

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos. 335/H/2016 Assessment Year: 2011-12		
Asst. Commissioner of Income-tax, Circle - 2(2), Hyderabad.	Vs.	The Andhra Pradesh Mineral Development Corporation Ltd., Hyderabad. PAN - AAAC7 7391N
(Appellant)		(Respondent)
ITA Nos. 328 /H/2016 & 1790/H/2018 Assessment Years: 2011-12 & 2012-13		
(Appellant)		(Respondent)
The Andhra Pradesh Mineral Development Corporation Ltd., Hyderabad. PAN - AAAC7 7391N	Vs	Asst. Commissioner of Income-tax, Circle - 2(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri C.S. Subramanyam	
Revenue by:	Shri P. Chandra Sekhar	
Date of hearing:	24/06/2021	
Date of pronouncement:	20/07/2021	

ORDER

PER L.P. SAHU, A.M.:

ITA Nos. 335/Hyd/ 2016 and ITA No. 328/Hyd/2016

These appeals are cross appeals filed by the assessee as well as revenue are directed against CIT(A) - 9, Hyderabad's order dated 1st December, 2015 for AY 2011-12 involving proceedings u/s 143(3) of the Income- Tax Act, 1961; in short "the Act".

3. Briefly the facts of the case are that the assessee company deriving income from development of mineral resources including exploration, exploitation, beneficiation and development of mineral industries based industries with private participation, filed its return of income for the AY 2011-12 on 30/09/2011 declaring total income of Rs. 86,30,00,000/-. Subsequently, the return was selected for scrutiny under CASS and notice u/s 143(2) dated 02/08/2012 was issued and served on the assessee. During the scrutiny proceedings the assessee filed its revised computation enhancing the net taxable from Rs. 86,30,00,000/- to Rs. 94,71,30,796/-. After issuing the statutory notices, the AO completed the assessment assessing the total income of the assessee at Rs. 106,23,04,347/- by making the following additions:

1. Addition on account of rehabilitation expenses
Being capital in nature - Rs.10,27,39,144/-
2. Addition on account of penalty suspense account
- Rs. 1,23,04,407/-
3. Addition on account of donations - Rs. 1,30,000/-

4. When the assessee preferred an appeal before the CIT(A), the CIT(A) deleted the addition of Rs. 10,27,39,144/- made on account rehabilitation expenses and confirmed the additions on account of penalty suspense account - Rs. 1,23,04,407/- and account of donations - Rs. 1,30,000/-.

5. Aggrieved by the order of CIT(A), both the assessee and revenue are in appeals before the ITAT.

6. As regards the grounds raised by the revenue against the action of the CIT(A) in deleting the addition of Rs. 10,27,39,144/- account rehabilitation expenses, the facts are that the AO observed that assessee had debited an amount of Rs.10,27,39,144/- towards 'Rehabilitation Expenses'. Since, it was capital in nature, the assessee was asked as to why the same should not be disallowed being the said expenditure is capital in nature? In response, the assessee vide letter dated 24.12.2011, stated that the said expenditure incurred for the welfare of people excavated from the mining sites and requested to allow the expenditure. The AO observed that unless the said expenditure is incurred before commencement of production of mining, the assessee could not start its mining activity and, therefore, he held that the said expenditure is a capital in nature and disallowed the said

amount of Rs.10,27,39,144/- and added back to the income returned.

6.1 Before the CIT(A), the assessee submitted that the issue in dispute was decided in favour of the assessee by the ITAT in assessee's own case for AYs 2002-03 to 2004-05 vide order in ITA No. 1255/Hyd/2005, 1001/Hyd/2006 and 731/Hyd/2007 dated 24/09/2009.

6.2 The CIT(A) following the said order of ITAT, directed the AO to delete the addition made on account of rehabilitation expenditure.

6.3 After considering the submissions of both the parties and perusing the material on record, we are of the view that there is no infirmity in the order of the CIT(A) in deleting the addition of Rs. 10,27,39,144/- made by the AO on account of rehabilitation expenses as the decision of CIT(A) is in consonance with the decision of ITAT. Therefore, we uphold the order of CIT(A) and dismiss the grounds raised by the revenue on this count.

7. In assessee's appeal, the assessee has raised 5 grounds of appeal, the sum and substance of which are against the action of the CIT(A) in confirmation addition of

Rs. 1,23,04,407/- on account of credit in penalty suspense account.

7.1 The facts relating to this ground are that the AO observed that as seen from the schedule-11 of 'sundry Creditors (for expenses), the assessee had shown an amount of Rs.1,23,04,407/- towards penalty suspense account. When this was put to the assessee as to why this amount towards penalty suspense account should not be treated as income of the assessee, the assessee filed a note which is as under:

"We have recovered penalties from Mis. VLC-5CKC-JV [Excavation contractor] to the extent of Rs.1,23,04,418/- during the financial year 2010-11. However, as per clause 25.6 if the contractor compensated the short fall in 1st or 2nd half of any year in subsequent 6 months period, the penalties recovered for such quantities will be released. Based on this clause as the contractor fulfills the conditions the amount recovered earlier was refunded to the contractor on 03.05.2011 and 17.09.2011. Hence, we contended the penalty suspense amount recovered during FY 2010-11 would not be treated as our income.

7.2 The AO held that the contention of the assessee is not acceptable as the assessee had not shown any evidence that the amount recovered earlier was refunded to the contractors during the FY 2011-12. Since the amount was already recovered and the same pertains to revenue account and as the corresponding expenditure relating to

this contract was already claimed as expenditure, the recovered amount of Rs. Rs.1,23,04,407/- has to be treated as income. Hence, the AO disallowed the amount of Rs. Rs.1,23,04,407 and added back to the income returned.

7.3 Before the CIT(A), the assessee contended that the assessee has engaged different contractors for extracting ore from the mines and that each year the assessee withholds some amount as per the agreement for different defaults committed by the contractor which is accounted for under the head ‘penalty suspense” and once the contractor makes good for the defaults, the amount withheld is returned back to the contractor.

7.4 The CIT(A) after considering the submissions of the assessee observed that the contentions of the assessee were not acceptable as the assessee has not produced any evidence either before the AO or during the appellate proceedings to show that the amount recovered was refunded to the concerned contractors. Further, he observed that as opined by the AO, as the corresponding expenditure relating to this contract was already claimed as expenditure, the recovered amount shown in penalty suspense account of Rs. 1,23,04,407/- has to be treated as income of the assessee. In view of the above observations, he confirmed the said addition.

7.5 Before us, the ld. AR of the assessee referring to the penalty clause filed at page 32 of the paper book submitted in case the achievement of the target is not less than 70%, the corporation shall allow the contractor to make up the short fall in 1st or 2nd half of any year in subsequent 6 months period. Once the shortfall quantities are compensated, the penalties recovered for such quantities will be released. However, the Corporation shall pay the rates for shortfall quantities only the rates originally payable.

7.6 On the other hand, the ld. DR relied on the orders of revenue authorities.

7.7 We have considered the submissions of both the parties and perused the material on record as well as gone through the orders of revenue authorities. As submitted by the ld. AR of the assessee that the assessee withholds some amount as per the agreement for different defaults committed by the contractor which accounted for under the head penalty suspense and once the contractor makes good for the defaults, the amount withheld is returned back to the contractor. Therefore, we are of the view that treating the recovery amount, which is made as per the agreement, for which the contractors are agreed and refunded to the concerned contractor on completion of the targeted work satisfactorily, but, the assessee failed to prove the same by

way of documentary evidence when it was refunded, whereas, assessee stated that it has been refunded. Considering the facts and circumstances of the case, we restore the issue back to the file of AO with a direction to redetermine the issue on submission of the evidence before him by the assessee. The assessee is directed to substantiate its claim by way of producing documentary evidence before the AO. Accordingly, the grounds raised by the assessee on this issue are treated as allowed for statistical purposes.

ITA No. 1790/Hyd/2018 by assessee for AY 2012-13

8. This appeal of the assessee is directed against the order of CIT(A) – 9, Hyderabad dated 27th March, 2017 on the following grounds of appeal:

"1 The order of the learned Commissioner of Income-tax (Appeals) is erroneous in law and on the facts of the case.

2 The learned Commissioner of Income-tax (Appeals) erred in not adjudicating the grounds relating to addition of Rs.1,18,48,159 towards prospecting and leasing expenses.

3 The learned Commissioner of Income-tax (Appeals) erred in directing the Assessing Officer to allow the deduction for the amount of Rs.1,69,53,355 in the next A.V .2013 -" on payment basis, since the amount is allowable in the current year itself on accrual basis which method the assessee had followed.

4 The learned Commissioner of Income-tax (Appeals) erred in directing the Assessing officer to verify the Corporate Social Responsibility expenditure of Rs.47,58,803 sine such verification had already done at the time of assessment and the Assessing Office erroneously invoked the amended provision of Section 37(1) which is effective only from A.Y.2015-16.

5 Any other ground of appeal that may be pleaded with the prior approval by the Hon'ble Tribunal during the course of appellate proceedings. The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if considered necessary."

9. We notice at the outset that assessee's instant appeal suffers from 422 days delay in filing. To this effect, the assessee filed an affidavit affirming therein that since some of the grounds were not adjudicated by the CIT(A), an MA was filed before him, but the same pending till now, which caused the impugned delay in filing of the instant appeal. Case law Collector Land Acquisition vs Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that assessee's impugned delay of 422 days is neither intentional nor deliberate but due to the circumstances beyond its control. The same stands condoned. Case is now taken up for adjudication on merits.

