

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

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

ITA No.177/CTK/2016
Assessment Year : 2011-12

Braj Mining Corporation (P) Ltd.,Hudi Sahi, Joda, Keonjhar.	Vs.	PR. CIT, Cuttack
PAN/GIR No. AADCB 5114 G		
(Appellant)	..	(Respondent)

Assessee by : Shri S.K.Agarwalla, AR
Revenue by : Shri Kunal Singh, CIT DR

Date of Hearing : 27/07/ 2017
Date of Pronouncement : /07/ 2017

ORDER

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order u/s.263 of the Act of the Pr. CIT, Cuttack, dated 8.3.2016, for the assessment year 2010-2011.

2. In Ground No.1 of the appeal, the grievance of the assessee is that the Pr CIT erred in directing the Assessing Officer to restrict the depreciation @ 15% in place of 30% charged by the assessee on the vehicle running them on hire.

3. The brief facts of the case are that the Pr. CIT, on verification of assessment records, found that the assessee company has claimed excess depreciation @ 30% instead of 15%. According to the Ld Pr. CIT, the assessee has used its own trucks in its own business and not used the trucks in the business of running them on hire for which it is entitled to get depreciation @ 15%. He relied on the decision of Hon'ble Rajasthan High Court in the case of CIT vs. Manjeet Stone Co.(1991) 190 ITR 183 (Raj), wherein, it was held that even if the trucks are used partly in assessee's own business and occasionally been let out on hire, the depreciation is restricted to 15%. Therefore, he held that excess depreciation which works out to Rs.55,92,992/- has not been properly examined by the Assessing Officer at the time of regular assessment and, accordingly, directed the Assessing Officer to restrict the claim of depreciation of the assessee of trucks to 15%.

4. Before us, Id A.R. of the assessee argued that the assessee is in the business of transporting and running its trucks on hire for transportation of goods of customers from and to the place as desired by customers. Further, a major part of the revenue of the assessee i.e. approx. 40% of the turnover is generated from such transporting business. It was further submitted that in some cases, the Hon'ble High Courts have expressed their opinion that if the trucks are being used for running them on hire then the higher rate of depreciation is allowable. Further, he relied on the CBDT Circular No.652 dated 14.6.1993, copy of which is placed on record and

point out therefrom that the CBDT in its circular has stated that higher depreciation will also be admissible on motor lorries used in assessee's business of transportation of goods on hire. The higher rate of depreciation will not apply if the motor lorries are used in some other non-hiring business of the assessee. Hence, he prayed that as the assessee was using the trucks in question in hiring business of the assessee and, therefore, was allowable for higher depreciation @ 30%.

5. Ld D.R. on the other hand supported the order of Pr. CIT.

6. We find that in the instant case, the submission of the assessee is that since it has used the trucks in question in the business of hire as well as in its own business, therefore, is eligible for higher depreciation @ 30%. The assessee has contended that it will be observed from its account that approximately 40% of its turnover pertains to hire charges. In the above facts and circumstances of the case, we are of the considered view that the Id Pr. CIT at the time of passing the order has not considered the CBDT Circular No.652 dated 14.6.1993, which has been filed before us and has not looked into the fact that the trucks in question are claimed by the assessee to be used for the business on hire as well as in its own business and that it has shown revenue of approximately 40% of the total turnover from hiring business. We are of the considered view that the matter should be restored back to the file of the Pr. CIT to examine the issue in the light of above facts and CBDT circular and re-adjudicate the same afresh as per

law. Accordingly, this ground of appeal of the assessee is allowed for statistical purposes.

7. In Ground No.2 of the appeal, the grievance of the assessee is that the Pr. CIT is not justified in setting aside the issue regarding expenses incurred under the head "donations" to the file of the Assessing Officer for verification.

8. The brief facts of the case are that the Pr. CIT observed from assessment records that the assessee has claimed deduction of Rs.9,01,057/- as donations in its profit and loss account. He observed that the Assessing Officer has not examined admissibility of this expenditure and, accordingly, requires further examination. Therefore, he restored back the issue to the file of the Assessing Officer to call details of expenditure on account of donation and examine the genuineness and allowability of the same u/s.37 of the Act.

9. Being aggrieved by the order of the Pr. CIT, the assessee is in appeal before us.

10. Before us, Id A.R. of the assessee argued that the donations were paid by the truck drivers while transporting the goods to the local area people for smooth functioning of its business. He argued that same was for business necessity and smooth conducting of its business and hence, the same should be allowed as deduction u/s.37 (1) of the Act.

11. We find that no details of donations of Rs.9,01,057/- claimed as deduction in the profit and loss account by the assessee has been filed before us. Therefore, we are unable to examine the nature of expenses incurred by the assessee. However, we find force in the submission of Id A.R. of the assessee that payment of donation is business necessity and required to be paid by the truck drivers during the course of transportation of goods to the local area people for smooth conduct of the business. Therefore, in our considered view, it has nexus with the carrying on of the business by the assessee and hence, is allowable deduction to the assessee u/s.37(1) of the Act. However, as we do not have details of the donations paid by the assessee, we are not able to adjudicate the same. Hence, in the above circumstances, we restore this issue back to the file of Pr. CIT, who shall examine the details and if he finds that expenses are incurred by the assessee for smooth conduct of its business, allow the same as deduction to the assessee. Thus, this issue is restored back to the file of the Pr. CIT for adjudication afresh in the light of discussion made hereinabove.

12. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 28 /07/2017 .

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 28 /07/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Braj Mining Corporation
(P) Ltd.,Hudi Sahi, Joda, Keonjhar
2. The Respondent. PR. CIT, Cuttack
3. The CIT(A) Cuttack
4. Pr.CIT,
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack