

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2711/Del./2017
(Assessment Year : 2007-08)**

M/s. Global Minetec Limited, vs. ACIT, Central Circle 17,
2, First Floor, Sector 8 Market, New Delhi.
R.K. Puram,
New Delhi.

(PAN : AABCG3859N)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Karan Kumar, CA
REVENUE BY : Shri S.N. Meena, Senior DR

Date of Hearing : 03.02.2020
Date of Order : 19.02.2020

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER

Appellant, M/s. Global Minetec Limited (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 27.02.2017 passed by the Commissioner of Income-tax (Appeals)-27, New Delhi qua the assessment year 2007-08 on the grounds inter alia that :-

"1. That on the facts and circumstances of the case of the appellant and in law, the Ld. Commissioner of Income Tax-27 [hereinafter referred to as the "CIT(A)-27"] has grossly erred in construing the facts of the case while passing the impugned order U/S 250(6) of the Act.

2. *That on the facts and circumstances of the case of the appellant and in law, the Ld. CIT(A)-27 has grossly erred by confirming the ad-hoc and arbitrary disallowance of 2% of various expenses i.e. Rs.23,49,294/- made by the Assessing Officer, without appreciating the arguments and evidence submitted by the appellant.*

3. *That the impugned addition should be deleted as the appellant's matter after being remanded by Hon'ble IT AT to CIT(A)-4 was heard on merits, and addition of Rs. 23,49,294/- made by the Assessing Officer was deleted by Hon'ble CIT(A)-4 vide order dated 21.02.2017.*

4. *That the order of the Ld. CIT(A)-27 being factually incorrect, contrary to law, and contrary to findings on merit of Hon'ble CIT(A)-4 should be quashed and impugned addition made in the assessment order and confirmed by Hon'ble CIT(A)-27 be deleted.*

5. *That without prejudice to the other grounds of appeal, since the basis of disallowance has now been deleted by Hon'ble CIT(A)-4, and no other objections were raised by the AO or Hon'ble CIT(A)-27, the impugned disallowance of Rs. 23,49,294 should now be deleted.”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee is into the business of excavation of coal through surface minor in coal mines in Orissa since its incorporation in 1999 till 2009. The contract for mining of coal has been awarded by different principals at different coal mining projects. The company has been mining coal at 8 different projects spread in the coal mines of Mahanadi Coalfields and Singareni Collieries Company Ltd..

3. On the basis of search and seizure and survey operation conducted under section 132/133A of the Income-tax Act, 1961 (for short 'the Act') along with questionnaire in case of assessee and other cases of Aryan Sainik Group at various residential and business premises on 12.04.2012, a notice u/s 153A was issued on

23.10.2013 and in response thereof, assessee filed return declaring income of Rs.3,78,34,538/- on 09.06.2014. Then statutory notice u/s 143 (2) was issued on 15.09.2014. During the year under assessment, the assessee has declared its income under the head "income from business". Assessing Officer (AO) proceeded to make the addition of Rs.23,49,294/- by way of making disallowance out of the repair, maintenance and spare parts expenses on the basis of assessment framed u/s 143 (3) of the Act vide order dated 17.12.2009 and the addition was so confirmed by the Id. CIT (A) and the appeal filed by the assessee company was dismissed.

4. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved by the order passed by the Id. CIT (A), the assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Bare perusal of the impugned order passed by the Id. CIT(A) as well as assessment order goes to prove that during the search

and seizure and survey operation conducted in case of the assessee and Aryan Sainik Group of cases, no incriminating material was seized. It is also not in dispute that initial assessment was framed in this case u/s 143 (3) of the Act by making addition of Rs.23,49,294/- by way of making disallowance of 2% of the repair and maintenance expenses and spare parts & tyre expenses.

7. AO while framing assessment u/s 143 (3) read with section 153A has again made addition of Rs.23,49,294/- which was made by the AO while framing assessment u/s 143(3) of the Act without giving any reason whatsoever. Firstly, when no incriminating material has been seized during the search and seizure operation on the basis of which notice u/s 153A and section 143 (2) were issued to the assessee, no addition is warranted.

8. Furthermore, ld. AR for the assessee brought on record the fact that the addition made by the AO of Rs.23,49,294/-, no doubt, was confirmed by the ld. CIT (A) in ex-parte proceedings and thereafter the Tribunal has also confirmed the addition in ex-parte order which was subsequently recalled by the Tribunal and ultimately, case was remitted back to the ld. CIT (A) to decide afresh on merits. Ld. CIT (A) vide order dated 21.02.2017 deleted the addition of Rs.23,49,294/-.

9. Without entering into the merits of the deletion of addition made by the Id. CIT (A) made by the AO u/s 143(3) of the Act, we are of the considered view that when addition of Rs.23,49,294/- made by the AO on account of disallowances of repair & maintenance expenses and spare parts & tyre expenses has already been dealt with by the Id. CIT (A), the same cannot be made subject matter of the assessment framed u/s 153A of the Act.

10. Moreover, when no incriminating material has been seized during search and seizure operation, no addition can be made. In case, Revenue authorities are having any grievance against the deletion of addition of Rs.23,49,294/- made by the Id. CIT (A) vide order dated 21.02.2017, available at pages 6 to 11 of the paper book, they can avail of the remedy available under the Act but are not entitled to reiterate the same addition while framing assessment u/s 143(3)/153A, hence addition made by the AO and confirmed by the Id. CIT (A) is ordered to be deleted. Consequently, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 19th day of February, 2020.

**Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 19th day of February, 2020
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-27, New Delhi
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.