10. As regards ground No. 1 regarding the addition of Rs. 1,18,48,159/- on account of prospecting and leasing expenses, the AO observed that the assessee had debited an amount of Rs. 1,18,48,159/- to Profit & loss account being 100% of prospecting and mining lease expenses under the head 'operational expenses. Since the said expenditure is covered under provisions of section 35E of the Act, the AO asked the assessee to show cause as to why the said expenditure should not be allowed only to the extent of 1/10th of Rs. 1,18,48,159/-.

10.1 In response, the assessee inter-alia, stated that the expenditure is regular and routine for the assessee company as it was in the business of prospecting, exploring and production of minerals and it was incorporated on 24th February, 1961 and hence was operation for the past 51 years. The company was into commercial production for all the years. Further, it was stated that such exploration activity is akin to the activity of a real estate business man constructing a new venture in addition to the existing projects. Therefore, the expenditure incurred on such expanding activities cannot be considered as capital in nature as no new asset of enduring nature comes into existence. It was also stated that the mines are trading asset to the company and not a capital asset. The asset itself is exploited and sold by the company and accordingly,

a trading asset for the assessee having regard to the nature of business in which assessee is operating.

10.2 Rejecting the submissions of the assessee, treating the above expenditure as capital in nature, the AO disallowed an amount of Rs. 1,06,63,344/-.

10.3 When the assessee preferred an appeal before the CIT(A), as contended by the assessee in the ground, the CIT(A) did not adjudicate this ground of appeal. Therefore, we remit this issue back to the file of CIT(A) with a direction to adjudicate the issue on merits after providing reasonable opportunity of hearing to the assessee. Thus, ground No. 2 is allowed for statistical purposes.

11. As regards ground No. 3 with regard to the addition of Rs. 1,69,53,355/- towards penalty suspense account, similar ground has been adjudicated by us (supra) vide para 7.7. Therefore, following the conclusions drawn therein, this issue is remitted back to the file of the AO. Thus, this ground is allowed for statistical purposes.

12. As regards ground No. 4 relating to the addition of Rs. 47,58,803/- towards corporate social responsibility expenditure, the AO observed that the assessee had debited an amount of Rs. 47,58,802/- as corporate social responsibility expenses wholly and exclusively for the

purpose of the business of the assessee. The AO asked the assessee to show cause as to why the expenditure should not be disallowed u/s 37(1) of the Act. In reply, the assessee vide its letter dated 26/02/2015, inter-alia, stated that the above expenditure was spent towards CSR activity which is an expenditure of revenue in nature and the same was spent for the benefits such as provision for drinking water facilities, provision of medical benefits to people affected by the mining. Therefore, such expenditure is compensatory in nature as the lives of people being disturbed due to mining activity.

12.1 Rejecting the submissions of the assessee, the AO held that there is no scope to allow the CSR expenditure in the existing provisions of income tax Act as business expenditure u/s 30 to 37 of the Act as there are specific provisions like section 80G etc., which allows the assessee to meet its CSR obligations. He, therefore, disallowed the said expenditure of Rs. 47,58,803/- u/s 37(1) of the Act.

12.2 The CIT(A) restored the issue back to the file of the AO by observing as under:

“4.3.3 It was held by various courts that the necessity of expenditure needs to be looked into from the perspective of the businessman. The fact that somebody other than the assessee is also benefited by the expenditure should not come in the way of an expenditure being allowed by way of deduction. Without there being any legal or contractual obligation

to incur the same, those expenses do not cease to be deductible in nature. Therefore, it is held that the expenditure debited by the assessee under the head corporate social responsibility is in principle allowable. However, as the Assessing Officer did not examine the nature and correctness of the expenditure debited, the issue is restored to the file of the Assessing Officer for factual verification of the expenditure and decision thereon. In the result the grounds relating to these additions are treated as partly allowed."

12.3 After hearing both the parties and perusing the material on record as well as going through the orders of the revenue authorities, we find that the CIT(A) before remitting the issue to the file of AO observed that the expenditure debited by the assessee under the head corporate social responsibility is in principle allowable. However, he observed that the AO did not examine the nature and correctness of the expenditure debited. Therefore, we also remit this issue to the file of the AO with a direction to examine the nature and correctness of the expenditure debited and decide the issue in accordance with law after providing reasonable opportunity of being heard to the assessee. Accordingly, this ground is treated as allowed for statistical purposes.

13. In the result, appeals in ITA Nos. 328/Hyd/2016 and ITA No. 1790/Hyd/2018 are allowed for statistical purposes and the appeal in ITA No. 335/Hyd/2016 is

dismissed. A copy of this common order be placed in the respective case files.

Pronounced in the open court on 20th July, 2021.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 20th July, 2021.

Kv

Copy to :

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2	<i>M/s The Andhra Pradesh Mineral Development Corporation Ltd., 6-2-915, Rear Block, 3rd Floor, HMWSSB Premises, Khairathabad, Hyderabad.</i>
3	<i>CIT(A) - 9, Hyderabad.</i>
4	<i>Pr. CIT - 2, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>

S.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	

