

**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos. 31 & 32/CTK/2015
Assessment Years : 2007-08 & 2010-2011

DCIT, Circle 1(1), Sambalpur	Vs.	M/s. East India Minerals Ltd., 3 rd floor, Barbil Trade Centre, Near Bus Stand, Main Road, Barbil.
PAN/GIR No. AAACE 3944 j		
(Appellant)	..	(Respondent)

Assessee by : NONE
Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 15/06/ 2017
Date of Pronouncement : 27 /06/ 2017

ORDER

Per N.S.Saini, AM

These are appeals filed by the revenue against the order of CIT(A)-II, Bhubaneswar, dated 7.10.2014, for the assessment year 2007-08 and dated 17.10.2014 for the assessment year 2010-2011.

2. None appeared on behalf of the assessee when the matter was called for hearing and neither any adjournment was filed. Hence, we proceed to decide the appeal of the revenue exparte qua the respondent assessee after hearing Id D.R. and on the basis of materials available on record.

3. The first common ground of appeal taken in both the appeals is that the CIT(A) was not justified in allowing depreciation of Rs.14,05,500/- for both the assessment years on the leasehold property only because there was a judgment in favour of the assessee on the same matter by the ITAT, Cuttack in an earlier assessment year ignoring that the assets were acquired prior to 1.4.1998.

4. Brief facts of the case are that the Assessing officer observed that the assessee has claimed Rs.14,05,550/- as depreciation on an original capital value of Rs.2,81,10,000/- being leasehold rights on land. The depreciation was claimed u/s.32(1) (ii) as business or commercial right from the assessment year 2004-05 since leasehold rights valued at Rs.2,81,10,000/- was treated by the assessee as an intangible asset. The rights were stated as having been acquired after 1.4.1998 and the project itself bearing the rights was commissioned on 1.9.1999. As against a normal rate of 25% on WDV for similar assets allowed under the Income tax Act, the assessee claimed a lower rate of 5% on Straight Line method since they had been given the right to use the leasehold property for a period of 20 years. In the assessment year 2008-09, the submissions of the assessee were not accepted by the Assessing Officer and the depreciation claimed of Rs.14,05,200/- was disallowed and added back as the assessee's taxable income.

5. Following the above case of the assessee for the impugned assessment year 2007-08, the assessment was reopened u/s.147 of the

Act and on identical issue of claim of depreciation u/s.32(1)(ii) of the Act of Rs.14,05,500/- was disallowed. Similarly, the claim of depreciation for the assessment year 2010-2011 was disallowed by the Assessing Officer.

6. On appeal, the CIT(A) allowed the appeal of the assessee by observing as under:

"... It is determined that the claim of depreciation denied by the AO "was indeed the subject matter of a decision handed down for the Assessment year 2008-09 by the Jurisdictional ITAT, Cuttack Bench in the same case as that of the appellant. In adherence to this decision (ITA No.224/CTK/2012 dated 25.6.2012) that is favourable to the appellant and contains all the relevant details, I delete the disallowance of depreciation claimed of Rs.14,05,500/-"

7. When questioned by the Bench to Id D.R. that what was the error in the order of the CIT(A) in allowing the claim of depreciation of the assessee following the order of the Tribunal in the case of the assessee itself in earlier years, he could not point any specific error in the order of the CIT(A). He also could not bring any material on record to show that the order of the Tribunal in the case of the assessee itself for assessment year 2008-09 was varied in appeal by any higher forum. Hence, we find no merits in this appeals of the revenue and, accordingly, they are dismissed.

8. In Assessment Year 2010-11, the revenue has taken another ground of appeal that the CIT(A) failed to appreciate the fact that the expenses in respect of overburden removal claimed by the assessee cannot be termed as an operation relating to prospecting for any mineral u/s.35E.

9. Brief facts of the case are that the Assessing Officer observed that the assessee has claimed deduction of Rs.20,12,041/- under section 35E of the Act. He referred to column 15(a) of the audit report which refers to Annexure-A of the audit report for the relevant claim. He required the assessee to give details of the expenditure on which it was claiming to be subject of section 35E. The details were submitted by the assessee. He observed that the expenditure do not fall within the scope of section referred to and hence, cannot be accepted and disallowed deduction for Rs.20,12,041/-.

10. On appeal, the CIT(A) observed that 35E allows deduction of the nature of amortizations @ 1/10th of the total of prescribed expenses incurred by an Indian resident engaged in any operations relating to prospecting, for, or extraction or production of, any mineral, wholly and exclusively on any operations relating to prospecting for any mineral or group of associated minerals specified in part A or Part B, respectively, of the Seventh Schedule or on the development of a mine or other natural deposit of any such mineral or group of associated minerals. Any portion thereof met directly or indirectly by any other person or authority and any sale, salvage, compensation or insurance moneys realised by the assessee in respect of any property or rights brought into existence as a result of the expenditure will be excluded from the claim of expenses. He observed that also excluded will be expenses :

“(i) on the acquisition of the site of the source of any mineral or group of associated minerals or of any rights in or over such site;

(ii) on the acquisition of the deposits of such mineral or group of associated minerals or of any rights in or over such deposits; or

(iii) of a capital nature in respect of any building, machinery, plant or furniture for which allowance by way of depreciation is admissible under section 32.

He, therefore, observed that it is not clear from the order of the Assessing Officer as to which of the above exclusions were considered applicable in the instant case by the Assessing Officer. Upon examination of column 15(a) of the audit report and the associated Annexure A provided by the assessee, it is found that the claim of expenses u/s.35E has been made towards the incontrovertibly applicable site and Mining Development Operations. He observed that amortisation of expenses incurred at the applicable rate is a genuine claim of deduction that needs to be allowed in line with the provisions of Income tax Act. There is nothing on record to indicate the Assessing Officer has determined that any of the actions or claims of the assessee are contrary to or violate in any matter or do not sufficiently adhere to the applicable statutory provisions. The impugned order is defective on this count and the disallowance of Rs.20,12,041/- on account of it being arbitrary, summary and completely unsubstantiated..

11. Ld D.R. simply relied on the order of the assessing Officer.

12. After considering the rival submissions and perusing the materials on record, we find that the Id D.R. could not point out any specific mistake in the order of the CIT(A). Hence, we confirm the order of the CIT(A) and dismiss the ground of appeal of the revenue.

13. In the result, the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 27 /06/2017 in the presence of parties.

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 17 /06/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant :
 2. The Respondent.
 3. The CIT(A)
 4. Pr.CIT,
 5. DR, ITAT, Cuttack
 6. Guard file.
- //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack