against the opening balance of provision brought forward at Rs.22,33,722 and out of the provision made during the year at Rs.45,31,058, the assessee has made a provision for future claim to the extent of Rs.30,01,400.

22. The AO further observed that liability to pay reimbursement of medical expenses arises in future on incurring of medical expenses by

employees and putting forth their claim for reimbursement of the said expenses and such claim has to be in accordance with the scheme devised by the assessee company. Thus the liability to pay the reimbursement of medical expenses is a contingent liability and not liability in praesenti. The AO further held that it is settled principle of law that contingent liability cannot be allowed as an expenditure u/s. 37 of the Act and placed reliance upon the judgment of the Hon'ble Supreme Court in the case of *Indian Molasses Co. (P) Ltd. v. CIT, 37 ITR 66 (SC)* and the judgment of the Hon'ble Bombay High Court in the case of *CIT v. Kesar Sugar Works Ltd., 239 ITR 398*. The AO accordingly disallowed the provision of Rs.30,01,400 made towards medical liability for future claim and added to the total income of the assessee.

23. Aggrieved, the assessee preferred an appeal and filed written submissions before the CIT(Appeals). The CIT(Appeals) re-examined the claim of assessee and was not convinced with the contention of the assessee and he accordingly confirmed the order of AO, having observed that payment was not merely contingent but the liability itself was also contingent.

24. Aggrieved, the assessee has preferred an appeal before the Tribunal reiterating its contentions as raised before the CIT(Appeals). Before the CIT(Appeals), though the assessee has contended that it has paid fringe benefit tax on these payments, but no evidence has been filed

in this regard. Undisputedly, the payment of medical reimbursement was made on receipt of claim from the employees. The said payment can be made during the financial year. In the absence of claim, there is no ascertained liability which are to be discharged by the assessee. Therefore, we find ourselves in agreement with the order of CIT(Appeals) that liability itself is a contingent liability. Therefore the provision for contingent liability has to be disallowed. We therefore confirm the order of CIT(Appeals) as we find no error in it.

25. Apropos ground No.3 relating to disallowance of leave travel allowance of Rs.30,40,011, the claim of provision of leave travel allowance was also disallowed by the AO for the similar reasons as the payment of medical reimbursement. For the same reasons as discussed in the foregoing paragraphs, we find no infirmity in the order of CIT(Appeals) and we confirm the same.

26. Apropos ground No.4, which relates to the disallowance of foreign travel expenses to the tune of Rs.38,05,986, we find that the AO has made a disallowance for foreign travel expenses on the ground that the expenditure relate to new project in acquiring mine at Thailand. Since the expenditure relating to new project on acquisition of mine is a capital expenditure and not incurred in connection with business carried on by the assessee.

27. The assessee preferred appeal before the CIT(Appeals) with the submission that it was extension of earlier business, therefore it should be allowed as revenue expenditure. The CIT(Appeals) was not convinced with it and he disallowed the same having accepted the findings of the AO that foreign travel was undertaken for new project of quary and new mines at Thailand.

28. Now the assessee is before the Tribunal and reiterated its arguments as raised before the CIT(Appeals), whereas the ld. DR has contended that it is for the assessee to establish that expenditure was incurred for the business exigencies and not for setting up of a new project in the business.

29. Having carefully examined the orders of lower authorities in the light of rival submissions, we find that undisputedly the assessee has undertaken the foreign travel in connection with the purchase of mines at Thailand. The assessee claimed expenditure incurred thereon as revenue expenditure on the ground of expansion of old business, but no details in support of its claim were furnished. It is also not disputed that the assessee has purchased mines at Thailand, therefore expenditure incurred in acquiring capital asset has to be capital expenditure. The CIT(Appeals) has adjudicated the issue in detail in his order and we find no infirmity therein. Accordingly, we confirm his order.

30. Apropos ground No.5 & 6, it is noticed that stamp duty for registration and processing fee of the mining lease was claimed to be revenue expenditure by the assessee, but the AO treated the same to be capital expenditure having relied upon the Hon'ble jurisdictional High Court in the case of *Hotel Rajmahal v. CIT, 152 ITR 218*.

31. Aggrieved the assessee preferred appeal before the CIT(Appeals), but the CIT(Appeals) has following the judgment of Hon'ble jurisdictional High Court confirmed the order of AO as mining lease was obtained for 20 years and the expenditure incurred relating to obtaining mining lease is of capital nature.

32. Now the assessee is before us and reiterated its contentions as raised before the CIT(Appeals).

33. The ld. DR, besides placing reliance upon the order of CIT(Appeals) has contended that whatever expenditure is incurred by way of licence fees or registration charges, they all are of capital nature.

34. Having carefully examined the orders of lower authorities in the light of rival submissions, we find that the lower authorities have adjudicated the issue following the judgment of Hon'ble jurisdictional High Court in the case of *Hotel Rajmahal (supra)*. Since the lower authorities have decided the issue following the judgment of the Hon'ble jurisdictional High Court, we find no infirmity therein. Accordingly, we confirm the order of CIT(Appeals).

35. Apropos ground Nos. 7 to 8, we find that the AO has disallowed the mining lease rent of Rs.21,81,32,476, having observed that the said lease rent relates to the period from 01.01.1974 to 31.03.2008. The assessee explained that since the forest department demanded the payment vide notice dated 16.01.2008, the liability accrued during the year. The AO disputed these facts and observed that lease rent was payable on annual basis and liability to pay the lease rent accrues at the end of the respective year. He, however, allowed the lease rent relating to impugned assessment year at Rs.1,42,35,667, but the remaining amount was not allowed as it was not crystallized during the year.

36. The assessee preferred an appeal before the CIT(Appeals) and filed written submissions before him. The written submissions were considered by the CIT(Appeals), but he was not convinced with it. While confirming the order of the AO, the CIT(Appeals) has observed that no evidence was placed to demonstrate that the liability was crystallized during the impugned year. Through demand notice, it cannot be said that liability has been crystallized during the year. The CIT(Appeals) has also observed that only lease rent is to be paid annually, but there is no reason to defer it.

37. Aggrieved, the assessee has preferred an appeal before the Tribunal reiterating its contentions, whereas the ld. DR has contended that annual lease rent is fixed at the time of granting the licence for mining. Therefore, it is a recurring liability and has to be debited every year, unless

and until the assessee raised a dispute with respect to the liability. No evidence has been placed on record to demonstrate that this liability was ever disputed by the assessee. Therefore, it is to be debited to the profit & loss account annually every year. We find no evidence on record that the liability was disputed in the earlier years and it is crystallized only in the impugned assessment year. Mere notice of demand does not demonstrate that liability was disputed in the earlier years and it is crystallized in the impugned assessment year. Therefore, we find no merit in the contentions of the assessee. Accordingly, we confirm the order of the CIT(Appeals), who has rightly disallowed the prior period expenses.

38. In the result, the appeals of the revenue and assessee are dismissed.

Pronounced in the open court on this 11th day of October, 2017.

Sd/-	Sd/-
(JASON P. BOAZ)	(SUNIL KUMAR YADAV)
Accountant Member	Judicial Member

Bangalore,
Dated, the 11th October, 2017.

/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Senior Private Secretary
ITAT, Bangalore.