

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 686/Bang/2021
Assessment Year : 2014-15

M/s. Sri Kumaraswamy Minerals Exports Pvt. Ltd., No. 58, Cunningham Road Cross, Bangalore – 560 052. PAN: AAQCS4798A	Vs.	The Deputy Commissioner of Income Tax, Circle – 6[1][2], Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Chandrashekar, Advocate
Revenue by	:	Shri Sankarganesh K, JCIT (DR)

Date of Hearing	:	02-02-2022
Date of Pronouncement	:	02-02-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal by the assessee has been filed by assessee against the ex-parte order dated 12.10.2021 passed by the Ld.CIT(A)-11, Bangalore relating to Assessment Year 2014-15 on following grounds of appeal:

“1. The order of the learned Commissioner of Income-tax [Appeals]-12, Bengaluru, passed under Section 250 of the Act dated 12/10/2021, in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. The Appellant denies itself liable to be taxed on a total income of Rs. 103,97,62,214/- as determined by the learned assessing officer and confirmed by the learned

Commissioner of Income-tax [Appeals], on the facts and circumstances of the case.

3. The learned Commissioner of Income-tax [Appeals], is not justified in passing the appellate order, which is in haste and not affording sufficient and reasonable opportunity to the appellant, which is in violation of the principles of natural justice and hence the order passed is required to be set aside as bad in law, on the facts and circumstances of the case.

4. The learned Commissioner of Income-tax [Appeals] failed to appreciate that the order of rectification passed by the learned assessing officer under section 154 of the Act is bad in law in as much as the issue of denying set off of unabsorbed depreciation loss of Rs.85,06,293/- of a previous year i.e. Assessment Year 201213, required a long drawn process of verification and consequently the learned Assessing Officer did not have any jurisdiction or power to review the assessment order under the facts and circumstances of the case.

5. The learned Commissioner of Income-tax [Appeals] is not justified in confirming the disallowance made by the learned assessing officer of Rs. 85,06,293/- being the denial of eligible brought forward loss pertaining to assessment year 201213 to be set off against the income for the impugned assessment year 2014-15, on the facts and circumstances of the case.

6. The learned Commissioner of Income-tax [Appeals], failed to appreciate the fact that the various parameters arising out of the record, cannot come within the purview of section 154 of the Act and further the said issue is a debatable issue. Reliance is placed on the decision of the Hon'ble Apex Court in T.S. Balaram, ITO Vs Volkart Bros Et Others reported in 82 ITR 50, under the facts and circumstances of the case.

7. The learned Commissioner of Income-tax [Appeals] failed to appreciate that when the order of assessment passed under section 143[3] of the Act itself is challenged and an appeal has been preferred, then the question of invoking the provisions of section 154 of the Act is impermissible and consequently the order of rectification passed by the learned assessing officer under section 154 of the Act requires to be cancelled, on the facts and circumstances of the case.

8. Without prejudice to the main grounds of appeal, the learned Commissioner of Income-tax [Appeals] ought not to have passed the appellate order for the impugned assessment year 2014-15 without adjudicating or passing the appellate order for the earlier assessment year 2012-

13, which is still pending and the learned Commissioner of Income [Appeals] ought to have appreciated that the outcome of the appeal for the assessment 2012 - 13, will have a bearing on the present appeal preferred by the appellant, which is in grave violation, on the facts and circumstances of the case.

9. Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under section 234 B of the Income Tax Act on the facts and circumstances of the case. Further the levy of interest under section 234 B of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernible and are wrong on the facts of the case.

10. The Appellant craves leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.

11. For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.”

2. At the very outset, it was submitted by ld. AR of assessee that the order of Ld. CIT(A) is ex-part qua the assessee. He submitted that it is noted by Ld. CIT(A) in his order that he has given a time of more than a month and multiple opportunities to represent the assessee's case. The Ld.AR submitted that the hearing was fixed on 16.09.2021 for which the assessee sought adjournment and hence the hearing was fixed on 27.09.2021 and the final hearing was fixed on 11.10.2021. He also submitted that sufficient opportunity of being heard was not provided to assessee. He submitted that under these facts, the order of Ld.CIT(A) should be set aside and the matter should be restored back to him for fresh decision after providing adequate opportunity of being heard to assessee.

2.1 The Ld.DR of revenue supported the order of Ld.CIT(A).

3. We have considered the submissions advanced by both sides in the light of records placed before us.

In view of this fact that as per the impugned order of Ld.CIT(A), there is no decision on merit on the grounds. Considering all these facts, we feel it proper to set aside this ex-parte order of Ld.CIT(A) and restore back the entire matter to his file for fresh decision after providing adequate opportunity of being heard to both sides. In view of this decision, no adjudication is called for at present in respect of various grounds raised by assessee in this appeal.

Accordingly, the grounds raised by the assessee stands allowed for statistical purposes.

In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 02nd February, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 02nd February, 2022.
/MS /

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

By order

Assistant Registrar,
ITAT, Bangalore