

**IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 186/PAN/2018

Assessment Year: 2014-15

Deputy Commissioner Income Tax, Circle 1, Belagavi	of Vs.	M/s Gogte Minerals Nasco Ishanya, Khanapur Road, Tilakwadi, Belagavi [PAN: AABFG 3663N]
(Appellant)		(Respondent)

Appellant by : Sh. R. L. Barve, CA

Respondent by: Sh. Ranjan Kumar, CIT, DR

Date of Hearing: 31.03.2022

Date of Pronouncement: 05.04.2022

ORDER

Per Anikesh Banerjee, JM:

The instant appeal was filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals), Belagavi [in brevity the CIT(A)], bearing Appeal No. CIT(A)BGM/10535/2016-17 dated 12.02.2018 passed u/s 250(6) of the Income Tax Act, 1961 (in brevity the Act), for Assessment Year 2014-15.

2. The Revenue authority filed the appeal with the following grounds which are as follows:

- “(i). *Whether the estimation of Pit Filling expenses can be allowed when it has been given based on approximation by a person, who does not have any academic qualification and experience to give the reasonable and ascertainable cost estimate of Pit Filling and that even without any survey/study/proper inspection of Mine Land and having no recognition from any Statutory Authority.*
- (ii) *Whether the Pit Filling expenses can be allowed even though the assessee has not made any provision with a reasonable estimate when it is following mercantile system of accounting.*
- (iii) *The Ld. CIT(A) erred in not applying the ratio of the decision of the Hon’ble High Court of Rajasthan in the case of Udaipur Mineral Development Syndicate Pvt. Ltd., Vs. DCIT which was referred in the case of NMDC vs. DCIT in Hon’ble High Court Hyderabad Bench as NMDC has estimated Mine Closure expenses based on parameters identified as per Indian Bureau of Mines Circular.*
- (iv) *For these and other grounds that may be urged at the time of hearing, the order of the Ld. CIT(A) may be set aside and that of the Assessing Officer may be restored.”*

3. Brief fact is that the assessee is a Mining Company during the financial year 2013-14 claimed pit filling expenses at the rate of Rs.106/- per ton. In the financial year 2012-13. This pit filling charges was claimed Rs.96/- per ton. In respect of the earlier year the assessee claimed the excess pit filling charge of Rs. 10/- per ton accordingly the Ld. AO added back amount of Rs.20,95,89,352/- in the year of appeal. In the appeal before the Ld. CIT(A) had partly allowed the assessee’s plea and modify the pit filling charge of Rs.104/- per ton. Accordingly appeal order was passed. This impugned appeal order was challenged by the Revenue before the ITAT.

4. During the hearing, the Ld. DR relied on the order of the Ld. Assessing Officer (in brevity the AO). The observation of the Ld. AO is as under. The assessment order paragraph 7 is as under:

“7. From this statement of Mr. Nilesh Raut, following contradictions comes out:-

1. He doesn't have any Academic Qualification and /or experience to give the reasonable and ascertainable cost estimate of pit filling expenses.

2. He doesn't have any recognition from any statutory authority to furnish such report.

3. He has not carried out any surveys of the mine before giving estimate of pit filling expenses for the said mines.

4. He has stated that nobody can give the Assessment report of the mines for estimation of pit filling expenses unless he is highly qualified or it can be given only after proper inspections, study and he himself is not capable of giving any such reports as his experience in the field is hardly two years.

5. He has not taken into account all the aspects scientifically and has estimated based on approximation.

6. He doesn't know where the ROM is dumped. Without knowing it, he has calculated cost of lifting and transporting ROM to excavated pit site.

7. He has joined Tiroda site in November 2014 and he has given cost estimation report of pit filling expenses on 30 March 2014. Further he has stated that he has not carried out any survey of mining site for estimating the pit filling expenses in his report. Thus, he has furnished report without knowing anything about mining site and without even visiting the mining site.

7.1 As per circular issued by Bureau of Mines:- The closure cost should be reviewed regularly to reflect changing circumstances. While estimating the cost of abandonment, different activities required for reclamation and rehabilitation, maintenance and monitoring including post closure monitoring and another administrative expenditures

related to the closure operations should be accounted for as the objective of providing financial provision is to ensure that the adequate funds are available at the time of closure. While determining the closure cost following items and activities should be part of estimation of cost of closure.

- 1. Decommissioning/demolition.*
- 2. Removal of infrastructure.*
- 3. Removal of equipment and heavy machineries.*
- 4. Site safety.*
- 5. Remediation/mitigation measures*
- 6. Reclamation and rehabilitation of workings.*
- 7. Maintenance /monitoring during and after closure operation.*
- 8. Retrenchment and re-location cost.*
- 9. Research & Development.*
- 10. Administration/Maintenance.*

7.2 Cost Estimation follows the unit cost to lease area criteria rather than actual estimation by which the realistic amount could have been arrived at case to case basis;

(I) A category mines- Rs. 25000/- per hectare to the minimum of Rs. 2 lakhs.

(II) B category mines – Rs. 15,000/- per hectare to the minimum of Rs. 1 lakhs.

As per Indian Bureau of Mines, there is procedure for recognition of persons who can prepare the cost estimation report of pit filling expenses.

7.3 RECOGNITION TO PERSONS TO PREPARE MINING PLANS:

Relevant amendments as per amended rule 22B(1) of MCR, 1960 a mining plan is to be prepared by a recognized person who satisfies the qualification and experience stipulated

in rule 22B(2) of MCR. Under rule 22C, the Chief Controller of Mines and Regional Controller of Mines have been declared as Competent Authority to grant/refuse recognition.

8. *The report prepared by Mr Nilesh Raut does not fulfill any of these criteria Mr Nilesh Raut also does not have any above mentioned recognition. A paragraph No. 3 of report of Mr. Nilesh Raut is reproduced as below:-*

"We were given assignment by M/s Gogte Minerals to survey the working areas at Redi and estimate the volume of earth work involved and the probable cost thereof for filling up the mined pits with the available rejection material. After taking into consideration the operations involved in excavating, loading transporting and spreading the rejection material into the mined areas a few years hence, when the deposits in the quarries become exhausted, the cost of operations have been work out"

But from Answers to Questions no. 5, 6, 12 and 13 from his statement, it is clear that Mr. Nilesh Raut has not carried out any survey to work out estimation of pit filling expenses. Therefore the authenticity of the report by Mr. Nilesh Raut, based on which M/s Gogte Minerals has estimated pit filling expenses at Rs 106 per Ton cannot be established."

5. The Ld. DR also produced a chart which was adapted by the Ld. CIT(A) related to estimated cost of pit filling expenses related different years.

<i>Year</i>	<i>Estimated cost of pit filling expenses</i>
<i>2007</i>	<i>Rs. 60 per ton</i>
<i>2008</i>	<i>Rs. 66 per ton</i>

2009	Rs. 79 per ton
2010	Rs. 87 per ton
2011	Rs. 87 per ton
2012	Rs. 87 per ton
2013	Rs. 96 per ton
2014	Rs. 106 per ton

6. The Ld. counsel of the assessee filed a paper book and written argument in his favour. The counsel relied on the order of the Ld. CIT(A) and the observation of the Ld. CIT(A) is reproduced as under:

“8.2 The Hon'ble Karnataka High Court in the assessee's own case decided the issue in favour of assessee the allowability of pit filling expenses. Since then Department has been allowing the expenditure workout by assessee right from 1975 till 2013. There is no reason to deviate from the regular practice. A.O. through disagreed with assessee's estimation did not workout any reasonable estimation but disallowed the whole amount which is in correct and not justifiable.

8.3 It is a necessary provision as held by the Hon'ble Court. If 96/T was allowed in earlier year considering inflation (CPI-9.13) for F.Y. 2013-14, I feel that assessee should be allowed the provision of pit filling expenses at reasonable price. I consider 104/ton should be a reasonable provision for allowing such provision for expenditure. AO is directed to allow 104/ton as an estimated expenditure for pit filling for this year.”

7. The Ld. DR also stated that the valuation of pit filling charges, i.e. Rs.106/- per ton without any basis and person who made it this valuation on dated 30.03.2014 has no scientific basis for calculation of pit filling charge of Rs.106/- per ton.

The Ld. DR further stated that the Ld. CIT(A) had calculated the pit filling charge of Rs.104/- per ton had no basis. The calculation is totally devoid of observation of the Ld. AO made in the assessment order. Ld. counsel relied on the different orders of the Hon'ble High Court of Karnataka for the year 1985-86 or assessment year 1989-90 but did not able to substantiate the basis of calculation of pit filling expenses of Rs.106/- per ton related to this financial year.

8. We heard the rival submissions, the relevant documents available on record. The Ld. AO made his addition on specific basis but did not make a proper calculation for his own claim. The statements are recorded and it is clear that the person who has made the calculation have no scientific basis. The Ld. CIT(A) made calculation in a very casual approach. After considering herein we are directing the Ld. AO to reconsider the calculation as per available records and reasonable opportunity should be given to assessee during hearing related to pit filling charges for an assessment year 2014-15.

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

Order pronounced in the open court on 05.04.2022

Sd/-
(Dr. M. L. Meena)
Accountant Member

Sd/-
(Anikesh Banerjee)
Judicial Member

Date: 05.04.2022

GP/Sr. PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:

- (3) The CIT(A),
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.
- (6) The Guard File

True Copy

By Order

Sr. Private Secretary
Income Tax Appellate Tribunal