

## **आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK  
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM**

**आयकर अपील सं./ITA No.395/CTK/2013**

**(निर्धारण वर्ष / Assessment Year :2007-2008)**

ACIT, Circle-2(1), Sambalpur	Vs.	M/s Mahanadi Coalfields Ltd., Jagriti Vihar, Burla, Sambalpur
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AABCM 5188 P</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri Kunal Singh, CITDR  
निर्धारिती की ओर से /Assessee by : Shri S.S.Poddar/N.Kedia, AR  
सुनवाई की तारीख / Date of Hearing : **04/10/2017**  
घोषणा की तारीख/Date of Pronouncement **09/10/2017**

### **आदेश / O R D E R**

**Per Shri Pavan Kumar Gadale, JM:**

The revenue has filed an appeal against the order of CIT(A), Cuttack, in Appeal No.0402/2012-13, dated 23.05.2013, passed u/s.147/143(3)/250 of the Income Tax Act, 1961 for the assessment year 200-2008.

2. The sole substantive grounds raised by the revenue with respect to quashing of order u/s.143(3) r.w.s.147 of the Act by the CIT(A) and the Id. CIT(A) erred that there is a change of opinion on the admissibility of depreciation u/s.32 of the Act in respect of plant and machinery and the definition of manufacturing does not include the mining activities.

3. Brief facts of the case are that the assessee is a Government of India Undertaking engaged in the business of mining, extraction of coal and sale thereof and filed the return of income electronically for the assessment year 2007-2008 on 31.10.2007 with total income of

Rs.2091,48,07,000/- and the return of income was processed u/s.143(1) of the Act and subsequently the case was selected for scrutiny under and notice u/s.143(2) & 142(1) along with questionnaire was issued. In compliance to the same, Id. AR of the assessee appeared from time to time and produced the relevant documents as required by the AO.

4. The AO on perusal of the assessment record found that the assessee has claimed additional depreciation @ 20% of Rs.3208.23 lacs u/s.32A of the Act on the new plant and machinery as the assessee is engaged in the business of extraction and sale of coal. The AO considered that the activities of the assessee does not fall within the purview of manufacture or production of articles or things and the assessee is not eligible for additional depreciation @20%. Therefore, has reason to believe that there is income escaping assessment and issued notice u/s.148 of the Act. In compliance Id. AR appeared and filed written submissions and to treat the return of income filed originally on 31.10.2007 as due compliance. The AO considered the written submissions, detailed documents filed and the issues under dispute. The AO found that as per the tax audit report in Form No.3CD, the assessee has claimed depreciation on new plant and machinery as the actual mining is a manufacturing or production process. The assessee submitted the explanations in respect of manufacture and under the Central Excise Act, 1944 and the AO referred to the conditions for claim of depreciation u/s.32A of the Act at page 3 of the order and judicial decisions and finally concluded that the assessee company is a coal mining and is not

manufacturing unit, therefore, not eligible for addition of depreciation and made addition and assessed the total income Rs.224709.48 lacs and passed the order u/s.143(3)/147 of the Act dated 22.12.2009.

5. Aggrieved by the order of AO, the assessee filed an appeal with the CIT(A). The Id. AR in the reassessment proceedings has challenged the validity and the assessee is eligible for additional depreciation as the mining activities are within the purview of manufacture and production of articles and things. Ld. AR of the assessee relied on the decisions of Hon'ble Supreme Court in the case of Kelvinator of India Ltd. 320 ITR 561 and the case of Xerox Modicorp Ltd., 350 ITR 308. The Ld. CIT(A) having considered the facts and judicial decisions and finding of the AO dealt at page 3 to 5 of the order and after considering the decision of jurisdictional High Court where the reassessment proceedings is in the nature of change of opinion and supported his views relying on the plethora of decisions and quashed the reassessment proceedings.

6. Aggrieved by the order of CIT(A), the revenue has filed an appeal before the Tribunal.

7. Before us, Id. DR emphasized that the CIT(A) has erred in quashing reassessment proceeding without considering the fact that the assessee is not eligible for additional depreciation in respect of mining activities as it is not fall within the ambit of manufacturing and prayed that the First Appellate Authority is not justified in relying on the decisions and allowing the appeal of the assessee. Contra, Id. AR of the assessee relied on the order of CIT(A) and relied on judicial decisions.

8. We have heard the rival contentions and perused the material on record. The sole crux of the disputed issue raised by the revenue is with respect to reassessment proceedings. Ld. CIT(A) having considered the facts of original assessment u/s.143(3) of the Act and the reasons for reopening of assessment and the submissions made in the appellate proceedings has dealt exhaustively on subject matter as the AO has made addition of additional depreciation claimed by the assessee, whereas Id. CIT(A) gave categorical finding that the assessee has submitted the information in the course of assessment proceedings and supported with judicial decisions. Ld. CIT(A) dealt on the decision of Hon'ble Supreme Court in the case of Kelvinator India Ltd (supra) and in the case of Xerox Modicorp Ltd (supra) and in the case of Foramer France 264 ITR 566 as the assessment is bad in law and no new set of facts emerged between the completion of assessment u/s.143(3) of the Act and issue of notice u/s.148 of the Act. We found the CIT(A) has considered the submissions and additions made in the assessment order u/s.143(3) of the Act dated 22.12.2009 and emphasised that the AO has raised the query in the original assessment and assessee has filed various documents, finally the CIT(A) is of the substantive view that it is only a mere change of opinion and the reassessment proceedings cannot be sustained and observed on the findings of AO at para 6 as under :-

*Reasons for the Decision*

*6. I have gone through the 'Income-tax assessment record' of the appellant for the AY 2007-08. I find that the return of income filed by the appellant-company was processed u/s.143(1) on 18.02.2009. Then the AO has made the assessment u/s.143(3) on 22.12.2009 making the following additions / disallowances:*

Sl.No.	Nature of addition/disallowance	Amount in Lakh
1	Charge against leasehold land for lease period exhausted	1195.11
2	Claim of prospecting & boring expenses	1887.31
3	Capital expenditure on assets not belonging to the assessee-company	11.78
4	Reclamation of land	780.27
5	Expenditure claimed under community development	294.76
6	Apex office expenses	4000.05
7	Contribution to rehabilitation fund	4586.22
8	Donation & subscription	9.00
9	Guest house expenses	3.25
10	Expenditure (Others)	151.21
11	Deterioration of stock and rehandling charges of coal	290.98
12	Reduction in value of stores due to obsolescence and shortage of stores	2.24

6.1 I also find that the AO at page-2 of his above assessment order has mentioned the following:

*"In response to the Departmental notices and query letters Shri G.Roychoudhury, Manager (Fin.) and Shri Jaydayal Agrawal, FCA & A/Rs of the assessee-company appeared from time to time and complied with the queries raised. Copies of accounts, documents were produced and explanation/clarifications were filed by A/Rs of the assessee during the course of assessment proceeding. After examination of the books of accounts and submission of the assessee-company the discussion with the A/Rs during assessment proceedings, the following issues are taken up for completion of assessment as under"*

6.2 The AO made the assessment u/s 143(3) on 22.12.2009 determining the income at Rs. 224709.48 lakh. Then he issued notice u/s 148 to the appellant-company on 23.06.2011.

6.3 I refer here to the judgment of the Hon'ble Orissa High Court in the case of *M/s.B.C.Nayak v. CIT [Writ Petition (C) No.797 / 2012]*. The issue therein was that the AO had passed order u/s.143(3), then re-opened the assessment on the allegation of non-consideration and violation of provision of section 40(a)(ia) and 40A(3). Their Lordships of the Hon'ble High Court vide order dated 02.3.2012 held :

*'No doubt Section 147 of the Act is very wide and conferred power upon the Assessing Officer to re-assess the assessment made previously where there is escaped assessment and sufficient basis for re-assessment. However, Section 147 does not authorize the*

*Assessing Officer to reopen his own assessment order on the basis of 'reason to belief' by reviewing its own original assessment order without any basis and merely in change of opinion of the Assessing Officer. In the instant case, if the original order of assessment dated 04.12.2003 is erroneous or prejudicial to the interest of revenue or has not been made properly, power u/s.263 is vested upon the Commissioner for revision of the orders of the Assessing Officer in the better interest of the revenue.*

*Considering the entire fact situation of the case we are of the view that the exercise of power by the Assessing Officer in the instant case is not sustainable in law. Hence the impugned order of re-assessment dated 22.11.2011 under Annexure-4 is quashed. Writ Petition is accordingly allowed.*

*If the Revenue is not satisfied with the assessment order dated 04.12.2008, it is open for the O.P.No.1-Commissioner to exercise its power u/s.263 of the Act."*

*The learned ITAT, Cuttack Bench, Cuttack has followed the above judgment of the Hon'ble High Court in the case of ITO, Ward-1, Paradeep v. Niladri Construction (ITA No.538/CTK/2012 for the AY 2006-07).*

*6.4 The Hon'ble High Court of Delhi in the case of BLB Ltd. v. ACIT [W.P.(C) 6884/2010] in order dated 01.12.2011 held the following:*

*"12. In the present case, it is noticeable that the assessee had disclosed fully and truly all material facts relevant for the assessment. The reasons recorded above do not disclose or state that there was failure or omission to disclose fully and truly all material facts. There is no indication and it is not alleged that there was some material or information available on record when reasons to reopen were recorded, to show that the assessee had concealed or had not disclosed fully and truly all material facts. The material facts were on record and had been disclosed by the assessee. The factual matrix above indicates that the Revenue verily believes that the Assessing Officer had drawn a wrong legal inference and a conclusion, which it is submitted is incorrect. In these circumstances, it has to be held that the re-assessment proceedings have not been validly initiated as the condition of the proviso to Section 147 is not satisfied.*

*13. Revenue had the option, but did not take recourse to Section 263 of the Act, in spite of audit objection. Supervisory and revisionary power u/s.263 of the Act is available, if an order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. As erroneous order contrary to law that has caused prejudiced can be correct, when jurisdiction u/s.263 is invoked.*

*14. In view of the said discussion, we allow and issue a writ of certiorari quashing the Notice u/s.148 dated 01.02.2010 and the order dated 16.9.2010 passed by the Assessing Officer. Writ Petition is disposed of. No costs."*

6.5 Examined on the touchstone of the afore-noted legal principles, the reassessment made by the AO on 22.02.2013 as a result of notice u/s 148 issued by him on 23.06.2011 is quashed.

7. In the result, the appeal is allowed.

Considering the apparent facts and the reasons dealt by the CIT(A) on the reassessment proceedings, we are of the view that the CIT(A) has passed a well reasoned order after considering the submissions of the assessee on law and facts and findings of the AO. Accordingly we are not inclined to interfere with the order of CT(A) and upheld the action of CIT(A) and dismiss the grounds of appeal of revenue.

9. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this 09/10/2017. .

**Sd/-**  
**(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

**कटक** Cuttack; दिनांक Dated 09/10/2017

प्र.कु.मि/PKM, Senior Private Secretary

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**(Senior Private Secretary)**

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack