

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 33/JP/2021  
निर्धारण वर्ष/Assessment Year :2016-17

Rajasthan State Mines & Minerals Ltd. C-89-90, Lal Kothi, Janpath, Jaipur	बनाम Vs.	Principal Commissioner of Income Tax, Jaipur-2
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAACR7857H		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Sh. P. C. Parwal (CA)  
राजस्व की ओर से / Revenue by : Sh. B. K. Gupta (Pr.CIT)

सुनवाई की तारीख / Date of Hearing : 04/08/2021  
उद्घोषणा की तारीख / Date of Pronouncement: 31/08/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. PCIT-Jaipur-2 dated 31.03.2021 wherein the assessee has raised the following grounds of appeal:

"1. Under the facts and circumstances of the case, the order passed by the Id. PCIT u/s 263 is illegal & bad in law. He has further erred in passing the order without considering the complete reply filed by the assessee.

2. The Id. PCIT has erred on facts and in law in holding that the order passed by the AO u/s 143(3) dt. 28.12.2018 is erroneous and prejudicial to the interest of Revenue ignoring that issue of exemption claimed on account of CER and expenditure claimed on

*account of payment made for Resurgent Rajasthan, 2015 Summit has been examined by the AO in detail vide notice issued u/s 142(1) dt. 30.07.2018 and 28.09.2018 and the issue of exemption of CER is also decided by Hon'ble Rajasthan High Court in favour of assessee."*

2. Briefly, the facts of the case are that the assessment for the impugned assessment year was completed u/s 143(3) vide order dated 28.12.2018 and thereafter, the Id PCIT issued a show-cause and passed the order u/s 263 dated 31.03.2021 setting aside the assessment order so passed by the AO with a direction to pass a fresh assessment order after considering the issued raised in the impugned order. Against the said order and findings of the Id PCIT, the assessee is in appeal before us.

3. During the course of hearing, the Id. AR submitted that the assessee is a State Government undertaking engaged in the business of mining. It filed its return of income declaring income of Rs.184.20 crores on 14.10.2016 which was selected for scrutiny by the AO. The AO vide notice u/s 142(1) dt. 30.07.2018, in Q. No.10(x) required the assessee to provide details of any carbon emission receipts received during the year & whether the same has been shown as income and in Q. No.15(ii) required the assessee to justify the claim of expenses on account of payment to Resurgent Rajasthan of Rs.20,26,50,000/- detailing the business purpose and why the same is not application of income and not an expense. The same was replied by the assessee vide letter dt. 27.08.2018. At Point No.10(x) assessee submitted that during the year it has received Rs.2,58,48,598/- on account of sale of CER Certificates and Renewal Energy Certificates and after reducing expenses of Rs.65,494/- incurred on earning these CER, it has claimed exemption of

Rs.2,57,83,104/- . Thereafter, the assessee explained the term "CER" in detail and submitted that it is a capital receipt not liable for tax for which it placed reliance on the decision of Hon'ble ITAT in its own case for A.Y 2007-08 approved by Hon'ble Rajasthan High Court. At Point No.15(ii) assessee explained the purpose for payment of sponsorship fees of Rs.20,26,50,000/- to Resurgent Rajasthan Summit 2015 and thus submitted that the same is allowable u/s 37(1) being incurred wholly and exclusively for the purpose of business.

4. It was submitted that the AO again vide notice u/s 142(1) dt. 28.09.2018 at Point No.2 required the assessee to provide proof as to how the payment of Rs. 20,26,50,000/- to Resurgent Rajasthan is related to and has been spent wholly and exclusively for the purpose of business and at Point No.5 required the assessee to explain how and under what statutory provisions, CER of Rs.2,58,48,598/- has been claimed as exempt income when the same are in the nature of revenue receipts. In response to said notice, the assessee vide letter dt. 11.10.2018 furnished the detailed explanation at Point No.1 & 4. The AO after examining all the details/ explanation accepted the claim of assessee.

5. The Id. AR submitted that thereafter, Ld. CIT vide show cause notice dt. 16.03.2021 issued u/s 263 required the assessee to show cause as to why the order passed u/s 143(3) on 28.12.2018 may not be revised as the said order is erroneous in so far as it is prejudicial to the interest of the revenue on account of the following:-

(a) The assessee had claimed and was allowed an exemption of Rs.2,58,48,598/- on account of sale of carbon/ voluntary Emission Reduction (CER/ VER) certificates and renewable Energy Certificates (REC)

(item A(5) of schedule BP of ITR) which was credited to profit and loss account. This exemption was not allowable under any provisions of the IT Act and thus to be taxed accordingly.

(b) The amount paid by the assessee to organize the event 'Resurgent Rajasthan' was in the nature of assistance/ contribution and no details/ nature of expenditure/ utilization by the nodal agency was available. Thus, expenditure of Rs.20,26,50,000/- incurred as 'assistance/ contribution' to organize an event cannot be said to be laid out or expended wholly and exclusively for the purpose of the business or profession of your company was to be disallowed.

6. The Id. AR submitted that against this notice assessee filed detailed reply vide letter dt. 22.03.2021. The Ld. CIT, however, held that the order passed by AO u/s 143(3) is erroneous in so far as it is prejudicial to the interest of revenue as the said order has been passed in a routine and perfunctory manner without properly examining the veracity and allowability of claim of exemption of Rs.2,58,48,598/- credited in the P&L A/c and not examining the veracity of the expenses of Rs.20,26,50,000/- debited by the assessee company in the P&L A/c. The AO failed to examine the exemption of income claimed and the expenses incurred. The order of AO is therefore, liable to revision under clause (a) & (b) of Explanation 2 to section 263 of IT Act. Accordingly, order passed by the AO was set aside to be redone de-novo.

7. The Id. AR submitted that from the facts stated above it can be noted that AO vide notice u/s 142(1) dt. 30.07.2018 and dt. 28.09.2018 specifically required the assessee to provide proof/ explanation as to how the payment of Rs.20,26,50,000/- to Resurgent Rajasthan is wholly and

exclusively for the purpose of business and under what statutory provisions CER of Rs.2,58,48,598/- has been claimed as exempt income. In response to same assessee filed the detailed reply vide letter dt. 27.08.2018 and 11.10.2018 supported by various judicial decisions as to how the payment to Resurgent Rajasthan is wholly and exclusively for the purpose of business and how the CER is a capital receipt. The AO after considering all the details/ explanation/ case laws accepted the claim of assessee. Thus, when the AO has made necessary inquiry/ verification which he should have made as also inquired into the claim of CER being capital receipt and has applied his mind on both the issues, his order cannot be said to be erroneous so far as it is prejudicial to the interest of revenue only for the reason that the Ld. PCIT holds a different view. For this purpose, reliance is placed on the following cases:-

- Sir Dorabji Tata Trust Vs. DCIT(E) 188 ITD 38 (Mum)
- CIT Vs. Vijay Kumar Koganti (2020) 275 Taxman 394 (Mad)
- CIT Vs. Green Fields Commercial Pvt. Ltd (2015) 119 DTR 303 (J&K)

8. The Id. AR submitted that the principles laid down in these decisions when applied to the facts of assessee's case, it is evident that in the assessee's case, the AO has made all the necessary enquiry and verification as can be expected of a prudent, judicious and responsible AO in normal course of his assessment work. The Ld. CIT has not specified as to what type of enquiry ought to have been made by AO which would have resulted into income or disallowance or any other adverse action. Thus, none of the conditions of clause (a) & (b) of Explanation 2 to section 263 is attracted. Hence, the order passed by AO can't be branded as erroneous and prejudicial to the interest of Revenue.

9. It was further submitted that the sale of CER is a capital receipt has been decided in favour of assessee by the ITAT vide order dt. 30.05.2017 in assessee's own case for AY 2007-08 in ITA No.253 & 295/JP/2015. This order is approved by the Hon'ble Rajasthan High Court in DBITA No.313/2017 dt. 28.11.2017. The payment of sponsorship fees of Rs. 20,26,50,000/- to Resurgent Rajasthan Summit 2015 is wholly and exclusively for the purpose of business in as much as the participation in such summit helps the assessee in finding joint venture partners in PPP mode or otherwise towards mineral development in Rajasthan which is step forward for the objectives of the assessee. Hence, it is an allowable expenditure which is also covered by the principle laid down in various decisions of Supreme Court, High Court and Tribunal relied by the assessee in reply dt. 11.10.2018. The AO after considering the reply and the case laws relied by the assessee allowed the claim. It is a settled law that where two views are possible (though in the present case there are no two views) and the AO has taken one view, assessment order cannot be treated as erroneous or prejudicial to the interest of revenue. For this reliance is placed on the following cases:-

- CIT Vs. Kwality Steel Suppliers Complex (2017) 395 ITR 1 (SC)
- CIT Vs. Max India 295 ITR 282 (SC)
- Malabar Industrial Co. Ltd. Vs. CIT 243 ITR 83 (SC)

In view of above, order passed by Ld. CIT u/s 263 is illegal & bad in law and the same be quashed.

10. Per contra, the Id PCIT/DR relied on the order passed by the Id PCIT and our reference was drawn to the relevant findings which read as under:

"5. I have considered the facts of the case, written submission filed by the assessee company and the material available on record. The contentions of assessee are not tenable. The AO has allowed an exemption of Rs. 2,58,48,598/- on account of sale of carbon/Voluntary Emission Reduction (CER/VER) certificates and Renewable Energy Certificates (REC) without properly examining its veracity and allowability. Further, the A/R of the assessee has submitted that the expenses on 'Resurgent Rajasthan' of Rs. 20,26,50,000/- was debited in the P & L account. This claim of the assessee company was not justified. In any case, the AO has failed to examine the veracity of the expenditure made by the assessee company and expenses which were debited by the assessee company in the year under consideration was also not examined by the AO during the course of assessment proceedings.

6. From the above facts and circumstances of the case and having regard to the material available on record, the Assessing Officer failed to consider/ apply his mind while framing/passing assessment order of the above named assessee company. Thus, the order passed on 28.12.2018 is without making necessary verification cum examination of the exemption of income claimed by the assessee company and the expenses incurred by the assessee company debited in the Profit & Loss account and as such the assessment was made without application of mind on the given facts on record. This in turn has resulted in passing of an erroneous order by the Assessing Officer in the case due to non application of mind to relevant material an incorrect assumption of facts and an incorrect application of mind to law which is prejudicial to the interest of the Revenue. In this case,

*the Assessing Officer failed to examine the exemption of income claimed by the assessee company and the expenses which were incurred by the assessee company, debited to the Profit & Loss account. Thus, the order passed u/s 143(3) of the Income-tax Act, 1961 on 28.12.2018 is erroneous and prejudicial to the interest of Revenue.*

*7. Accordingly, by virtue of powers conferred on the undersigned under the provisions of section 263 of the Income-tax Act, 1961, I hold that the order u/s 143(3) of the I T Act, 1961 dated 28.12.2018 for A Y 2016-17 passed by the Assessing Officer is erroneous in so far it is prejudicial to the interest of Revenue as the said order has been passed by the Assessing Officer in a routine and perfunctory manner without verifying the claim of exemption of Rs. 2,58,48,598/- credited in the Profit and Loss account and not verifying the expenses of Rs.20,26,50,000/- debited by the assessee company in the Profit & Loss account. The order of the Assessing Officer is therefore, liable to revision under the Explanation-2 clause (b) and clause (a) of Section 263 of the Income-tax Act, 1961. Hence, the assessment order is set aside and as per law to be redone de-novo in the light of the observation made in this order and with direction to the Assessing Officer to verify and examine and finalize the assessment in accordance with the prevailing law; quantify the correct income of the assessee liable to tax for A Y 2016-17 after according reasonable opportunity to the assessee."*

11. We have heard the rival contentions and perused the material available on record. Broadly, two issues have been raised by the Id. CIT(E) while issuing the show cause u/s 263 of the Act. The first issue

relates to amount received by the assessee company on sale of carbon/Voluntary Emission Reduction (CER/VER) certificates and renewable Energy Certificates (REC) which have been claimed exempt. As per the Id. Pr. CIT, the said exemption was not allowable under any provisions of the Act and there is a complete failure on the part of the Assessing Officer to examine the said exemption claimed by the assessee company.

12. In this regard, it is noted that the assessee company in its return of income has claimed an amount of Rs.2,57,83,104/- towards sale of CER/VER/REC certificates as not taxable holding the same being capital in nature and there is also a note explaining such claim of exemption which was submitted as part of its return of income. Thereafter, the Assessing Officer as part of notice u/s 142(1) dated 30.07.2018 has asked the assessee company to provide details of any carbon emission receipts during the year and whether the same has been shown as income. In response, the assessee company vide its submission dated 27.08.2018 has submitted that during the year, it has received an amount of Rs. 2,58,48,598/- on account of sale of CER/REC certificates and after reducing expenses of Rs. 65,494/-, it has claimed exemption of Rs. 2,57,83,104/- as capital receipt. It was also submitted that in assessee's own case for A.Y 2007-08, the matter has been decided by the Tribunal vide its order dated 03.05.2017 which has subsequently been approved by the Hon'ble Rajasthan High Court vide its order dated 28.11.2017. We further note that the Assessing Officer has thereafter issued a specific show cause notice dated 28.09.2018 asking the assessee company to explain the carbon emission receipts of Rs. 2,58,48,598/- as to how and under what statutory provisions the same has been claimed as exempt income when the same is in the nature of

Revenue receipt. In response, the assessee company vide its submission dated 11.10.2018 has again reiterated its earlier submissions. It was further submitted that the matter is also covered by the decision of Hyderabad Bench of the Tribunal in case of My Home Power Ltd. vs. Dy. CIT, Central Circle-07 (ITA No. 1114(HYD) of 2009) and it was also submitted that there has been an amendment which has been brought about by the Finance Act, 2017 wherein section 115BBG has been introduced with effect from 01.04.2018 wherein income from sale of CERs is taxable at special rate of 10%. It was submitted that the said amendment has been brought on the statute with prospective effect and in the instant year, the receipt from sale of CERs is not taxable being capital receipt. The Assessing Officer after considering and examining the submissions of the assessee has not recorded any adverse finding while passing the assessment order. We therefore, find that in the instant case, the Assessing Officer has raised specific queries not once but twice, firstly as part of initial notice u/s 142(1) and thereafter, by way of a specific show-cause before passing the assessment order. The assessee has also submitted its response explaining the factual as well as the legal position and the fact that the matter has been examined earlier by the Tribunal in assessee's own case for A.Y 2007-08 and which has also been affirmed by the Hon'ble Rajasthan High Court. Therefore, where the Assessing Officer has taken into consideration the decision of the Tribunal as well as of jurisdictional High Court in assessee's own case and find that identical facts and circumstances of the case are prevailing during the year under consideration, the opinion formed by the Assessing Officer cannot be held as erroneous in nature. It is therefore not a case of lack of inquiry as held by the Id. Pr. CIT rather it is a case where the Assessing Officer has taken into consideration the factual and the legal position, the decision in

assessee's own case rendered by the Tribunal and affirmed by the Hon'ble High Court and also the fact that there is prospective amendment in the statute which is not applicable in the instant year. Therefore, the findings of the Id. Pr. CIT to the effect that there is a failure on the part by the Assessing Officer to examine the claim of exemption by the assessee and the assessment order has been passed in a routine and perfunctory manner cannot be sustained and is hereby set aside.

13. The second issue which has been raised by the Id. Pr. CIT in the show cause notice relates to amount paid by assessee company to organize the event "Resurgent Rajasthan" in nature of assistance/contribution and no details/nature of expenditure/utilization by the nodal agency, was available on record. As per Id. PCIT, the expenditure of Rs. 20,26,50,000/- incurred by the assessee company cannot said to be laid out or expended wholly and exclusively for the purposes of assessee's business and the same deserves to be disallowed. Here also, the Id. Pr. CIT has recorded a finding that expenditure so claimed by the Assessing Officer has not been examined by the Assessing Officer and has therefore, held that the order has been passed in a routine and perfunctory manner which is clearly erroneous and prejudicial to the interest of the Revenue.

14. In this regard, during the course of hearing, our reference was drawn by the Id AR to the notice u/s 142(1) dated 07.07.2018 wherein the Assessing Officer has specifically asked the assessee company to justify its claim of expenses on account of payment to Resurgent Rajasthan amounting to Rs. 20,26,50,000/- detailing the business purposes and why the same is not application of income and not an expense. It was submitted that in response to the said notice, the

assessee vide its submission dated 27.08.2018 has submitted that Government of Rajasthan along with CII has organized Resurgent Rajasthan 2015 Summit. It was an event with strategic conferences, sector specification sectorial discussions, deliberations, investors meet, investors discussions etc. It brought together leading investors from all over the world. Assessee being a leading mining company of the State Government in order to promote and undertake activities of industrial and mineral development in the state of Rajasthan and for the furtherance of its objective has participated in the organization of the event. The primary objective of the company for participation in the event was to find out joint ventures partners in PPP mode or otherwise towards mineral development in Rajasthan. Accordingly assessee has sponsored the event by paying sponsorship fees of Rs. 20,26,50,000/- so that more and more investors around the world must have the knowledge about the company, its working and objective in order to invest in the company. Since the object of the expenditure was to earn more and more business for the company, the expenditure is allowable u/s 37(1) of Income Tax Act, being incurred wholly and exclusively for the business purpose of the company.

