

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 4839/DEL/2016 (A.Y 2013-14)

Dy. Commissioner of Income Tax (International Taxation), Circle – 3(1)(2), New Delhi.	Vs	M/s. Swan Gold Mining Ltd., India Project Office (formerly known as Monarch Gold Mining Co. Ltd.) KB-25, 9 th Floor, Sector-III, Salt Lake, Kolkata-98. (PAN : AAFCM 1718 D)
(APPELLANT)		(RESPONDENT)

Appellant by	Shri Satpal Gulati, CIT-D.R.
Respondent by	--None--

Date of Hearing	02.01.2020
Date of Pronouncement	07.01.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order of the Commissioner of Income Tax [Appeals]-43, New Delhi dated 27.06.2016 for Assessment Year 2013-14.

2. The Grounds of appeal are as under:-

- (i) *"Whether on the facts and in the circumstances of the case, the CIT (A) has erred in allowing relief to the assessee ignoring the fact that the assessee had not included the amount of Rs. 60,22,34,488/- in its income and expenditure statements filed with the return of income which was received from M/s Hindustan Copper Ltd. (HCL)*

on which that tax was deducted at source and which was also appearing in 26AS.

- (ii) Whether on the facts and in the circumstances of the case, the CIT (A) has erred in allowing relief to the assessee ignoring that the facts and circumstances of earlier years are different from the year under consideration. In earlier years, the disallowance was made u/s 40(a)(ia) due to non deduction of tax at source on the payment made by the assessee to M/s IRL, while during the year under consideration the addition was made on account of non disclosure of the amount received from HCL on which the tax was duly deducted at source by the HCL.*
- (iii) Whether on the facts and in the circumstances of the case, the CIT (A) has erred in allowing the relief to the assessee ignoring the fact that the assessee has not claimed any expenditure in its return of income and supporting accounts against the amount of Rs. 60,22,34,488/- received by it from M/s Hindustan Copper Ltd.*
- (iv) That appellant craves leaves to add or amend the aforesaid grounds that may be available to the appellant at the time of hearing.”*

3. The assessee company is a tax resident of Australia and engaged in the business of supplying and delivering copper concentrate at specified rates per tones of metal in concentrate (excluding royalty), and in India it was awarded a work- order dated 14.04.2007 in response to tender notice dated 11.12.2006 by M/s Hindustan Copper Limited (HCL), a Government of India enterprises, in order to re-commissioning, operating and maintaining Surda Mine & Mosaboni concentrator plant located at Surda, Jharkhand, India and to supply and deliver copper concentrate at specified rates per tones of metal in concentrate (excluding royalty) to Maubhandar work of Indian Copper Complex, Ghatshila produced from the operation of these units. Subsequently, the assessee company sub-contracted the work to India Resources Ltd.(RIL) vide a contract dated 05.04.2007 through a contract titled "Deed for Appointment" for implantation of Surda Project which was duly accepted by the Hindustan Copper Limited (HCL) on 14.05.2007. The contract for work-order dated 14.04.2007 of M/s HCL was awarded till validity of mining lease i.e. 14.06.2014 (subject to further renewable). In assessment year 2011-12, the

Assessing Officer treated the assessee as a contractor and IRL as its sub-contractor after considering the following agreements/ contracts entered by the assessee with HCL and with IRL separately. For Assessment Year 2013-14, the assessee company filed its return of income on 29.09.2013 declaring nil income and claiming refund of Rs.60,76,850/-. Subsequently, the assessee filed a revised return on 31.03.2014 declaring nil income and claiming refund of Rs.65,76,850/-. The Assessing Officer on notional basis in his assessment order held that during the year under consideration the assessee company earned a revenue of Rs. 60,27,65,459/- and assessed the income at Rs.60,28,12,915/- and did not allow any expenditure on the same while computing the taxable income and raised a demand of Rs. 34,34,23,870/-.

6. Being aggrieved by the assessment order, the assessee filed an appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

7. At the time of hearing none appeared for the assessee despite giving notice to the assessee. Therefore, we are proceeding on the basis of the submissions made before the Assessing Officer as well as before the CIT(A) on behalf of the assessee and also perused all the requisite documents submitted by the Revenue before us.

8. The Ld. DR submitted that in A.Y. 2011-12, the Tribunal has remanded back identical issue to the file of the Assessing Officer. Therefore, the Ld. DR requested that in this year as well the issue may be remanded back to the file of the Assessing Officer as the CIT(A) has ignored the fact that the assessee has not included the amount of Rs.60,22,34,488/- in its income and expenditure statements filed by the assessee along with the return of income which was received from M/s. Hindustan Copper Ltd. (HCL) on which tax was deducted at source and which was also appearing in Form 26AS.

9. We have heard the Ld. DR and perused all the relevant materials available on record. From the perusal of records it can be seen that in this year i.e. 2013-14, the Assessing Officer included receipts from business as business

income, but did not allow any deductions against the same. In the earlier year for A.Y. 2011-12 being ITA Nos. 5734 & 1033/DEL/2015 order dated 24.02.2016, the Tribunal held as under:

“4.4 It was brought to our notice by the ld AR that in the year under consideration the returned income of M/s. IRL was a loss and, therefore, the assessee was not required to deduct tax at source applying the above Circular. Looking to the above submission, we feel appropriate to restore the matter to the file of Assessing Officer for verification of the compliance of the aforesaid Circular and if the assessee fulfills the conditions of the circular, no tax was required to be deducted at source and accordingly, the disallowance under section 40(a)(i) of the Act is not warranted in the case of the assessee. While making verification, the Assessing Officer is also directed to provide sufficient opportunity of being heard to the assessee. As the assessee is eligible for relief in view of the above argument, the other arguments of the assessee are not discussed for adjudication now. Accordingly, this ground of the assessee is allowed for statistical purposes.”

It is appropriate to mentioned herein that in present year the CIT(A) mentioned in para 4.4 that M/s India Resources Limited (M/s IRL), the entity to whom payments were made by M/s HCL has returned Nil income and thereafter considered the Circular No. 3/2015 of CBDT dated 12.02.2015. This aspect was before the Tribunal in A.Y. 2011-12 and hence this needs verification whether the assessee satisfies the conditions mentioned in the said circular. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer to verify the transactions as regards the treatments given by the assessee to the expenditure/receipts. Needless to say the assessee be given opportunity of hearing by following the principles of natural justice.

10. In result, appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced in the Open Court on 07th day of January, 2020.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 07/01/2020
Priti Yadav, Sr. PS *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	02.01.2020
Date on which the typed draft is placed before the dictating Member	03.01.2020
Date on which the typed draft is placed before the Other Member	07.01.2020
Date on which the approved draft comes to the Sr. PS/PS	07.01.2020
Date on which the fair order is placed before the Dictating Member for pronouncement	07.01.2020
Date on which the fair order comes back to the Sr. PS/PS	07.01.2020
Date on which the final order is uploaded on the website of ITAT	07.01.2020
Date on which the file goes to the Bench Clerk	07.01.2020
Date on which the file goes to the Head Clerk	