

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

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

ITA Nos.611, 341 & 342/Bang/2019
Assessment Year: 2012-13, 2013-14 & 2014-15

V S Lad & Sons Prashant Nivas Krishna Nagar Sandur 583 119 PAN NO : AACFV3909R	Vs.	ACIT Circle-1 Bellary
APPELLANT		RESPONDENT

Appellant by	:	Sri Ramasubramaniyan, A.R.
Respondent by	:	Sri V.S. Chakrapani, D.R.

Date of Hearing	:	02.06.2022
Date of Pronouncement	:	06.06.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These appeals by assessee are directed against the order of CIT(A) for the assessment years 2012-13 to 2014-15. The assessee has raised following grounds of appeal:-

Grounds for the A.Y. 2012-13:-

1. *That the order of the learned Commissioner of Income Tax (Appeals) in so far it is prejudicial to the interests of the appellant, is bad and erroneous in law and against the facts and circumstances of the case.*

**Ground relating to E-auction proceeds by Monitoring Committee —
Rs.32,39,40,000**

2. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the e-auction sale proceeds of Rs. 32,39,40,000 is liable to be included in the total income of the appellant.*
3. *That the learned Commissioner of Income Tax (Appeals) ought to have appreciated that in view of the **order of the Hon'ble Supreme Court, the appellant had no right over the sale** proceeds as the entire stock has been confiscated and the Monitoring Committee was directed to hand over the sale proceeds to the State Government.*
4. *That the learned Commissioner of Income Tax (Appeals) ought to have held that the sale proceeds cannot be assessed as income of the appellant as it never reached it as income.*
5. *That the finding of the learned Commissioner of Income Tax (Appeals) in paragraph 3.4.2 of the appellate order that the Monitoring Committee is holding the sale proceeds on behalf of the assessee is perverse as being not supported by any evidence and being contrary to the materials on record.*
6. *Without prejudice to the above grounds that the learned Commissioner of Income Tax (Appeals) ought to have allowed e-auction sale proceeds retained by the Monitory Committee, as a loss if the sale proceeds were to be treated as income of the appellant.*

Ground relating to valuation of closing Stock — 2,68,52,051/-

7. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in valuing the closing stock for Rs.2,68,52.051/-*

Ground relating to contribution to FIMI — Rs.50,00,000/-

8. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the contribution to FIMI towards building fund and legal fund of Rs. 50,00,000/- is not allowable as expenditure*

Ground relating to other CSR Expenses

9. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the village development expenditure of Rs.7.53,996/- is not allowable as expenditure.*
10. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the CSR expenditure of Rs. 1,30.667 is not allowable as expenditure.*

Grounds for the A.Y. 2013-14:-

1. *That the order of the learned Commissioner of Income Tax (Appeals) in so far it is prejudicial to the interests of the appellant, is bad and erroneous in law and against the facts and circumstances of the case.*

2. *The learned Commissioner of Income Tax (Appeals) ought to have held that the order passed by the ACIT, Circle-1, Bellary is without jurisdiction.*
3. *That the order u/s 143(3) passed by the ACIT, Circle-1, Bellary is without jurisdiction as no valid notice u/s 143(2) has been issued by either ACIT, Central Circle 2(3), Bangalore or by ACIT, Circle-1, Bellary.*
4. *That the notice dated 23.09.2014 issued u/s 143(2) of the Act by the learned ACIT, Central Circle 2(3), Bangalore is without jurisdiction as it has been issued after the case was transferred to Bellary by virtue of an order passed u/s 127 of the Act by the learned Commissioner.*
5. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the e-auction sale proceeds of Rs. 130,94,98,919 is liable to be included in the total income of the appellant.*
6. *That the learned Commissioner of Income Tax (Appeals) ought to have appreciated that in view of the order of the Hon'ble Supreme Court, the appellant had no right over the sale proceeds as the entire stock has been confiscated and the Monitoring Committee was directed to hand over the sale proceeds to the State Government.*
7. *That the learned Commissioner of Income Tax (Appeals) ought to have held that the sale proceeds cannot be assessed as income of the appellant as it never reached it as income.*
8. *That the finding of the learned Commissioner of Income Tax (Appeals) in paragraph 5.3.3 of the appellate order that the Monitoring Committee is holding the sale proceeds on behalf of the assessee is perverse as being not supported by any evidence and being contrary to the materials on record.*
9. *Without prejudice to the above grounds that the learned Commissioner of Income Tax (Appeals) ought to have allowed e-auction sale proceeds retained by the Monitoring Committee, as a loss if the sale proceeds were to be treated as income of the appellant.*
10. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the CSR expenditure of Rs. 6,30,000 is not allowable as expenditure.*
11. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the sum of Rs. 9,04,077 being the closing stock value has not been added and therefore, the ground does not arise.*
12. *That the learned Commissioner of Income Tax (Appeals) ought to have appreciated that the sum of Rs. 130,94,98,919 have been added to the total income of the appellant includes the sum of Rs. 9,04,077 being the value of closing stock as on 31.03.2013 which has been confiscated.*

Grounds for the A.Y. 2014-15:-

1. *That the order of the learned Commissioner of Income Tax (Appeals) in so far it is prejudicial to the interests of the appellant, is bad and erroneous in law and against the facts and circumstances of the case.*
2. *The learned Commissioner of Income Tax (Appeals) ought to have held that the order passed by ITO Hospet is without jurisdiction.*
3. *That the learned Commissioner of Income Tax (Appeals) ought to have held that the ACIT, Circle-1, Bellary having issued a notice u/s 143(2) should have completed the assessment.*
4. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the e-auction sale proceeds of Rs. 63,67,20,000 is liable to be included in the total income of the appellant.*
5. *That the learned Commissioner of Income Tax (Appeals) ought to have appreciated that in view of the order of the Hon'ble Supreme Court, the appellant had no right over the sale proceeds as the entire stock has been confiscated and the Monitoring Committee was directed to hand over the sale proceeds to the State Government.*
6. *That the learned Commissioner of Income Tax (Appeals) ought to have held that the sale proceeds cannot be assessed as income of the appellant as it never reached it as income.*
7. *That the finding of the learned Commissioner of Income Tax (Appeals) in paragraph 5.3.3 of the appellate order that the Monitoring Committee is holding the sale proceeds on behalf of the assessee is perverse as being not supported by any evidence and being contrary to the materials on record.*
8. *Without prejudice to the above grounds that the learned Commissioner of Income Tax (Appeals) ought to have allowed e-auction sale proceeds retained by the Monitoring Committee, as a loss if the sale proceeds were to be treated as income of the appellant.*

2. The assessee filed following additional grounds of appeal along with petition for admission of additional grounds:-

For AY 2013-14

Additional Grounds:

1. *That the finding of the learned assessing officer in paragraph 4.5 of the assessment order that e-auction was conducted with*

the consent of the mine owner-appellant is perverse as it is not based on any material on record and being contrary to the materials on record.

- 2. That the finding of the learned assessing officer in paragraph 4.10 of the assessment order that e-auction sale proceeds are appropriation of profits towards various penalties is perverse as it is not based on any material on record and being contrary to the materials on record.*

For AY 2014-15

Additional Grounds:

- 1. That the finding of the learned assessing officer in paragraph 4.3 of the assessment order that e-auction was conducted with the consent of the mine owner-appellant is perverse as it is not based on any material on record and being contrary to the materials on record.*
 - 2. That the finding of the learned assessing officer in paragraph 4.8 of the assessment order that e-auction sale proceeds 'are appropriation of profits towards various penalties is perverse as it is not based on any material on record and being contrary to the materials on record.*
3. The Ld. A.R. pleaded that these additional grounds may be admitted as there is no necessity of investigation of fresh facts otherwise on record. Similarly, he filed additional evidences dated 19.2.2021 and dated 27.5.2022, which are follows:-

Additional evidences -1 dated 19.2.2021:-

The appellant seeks the leave of the Hon'ble Tribunal to file the following documents as additional evidence.

- 1. Notice dated 13.05.2011 directing to stop all kinds of mining activities.*
- 2. Survey report dated 13.6.2011 of the joint team constituted by the Hon'ble Supreme Court.*
- 3. Procedure for e-auction of iron ore.*
- 4. Notice dated 20.06.2011 issuing further order for closure of mining operations.*

The documents mentioned in serial 2 & 3 are available in public domain. The above 4 documents would prove that the mining operations of the appellant were completely stopped, and the appellant is not the owner of iron ore. Therefore, it goes to the root of the matter to prove that sale proceeds of ore have not accrued to the appellant and it has not earned any income from iron ore sold by Monitoring Committee. The above documents were not filed before the learned lower authorities because the appellant was under the impression that the Supreme Court order is very clear on the point that the 'C' category mines are completely closed, licenses are cancelled, and the stock of iron ore is confiscated/forfeited. However, now it has been advised that the above documents would present a complete picture of the facts.

It is prayed that the Hon'ble Income Tax Appellate Tribunal be pleased to admit the above additional evidence in the interest of equity, good conscience and justice and decide the case on merits.

Additional evidences -2 dated 27.5.2022:-

“The appellant seeks the leave of the Hon'ble Tribunal to file the following documents as additional evidence.

- 1. Invoice dated 06.12.2012 raised by Monitoring Committee, Department of Mines & Geology on M/s. Divyajyothi Steels.*
- 2. Screenshot of TIN website showing TIN of Monitoring Committee.*
- 3. Screenshot of TIN website showing TIN of M/s. VS Lad & Sons.*

The appellant was under a bonafide belief that report of Monitoring Committee and the Supreme Court decision would be sufficient to prove its case that it had no right over the ore sold by the Monitoring Committee. The above documents would prove that the sale of iron ore has been made by the Monitoring Committee as owner and not by the appellant. Hence, the appellant has been advised to file these documents as additional evidence. The documents mentioned in # 2 & 3 are in public domain. Appellant was able to obtain the document in # 1 only now. Hence, it could not be produced earlier.”

4. The Ld. A.R. prayed that these additional evidences may be admitted in the interest of justice as these are not available at the time of completion of assessment.

5. Ld. D.R. has not put any serious objection for admission of these additional evidences. In our opinion, these additional evidences

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are very much necessary for fair adjudication of the issue in dispute and the assessee was prevented by sufficient cause in not filing these additional evidences on earlier occasion on the reason that these additional evidences were not available at that point of time. Accordingly, by placing reliance on the judgement in the case of NTPC Ltd. (229 ITR 383), we admit the additional evidences as well as additional grounds for adjudication.

6. Since these additional grounds and additional evidences were not made available to the Ld. CIT(A) at the time of he disposing of these appeals and they have no occasion to hearing these issues, both additional grounds and additional evidences are remitted back to the file of Ld. CIT(A) for adjudication. However, we make it clear that the lower authorities shall not lend that aid to assessee that roots its cause of action in an immoral or illegal act. In other words, none should be allowed to profit from any wrongdoing coupled with the fact that statutory regimes should be coherent and not self-defeating.

7. Since we have remitted the additional grounds and additional evidences to the file of Ld. CIT(A) for his consideration, we refrain from going into the other grounds of appeal raised by the assessee at this stage.

8. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 6th Jun, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 6th Jun, 2022.
VG/SPS

Copy to:

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

By order

**Asst. Registrar,
ITAT, Bangalore.**