15. It was further submitted that the Assessing Officer again issued a show cause dated 18.09.2018 wherein it was stated that the assessee has claimed an amount of Rs. 20,26,50,000/- as expenses of Resurgent Rajasthan. However, no proof of how the same is related to and has been spent wholly and exclusively for the purpose of business has been submitted and the assessee was accordingly asked to justify with clear evidence as to why the same should not be disallowed as not being a business expense. In response, the assessee vide its submission dated 11.10.2018 has submitted that the expenditure of Rs. 20,26,50,000/-

incurred by the assessee on payment to Bureau of Investment Promotion, the nodal agency for organizing Resurgent Rajasthan 2015 Summit is wholly and exclusively for the purpose of business in as much as participation in such summit helps the assessee in finding joint venture partners in PPP mode or otherwise towards mineral development in Rajasthan which is a step forward for the objectives of the assessee. The expenditure was approved by the Board of Directors in its 398<sup>th</sup> Meeting convened on 30.09.2015. It was submitted that because of the participation in the summit, a MOU was entered by the subsidiary company of the assessee M/s Rajasthan State Gas Ltd. for Rs. 2700 Crores with the State Government for the development of Gas and Pipelines Infrastructures, CNG and CGD network. This will bring more and more petroleum and gas companies in the state which will fetch huge Revenue to the company and profits to the assessee. Besides, Government of Rajasthan has also entered into various agreements with Fertilizers, Cement and Steel Industries to setup new plants or expand their manufacturing activities which will directly benefit the assessee in increasing its turnover and profits as the main raw material in Fertilizer industries is Rock Phosphate, in Cement Industry is Limestone and Gypsum. Further steel industry also uses limestone for its various manufacturing activities. Also these industries will be having huge power requirement and assessee is a major supplier of Lignite used in power plants in the State of Rajasthan. Accordingly there are several direct and indirect benefits to the assessee by incurring this expenditure. Copy of the publication of the State Government showing various partnerships/MOUs taking place in the Resurgent Rajasthan 2015 Summit is enclosed as Annexure-II. Thus the expenditure is incurred solely for the purpose of the business of the assessee. Even if by incurring the expenditure, third party is also benefited, the same is a

allowable expenditure u/s 37(1) of the Act. Further, reliance was placed on various Hon'ble Supreme Court and High Court decisions. It was accordingly submitted that where the Assessing Officer has made necessary inquiry/verification which he should have made and has applied his mind and has allowed the claim of the assessee, the order cannot be said to be erroneous in so far as prejudicial to the interest of the Revenue.

16. We find that in this second matter as well, the Assessing Officer has raised specific queries not once but twice, firstly as part of initial notice u/s 142(1) and thereafter, by way of a specific show-cause before passing the assessment order. The assessee has also submitted its response explaining the factual position as to how the sponsorship payment to Bureau of Investment Promotion, the nodal agency for organizing Resurgent Rajasthan 2015 Summit has been incurred for the purposes of its business duly approved by its Board of Directors and its claim duly supported by various Court decisions, the opinion formed by the Assessing Officer cannot be held as erroneous in nature. It is therefore not a case of lack of inquiry as held by the Id. Pr. CIT rather it is a case where the Assessing Officer has taken into consideration the factual and the legal position and then has decided to accept the claim of the expenditure so claimed by the assessee. Therefore, the findings of the Id. Pr. CIT to the effect that there is a failure on the part by the Assessing Officer to examine the claim of expenses by the assessee and the assessment order has been passed in a routine and perfunctory manner cannot be sustained and is hereby set aside.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 31/08/2021.

Sd/-  
( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 31/08/2021

\*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Rajasthan State Mines & Minerals Ltd.,  
Jaipur
2. प्रत्यर्थी / The Respondent- Pr. CIT, Jaipur-2
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 33/JP/2021}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar