

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

ITA No.501/Bang/2014
Assessment Years : 2007-08

M/s. Gogga Gurushantiah and Brothers, P. No. 4, Mine Owners and Mineral Grinders Nehru Co-op Colony, Hospet. PAN : AACFG 6895 M	Vs.	Assistant Commissioner of Income-Tax, Circle – I, Bellary.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Siva Pasad Reddy, CA
Revenue by	:	Shri. Vikas Suryavamshi, Addl. CIT

Date of hearing	:	15.07.2019
Date of Pronouncement	:	02.08.2019

ORDER

Per Jason P. Boaz, A.M.

This appeal by the assessee is directed against the order of CIT(A), Hubli, dated 22.01.2014 for Assessment Year 2007-08.

2. Briefly stated, the facts relevant for disposal of this appeal are as under:-

2.1 The assessee, a firm engaged in iron ore extraction, filed its return of income for Assessment Year 2007-08 on 12.11.2007 admitting taxable income of Rs.18,62,39,540/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (in short 'the Act') and the case was subsequently taken

up for scrutiny for this Assessment Year since there was a survey action under section 133A of the Act at the assessee's business premises on 05.01.2007. The assessment was completed under section 143(3) of the Act vide order dated 24.12.2009; wherein the assessee's income was determined at Rs.20,74,64,500/- due to, *inter alia*, disallowance of the assessee's claim for being allowed deduction in respect of net present value of Rs.64,51,600/- paid to the Forest Department for transfer to Compensatory Afforestation Management and Planning Agency (CAMPA). On appeal, the CIT(A), vide the impugned order dated 22.01.2014, *inter alia*, upheld the treatment of net present value of Rs.64,51,600/- paid to Karnataka Government as being capital in nature.

3.1 Aggrieved by the order of CIT(A), Hubli, dated 22.01.2014 for Assessment Year 2007-08, the assessee has preferred this appeal before the Tribunal wherein it has raised the following revised grounds:-

1. The learned Commissioner of Income-tax (Appeals), Hubli is not justified in holding Rs. 64,51,600/- being Net Present Value paid to Government of Karnataka as Capital in nature.
2. The learned Commissioner of Income-tax (Appeals), Hubli is not justified in holding the NPV payment as capital in nature just because the same is paid in lump sum.
3. The learned Commissioner of Income-tax (Appeals), Hubli is not justified in holding that the payment of NPV is nothing but a payment relating to the original acquisition of the land for mining which is collected now. The learned CIT Appeals ought to have appreciated that the firm has already provided/delivered to Government of Karnataka compensatory land equivalent to the mining lease area.
4. The learned Commissioner of Income-tax (Appeals), Hubli is not justified in holding that the payment of NPV has resulted in acquisition of tangible assets.
5. Any other grounds that may be urged at the time of appeal may kindly be treated as grounds of appeal.

3.2 The only issue of dispute in the grounds of appeal raised (supra), that require our consideration / adjudication, is whether the payment of Rs.64,51,600/- on account of net present value towards CAMPA is in the nature of revenue expenditure or capital expenditure.

3.3 The learned AR for the assessee was heard in support of the grounds raised and at the outset placed reliance on the decision of a Co-ordinate Bench of this Tribunal in the case of Mysore Minerals Ltd., Vs. ACIT reported in (2013) 32 taxmann.com 284 (Bang – Trib.) (a copy of which has been placed on record); wherein the Co-ordinate Bench followed its earlier decision in the case of Ramgad Minerals and Mining (P) Ltd., Vs. ACIT in ITA No.1012 (BNG)/2008 dated 09.04.2009. It was submitted that in the aforesaid decision of the Co-ordinate Bench (supra), the very same issue of payment made for net present value to CAMPA was considered and the Bench held that the payment of net present value to the State Government for CAMPA was a revenue expenditure and not capital expenditure which gave the assessee a benefit of enduring nature and had directed the authorities below to allow the same in the year in which it was incurred. The learned AR prayed that in view of the above, the issue be held in favour of the assessee.

3.4 Per contra, the learned DR for Revenue supported the orders of the authorities below.

3.5.1 We have considered the rival contentions / submissions and carefully perused the material on record; including the judicial pronouncements cited. We have perused the decision of the Co-ordinate Bench of this Tribunal in the case of Mysore Minerals Ltd., (supra), cited by the assessee, and find that in this case too, a similar issue of payments of net present value to the State Government for CAMPA was considered and in its order, the Co-ordinate Bench held that the amount incurred on this count was incurred as a revenue expenditure

and the same was directed to be allowed in the year in which the expenditure was incurred. The relevant portion at para 5.4 of the order is extracted hereunder:-

“5.4 We have heard both parties and carefully perused the material on record and the judicial decisions cited and placed reliance upon. We have perused the decision of the co-ordinate bench of this Tribunal in the case of Ramgad Minerals & Mining Pvt Ltd Vs.ACIT in ITA No.1012/Bang/08 dt.9.4.2009 and find that in the cited case too a similar / identical issue was considered on the payments made towards contribution for compensatory afforestation as per the direction of the Hon'ble Apex Court when the mines are exploited on forest land. The Hon'ble Tribunal in para 5 of its order held that the amount expended on this count was incurred as a revenue expenditure and was directed to be allowed in the year in which it was incurred. The operative part of the order in para 5 at pages 7 and 8 is extracted and reproduced hereunder

"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."

Respectfully following the decision of the co-ordinate bench of the Bangalore Tribunal, in the case of Ramgad Minerals & Mining P. Ltd. (supra), we hold that the entire expenditure of Rs.5,02,59,000 incurred by the assessee of net present value to CAMPA in the relevant period are to be allowed as revenue expenditure for Assessment Year 2004-05."

3.5.2 Respectfully following the decision of the Co-ordinate Bench of this Tribunal in the case of Mysore Minerals Ltd., (supra), we hold that the entire expenditure of Rs.64,51,600/- incurred by the assessee of net present value of CAMPA in the year under consideration are to be allowed as revenue expenditure for the year under consideration; i.e., Assessment Year 2007-08. We hold and direct accordingly.

4. In the result, the assessee's appeal for Assessment Year 2007-08 is allowed.

Pronounced in the open court on 02nd August, 2019.

Sd/-
(N. V. VASUDEVAN)
VICE PRESIDENT

Sd/-
(JASON P. BOAZ)
Accountant Member

Bangalore.

Dated: 02nd August, 2019.

/NS/*

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.