

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'एफ', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "F", BENCH, MUMBAI
सर्वश्री राजेन्द्र, लेखा सदस्य, एवं , राम लाल नेगी न्यायिक सदस्य के समक्ष

BEFORE SHRI RAJENDRA, AM AND SHRI RAM LAL NEGI, JM

आयकर अपील सं./ITA No. 1241/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s Vittrag Minerals & Metal Excavation Pvt. Ltd., Office 15, 12 th Floor, New Akhand Jyoti Society, Building No. 1, Maniesh Nagar, 4 Bungalow, Andheri (W), Mumbai - 400053	Vs.	The ITO 8(3)(4), 2 nd Floor, Ayakar Bhavan, M.K. Road, Churchgate, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCV7379N		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से / Assessee by : Shri Vijay Mehta (AR)
राजस्व की ओर से / Revenue by : Shri Saurabh Kumar Rai (DR)

सुनवाई की तारीख / **Date of Hearing** : **05/01/2018**
घोषणा की तारीख/**Date of Pronouncement**: **31/01/2018**

आदेश / O R D E R

PER RAM LAL NEGI, JM

This appeal has been preferred by the assessee against the order dated 05/12/2014 passed by the Commissioner of Income Tax [CIT(A)] (Appeals)-18, Mumbai, pertaining to the Assessment Year 2010-11, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee company filed its return of income for the assessment year under consideration declaring the loss of Rs. 7,347/-. Since, the return was selected for scrutiny assessment, notice u/s 143 (2) and 142 (1) were issued. In response thereof the authorized representative of the assessee attended the proceedings, made submissions on

behalf of the assessee and furnished details called for. On perusal of the balance sheet, it was noticed that during the year relevant to the assessment year under consideration, the assessee company had received fresh funds by way of share application money amounting to Rs. 5,30,00,000/-. Out of which Rs. 5,20,00,000/- was utilized on investment in the share warrants of two other companies. The profit and loss account contained only expenditure to the extent of Rs. 7,343/-, which was claimed as business expenditure. The assessee was accordingly asked to furnish the party wise details of share application money. The assessee furnished abstract of its bank statements, however, failed to furnish the complete details. A notice u/s 133 (6) was issued to the banker seeking information regarding the details, which was furnished by the bank. On perusal of the details provided by the Bank, it was observed that the assessee company opened bank account in January 2010 and there were credit entries amounting to Rs. 5,30,00,000/ up to 31.03.2010 -. On the basis of the said entries, the AO concluded that the assessee company generated the share application money of the said amount by opening a new bank account in ING Vysya Bank. It was further noticed that four entries were related to transfer of funds from Bank of India. The AO asked the Bank of India to furnish the details regarding the four entries. On the basis of the details provided by the Bank of India notices u/s 133 (6) were sent to the concerned persons and they were asked to furnish the details. However, the AO did not receive any response from the parties concerned.

3. It was further noticed that the assessee company received Rs. 5,64,000/- as interest from Mangaldeep Enterprises, whereas the assessee had not shown any income in its P&L account for the year ending 31.03.2010. Notice u/s 133 (6) of the Act was issued to Mangaldeep Enterprises to submit the details. Accordingly, Mangaldeep Enterprises provided copy of ledger account of the assessee, copy of TDS certificate issued in the name of Assessee Company and statement of bank accounts etc. On the basis of the said documents, show

cause notice was issued to the assessee, but no response was received from the assessee company.

4. On the basis of material collected during assessment proceedings, the AO made addition of Rs. 5,64,000/- as income from other sources and Rs. 5,30,00,000/- as unexplained cash credit u/s 68 of the Act and determined the total income of the assessee at Rs. 5,35,56,650/- (rounded off). The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee affirmed the additions made by the AO and dismissed the appeal of the assessee. The assessee is in appeal before the Tribunal against the said order.

5. The assessee has raised the following effective grounds of appeal against the impugned order passed by the Ld. CIT (A):-

a) *“The order of the CIT (Appeal) upholding the addition of Rs. 5,30,00,000/- as share application money taken from three parties be set aside/deleted as the same is defective, illegal and void-ab-initio for want of jurisdiction.*

b) *The order of the CIT (Appeal) upholding the addition of Rs. 5,64,000/- as interest income be set aside/deleted as the same is defective, illegal and void-ab-initio for want of jurisdiction.”*

6. At the very outset, the Ld. counsel for the assessee submitted that the assessee has filed an application for admission of additional evidence under rule 29 of the Appellate Tribunal Rules, 1963. The Ld. counsel further submitted that the documents submitted along with the application for placing of record as additional evidence are very vital and essential to adjudicate the issues involved in this case. The Ld. counsel further submitted that in fact the appellant company did not have any business activities during the relevant time. Sh. Nikhil Bajaj was persuaded to become a Director of the company by his friend Sh. Amit Sharma, who was whole time Director of M/s Resurgere Group which used to control many entities including the appellant company. Sh. Nikhil Bajaj resigned from the post of the Director on 16.08.2011, however,

he used to sign the documents presented to him in good faith. The appellant company was used as conduit to handle transactions of Resurgere Group and the funds were routed through the appellant company. The assessee wants to adduce additional evidence in support of the said contention. The Ld. counsel relied on the judgment of Hon'ble Guwahati High Court passed in the case of *Jeypore Timber and Veneer Mills P. Ltd. vs. CIT 137 ITR 415*.

7. On the other hand, the Ld. Departmental Representative opposed the application for additional evidence on the ground that the assessee has not pointed out any reasonable cause for not submitting the documents in question before the authorities below.

8. We have heard the rival submissions and also gone through the entire material on the record. The assessee wants to rely on the relevant pages of Red Hearing Prospectus of M/s Resurgere Mills and Minerals India Ltd., filed with stock exchange and Registrar of Companies in the year 2008 for its IPO as pointed out by the Ld. counsel. As pointed out by the Ld. counsel, the said document is a public document beyond the scope of tampering no prejudice is going to be caused in case the same is admitted as additional evidence under Rule 29 of the Appellate Tribunal Rules, 1963. The Hon'ble Gujarat High Court has held in the case of *Jeypore Timber and Veneer Mills P. Ltd.* (supra) that the Tribunal has discretionary power to admit additional evidence after recording reasons for admitting the same. The basic object behind the provisions is to dispense justice and to rectify the mistakes committed by the parties. Since, the documents in question are essential for reaching to a logical conclusion and for the just decision of the present appeal, we are of the considered view that the assessee should be given an opportunity to present its case before the authorities below in the light of the additional evidence, in the interest of justice. We, therefore, allow the application of the assessee and admit the additional evidence and send the appeal back to the AO for passing assessment order afresh after hearing the assessee in the light of the

additional evidence allowed by us. The assessee is directed to appear before the AO and not to seek any adjournment on frivolous grounds during the assessment proceedings. The appeal is accordingly disposed of.

In the result, appeal filed by the assessee for assessment year 2010-11 is allowed for statistical purposes.

Order pronounced in the open court on 31st January, 2018.

Sd/-

(RAJENDRA)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 31/01/2018

Alindra, PS

Sd/-

(RAM LAL NEGI)
JUDICIAL MEMBER

आदेश 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, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai